

(2) an estimate of the environmental response costs at the permitted landfills that would become eligible to participate;

(3) a discussion of the amount necessary to pay for reimbursement for persons who have paid for cleanup at these added sites; and

(4) an analysis and recommendation of funding sources to pay for the additional costs due to expansion of the program.

Sec. 158. YEAR 2000 READY.

Any computer software or hardware that is purchased with money appropriated in this bill must be year 2000 ready.

Sec. 159. REPORT TO LEGISLATURE; HYDROGEN SULFIDE VIOLATIONS.

The commissioner of the pollution control agency shall report on the agency's efforts to resolve the hydrogen sulfide violations of ambient air quality standards related to feedlots by February 1, 1998, to the agriculture and environment and natural resources committees of the house and the agriculture and rural development and environment and natural resources committees of the senate. The report must specify actions taken in terms of response to complaints from citizens, emissions monitoring, compliance actions taken, including penalties, and equipment purchased.

Sec. 160. REPEALER.

(a) Minnesota Statutes 1996, sections 25.34; 115A.908, subdivision 3; 115A.9523; 115B.223; 115B.224; 116.991; 116.992; and 296.02, subdivision 7a, are repealed.

(b) Laws 1995, chapter 77, section 3, is repealed effective the day after final enactment.

(c) Laws 1995, chapter 220, section 21, is repealed.

Sec. 161. EFFECTIVE DATE.

Sections 72, 130 to 134, 141, and 146 to 152 are effective the day following final enactment.

Sections 24, 83, 89, and 90 are effective March 1, 1998.

Presented to the governor May 27, 1997

Signed by the governor May 30, 1997, 1:00 p.m.

CHAPTER 217—H.F.No. 735

An act relating to civil commitment; clarifying and reorganizing portions of the commitment act; allowing the designated agency to consent to voluntary treatment for certain incompetent persons; creating a new standard for court-ordered early intervention to provide less intrusive treatment; modifying standards and procedures for the administration of neuroleptic medications; pro-

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viding for access to records; amending the provisional discharge procedures; requiring medical documentation of a patient's refusal to be examined and allowing determination of need for treatment based on other information; prohibiting prepetition screeners from filing commitment petitions; limiting use of prepetition screening reports in unrelated proceedings; requiring distribution to specified parties; increasing time for return after provisional discharge; modifying provisions governing special review boards; increasing time for hearing appeals; changing provisions for state liens for cost of care; amending Minnesota Statutes 1996, sections 13.42, subdivisions 2 and 3; 55.10, subdivision 4; 246B.01, subdivisions 3 and 4; 253B.01; 253B.02, subdivisions 2, 4, 4a, 7, 9, 13, 14, 15, 18, 18a, 18b, and by adding subdivisions; 253B.03, subdivisions 1, 2, 3, 4, 5, 6, 6b, 7, 8, and by adding a subdivision; 253B.04; 253B.05, subdivisions 1, 2, 3, 4, and by adding a subdivision; 253B.06; 253B.07, subdivisions 1, 2, 2a, 3, 4, 5, 7, and by adding subdivisions; 253B.08, subdivisions 1, 2, 3, 5, and by adding subdivisions; 253B.09, subdivisions 1, 2, 3, 5, and by adding a subdivision; 253B.095; 253B.10; 253B.11, subdivision 2, and by adding a subdivision; 253B.12, subdivisions 1, 3, 4, and by adding a subdivision; 253B.13, subdivisions 1 and 2; 253B.14; 253B.15, subdivisions 1, 1a, 2, 3, 5, 10, and by adding subdivisions; 253B.16, subdivision 1; 253B.17, subdivisions 1 and 3; 253B.18, subdivisions 1, 2, 3, 4, 4a, 4b, 5, 6, 7, 9, 12, 14, 15, and by adding a subdivision; 253B.185, subdivision 4; 253B.19, subdivisions 1, 2, 3, and 5; 253B.20, subdivisions 1, 3, 4, 6, and 7; 253B.21, subdivision 4; 253B.22, subdivision 1; 253B.23, subdivisions 1, 4, 6, 7, and 9; 256.015, subdivisions 1, 2, and 4; 256B.042, subdivisions 1, 2, and 4; 256B.37, subdivision 1; 514.71; 514.980, subdivision 2; 514.981, subdivision 2; 514.982, subdivisions 1 and 2; 514.985; 524.1-201; 524.3-801; 524.3-1004; 524.3-1201; and 524.6-207; proposing coding for new law in Minnesota Statutes, chapter 253B; repealing Minnesota Statutes 1996, sections 253B.03, subdivisions 6c and 9; 253B.05, subdivisions 2a and 5; 253B.07, subdivision 6; 253B.08, subdivisions 4 and 6; 253B.091; 253B.12, subdivisions 5 and 8; 253B.13, subdivision 3; 253B.15, subdivisions 4 and 6; 253B.18, subdivision 4; 253B.21, subdivision 5; and 253B.23, subdivision 1a.

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

ARTICLE 1

CIVIL COMMITMENT

Section 1. Minnesota Statutes 1996, section 13.42, subdivision 2, is amended to read:

Subd. 2. **PUBLIC HOSPITALS; DIRECTORY INFORMATION.** (a) During the time that a person is a patient in a hospital operated by a state agency or political subdivision pursuant to under legal commitment, directory information is public data. After the person is released by termination of the person's legal commitment, the directory information is private data on individuals.

(b) If a person is a patient other than pursuant to commitment in a hospital controlled by a state agency or political subdivision, directory information is public data unless the patient requests otherwise, in which case it is private data on individuals.

(c) Directory information about an emergency patient who is unable to communicate which is public under this subdivision shall not be released until a reasonable effort is

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made to notify the next of kin. Although an individual has requested that directory information be private, the hospital may release directory information to a law enforcement agency pursuant to a lawful investigation pertaining to that individual.

Sec. 2. Minnesota Statutes 1996, section 13.42, subdivision 3, is amended to read:

Subd. 3. **CLASSIFICATION OF MEDICAL DATA.** Unless the data is summary data or a statute specifically provides a different classification, medical data are private but are available only to the subject of the data as provided in section 144.335, and shall not be disclosed to others except:

- (a) Pursuant to section 13.05;
- (b) Pursuant to section ~~253B.03~~, subdivision ~~6e~~ 253B.0921;
- (c) Pursuant to a valid court order;
- (d) To administer federal funds or programs;
- (e) To the surviving spouse, parents, children, and siblings of a deceased patient or client or, if there are no surviving spouse, parents, children, or siblings, to the surviving heirs of the nearest degree of kindred;
- (f) To communicate a patient's or client's condition to a family member or other appropriate person in accordance with acceptable medical practice, unless the patient or client directs otherwise; or
- (g) As otherwise required by law.

Sec. 3. Minnesota Statutes 1996, section 246B.01, subdivision 3, is amended to read:

Subd. 3. **SEXUAL PSYCHOPATHIC PERSONALITY.** "Sexual psychopathic personality" has the meaning given in section 253B.02, subdivision ~~18a~~ 18b.

Sec. 4. Minnesota Statutes 1996, section 246B.01, subdivision 4, is amended to read:

Subd. 4. **SEXUALLY DANGEROUS PERSON.** "Sexually dangerous person" has the meaning given in section 253B.02, subdivision ~~18b~~ 18c.

Sec. 5. Minnesota Statutes 1996, section 253B.01, is amended to read:

253B.01 CITATION.

This chapter may be cited as the "Minnesota commitment and treatment act of 1982."

Sec. 6. Minnesota Statutes 1996, section 253B.02, subdivision 2, is amended to read:

Subd. 2. **CHEMICALLY DEPENDENT PERSON.** "Chemically dependent person" means any person (a) determined as being incapable of self-management or management of personal affairs by reason of the habitual and excessive use of alcohol or drugs, or other mind-altering substances; and (b) whose recent conduct as a result of habitual and excessive use of alcohol or drugs, or other mind-altering substances poses a

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substantial likelihood of physical harm to self or others as demonstrated by (i) a recent attempt or threat to physically harm self or others, (ii) evidence of recent serious physical problems, or (iii) a failure to obtain necessary food, clothing, shelter, or medical care. "Chemically dependent person" also means a pregnant woman who has engaged during the pregnancy in habitual or excessive use, for a nonmedical purpose, of any of the following controlled substances or their derivatives: cocaine, heroin, phencyclidine, methamphetamine, or amphetamine.

Sec. 7. Minnesota Statutes 1996, section 253B.02, subdivision 4, is amended to read:

Subd. 4. **COMMITTING COURT.** "Committing court" means ~~court or~~ the district court where a petition for commitment was decided. In a case where commitment proceedings are commenced in response to following an acquittal of a crime or offense under section 611.026, "committing court" means the district court in which the acquittal took place.

Sec. 8. Minnesota Statutes 1996, section 253B.02, subdivision 4a, is amended to read:

Subd. 4a. **CRIME AGAINST THE PERSON.** "Crime against the person" means a violation of or attempt to violate any of the following provisions: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.224 (assault in the fifth degree); 609.2242 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse); 609.233 (criminal neglect); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.265 (abduction); 609.27, subdivision 1, clause (1) or (2) (coercion); 609.28 (interfering with religious observance) if violence or threats of violence were used; 609.322, subdivision 1, clause (2) (solicitation); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.365 (incest); 609.498, subdivision 1 (tampering with a witness); 609.50, clause (1) (obstructing legal process, arrest, and firefighting); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.595 (damage to property); and 609.72, subdivision 3 (disorderly conduct by a caregiver).

Sec. 9. Minnesota Statutes 1996, section 253B.02, subdivision 7, is amended to read:

Subd. 7. **EXAMINER.** "Examiner" means a person who is knowledgeable, trained, and practicing in the diagnosis and treatment of the alleged impairment and who is:

(1) a licensed physician; or

(2) a licensed psychologist who has a doctoral degree in psychology or who became licensed as a licensed consulting psychologist before July 2, 1975.

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Sec. 10. Minnesota Statutes 1996, section 253B.02, subdivision 9, is amended to read:

Subd. 9. **HEALTH OFFICER.** "Health officer" means a licensed physician, licensed psychologist, ~~psychiatric~~ licensed social worker, or psychiatric or public health nurse as defined in section 145A.02, subdivision 18, and formally designated members of a prepetition screening unit established by section 253B.07.

Sec. 11. Minnesota Statutes 1996, section 253B.02, is amended by adding a subdivision to read:

Subd. 12a. **MENTAL ILLNESS.** "Mental illness" has the meaning given in section 245.462, subdivision 20.

Sec. 12. Minnesota Statutes 1996, section 253B.02, subdivision 13, is amended to read:

Subd. 13. **MENTALLY ILL PERSON.** (a) "Mentally ill person" means any person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which (a) is manifested by instances of grossly disturbed behavior or faulty perceptions; and (b) poses a substantial likelihood of physical harm to self or others as demonstrated by:

(~~i~~) (1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment; or

(~~ii~~) (2) a recent attempt or threat to physically harm self or others.

This impairment excludes (b) A person is not mentally ill under this section if the impairment is solely due to:

(a) (1) epilepsy;

(b) (2) mental retardation;

(e) (3) brief periods of intoxication caused by alcohol or drugs, or other mind-altering substances; or

(~~d~~) (4) dependence upon or addiction to any alcohol or drugs, or other mind-altering substances.

Sec. 13. Minnesota Statutes 1996, section 253B.02, subdivision 14, is amended to read:

Subd. 14. **MENTALLY RETARDED PERSON.** "Mentally retarded person" means any person: (a) who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions prior to the person's 22nd birthday; and (b) whose recent conduct is a result of mental retardation and poses a substantial likelihood of physical harm to self or others in that there has been (i) a recent attempt or threat to physically harm self or others, or (ii) a failure and inability to obtain necessary food, clothing, shelter, safety, or medical care.

Sec. 14. Minnesota Statutes 1996, section 253B.02, subdivision 15, is amended to read:

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Subd. 15. **PATIENT.** "Patient" means any person who is institutionalized receiving treatment or committed under this chapter.

Sec. 15. Minnesota Statutes 1996, section 253B.02, subdivision 18, is amended to read:

Subd. 18. **REGIONAL TREATMENT CENTER.** "Regional treatment center" means any state operated facility for mentally ill, mentally retarded or chemically dependent persons which is under the direct administrative authority of the commissioner.

Sec. 16. Minnesota Statutes 1996, section 253B.02, is amended by adding a subdivision to read:

Subd. 18a. SECURE TREATMENT FACILITY. "Secure treatment facility" means the Minnesota security hospital or the Minnesota sexual psychopathic personality treatment center.

Sec. 17. Minnesota Statutes 1996, section 253B.02, subdivision 18a, is amended to read:

Subd. 18a, 18b. **SEXUAL PSYCHOPATHIC PERSONALITY.** "Sexual psychopathic personality" means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Sec. 18. Minnesota Statutes 1996, section 253B.02, subdivision 18b, is amended to read:

Subd. 18b. **18c. SEXUALLY DANGEROUS PERSON.** (a) A "sexually dangerous person" means a person who:

- (1) has engaged in a course of harmful sexual conduct as defined in subdivision 7a;
 - (2) has manifested a sexual, personality, or other mental disorder or dysfunction;
- and
- (3) as a result, is likely to engage in acts of harmful sexual conduct as defined in subdivision 7a.

(b) For purposes of this provision, it is not necessary to prove that the person has an inability to control the person's sexual impulses.

Sec. 19. Minnesota Statutes 1996, section 253B.03, subdivision 1, is amended to read:

Subdivision 1. **RESTRAINTS.** (a) A patient has the right to be free from restraints. Restraints shall not be applied to a patient unless the head of the treatment facility or a member of the medical staff determines that they are necessary for the safety of the patient or others.

(b) Restraints shall not be applied to patients with mental retardation except as permitted under section 245.825 and rules of the commissioner of human services. Consent

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must be obtained from the person or person's guardian except for emergency procedures as permitted under rules of the commissioner adopted under section 245.825.

(c) Each use of a restraint and reason for it shall be made part of the clinical record of the patient under the signature of the head of the treatment facility.

Sec. 20. Minnesota Statutes 1996, section 253B.03, subdivision 2, is amended to read:

Subd. 2. **CORRESPONDENCE.** A patient has the right to correspond freely without censorship. The head of the treatment facility may restrict correspondence on determining that the if the patient's medical welfare of the patient requires it this restriction. For patients in regional facilities treatment centers, that determination may be reviewed by the commissioner. Any limitation imposed on the exercise of a patient's correspondence rights and the reason for it shall be made a part of the clinical record of the patient. Any communication which is not delivered to a patient shall be immediately returned to the sender.

Sec. 21. Minnesota Statutes 1996, section 253B.03, subdivision 3, is amended to read:

Subd. 3. **VISITORS AND PHONE CALLS.** Subject to the general rules of the treatment facility, a patient has the right to receive visitors and make phone calls. The head of the treatment facility may restrict visits and phone calls on determining that the medical welfare of the patient requires it. Any limitation imposed on the exercise of the patient's visitation and phone call rights and the reason for it shall be made a part of the clinical record of the patient. ~~Upon admission to a facility where federal law prohibits unauthorized disclosure of patient or resident identifying information to callers and visitors, the patient or resident, or the legal guardian or conservator of the patient or resident, shall be given the opportunity to authorize disclosure of the patient's or resident's presence in the facility to callers and visitors who may seek to communicate with the patient or resident. To the extent possible, the legal guardian or conservator of a patient or resident shall consider the opinions of the patient or resident regarding the disclosure of the patient's or resident's presence in the facility.~~

Sec. 22. Minnesota Statutes 1996, section 253B.03, subdivision 4, is amended to read:

Subd. 4. **SPECIAL VISITATION; RELIGION.** A patient has the right to meet with or call a personal physician, spiritual advisor, and counsel at all reasonable times. ~~Upon admission to a facility where federal law prohibits unauthorized disclosure of patient or resident identifying information to callers and visitors, the patient or resident, or the legal guardian or conservator of the patient or resident, shall be given the opportunity to authorize disclosure of the patient's or resident's presence in the facility to callers and visitors who may seek to communicate with the patient or resident. To the extent possible, the legal guardian or conservator of a patient or resident shall consider the opinions of the patient or resident regarding the disclosure of the patient's or resident's presence in the facility.~~ The patient has the right to continue the practice of religion.

Sec. 23. Minnesota Statutes 1996, section 253B.03, is amended by adding a subdivision to read:

Subd. 4a. **DISCLOSURE OF PATIENT'S ADMISSION.** Upon admission to a facility where federal law prohibits unauthorized disclosure of patient or resident identi-

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fyng information to callers and visitors, the patient or resident, or the legal guardian or conservator of the patient or resident, shall be given the opportunity to authorize disclosure of the patient's or resident's presence in the facility to callers and visitors who may seek to communicate with the patient or resident. To the extent possible, the legal guardian or conservator of a patient or resident shall consider the opinions of the patient or resident regarding the disclosure of the patient's or resident's presence in the facility.

Sec. 24. Minnesota Statutes 1996, section 253B.03, subdivision 5, is amended to read:

Subd. 5. **PERIODIC ASSESSMENT.** A patient has the right to periodic medical assessment. The head of a treatment facility shall have assess the physical and mental condition of every patient assessed as frequently as necessary, but not less often than annually. If the patient refuses to be examined, the facility shall document in the patient's chart its attempts to examine the patient. If a person is committed as mentally retarded for an indeterminate period of time, the three-year judicial review must include the annual reviews for each year as outlined in Minnesota Rules, part 9525.0075, subpart 6.

Sec. 25. Minnesota Statutes 1996, section 253B.03, subdivision 6, is amended to read:

Subd. 6. **CONSENT FOR MEDICAL PROCEDURE.** A patient has the right to prior consent to any medical or surgical treatment, other than treatment for chemical dependency or nonintrusive treatment for mental illness.

The following procedures shall be used to obtain consent for any treatment necessary to preserve the life or health of any committed patient:

(a) The written, informed consent of a competent adult patient for the treatment is sufficient.

(b) If the patient is subject to guardianship or conservatorship which includes the provision of medical care, the written, informed consent of the guardian or conservator for the treatment is sufficient.

(c) If the head of the treatment facility determines that the patient is not competent to consent to the treatment and the patient has not been adjudicated incompetent, written, informed consent for the surgery or medical treatment shall be obtained from the nearest proper relative. For this purpose, the following persons are proper relatives, in the order listed: the patient's spouse, parent, adult child, or adult sibling. If the nearest proper relatives cannot be located or, refuse to consent to the procedure, or are unable to consent, the head of the treatment facility or an interested person may petition the committing court for approval for the treatment or may petition a court of competent jurisdiction for the appointment of a guardian or conservator. The determination that the patient is not competent, and the reasons for the determination, shall be documented in the patient's clinical record.

(d) Consent to treatment of any minor patient shall be secured in accordance with sections 144.341 to 144.346, ~~except that.~~ A minor 16 years of age or older may give valid consent ~~for~~ to hospitalization, routine diagnostic evaluation, and emergency or short-term acute care.

(e) In the case of an emergency when the persons ordinarily qualified to give consent cannot be located, the head of the treatment facility may give consent.

New language is indicated by underline, deletions by ~~strikeout~~.

No person who consents to treatment pursuant to the provisions of this subdivision shall be civilly or criminally liable for the performance or the manner of performing the treatment. No person shall be liable for performing treatment without consent if written, informed consent was given pursuant to this subdivision. This provision shall not affect any other liability which may result from the manner in which the treatment is performed.

Sec. 26. Minnesota Statutes 1996, section 253B.03, subdivision 6b, is amended to read:

Subd. 6b. **CONSENT FOR MENTAL HEALTH TREATMENT.** A competent person admitted ~~without commitment~~ voluntarily to a treatment facility may be subjected to intrusive mental health treatment only with the person's written informed consent. For purposes of this section, "intrusive mental health treatment" means electroshock therapy and neuroleptic medication and does not include treatment for mental retardation. An incompetent person who has prepared a directive under subdivision 6d regarding treatment with intrusive therapies must be treated in accordance with this section, except in cases of emergencies.

Sec. 27. Minnesota Statutes 1996, section 253B.03, subdivision 7, is amended to read:

Subd. 7. **PROGRAM PLAN.** A person receiving services under this chapter has the right to receive proper care and treatment, best adapted, according to contemporary professional standards, to rendering further ~~eustody, institutionalization, or other services~~ court supervision unnecessary. The treatment facility shall devise a written program plan for each person which describes in behavioral terms the case problems, the precise goals, including the expected period of time for treatment, and the specific measures to be employed. Each plan shall be reviewed at least quarterly to determine progress toward the goals, and to modify the program plan as necessary. The program plan shall be devised and reviewed with the designated agency and with the patient. The clinical record shall reflect the program plan review. If the designated agency or the patient does not participate in the planning and review, the clinical record shall include reasons for nonparticipation and the plans for future involvement. The commissioner shall monitor the program plan and review process for regional centers to insure compliance with the provisions of this subdivision.

Sec. 28. Minnesota Statutes 1996, section 253B.03, subdivision 8, is amended to read:

Subd. 8. **MEDICAL RECORDS.** A patient has the right to access to personal medical records. Notwithstanding the provisions of section 144.335, subdivision 2, every person subject to a proceeding or receiving services pursuant to this chapter and the patient's attorney shall have complete access to all medical records relevant to the person's commitment. A provider may require an attorney to provide evidence of representation of the patient or an authorization signed by the patient.

Sec. 29. Minnesota Statutes 1996, section 253B.04, is amended to read:

253B.04 INFORMAL VOLUNTARY TREATMENT AND ADMISSION PROCEDURES.

Subdivision 1. **VOLUNTARY ADMISSION AND TREATMENT.** ~~Informal Voluntary admission by consent is preferred over involuntary commitment and treatment.~~

New language is indicated by underline, deletions by ~~strikeout~~.

Any person 16 years of age or older may request to be admitted to a treatment facility as ~~an informal~~ a voluntary patient for observation, evaluation, diagnosis, care and treatment without making formal written application. Any person under the age of 16 years may be admitted as ~~an informal~~ a voluntary patient with the consent of a parent or legal guardian if it is determined by independent examination that there is reasonable evidence that (a) the proposed patient is mentally ill, mentally retarded, or chemically dependent; and (b) the proposed patient is suitable for treatment. The head of the treatment facility shall not arbitrarily refuse any person seeking admission as ~~an informal~~ a voluntary patient.

Subd. 1a. VOLUNTARY TREATMENT OR ADMISSION FOR PERSONS WITH MENTAL ILLNESS. (a) A person with a mental illness may seek or voluntarily agree to accept treatment or admission to a facility. If the mental health provider determines that the person lacks the capacity to give informed consent for the treatment or admission, and in the absence of a durable power of attorney for health care that authorizes consent, the designated agency or its designee may give informed consent for mental health treatment or admission to a treatment facility on behalf of the person.

(b) The designated agency shall apply the following criteria in determining the person's ability to give informed consent:

(1) whether the person demonstrates an awareness of the person's illness, and the reasons for treatment, its risks, benefits and alternatives, and the possible consequences of refusing treatment; and

(2) whether the person communicates verbally or nonverbally a clear choice concerning treatment that is a reasoned one, not based on delusion, even though it may not be in the person's best interests.

(c) The basis for the designated agency's decision that the person lacks the capacity to give informed consent for treatment or admission, and that the patient has voluntarily accepted treatment or admission, must be documented in writing.

(d) A mental health provider that provides treatment in reliance on the written consent given by the designated agency under this subdivision is not civilly or criminally liable for performing treatment without consent. This paragraph does not affect any other liability that may result from the manner in which the treatment is performed.

(e) A person who receives treatment or is admitted to a facility under this subdivision has the right to refuse treatment at any time or to be released from a facility as provided under subdivision 2. The person or any interested person acting on the person's behalf may seek court review within five days for a determination of whether the person's agreement to accept treatment or admission is voluntary. At the time a person agrees to treatment or admission to a facility under this subdivision, the designated agency or its designee shall inform the person in writing of the person's rights under this paragraph.

(f) This subdivision does not authorize the administration of neuroleptic medications. Neuroleptic medications may be administered only as provided in section 253B.092.

Subd. 2. RELEASE. Every patient admitted for mental illness or mental retardation under this section shall be informed in writing at the time of admission that the patient has a right to leave the facility within 12 hours of making a request, unless held under another provision of this chapter. Every patient admitted for chemical dependency under this sec-

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tion shall be informed in writing at the time of admission that the patient has a right to leave the facility within 72 hours, exclusive of Saturdays, Sundays and holidays, of making a request, unless held under another provision of this chapter. The request shall be submitted in writing to the head of the treatment facility or the person's designee. ~~On deeming it to be in the best interest of the person, the person's family, or the public, the head of the treatment facility shall petition for the commitment of the person pursuant to section 253B.07.~~

Sec. 30. Minnesota Statutes 1996, section 253B.05, subdivision 1, is amended to read:

Subdivision 1. **EMERGENCY HOLD.** (a) Any person may be admitted or held for emergency care and treatment in a treatment facility with the consent of the head of the treatment facility upon a written statement by an examiner that: (1) the examiner has examined the person not more than 15 days prior to admission, (2) the examiner is of the opinion, for stated reasons, that the person is mentally ill, mentally retarded or chemically dependent, and is in imminent danger of causing injury to self or others if not immediately restrained, and (3) an order of the court cannot be obtained in time to prevent the anticipated injury.

(b) The examiner's statement shall be: (1) sufficient authority for a peace or health officer to transport a patient to a treatment facility, (2) stated in behavioral terms and not in conclusory language, and (3) of sufficient specificity to provide an adequate record for review. ~~If imminent danger to specific individuals is a basis for the emergency hold, the statement must include identifying information on~~ identify those individuals, to the extent practicable. A copy of the examiner's statement shall be personally served on the person immediately upon admission. ~~A copy of the statement and a copy shall be maintained by the treatment facility.~~

Sec. 31. Minnesota Statutes 1996, section 253B.05, subdivision 2, is amended to read:

Subd. 2. **PEACE OR HEALTH OFFICER HOLD AUTHORITY.** (a) A peace or health officer may take a person into custody and transport the person to a licensed physician or treatment facility if the officer has reason to believe, either through direct observation of the person's behavior, or upon reliable information of the person's recent behavior and knowledge of the person's past behavior or psychiatric treatment, that the person is mentally ill or mentally retarded and in imminent danger of injuring self or others if not immediately restrained. A peace or health officer or a person working under such officer's supervision, may take a person who is believed to be chemically dependent or is intoxicated in public into custody and transport the person to a treatment facility. If the person is intoxicated in public or is believed to be chemically dependent and is not in danger of causing self-harm or harm to any person or property, the peace or health officer may transport the person home. The peace or health officer shall make written application for admission of the person to a the treatment facility shall be made by the peace or health officer. The application shall contain a the peace or health officer's statement given by the peace or health officer specifying the reasons for and circumstances under which the person was taken into custody. If imminent danger to specific individuals is a basis for the emergency hold, the statement must include identifying information on those individuals, to the extent practicable. A copy of the statement shall be made available to the person taken into custody.

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(b) As far as is practicable, a peace officer who provides transportation for a person placed in a facility under this subdivision may not be in uniform and may not use a vehicle visibly marked as a law enforcement vehicle.

(c) A person may be admitted to a treatment facility for emergency care and treatment under this subdivision with the consent of the head of the facility under the following circumstances: (1) a written statement is made by the medical officer on duty at the facility that after preliminary examination the person has symptoms of mental illness or mental retardation and appears to be in imminent danger of harming self or others; or, (2) a written statement is made by the institution program director or the director's designee on duty at the facility that after preliminary examination that the person has symptoms of chemical dependency and appears to be in imminent danger of harming self or others or is intoxicated in public.

Sec. 32. Minnesota Statutes 1996, section 253B.05, is amended by adding a subdivision to read:

Subd. 2b. NOTICE. Every person held pursuant to this section must be informed in writing at the time of admission of the right to leave after 72 hours, to a medical examination within 48 hours, and to request a change to voluntary status. The treatment facility shall, upon request, assist the person in exercising the rights granted in this subdivision.

Sec. 33. Minnesota Statutes 1996, section 253B.05, subdivision 3, is amended to read:

Subd. 3. **DURATION OF HOLD.** (a) Any person held pursuant to this section may be held up to 72 hours, exclusive of Saturdays, Sundays, and legal holidays, after admission unless. If a petition for the commitment of the person has been is filed in the district court of in the county of the person's residence or of the county in which the treatment facility is located and, the court issues an may issue a judicial hold order pursuant to section 253B.07, subdivision 6. If the head of the treatment facility believes that commitment is required and no petition has been filed, the head of the treatment facility shall file a petition for the commitment of the person. The hospitalized person may move to have the venue of the petition changed to the court of the county of the person's residence, if the person is a resident of Minnesota.

(b) During the 72-hour hold period, a court may not release a person held under this section unless the court has received a written petition for release and held a summary hearing regarding the release. The petition must include the name of the person being held, the basis for and location of the hold, and a statement as to why the hold is improper. The petition also must include copies of any written documentation under subdivision 1 or 2 in support of the hold, unless the person holding the petitioner refuses to supply the documentation. The hearing must be held as soon as practicable and may be conducted by means of a telephone conference call or similar method by which the participants are able to simultaneously hear each other. If the court decides to release the person, the court shall direct the release and shall issue written findings supporting the decision, but may not delay. The release may not be delayed pending the written order. Before deciding to release releasing the person, the court shall make every reasonable effort to provide notice of the proposed release to: (1) any specific individuals identified in a statement under subdivision 1 or 2 or individuals identified in the record as individuals who might be endangered if the person was not held; and (2) the examiner whose written statement, was a

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basis for a hold under subdivision 1 ~~or~~; and (3) the peace or health officer who applied for a hold under subdivision 2.

(c) If a treatment facility releases a person during the 72-hour hold period, the head of the treatment facility shall immediately notify the agency which employs the peace or health officer who transported the person to the treatment facility under this section.

Sec. 34. Minnesota Statutes 1996, section 253B.05, subdivision 4, is amended to read:

Subd. 4. **CHANGE OF STATUS.** Any person admitted pursuant to this section shall be changed to ~~the informal~~ voluntary status provided by section 253B.04 upon the person's request in writing and with the consent of the head of the treatment facility.

Sec. 35. Minnesota Statutes 1996, section 253B.06, is amended to read:

253B.06 MEDICAL EXAMINATION INITIAL ASSESSMENT.

Subdivision 1. **MENTALLY ILL AND MENTALLY RETARDED PERSONS.** ~~The head of a treatment facility shall arrange to have~~ Every patient hospitalized as mentally ill or mentally retarded pursuant to section 253B.04 or 253B.05 must be examined by a physician as soon as possible but no more than 48 hours following the time of admission. The physician shall be knowledgeable and trained in the diagnosis of the alleged disability related to the need for admission as a mentally ill or mentally retarded person.

Subd. 2. **CHEMICALLY DEPENDENT PERSONS.** Patients hospitalized as chemically dependent pursuant to section 253B.04 or 253B.05 shall also be examined within 48 hours of admission. At a minimum, the examination shall consist of a physical evaluation by facility staff according to procedures established by a physician and an evaluation by staff knowledgeable and trained in the diagnosis of the alleged disability related to the need for admission as a chemically dependent person.

Subd. 2a. **PATIENT REFUSAL.** If a patient refuses to be examined, the determination of the patient's need for treatment may be based on other available information and documented in the patient's medical record.

Subd. 3. **DISCHARGE.** At the end of a 48-hour period, any patient admitted pursuant to section 253B.05 shall be discharged if an examination has not been held or if the examiner or evaluation staff person fails to notify the head of the treatment facility in writing that in the examiner's or staff person's opinion the patient is apparently in need of care, treatment, and evaluation as a mentally ill, mentally retarded, or chemically dependent person.

Sec. 36. [253B.064] COURT-ORDERED EARLY INTERVENTION; PRELIMINARY PROCEDURES.

Subdivision 1. **GENERAL.** (a) An interested person may apply to the designated agency for early intervention of a proposed patient in the county of the patient's residence or presence. If the designated agency determines that early intervention may be appropriate, a prepetition screening report must be prepared pursuant to section 253B.07, subdivision 1. The county attorney may file a petition for early intervention following the procedures of section 253B.07, subdivision 2.

(b) The proposed patient is entitled to representation by counsel, pursuant to section 253B.03, subdivision 9. The proposed patient shall be examined by an examiner, and has

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the right to a second independent examiner, pursuant to section 253B.07, subdivisions 3 and 5.

Subd. 2. **PREHEARING EXAMINATION; FAILURE TO APPEAR.** If a proposed patient fails to appear for the examination, the court may:

(1) reschedule the examination; or

(2) deem the failure to appear as a waiver of the proposed patient's right to an examination and consider the failure to appear when deciding the merits of the petition for early intervention.

Subd. 3. **COUNTY OPTION.** Nothing in sections 253B.064 to 253B.066 requires a county to use early intervention procedures.

Sec. 37. [253B.065] COURT-ORDERED EARLY INTERVENTION; HEARING PROCEDURES.

Subdivision 1. **TIME FOR EARLY INTERVENTION HEARING.** The hearing on the petition for early intervention shall be held within 14 days from the date of the filing of the petition. For good cause shown, the court may extend the time of hearing up to an additional 30 days. When any proposed patient has not had a hearing on a petition filed for early intervention within the allowed time, the proceedings shall be dismissed.

Subd. 2. **NOTICE OF HEARING.** The proposed patient, the patient's counsel, the petitioner, the county attorney, and any other persons as the court directs shall be given at least five days' notice that a hearing will be held and at least two days' notice of the time and date of the hearing, except that any person may waive notice. Notice to the proposed patient may be waived by patient's counsel.

Subd. 3. **FAILURE TO APPEAR.** If a proposed patient fails to appear at the hearing, the court may reschedule the hearing within five days and direct a health officer, peace officer, or other person to take the proposed patient to an appropriate treatment facility designated by the court and transport the person to the hearing.

Subd. 4. **PROCEDURES.** The hearing must be conducted pursuant to section 253B.08, subdivisions 3 to 8.

Subd. 5. **EARLY INTERVENTION CRITERIA.** (a) A court shall order early intervention treatment of a proposed patient who meets the criteria under paragraph (b). The early intervention treatment must be less intrusive than long-term inpatient commitment and must be the least restrictive treatment program available that can meet the patient's treatment needs.

(b) The court shall order early intervention treatment if the court finds all of the elements of the following factors by clear and convincing evidence:

(1) the proposed patient is mentally ill;

(2) the proposed patient refuses to accept appropriate mental health treatment; and

(3) the proposed patient's mental illness is manifested by instances of grossly disturbed behavior or faulty perceptions and either:

(i) the grossly disturbed behavior or faulty perceptions significantly interfere with the proposed patient's ability to care for self and the proposed patient, when competent, would have chosen substantially similar treatment under the same circumstances; or

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(ii) due to the mental illness, the proposed patient received court-ordered inpatient treatment under section 253B.09 at least two times in the previous three years; the patient is exhibiting symptoms or behavior substantially similar to those that precipitated one or more of the court-ordered treatments; and the patient is reasonably expected to physically or mentally deteriorate to the point of meeting the criteria for commitment under section 253B.09 unless treated.

Sec. 38. [253B.066] COURT-ORDERED EARLY INTERVENTION; DECISION; TREATMENT ALTERNATIVES; DURATION.

Subdivision 1. TREATMENT ALTERNATIVES. If the court orders early intervention under section 253B.065, subdivision 5, the court may include in its order a variety of treatment alternatives including, but not limited to, day treatment, medication compliance monitoring, and short-term hospitalization not to exceed ten days.

If the court orders short-term hospitalization and the proposed patient will not go voluntarily, the court may direct a health officer, peace officer, or other person to take the person into custody and transport the person to the hospital.

Subd. 2. FINDINGS. The court shall find the facts specifically and separately state its conclusions of law in its order. Where early intervention is ordered, the findings of fact and conclusions of law shall specifically state the proposed patient's conduct which is a basis for determining that each of the requisites for early intervention is met.

The court shall also determine the nature and extent of the property of the patient and of the persons who are liable for the patient's care.

Subd. 3. DURATION. The order for early intervention shall not exceed 90 days.

Sec. 39. Minnesota Statutes 1996, section 253B.07, subdivision 1, is amended to read:

Subdivision 1. PREPETITION SCREENING. (a) Prior to filing a petition for commitment of or early intervention for a proposed patient, an interested person shall apply to the designated agency in the county of the proposed patient's residence or presence for conduct of a preliminary investigation, except when the proposed patient has been acquitted of a crime under section 611.026 and the county attorney is required to file a petition for commitment pursuant to subdivision 2. In any case coming within this exception, the county attorney shall apply to the designated county agency in the county in which the acquittal took place for a preliminary investigation unless substantially the same information relevant to the proposed patient's current mental condition as could be obtained by a preliminary investigation is part of the court record in the criminal proceeding or is contained in the report of a mental examination conducted in connection with the criminal proceeding. The designated agency shall appoint a screening team to conduct an investigation which shall include:

(i) a personal interview with the proposed patient and other individuals who appear to have knowledge of the condition of the proposed patient. If the proposed patient is not interviewed, reasons must be documented;

(ii) identification and investigation of specific alleged conduct which is the basis for application; and

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(iii) identification, exploration, and listing of the reasons for rejecting or recommending alternatives to involuntary placement; and

(iv) in the case of a commitment based on mental illness, the following information, if it is known or available: information that may be relevant to the administration of neuroleptic medications, if necessary, including the existence of a declaration under section 253B.03, subdivision 6d, or a durable power of attorney for health care under chapter 145C or a guardian, conservator, proxy, or attorney-in-fact with authority to make health care decisions for the proposed patient; information regarding the capacity of the proposed patient to make decisions regarding administration of neuroleptic medication; and whether the proposed patient is likely to consent or refuse consent to administration of the medication.

(b) In conducting the investigation required by this subdivision, the screening team shall have access to all relevant medical records of proposed patients currently in treatment facilities. Data collected pursuant to this clause shall be considered private data on individuals. The prepetition screening report is not admissible in any court proceedings unrelated to the commitment proceedings.

(c) When the prepetition screening team recommends commitment, a written report shall be sent to the county attorney for the county in which the petition is to be filed.

(d) The prepetition screening team shall refuse to support a petition if the investigation does not disclose evidence sufficient to support commitment. Notice of the prepetition screening team's decision shall be provided to the prospective petitioner.

(e) If the interested person wishes to proceed with a petition contrary to the recommendation of the prepetition screening team, application may be made directly to the county attorney, who may determine whether or not to proceed with the petition. Notice of the county attorney's determination shall be provided to the interested party.

(f) If the proposed patient has been acquitted of a crime under section 611.026, the county attorney shall apply to the designated county agency in the county in which the acquittal took place for a preliminary investigation unless substantially the same information relevant to the proposed patient's current mental condition, as could be obtained by a preliminary investigation, is part of the court record in the criminal proceeding or is contained in the report of a mental examination conducted in connection with the criminal proceeding. If a court petitions for commitment pursuant to the rules of criminal or juvenile procedure or a county attorney petitions pursuant to acquittal of a criminal charge under section 611.026, the prepetition investigation, if required by this section, shall be completed within seven days after the filing of the petition.

Sec. 40. Minnesota Statutes 1996, section 253B.07, subdivision 2, is amended to read:

Subd. 2. **THE PETITION.** (a) Any interested person, except a member of the prepetition screening team, may file a petition for commitment in the district court of the county of the proposed patient's residence or presence. Following an acquittal of a person of a criminal charge under section 611.026, the petition shall be filed by the county attorney of the county in which the acquittal took place and the petition shall be filed with the court in which the acquittal took place, and that court shall be the committing court for purposes of this chapter. If the head of the treatment facility believes that commitment is

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required and no petition has been filed, the head of the treatment facility shall petition for the commitment of the person.

(b) The petition shall set forth the name and address of the proposed patient, the name and address of the patient's nearest relatives, and the reasons for the petition. The petition must contain factual descriptions of the proposed patient's recent behavior, including a description of the behavior, where it occurred, and over what the time period of time over which it occurred. Each factual allegation must be supported by observations of witnesses named in the petition. Petitions shall be stated in behavioral terms and shall not contain judgmental or conclusory statements.

(c) The petition shall be accompanied by a written statement by an examiner stating that the examiner has examined the proposed patient within the 15 days preceding the filing of the petition and is of the opinion that the proposed patient is suffering a designated disability and should be committed to a treatment facility. The statement shall include the reasons for the opinion. In the case of a commitment based on mental illness, the petition and the examiner's statement may include, to the extent this information is available, a statement and opinion regarding the proposed patient's need for treatment with neuroleptic medication and the patient's capacity to make decisions regarding the administration of neuroleptic medications, and the reasons for the opinion. If a petitioner has been unable to secure a statement from an examiner, the petition shall include documentation that a reasonable effort has been made to secure the supporting statement.

Sec. 41. Minnesota Statutes 1996, section 253B.07, subdivision 2a, is amended to read:

Subd. 2a. **PETITION FOLLOWING ACQUITTAL; REFERRAL.** Following an acquittal of a person of a criminal charge under section 611.026, the petition shall be filed by the county attorney of the county in which the acquittal took place and the petition shall be filed with the court in which the acquittal took place, and that court shall be the committing court for purposes of this chapter. When a petition is filed pursuant to subdivision 2 with the court in which acquittal of a criminal charge took place, the court shall assign the judge before whom the acquittal took place to hear the commitment proceedings unless that judge is unavailable.

Sec. 42. Minnesota Statutes 1996, section 253B.07, is amended by adding a subdivision to read:

Subd. 2b. **APPREHEND AND HOLD ORDERS.** The court may order the treatment facility to hold the person in a treatment facility or direct a health officer, peace officer, or other person to take the proposed patient into custody and transport the proposed patient to a treatment facility for observation, evaluation, diagnosis, care, treatment, and, if necessary, confinement, when: (1) there has been a particularized showing by the petitioner that serious imminent physical harm to the proposed patient or others is likely unless the proposed patient is apprehended; (2) the proposed patient has not voluntarily appeared for the examination or the commitment hearing pursuant to the summons; or (3) a person is held pursuant to section 253B.05 and a request for a petition for commitment has been filed. The order of the court may be executed on any day and at any time by the use of all necessary means including the imposition of necessary restraint upon the proposed patient. Where possible, a peace officer taking the proposed patient into custody

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pursuant to this subdivision shall not be in uniform and shall not use a motor vehicle visibly marked as a police vehicle.

Sec. 43. Minnesota Statutes 1996, section 253B.07, is amended by adding a subdivision to read:

Subd. 2c. **RIGHT TO COUNSEL.** A patient has the right to be represented by counsel at any proceeding under this chapter. The court shall appoint a qualified attorney to represent the proposed patient if neither the proposed patient nor others provide counsel. The attorney shall be appointed at the time a petition for commitment is filed. In all proceedings under this chapter, the attorney shall:

- (1) consult with the person prior to any hearing;
- (2) be given adequate time and access to records to prepare for all hearings;
- (3) continue to represent the person throughout any proceedings under this chapter unless released as counsel by the court; and
- (4) be a vigorous advocate on behalf of the person.

Sec. 44. Minnesota Statutes 1996, section 253B.07, is amended by adding a subdivision to read:

Subd. 2d. **CHANGE OF VENUE.** Either party may move to have the venue of the petition changed to the district court of the county of the person's residence, if the person is a resident of Minnesota. If the petition has been filed pursuant to the rules of criminal or juvenile procedure, venue may not be changed without the approval of the court in which the juvenile or criminal proceedings are pending.

Sec. 45. Minnesota Statutes 1996, section 253B.07, subdivision 3, is amended to read:

Subd. 3. **EXAMINERS.** After a petition has been filed, the court in which the petition was filed shall appoint an examiner. Prior to the hearing, the court shall inform the proposed patient of the right to an independent second examination. At the proposed patient's request, the court shall appoint a second examiner of the patient's choosing to be paid for by the county at a rate of compensation fixed by the court.

Sec. 46. Minnesota Statutes 1996, section 253B.07, subdivision 4, is amended to read:

Subd. 4. **PREHEARING EXAMINATION; NOTICE AND SUMMONS PROCEDURE.** (a) A summons to appear for a prehearing examination and the commitment hearing shall be served upon the proposed patient. A plain language notice of the proceedings and notice of the filing of the petition, a copy of the petition, a copy of the examiner's supporting statement, and the order for examination and a copy of the prepetition screening report shall be given to the proposed patient, patient's counsel, the petitioner, any interested person, and any other persons as the court directs.

(b) The prepetition screening report, the petition, and the examiner's supporting statement shall be distributed to the petitioner, the proposed patient, the patient's counsel, the county attorney, any person authorized by the patient, and any other person as the court directs.

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(c) All papers shall be served personally on the proposed patient. Unless otherwise ordered by the court, the notice shall be served on the proposed patient by a nonuniformed person.

Sec. 47. Minnesota Statutes 1996, section 253B.07, subdivision 5, is amended to read:

Subd. 5. **PREHEARING EXAMINATION; REPORT.** The examination shall be held at a treatment facility or other suitable place the court determines is not likely to have ~~a harmful effect on~~ harm the health of the proposed patient. The county attorney and the patient's attorney may be present during the examination. Either party may waive this right. Unless otherwise agreed by the ~~counsel for the proposed patient parties,~~ a court appointed examiner shall file ~~three copies of~~ the report with the court not less than 48 hours prior to the commitment hearing. Copies of the examiner's report shall be sent to the county attorney, the proposed patient, and the patient's counsel.

Sec. 48. Minnesota Statutes 1996, section 253B.07, subdivision 7, is amended to read:

Subd. 7. **PRELIMINARY HEARING.** (a) No proposed patient may be held in a treatment facility under a judicial hold 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 the standard is met to hold the person.

(b) The proposed patient, patient's 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 reliable hearsay evidence, including written reports, for the purpose of the preliminary hearing.

(c) The court, on its motion or on the motion of any party, may exclude or excuse a respondent proposed patient 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 the proposed patient or other circumstances justifying which justify proceeding in the absence of the respondent proposed patient.

(d) The court may order the continued holding continue the court hold of the proposed patient if it finds, by a preponderance of the evidence, that serious imminent physical harm to the proposed patient or others is likely if the proposed patient is not confined. The fact that if a proposed patient was acquitted of a crime against the person under section 611.026 immediately preceding the filing of the petition constitutes evidence, the court may presume 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.

(e) Upon a showing that a person subject to a petition for commitment may need treatment with neuroleptic medications and that the person may lack capacity to make decisions regarding that treatment, the court may appoint a substitute decision-maker as

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provided in section 253B.092, subdivision 6. The substitute decision-maker shall meet with the proposed patient and provider and make a report to the court at the hearing under section 253B.08 regarding whether the administration of neuroleptic medications is appropriate under the criteria of section 253B.092, subdivision 7. If the substitute decision-maker consents to treatment with neuroleptic medications and the proposed patient does not refuse the medication, neuroleptic medication may be administered to the patient. If the substitute decision-maker does not consent or the patient refuses, neuroleptic medication may not be administered without a court order, or in an emergency as set forth in section 253B.092, subdivision 3.

Sec. 49. Minnesota Statutes 1996, section 253B.08, subdivision 1, is amended to read:

Subdivision 1. TIME FOR COMMITMENT HEARING. The hearing on the commitment petition shall be held within 14 days from the date of the filing of the petition. For good cause shown, the court may extend the time of hearing up to an additional 30 days. When any The proceeding shall be dismissed if the proposed patient has not had a hearing on a commitment petition filed for the person's commitment within the allowed time, the proceedings shall be dismissed. The proposed patient, or the head of the treatment facility in which the person is held, may demand in writing at any time that the hearing be held immediately. Unless the hearing is held within five days of the date of the demand, exclusive of Saturdays, Sundays and legal holidays, the petition shall be automatically discharged if the patient is being held in a treatment facility pursuant to court order. For good cause shown, the court may extend the time of hearing on the demand for an additional ten days.

Sec. 50. Minnesota Statutes 1996, section 253B.08, subdivision 2, is amended to read:

Subd. 2. NOTICE OF HEARING. The proposed patient, patient's counsel, the petitioner, the county attorney, and any other persons as the court directs shall be given at least five days' notice that a hearing will be held and at least two days' notice of the time and date of the hearing, except that any person may waive notice. Notice to the proposed patient may be waived by patient's counsel. If the proposed patient has no residence in this state, the commissioner shall be notified of the proceedings by the court.

Sec. 51. Minnesota Statutes 1996, section 253B.08, is amended by adding a subdivision to read:

Subd. 2a. PLACE OF HEARING. The hearing shall be conducted in a manner consistent with orderly procedure. The hearing shall be held at a courtroom meeting standards prescribed by local court rule which may be at a treatment facility.

Sec. 52. Minnesota Statutes 1996, section 253B.08, subdivision 3, is amended to read:

Subd. 3. RIGHT TO ATTEND AND TESTIFY. All persons to whom notice has been given may attend the hearing and, except for the proposed patient's counsel, may testify. The court shall notify them of their right to attend the hearing and to testify. The court may exclude any person not necessary for the conduct of the proceedings from the hearings except any person requested to be present by the proposed patient. Nothing in this section shall prevent the court from ordering the sequestration of any witness or witnesses other than the petitioner or the proposed patient.

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Sec. 53. Minnesota Statutes 1996, section 253B.08, subdivision 5, is amended to read:

Subd. 5. **ABSENCE PERMITTED.** (a) The court may permit the proposed patient to waive the 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 psychologist attending the patient is of the opinion that 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 the motion of any party, may exclude or excuse a respondent proposed patient 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 the proposed patient or other circumstances justifying proceeding in the absence of the respondent proposed patient.

Sec. 54. Minnesota Statutes 1996, section 253B.08, is amended by adding a subdivision to read:

Subd. 5a. **WITNESSES.** The proposed patient or the patient's counsel and the county attorney may present and cross-examine witnesses, including examiners, at the hearing. The court may in its discretion receive the testimony of any other person. Opinions of court-appointed examiners may not be admitted into evidence unless the examiner is present to testify, except by agreement of the parties.

Sec. 55. Minnesota Statutes 1996, section 253B.09, subdivision 1, is amended to read:

Subdivision 1. **STANDARD OF PROOF.** If the court finds by clear and convincing evidence that the proposed patient is a mentally ill, mentally retarded, or chemically dependent person and, ~~that~~ after careful consideration of reasonable alternative dispositions, including but not limited to, dismissal of petition, voluntary outpatient care, ~~informal~~ voluntary admission to a treatment facility, appointment of a guardian or conservator, or release before commitment as provided for in subdivision 4, it finds that there is no suitable alternative to judicial commitment, the court shall commit the patient to the least restrictive treatment program which can meet the patient's treatment needs consistent with section 253B.03, subdivision 7. In deciding on the least restrictive program, the court shall consider a range of treatment alternatives including, but not limited to, community-based nonresidential treatment, community residential treatment, partial hospitalization, acute care hospital, and regional treatment center services. The court shall also consider the proposed patient's treatment preferences and willingness to participate in the treatment ordered. The court may not commit a patient to a facility or program that is not capable of meeting the patient's needs.

Sec. 56. Minnesota Statutes 1996, section 253B.09, subdivision 2, is amended to read:

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Subd. 2. **FINDINGS.** The court shall find the facts specifically, and separately state its conclusions of law, and direct the entry of an appropriate judgment. Where commitment is ordered, the findings of fact and conclusions of law shall specifically state the proposed patient's conduct which is a basis for determining that each of the requisites for commitment is met.

If commitment is ordered, the findings shall also include a listing of identify less restrictive alternatives considered and rejected by the court and the reasons for rejecting each alternative.

If the proceedings are dismissed, the court may direct that the person be transported back to a suitable location.

Sec. 57. Minnesota Statutes 1996, section 253B.09, subdivision 3, is amended to read:

Subd. 3. **FINANCIAL DETERMINATION.** The court shall determine the nature and extent of the property of the patient and of the persons who are liable for the patient's care. If the patient is committed to a regional facility, a copy shall be transmitted treatment center, the court shall send a copy of the commitment order to the commissioner.

Sec. 58. Minnesota Statutes 1996, section 253B.09, is amended by adding a subdivision to read:

Subd. 3a. **REPORTING JUDICIAL COMMITMENTS INVOLVING PRIVATE TREATMENT PROGRAMS OR FACILITIES.** Notwithstanding section 253B.23, subdivision 9, when a court commits a patient to a treatment program or facility other than a state-operated program or facility, the court shall report the commitment to the commissioner through the supreme court information system for purposes of providing commitment information for firearm background checks under section 245.041.

Sec. 59. Minnesota Statutes 1996, section 253B.09, subdivision 5, is amended to read:

Subd. 5. **INITIAL COMMITMENT PERIOD.** The initial commitment begins on the date that the court issues its order or warrant under section 253B.10, subdivision 1. For persons committed as mentally ill, mentally retarded, or chemically dependent the initial commitment shall not exceed six months. At least 60 days, but not more than 90 days, after the commencement of the initial commitment of a person as mentally ill, mentally retarded, or chemically dependent, the head of the facility shall file a written report with the committing court with a copy to the patient and patient's counsel. This first report shall set forth the same information as is required in section 253B.12, subdivision 1, but no hearing shall be required at this time. If no written report is filed within the required time, or if it describes the patient as not in need of further institutional care and treatment, the proceedings shall be terminated by the committing court, and the patient shall be discharged from the treatment facility. If the person is discharged prior to the expiration of 60 days, the report required by this subdivision shall be filed at the time of discharge.

Sec. 60. **[253B.092] STANDARDS AND CRITERIA FOR ADMINISTRATION OF NEUROLEPTIC MEDICATION; PROCEDURES.**

Subdivision 1. **GENERAL.** Neuroleptic medications may be administered to patients subject to early intervention or civil commitment as mentally ill or mentally ill and

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dangerous only as provided in this section. For purposes of this section, "patient" includes a proposed patient who is the subject of a petition for early intervention or commitment.

Subd. 2. ADMINISTRATION WITHOUT JUDICIAL REVIEW. Neuroleptic medications may be administered without judicial review in the following circumstances:

(1) the patient has the capacity to make an informed decision under subdivision 4;

(2) the patient does not have the present capacity to consent to the administration of neuroleptic medication, but prepared a durable power of attorney for health care under chapter 145C or a declaration under section 253B.03, subdivision 6d, requesting treatment or authorizing an agent or proxy to request treatment, and the agent or proxy has requested the treatment;

(3) a substitute decision-maker appointed by the court consents to the administration of the neuroleptic medication and the patient does not refuse administration of the medication; or

(4) the substitute decision-maker does not consent or the patient is refusing medication, and the patient is in an emergency situation.

Subd. 3. EMERGENCY ADMINISTRATION. A treating physician may administer neuroleptic medication to a patient who does not have capacity to make a decision regarding administration of the medication if the patient is in an emergency situation. Medication may be administered for so long as the emergency continues to exist, up to 14 days, if the treating physician determines that the medication is necessary to prevent serious, immediate physical harm to the patient or to others. If a request for authorization to administer medication is made to the court within the 14 days, the treating physician may continue the medication through the date of the first court hearing, if the emergency continues to exist. If the request for authorization to administer medication is made to the court in conjunction with a petition for commitment or early intervention and the court makes a determination at the preliminary hearing under section 253B.07, subdivision 7, that there is sufficient cause to continue the physician's order until the hearing under section 253B.08, the treating physician may continue the medication until that hearing, if the emergency continues to exist. The treatment facility shall document the emergency in the patient's medical record in specific behavioral terms.

Subd. 4. PATIENTS WITH CAPACITY TO MAKE INFORMED DECISION. A patient who has the capacity to make an informed decision regarding the administration of neuroleptic medication may consent or refuse consent to administration of the medication. The informed consent of a patient must be in writing.

Subd. 5. DETERMINATION OF CAPACITY. (a) A patient is presumed to have capacity to make decisions regarding administration of neuroleptic medication.

(b) In determining a person's capacity to make decisions regarding the administration of neuroleptic medication, the court shall consider:

(1) whether the person demonstrates an awareness of the nature of the person's situation, including the reasons for hospitalization, and the possible consequences of refusing treatment with neuroleptic medications;

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(2) whether the person demonstrates an understanding of treatment with neuroleptic medications and the risks, benefits, and alternatives; and

(3) whether the person communicates verbally or nonverbally a clear choice regarding treatment with neuroleptic medications that is a reasoned one not based on delusion, even though it may not be in the person's best interests.

Disagreement with the physician's recommendation is not evidence of an unreasonable decision.

Subd. 6. PATIENTS WITHOUT CAPACITY TO MAKE INFORMED DECISION; SUBSTITUTE DECISION-MAKER. (a) Upon request of any person, and upon a showing that administration of neuroleptic medications may be recommended and that the person may lack capacity to make decisions regarding the administration of neuroleptic medication, the court shall appoint a substitute decision-maker with authority to consent to the administration of neuroleptic medication as provided in this section. The substitute decision-maker must be an individual or a community or institutional multidisciplinary panel designated by the local mental health authority. In appointing a substitute decision-maker, the court shall give preference to a guardian or conservator, proxy, or attorney-in-fact with authority to make health care decisions for the patient. The court may provide for the payment of a reasonable fee to the substitute decision-maker for services under this section or may appoint a volunteer.

(b) If the person's treating physician recommends treatment with neuroleptic medication, the substitute decision-maker may give or withhold consent to the administration of the medication, based on the standards under subdivision 7. If the substitute decision-maker gives informed consent to the treatment and the person does not refuse, the substitute decision-maker shall provide written consent to the treating physician and the medication may be administered. The substitute decision-maker shall also notify the court that consent has been given. If the substitute decision-maker refuses or withdraws consent or the person refuses the medication, neuroleptic medication may not be administered to the person without a court order or in an emergency.

(c) A substitute decision-maker appointed under this section has access to the pertinent sections of the patient's health records on the past or present administration of medication. The designated agency or a person involved in the patient's physical or mental health care may disclose information to the substitute decision-maker for the sole purpose of performing the responsibilities under this section.

(d) At a hearing under section 253B.08, the petitioner has the burden of proving incapacity by a preponderance of the evidence. If a substitute decision-maker has been appointed by the court, the court shall make findings regarding the patient's capacity to make decisions regarding the administration of neuroleptic medications and affirm or reverse its appointment of a substitute decision-maker. If the court affirms the appointment of the substitute decision-maker, and if the substitute decision-maker has consented to the administration of the medication and the patient has not refused, the court shall make findings that the substitute decision-maker has consented and the treatment is authorized. If a substitute decision-maker has not yet been appointed, upon request the court shall make findings regarding the patient's capacity and appoint a substitute decision-maker if appropriate.

(e) If an order for civil commitment or early intervention did not provide for the appointment of a substitute decision-maker or for the administration of neuroleptic me-

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dication, the treatment facility may later request the appointment of a substitute decision-maker upon a showing that administration of neuroleptic medications is recommended and that the person lacks capacity to make decisions regarding the administration of neuroleptic medications. A hearing is not required in order to administer the neuroleptic medication unless requested under subdivision 10 or if the substitute decision-maker withholds or refuses consent or the person refuses the medication.

(f) The substitute decision-maker's authority to consent to treatment lasts for the duration of the court's order of appointment or until modified by the court.

If the substitute decision-maker withdraws consent or the patient refuses consent, neuroleptic medication may not be administered without a court order.

(g) If there is no hearing after the preliminary hearing, then the court shall, upon the request of any interested party, review the reasonableness of the substitute decision-maker's decision based on the standards under subdivision 7. The court shall enter an order upholding or reversing the decision within seven days.

Subd. 7. STANDARDS FOR MAKING DECISION REGARDING ADMINISTRATION OF NEUROLEPTIC MEDICATION. (a) When a person lacks capacity to make decisions regarding the administration of neuroleptic medication, the substitute decision-maker or the court shall use the standards in this subdivision in making a decision regarding administration of the medication.

(b) If the person clearly stated what the person would choose to do in this situation when the person had the capacity to make a reasoned decision, the person's wishes must be followed. Evidence of the person's wishes may include written instruments, including a durable power of attorney for health care under chapter 145C or a declaration under section 253B.03, subdivision 6d.

(c) If evidence of the person's wishes regarding the administration of neuroleptic medications is conflicting or lacking, the decision must be based on what a reasonable person would do, taking into consideration:

- (1) the person's family, community, moral, religious, and social values;
- (2) the medical risks, benefits, and alternatives to the proposed treatment;
- (3) past efficacy and any extenuating circumstances of past use of neuroleptic medications; and
- (4) any other relevant factors.

Subd. 8. PROCEDURE WHEN PATIENT REFUSES MEDICATION. (a) If the substitute decision-maker or the patient refuses to consent to treatment with neuroleptic medications, and absent an emergency as set forth in subdivision 3, neuroleptic medications may not be administered without a court order. Upon receiving a written request for a hearing, the court shall schedule the hearing within 14 days of the request. The matter may be heard as part of any other district court proceeding under this chapter. By agreement of the parties or for good cause shown, the court may extend the time of hearing an additional 30 days.

(b) The patient must be examined by a court examiner prior to the hearing. If the patient refuses to participate in an examination, the examiner may rely on the patient's

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medical records to reach an opinion as to the appropriateness of neuroleptic medication. The patient is entitled to counsel and a second examiner, if requested by the patient or patient's counsel.

(c) The court may base its decision on relevant and admissible evidence, including the testimony of a treating physician or other qualified physician, a member of the patient's treatment team, a court appointed examiner, witness testimony, or the patient's medical records.

(d) If the court finds that the patient has the capacity to decide whether to take neuroleptic medication or that the patient lacks capacity to decide and the standards for making a decision to administer the medications under subdivision 7 are not met, the treating facility may not administer medication without the patient's informed written consent or without the declaration of an emergency, or until further review by the court.

(e) If the court finds that the patient lacks capacity to decide whether to take neuroleptic medication and has applied the standards set forth in subdivision 7, the court may authorize the treating facility and any other community or treatment facility to which the patient may be transferred or provisionally discharged, to involuntarily administer the medication to the patient.

(f) A finding of lack of capacity under this section must not be construed to determine the patient's competence for any other purpose.

(g) The court may authorize the administration of neuroleptic medication until the termination of a determinate commitment. If the patient is committed for an indeterminate period, the court may authorize treatment of neuroleptic medication for not more than two years, subject to the patient's right to petition the court for review of the order. The treatment facility must submit annual reports to the court, which shall provide copies to the patient and the respective attorneys.

(h) The court may limit the maximum dosage of neuroleptic medication that may be administered.

(i) If physical force is required to administer the neuroleptic medication, force may only take place in a treatment facility or therapeutic setting where the person's condition can be reassessed and appropriate medical staff are available.

Subd. 9. IMMUNITY. A substitute decision-maker who consents to treatment is not civilly or criminally liable for the performance of or the manner of performing the treatment. A person is not liable for performing treatment without consent if the substitute decision-maker has given written consent. This provision does not affect any other liability that may result from the manner in which the treatment is performed.

Subd. 10. REVIEW. A patient or other person may petition the court under section 253B.17 for review of any determination under this section or for a decision regarding the administration of neuroleptic medications, appointment of a substitute decision-maker, or the patient's capacity to make decisions regarding administration of neuroleptic medications.

Sec. 61. [253B.0921] ACCESS TO MEDICAL RECORDS.

A treating physician who makes medical decisions regarding the prescription and administration of medication for treatment of a mental illness has access to the pertinent

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sections of a patient's health records on past administration of medication at any treatment facility, if the patient lacks the capacity to authorize the release of records. Upon request of a treating physician under this section, a treatment facility shall supply complete information relating to the past records on administration of medication of a patient subject to this chapter. A patient who has the capacity to authorize the release of data retains the right to make decisions regarding access to medical records as provided by section 144.335.

Sec. 62. Minnesota Statutes 1996, section 253B.095, is amended to read:

253B.095 RELEASE BEFORE COMMITMENT.

Subdivision 1. **COURT RELEASE.** (a) After the hearing and before a commitment order has been issued, the court may release a proposed patient to the custody of an individual or agency upon conditions that guarantee the care and treatment of the patient.

(b) A person against whom a criminal proceeding is pending may not be released. Continuances may not extend beyond 14

(c) A continuance for dismissal, with or without findings, may be granted for up to 90 days.

(d) When the court stays an order for commitment for more than 14 days beyond the date of the initially scheduled hearing, the court shall issue an order that ~~meets the requirements of this section.~~

Subd. 2. **STAY BEYOND 14 DAYS.** ~~An order staying commitment for more than 14 days must include:~~

(1) a written plan for services to which the proposed patient has agreed;

(2) a finding that the proposed treatment is available and accessible to the patient and that public or private financial resources are available to pay for the proposed treatment; and

(3) conditions the patient must meet to avoid imposition revocation of the stayed commitment order and imposition of the commitment order.

(e) A person receiving treatment under this section has all rights under this chapter.

Subd. 3. 2. **CASE MANAGER.** ~~When a court releases a patient with mental illness under this section, the court shall appoint a direct the case manager.~~

Subd. 4. **REPORTS.** ~~The case manager shall to report to the court at least once every 90 days. The case manager and shall immediately report a substantial failure of a patient or provider to comply with the conditions of the release.~~

Subd. 5. 3. **DURATION.** The maximum duration of an a stayed order under this section is six months. The court may continue the order for a maximum of an additional 12 months if, after notice and hearing, under sections 253B.08 and 253B.09 the court finds that (1) the person continues to be mentally ill suffer from mental illness, chemical dependency, or mental retardation, and (2) an order is needed to protect the patient or others.

Subd. 6. 4. **MODIFICATION OF ORDER.** ~~An order under this section may be modified upon agreement of the parties and approval of the court.~~

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Subd. 7. 5. **REVOCATION OF ORDER.** The court, on its own motion or upon the petition motion of any person party that the patient has not complied with a material condition of release, and after notice and a hearing unless otherwise ordered by the court, may revoke any release and commit the proposed patient under this chapter.

Sec. 63. Minnesota Statutes 1996, section 253B.10, is amended to read:

253B.10 PROCEDURES FOR UPON COMMITMENT.

Subdivision 1. **ADMINISTRATIVE REQUIREMENTS.** When a person is committed, the court shall issue a warrant in duplicate, or an order committing the patient to the custody of the head of the treatment facility. The warrant or order shall state that the patient meets the statutory criteria for civil commitment. Upon the arrival of a patient at the designated treatment facility, the head of the facility shall retain the duplicate of the warrant and endorse receipt upon the original warrant, which shall or acknowledge receipt of the order. The endorsed receipt or acknowledgment must be filed in the court of commitment. After arrival, the patient shall be under the control and custody of the head of the treatment facility.

Copies of the petition for commitment, the court's findings of fact and conclusions of law, the court order committing the patient, the report of the examiners, and the pre-petition report shall be provided promptly to the treatment facility at the time of admission.

Subd. 2. **TRANSPORTATION.** When a proposed patient is about to be placed in a treatment facility, the court may order the designated agency, the treatment facility, or any responsible adult to transport the patient to the treatment facility. Unless otherwise ordered by the court Whenever possible, a peace officer who provides the transportation shall not be in uniform and shall not use a vehicle visibly marked as a police vehicle. The proposed patient may be accompanied by one or more interested persons.

When a proposed patient who is at a regional treatment center requests a change of venue or when a hearing is to be held for adjudication of a patient's status pursuant to section 253B.17, the commissioner shall provide transportation.

Subd. 3. **NOTICE OF ADMISSION.** Whenever a committed person has been admitted to a treatment facility under the provisions of sections 253B.09 or 253B.18, the head of the treatment facility shall immediately notify the patient's spouse or parent and the county of the patient's legal residence if the county may be liable for a portion of the cost of institutionalization treatment. If the committed person was admitted upon the petition of a spouse or parent the head of the treatment facility shall notify an interested person other than the petitioner.

Subd. 4. **PRIVATE INSTITUTIONALIZATION TREATMENT.** Patients or other responsible persons are required to pay the necessary charges for patients committed or transferred to private treatment facilities. Private treatment facilities may refuse to accept a committed person.

Subd. 5. **TRANSFER TO VOLUNTARY STATUS.** At any time prior to the expiration of the initial commitment period, a patient who has not been committed as mentally ill and dangerous to the public may be transferred to voluntary status upon the patient's application in writing with the consent of the head of the facility. Upon transfer, the head of the treatment facility shall immediately notify the court in writing and the court shall terminate the proceedings.

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Sec. 64. Minnesota Statutes 1996, section 253B.11, subdivision 2, is amended to read:

Subd. 2. **FACILITIES.** Each county or a group of counties shall maintain or provide by contract a facility for confinement of persons held temporarily for observation, evaluation, diagnosis, treatment, and care. When the temporary confinement is provided at a regional center, the commissioner shall charge the county of financial responsibility for the costs of confinement of persons hospitalized under section 253B.05, subdivisions 1 and 2, and section 253B.07, subdivision 6, except that the commissioner shall bill the responsible prepaid plan for medically necessary hospitalizations for individuals enrolled in a prepaid plan under contract to provide medical assistance, general assistance medical care, or MinnesotaCare services. If the prepaid plan determines under the terms of the medical assistance, general assistance medical care, or MinnesotaCare contract that a hospitalization was not medically necessary, the county is responsible. "County of financial responsibility" means the county in which the person resides at the time of confinement or, if the person has no residence in this state, the county which initiated the confinement. The charge shall be based on the commissioner's determination of the cost of care pursuant to section 246.50, subdivision 5. When there is a dispute as to which county is the county of financial responsibility, the county charged for the costs of confinement shall pay for them pending final determination of the dispute over financial responsibility. Disputes about the county of financial responsibility shall be submitted to the commissioner to be settled in the manner prescribed in section 256G.09.

Sec. 65. Minnesota Statutes 1996, section 253B.11, is amended by adding a subdivision to read:

Subd. 2a. **COST OF CARE.** Notwithstanding subdivision 2, a county shall be responsible for the cost of care as specified under section 246.54 for persons hospitalized at a regional treatment center in accordance with section 253B.09 and the person's legal status has been changed to a court hold under section 253B.07, subdivision 6, pending a judicial determination regarding continued commitment pursuant to sections 253B.12 and 253B.13.

Sec. 66. Minnesota Statutes 1996, section 253B.12, subdivision 1, is amended to read:

Subdivision 1. **REPORT REPORTS.** Prior to the termination of the initial commitment order or final discharge of the patient, the head of the facility shall file a written report with the committing court with a copy to the patient and patient's counsel, setting (a) If a patient who was committed as mentally ill, mentally retarded, or chemically dependent is discharged from treatment within the first 60 days after the date of the commitment order, the head of the treatment facility shall file a written report with the committing court describing the patient's need for further treatment. A copy of the report must be provided to the county attorney, the patient, and the patient's counsel.

(b) If a patient who was committed as mentally ill, mentally retarded, or chemically dependent remains in treatment more than 60 days after the date of the commitment, then at least 60 days, but not more than 90 days, after the date of the order, the head of the facility that has custody of the patient shall file a written report with the committing court and provide a copy to the county attorney, the patient, and the patient's counsel. The report must set forth in detailed narrative form at least the following:

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- (1) the diagnosis of the patient with the supporting data;
- (2) the anticipated discharge date;
- (3) an individualized treatment plan;
- (4) a detailed description of the discharge planning process with suggested after care plan;
- (5) whether the patient is in need of further care and treatment with, the treatment facility which is needed, and evidence to support the response;
- (6) whether any further care and treatment must be provided in a treatment facility with evidence to support the response;
- (7) whether in the opinion of the head of the facility the patient must continue to be committed to a treatment facility;
- (8) whether in the opinion of the head of the facility the patient satisfies the statutory requirement for continued commitment to a treatment facility, with documentation to support the opinion; and
- (9) (7) whether the administration of neuroleptic medication is clinically indicated, whether the patient is able to give informed consent to that medication, and the basis for these opinions.

(c) Prior to the termination of the initial commitment order or final discharge of the patient, the head of the treatment facility that has custody or care of the patient shall file a written report with the committing court with a copy to the patient and the patient's counsel that sets forth the information required in paragraph (b).

(d) If the patient has been provisionally discharged from a treatment facility, the report shall be prepared by the designated agency.

(e) If no written report is filed within the required time, or if a report describes the patient as not in need of further institutional care and treatment, the proceedings must be terminated by the committing court and the patient discharged from the treatment facility.

Sec. 67. Minnesota Statutes 1996, section 253B.12, is amended by adding a subdivision to read:

Subd. 2a. TIME FOR HEARING. Unless the proceedings are terminated under subdivision 1, paragraph (e), a review hearing must be held within 14 days after receipt by the committing court of the report required under subdivision 1, paragraph (c) or (d), and before the time the commitment expires. For good cause shown, the court may continue the hearing for up to an additional 14 days and extend any orders until the review hearing is held.

The patient, the patient's counsel, the petitioner, and other persons as the court directs must be given at least five days' notice of the time and place of the hearing.

Sec. 68. Minnesota Statutes 1996, section 253B.12, subdivision 3, is amended to read:

Subd. 3. EXAMINATION. Prior to the review hearing, the court shall inform the patient of the right to an independent examination by an examiner chosen by the patient

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and appointed in accordance with provisions of section 253B.07, subdivision 3. The report of the examiner may be submitted at the hearing.

Sec. 69. Minnesota Statutes 1996, section 253B.12, subdivision 4, is amended to read:

Subd. 4. **HEARING; STANDARD OF PROOF.** The committing court shall not make a final determination of the need to continue commitment unless a hearing is held and the court finds by clear and convincing evidence that (1) the person continues to be mentally ill, mentally retarded, or chemically dependent; (2) involuntary commitment is necessary for the protection of the patient or others; and (3) there is no alternative to involuntary commitment.

In determining whether a person continues to be mentally ill, chemically dependent, or mentally retarded, the court need not find that there has been a recent attempt or threat to physically harm self or others, or a recent failure to provide necessary personal food, clothing, shelter, or medical care. Instead, the court must find that the patient is likely to attempt to physically harm self or others, or to fail to provide necessary personal food, clothing, shelter, or medical care unless involuntary commitment is continued.

Sec. 70. Minnesota Statutes 1996, section 253B.13, subdivision 1, is amended to read:

Subdivision 1. **MENTALLY ILL OR CHEMICALLY DEPENDENT PERSONS.** If at the conclusion of a review hearing held pursuant to section 253B.12, it is found that ~~the criteria for continued commitment have been satisfied~~, the court finds that the person continues to be mentally ill or chemically dependent and in need of treatment or supervision, the court shall determine the ~~probable~~ length of continued commitment necessary. No period of commitment shall exceed this length of time or 12 months, whichever is less.

At the conclusion of the prescribed period, commitment may not be continued unless a new petition is filed pursuant to section 253B.07 and hearing and determination made on it. Notwithstanding the provisions of section 253B.09, subdivision 5, the initial commitment period under the new petition shall be the probable length of commitment necessary or 12 months, whichever is less. The standard of proof at the hearing on the new petition shall be the standard specified in section 253B.12, subdivision 4.

Sec. 71. Minnesota Statutes 1996, section 253B.13, subdivision 2, is amended to read:

Subd. 2. **MENTALLY RETARDED PERSONS.** If, at the conclusion of a review hearing held pursuant to section 253B.12, it is found ~~the court finds~~ that the person continues to be mentally retarded, the court shall order commitment of the person for an indeterminate period of time, subject to the reviews required by section 253B.03, subdivisions 5 and 7, and subject to the right of the patient to seek judicial review of continued commitment.

Sec. 72. Minnesota Statutes 1996, section 253B.14, is amended to read:

253B.14 TRANSFER OF COMMITTED PERSONS.

The commissioner may transfer any committed person, other than a person committed as mentally ill and dangerous to the public, from one regional treatment center to

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any other institution treatment facility under the commissioner's jurisdiction which is capable of providing proper care and treatment. When a committed person is transferred from one treatment facility to another, written notice shall be given to the committing court, the county attorney, the patient's counsel, and to the person's parent or spouse or, if none is known, to an interested person, and the designated agency.

Sec. 73. [253B.141] AUTHORITY TO DETAIN AND TRANSPORT A MISSING PATIENT.

Subdivision 1. REPORT OF ABSENCE. (a) If a patient committed under this chapter or detained under a court-ordered hold is absent without authorization, and either: (1) does not return voluntarily within 72 hours of the time the unauthorized absence began; or (2) is considered by the head of the treatment facility to be a danger to self or others, then the head of the treatment facility shall report the absence to the local law enforcement agency. The head of the treatment facility shall also notify the committing court that the patient is absent and that the absence has been reported to the local law enforcement agency. The committing court may issue an order directing the law enforcement agency to transport the patient to an appropriate facility.

(b) Upon receiving a report that a patient subject to this section is absent without authorization, the local law enforcement agency shall enter information on the patient through the criminal justice information system into the missing persons file of the National Crime Information Center computer according to the missing persons practices.

Subd. 2. APPREHENSION; RETURN TO FACILITY. (a) Upon receiving the report of absence from the head of the treatment facility or the committing court, a patient may be apprehended and held by a peace officer in any jurisdiction pending return to the facility from which the patient is absent without authorization. A patient may also be returned to any facility operated by the commissioner. A mentally ill and dangerous person, a sexual psychopathic personality patient, or a sexually dangerous person committed under section 253B.18 and detained under this subdivision may be held in a jail or lockup only if:

- (1) there is no other feasible place of detention for the patient;
- (2) the detention is for less than 24 hours; and
- (3) there are protections in place, including segregation of the patient, to ensure the safety of the patient.

(b) If a patient is detained under this subdivision, the head of the treatment facility from which the patient is absent shall arrange to pick up the patient within 24 hours of the time detention was begun and shall be responsible for securing transportation for the patient to the facility. The expense of detaining and transporting a patient shall be the responsibility of the treatment facility from which the patient is absent. The expense of detaining and transporting a patient to a treatment facility operated by the department of human services shall be paid by the commissioner unless paid by the patient or persons on behalf of the patient.

Subd. 3. NOTICE OF APPREHENSION. Immediately after an absent patient is located, the head of the treatment facility from which the patient is absent, or the law enforcement agency that located or returned the absent patient, shall notify the law enforcement agency that first received the absent patient report under this section and that agency

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shall cancel the missing persons entry from the National Crime Information Center computer.

Sec. 74. Minnesota Statutes 1996, section 253B.15, subdivision 1, is amended to read:

Subdivision 1. **PROVISIONAL DISCHARGE.** The head of the treatment facility may provisionally discharge any patient without discharging the commitment, unless the patient was found by the committing court to be mentally ill and dangerous to the public.

Each patient released on provisional discharge shall have an a written aftercare plan developed which specifies the services and treatment to be provided as part of the aftercare plan, the financial resources available to pay for the services specified, the expected period of provisional discharge, the precise goals for the granting of a final discharge, and conditions or restrictions on the patient during the period of the provisional discharge. The aftercare plan shall be provided to the patient, the patient's attorney, and the designated agency.

The aftercare plan shall be reviewed on a quarterly basis by the patient, designated agency and other appropriate persons. The aftercare plan shall contain the grounds upon which a provisional discharge may be revoked. The provisional discharge shall terminate on the date specified in the plan unless specific action is taken to revoke or extend it.

Sec. 75. Minnesota Statutes 1996, section 253B.15, subdivision 1a, is amended to read:

Subd. 1a. **CASE MANAGER REPRESENTATIVE OF DESIGNATED AGENCY.** Before a provisional discharge is granted, a representative of the designated agency must be identified as the case manager. The case manager shall to ensure continuity of care by being involved with the treatment facility and the patient prior to the provisional discharge. The case manager representative of the designated agency shall coordinate plans for and monitor the patient's aftercare program. When the patient is on a provisional discharge, the representative of the designated agency shall provide the treatment report to the court required under section 253B.12, subdivision 1.

Sec. 76. Minnesota Statutes 1996, section 253B.15, subdivision 2, is amended to read:

Subd. 2. **REVOCAION OF PROVISIONAL DISCHARGE.** The head of the treatment facility designated agency may revoke a provisional discharge if:

(i) The patient has violated material conditions of the provisional discharge, and the violation creates the need to return the patient to the facility a more restrictive setting; or,

(ii) There exists a serious likelihood that the safety of the patient or others will be jeopardized, in that either the patient's need for food, clothing, shelter, or medical care are not being met, or will not be met in the near future, or the patient has attempted or threatened to seriously physically harm self or others; and

(iii) revocation is the least restrictive alternative available.

Any interested person, including the designated agency, may request that the head of the treatment facility designated agency revoke the patient's provisional discharge. Any person making a request shall provide the head of the treatment facility designated

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agency with a written report setting forth the specific facts, including witnesses, dates and locations, supporting a revocation, demonstrating that every effort has been made to avoid revocation and that revocation is the least restrictive alternative available.

Sec. 77. Minnesota Statutes 1996, section 253B.15, subdivision 3, is amended to read:

Subd. 3. **PROCEDURE; NOTICE.** ~~When the possibility of revocation becomes apparent, the designated agency shall notify the patient, the patient's attorney, and all participants in the plan, and every effort shall be made to prevent revocation.~~

Revocation shall be commenced by a the designated agency's written notice of intent to revoke provisional discharge, which shall be served upon given to the patient, the patient's attorney, and the designated agency treatment facility. The notice shall set forth the grounds upon which the intention to revoke is based, and shall inform the patient of the rights of a patient under this chapter.

Sec. 78. Minnesota Statutes 1996, section 253B.15, is amended by adding a subdivision to read:

Subd. 3a. **REPORT TO THE COURT.** Within 48 hours of giving notice to the patient, the designated agency shall file with the court a copy of the notice and a report setting forth the specific facts, including witnesses, dates and locations, which (1) support revocation, (2) demonstrate that revocation is the least restrictive alternative available, and (3) show that specific efforts were made to avoid revocation. The designated agency shall provide copies of the report to the patient, the patient's attorney, the county attorney, and the treatment facility within 48 hours of giving notice to the patient under subdivision 3.

Sec. 79. Minnesota Statutes 1996, section 253B.15, is amended by adding a subdivision to read:

Subd. 3b. **REVIEW.** The patient may request judicial review of the intended revocation by filing a petition for review and an affidavit with the committing court. The affidavit shall state specific grounds for opposing the revocation. If the patient does not file a petition for review within five days of receiving the notice under subdivision 3, revocation of the provisional discharge is final and the court, without hearing, may order the patient into a treatment facility. If the patient files a petition for review, the court shall review the petition and determine whether a genuine issue exists as to the propriety of the revocation. The burden of proof is on the designated agency to show that no genuine issue exists as to the propriety of the revocation. If the court finds that no genuine issue exists as to the propriety of the revocation, the revocation of the provisional discharge is final.

Sec. 80. Minnesota Statutes 1996, section 253B.15, is amended by adding a subdivision to read:

Subd. 3c. **HEARING.** If the court finds under subdivision 3b that a genuine issue exists as to the propriety of the revocation, the court shall hold a hearing on the petition within three days after the patient files the petition. The court may continue the review hearing for an additional five days upon any party's showing of good cause. At the hearing, the burden of proof is on the designated agency to show a factual basis for the revocation. At the conclusion of the hearing, the court shall make specific findings of fact. The court shall affirm the revocation if it finds:

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(1) a factual basis for revocation due to:

(i) a violation of the material conditions of the provisional discharge that creates a need for the patient to return to a more restrictive setting; or

(ii) a probable danger of harm to the patient or others if the provisional discharge is not revoked; and

(2) that revocation is the least restrictive alternative available.

If the court does not affirm the revocation, the court shall order the patient returned to provisional discharge status.

Sec. 81. Minnesota Statutes 1996, section 253B.15, subdivision 5, is amended to read:

Subd. 5. **RETURN TO FACILITY.** ~~The case manager may~~ When the designated agency serves notice of the intent to revoke a patient's provisional discharge, it may also apply to the committing court for an order directing that the patient be returned to the a facility. The court may order the patient returned to the a facility prior to a review hearing only upon finding that immediate return to the a facility is necessary to avoid serious, imminent harm to the patient or others because there is a serious likelihood that the safety of the patient or others will be jeopardized, in that (1) the patient's need for food, clothing, shelter, or medical care is not being met, or will not be met in the near future, or (2) the patient has attempted or threatened to seriously harm self or others. If a voluntary return is not arranged, the head of the treatment facility may request a health officer, a welfare officer, or a peace officer to return the patient to the treatment facility from which the patient was released or to any other treatment facility which consents to receive the patient. If necessary, the head of the treatment facility may request the committing court to direct a health or peace officer in the county where the patient is located to return the patient to the treatment facility or to another treatment facility which consents to receive the patient. The expense of returning the patient to a regional treatment facility center shall be paid by the commissioner unless paid by the patient or the patient's relatives. If the court orders the patient to return to the treatment facility and the patient wants judicial review of the revocation, the patient must file the petition for review and affidavit required under subdivision 3b within 48 hours of receipt of the notice of the intent to revoke.

Sec. 82. Minnesota Statutes 1996, section 253B.15, subdivision 10, is amended to read:

Subd. 10. **VOLUNTARY RETURN.** With the consent of the head of the treatment facility, a patient may voluntarily return to inpatient status at the treatment facility as follows:

(a) As an informal a voluntary patient, in which case the patient's commitment is discharged;

(b) As a committed patient, in which case the patient's provisional discharge is voluntarily revoked; or

(c) On temporary return from provisional discharge, in which case both the commitment and the provisional discharge remain in effect.

Prior to readmission, the patient shall be informed of status upon readmission.

New language is indicated by underline, deletions by strikeout.

Sec. 83. Minnesota Statutes 1996, section 253B.16, subdivision 1, is amended to read:

Subdivision 1. **DATE.** The head of a treatment facility shall discharge any patient admitted as mentally ill ~~or, chemically dependent, or a person with mental retardation~~ admitted under Minnesota Rules of Criminal Procedure, rules 20.01 and 20.02, to the secure bed component of the Minnesota extended treatment options when certified by the head of the facility to be certifies that the person is no longer in need of institutional care and treatment or at the conclusion of any period of time specified in the commitment order, whichever occurs first. The head of a treatment facility shall discharge any person admitted as mentally retarded, except those admitted under Minnesota Rules of Criminal Procedure, rules 20.01 and 20.02, to the secure bed component of the Minnesota extended treatment options, when that person's screening team has determined, under section 256B.092, subdivision 8, that the person's needs can be met by services provided in the community and a plan has been developed in consultation with the interdisciplinary team to place the person in the available community services.

Sec. 84. Minnesota Statutes 1996, section 253B.17, subdivision 1, is amended to read:

Subdivision 1. **PETITION.** Any patient, except one committed as mentally ill and dangerous to the public, or any interested person may petition the committing court or the court to which venue has been transferred for an order that the patient is not in need of continued ~~institutionalization care and treatment~~ or for an order that an individual is no longer mentally ill, mentally retarded, or chemically dependent, or for any other relief ~~as the court deems just and equitable.~~ A patient committed as mentally ill or mentally ill and dangerous may petition the committing court or the court to which venue has been transferred for a hearing concerning the administration of neuroleptic medication.

Sec. 85. Minnesota Statutes 1996, section 253B.17, subdivision 3, is amended to read:

Subd. 3. **EXAMINERS.** The court shall appoint an examiner and, at the patient's request, shall appoint a second examiner of the patient's choosing to be paid for by the county at a rate of compensation to be fixed by the court. Unless otherwise agreed by the parties, the examiners shall file a report with the court not less than 48 hours prior to the hearing under this section.

Sec. 86. Minnesota Statutes 1996, section 253B.18, subdivision 1, is amended to read:

Subdivision 1. **PROCEDURE.** Upon the filing of a petition alleging that a proposed patient is mentally ill and dangerous to the public, the court shall hear the petition as provided in sections 253B.07 and 253B.08. If the court finds by clear and convincing evidence that the proposed patient is mentally ill and dangerous to the public, it shall commit the person to the Minnesota Security Hospital, a regional center designated by the commissioner or to a secure treatment facility or to a treatment facility willing to accept the patient under commitment. In any case where the petition was filed immediately following the acquittal of the proposed patient for a crime against the person pursuant to a verdict of not guilty by reason of mental illness, the verdict constitutes evidence that the proposed patient is mentally ill and dangerous within the meaning of this section ~~and shifts.~~ The proposed patient has the burden of going forward in the presentation of evi-

New language is indicated by underline, deletions by strikeout.

dence to the proposed patient; provided that. The standard of proof remains as required by this chapter. Upon commitment, admission procedures shall be carried out pursuant to section 253B.10.

Sec. 87. Minnesota Statutes 1996, section 253B.18, subdivision 2, is amended to read:

Subd. 2. **REVIEW; HEARING.** A written treatment report shall be filed by the treatment facility with the committing court within 60 days after commitment. If the person is in the custody of the commissioner of corrections when the initial commitment is ordered under subdivision 1, the written treatment report must be filed within 60 days after the person is admitted to the ~~Minnesota security hospital or a private hospital receiving the person a secure treatment facility.~~ The court, prior to making shall hold a hearing to make a final determination with regard to a as to whether the person initially should remain committed as mentally ill and dangerous to the public, shall hold a hearing. The hearing shall be held within the earlier of 14 days of the court's receipt of the written treatment report, if one is filed, or within 90 days of the date of initial commitment or admission, unless otherwise agreed by the parties. If the court finds that the patient qualifies for commitment should be committed as mentally ill, but not as mentally ill and dangerous to the public, the court may commit the person as a mentally ill person and the person shall be deemed not to have been found to be dangerous to the public for the purposes of subdivisions 4 to 15. Failure of the treatment facility to provide the required report at the end of the 60-day period shall not result in automatic discharge of the patient.

Sec. 88. Minnesota Statutes 1996, section 253B.18, subdivision 3, is amended to read:

Subd. 3. **INDETERMINATE COMMITMENT.** If the court finds at the final determination hearing held pursuant to subdivision 2 that the patient continues to be mentally ill and dangerous, then the court shall order commitment of the proposed patient for an indeterminate period of time. ~~Subsequent to~~ After a final determination that a patient is mentally ill and dangerous to the public, the patient shall be transferred, provisionally discharged or discharged, only as provided in this section.

Sec. 89. Minnesota Statutes 1996, section 253B.18, subdivision 4, is amended to read:

Subd. 4. **SPECIAL REVIEW BOARD.** The commissioner shall establish a special review board for persons committed as mentally ill and dangerous to the public. The board shall consist of three members experienced in the field of mental illness. One member of the special review board shall be a physician psychiatrist and one member shall be an attorney. No member shall be affiliated with the department of human services. The special review board shall meet at least every six months and at the call of the commissioner. It shall hear and consider all petitions for transfer out of the ~~Minnesota Security Hospital~~ a secure treatment facility, all petitions relative to ~~for~~ discharge, provisional discharge and revocation of provisional discharge, and make recommendations to the commissioner concerning them. Patients may be transferred by the commissioner between secure treatment facilities without a special review board hearing.

Members of the special review board shall receive compensation and reimbursement for expenses as established by the commissioner.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 90. Minnesota Statutes 1996, section 253B.18, subdivision 4a, is amended 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 a secure treatment facility 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 secure treatment facility. 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 petitioner, 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. 91. Minnesota Statutes 1996, section 253B.18, subdivision 4b, is amended to read:

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

(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 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~~ a sexually psychopathic personality, or a sexually dangerous person.

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, the designated agency, 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.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 92. Minnesota Statutes 1996, section 253B.18, is amended by adding a subdivision to read:

Subd. 4c. SPECIAL REVIEW BOARD. (a) The commissioner shall establish one or more panels of a special review board for persons committed as mentally ill and dangerous to the public. The board shall consist of three members experienced in the field of mental illness. One member of each special review board panel shall be a psychiatrist and one member shall be an attorney. No member shall be affiliated with the department of human services. The special review board shall meet at least every six months and at the call of the commissioner. It shall hear and consider all petitions for transfer from a secure treatment facility; all petitions relative to discharge, provisional discharge, and revocation of provisional discharge; and make recommendations to the commissioner concerning them.

(b) Members of the special review board shall receive compensation and reimbursement for expenses as established by the commissioner.

Sec. 93. Minnesota Statutes 1996, section 253B.18, subdivision 5, is amended to read:

Subd. 5. PETITION; NOTICE OF HEARING; ATTENDANCE; ORDER. (a) A petition for an order of transfer, discharge, provisional discharge, or revocation of provisional discharge shall be filed with the commissioner and may be filed by the patient or by the head of the treatment facility. The special review board shall hold a hearing on each petition prior to making any recommendation. Within 45 days of the filing of the petition, A patient may not petition the special review board for six months following commitment under subdivision 3 or following the final disposition of any previous petition and subsequent appeal by the patient. The medical director may petition at any time.

(b) Fourteen days prior to the hearing, the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner, and the petitioner's counsel shall be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The board shall provide the commissioner with written findings of fact and recommendations within 21 days of the hearing. The commissioner shall issue an order no later than 14 days after receiving the recommendation of the special review board. A copy of the order shall be sent by certified mail to every person entitled to statutory notice of the hearing within five days after it is issued signed. No order by the commissioner shall be effective sooner than 45 30 days after it is issued the order is signed, unless the county attorney, the patient, and the commissioner agree that it may become effective sooner.

(c) The special review board shall hold a hearing on each petition prior to making its recommendation to the commissioner. The special review board proceedings are not contested cases as defined in chapter 14. Any person or agency receiving notice that submits documentary evidence to the special review board prior to the hearing shall also provide copies to the patient, the patient's counsel, the county attorney of the county of commitment, the case manager, and the commissioner.

(d) The special review board shall hold a hearing on each petition prior to making any recommendation. The special review board shall make written findings and a recom-

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mentation to the commissioner. The board shall make a recommendation to the commissioner no later than 21 days after the hearing.

(e) Prior to the final decision by the commissioner, the special review board may be reconvened to consider events or circumstances that occurred subsequent to the hearing.

Sec. 94. Minnesota Statutes 1996, section 253B.18, subdivision 6, is amended to read:

Subd. 6. **TRANSFER.** ~~(a) Persons who have been found by the committing court to be Mentally ill and dangerous to the public patients shall not be transferred out of the Minnesota Security Hospital a secure treatment facility unless it appears to the satisfaction of the commissioner, after a hearing and favorable recommendation by a majority of the special review board, that the transfer is appropriate. Transfer may be to other regional centers under the commissioner's control. In those instances where a commitment also exists to the department of corrections, transfer may be to a facility designated by the commissioner of corrections.~~

The following factors are to must be considered in determining whether a transfer is appropriate:

- (i) the person's clinical progress and present treatment needs;
- (ii) the need for security to accomplish continuing treatment;
- (iii) the need for continued institutionalization;
- (iv) which facility can best meet the person's needs; and
- (v) whether transfer can be accomplished with a reasonable degree of safety for the public.

Sec. 95. Minnesota Statutes 1996, section 253B.18, subdivision 7, is amended to read:

Subd. 7. **PROVISIONAL DISCHARGE.** ~~Patients who have been found by the committing court to be Mentally ill and dangerous to the public patients shall not be provisionally discharged unless it appears to the satisfaction of the commissioner, after a hearing and a favorable recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society.~~

The following factors are to be considered in determining whether a provisional discharge shall be recommended: (a) whether the patient's course of hospitalization and present mental status indicate there is no longer a need for inpatient treatment and supervision in the patient's current treatment setting; and (b) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

Sec. 96. Minnesota Statutes 1996, section 253B.18, subdivision 9, is amended to read:

Subd. 9. **PROVISIONAL DISCHARGE; REVIEW.** A provisional discharge pursuant to this section shall not automatically terminate. A full discharge shall occur only as provided in subdivision 15. The commissioner shall annually review the facts relating to the activity of a patient on provisional discharge and notify the patient that the

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terms of the a provisional discharge shall continue unless the patient requests and is granted a change in the conditions of provisional discharge or unless the patient petitions the special review board for a full discharge and the discharge is granted.

Sec. 97. Minnesota Statutes 1996, section 253B.18, subdivision 12, is amended to read:

Subd. 12. **RETURN OF PATIENT.** After revocation of a provisional discharge or if the patient is absent without authorization, the head of the treatment facility may request the patient to return to the treatment facility voluntarily. The head of the facility may request a health officer, a welfare officer, or a peace officer to return the patient to the treatment facility. If a voluntary return is not arranged, the head of the treatment facility shall inform the committing court of the revocation or absence and the court shall direct a health or peace officer in the county where the patient is located to return the patient to the treatment facility or to another treatment facility. The expense of returning the patient to a regional treatment facility center shall be paid by the commissioner unless paid by the patient or the patient's relatives other persons on the patient's behalf.

Sec. 98. Minnesota Statutes 1996, section 253B.18, subdivision 14, is amended to read:

Subd. 14. **VOLUNTARY READMISSION.** (a) With the consent of the head of the treatment facility, a patient may voluntarily return from provisional discharge for a period of up to 30 days and be released from the treatment facility without, or up to 60 days with the consent of the designated agency. If the patient is not returned to provisional discharge status within 60 days, the provisional discharge is revoked. Within 15 days of receiving notice of the change in status, the patient may request a review of the matter before the special review board. The board may recommend a return to a provisional discharge status.

(b) The treatment facility is not required to petition for a further review by the special review board unless the patient's return to the community results in substantive change to the existing provisional discharge plan. All the terms and conditions of the provisional discharge order shall remain unchanged if the patient is released again.

Sec. 99. Minnesota Statutes 1996, section 253B.18, subdivision 15, is amended to read:

Subd. 15. **DISCHARGE.** A person who has been found by the committing court to be mentally ill and dangerous to the public patient shall not be discharged unless it appears to the satisfaction of the commissioner, after a hearing and a favorable recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.

In determining whether a discharge shall be recommended, the special review board and commissioner shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the patient in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.

Sec. 100. Minnesota Statutes 1996, section 253B.185, subdivision 4, is amended to read:

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Subd. 4. **STATEWIDE JUDICIAL PANEL; SEXUAL PSYCHOPATHIC PERSONALITY AND SEXUALLY DANGEROUS PERSONS COMMITMENTS.** (a) The supreme court may establish a panel of district judges with statewide authority to preside over commitment proceedings brought under subdivision 1 of sexual psychopathic personalities and sexually dangerous persons. Only one judge of the panel is required to preside over a particular commitment proceeding. Panel members shall serve for one-year terms. One of the judges shall be designated as the chief judge of the panel, and is vested with the power to designate the presiding judge in a particular case, to set the proper venue for the proceedings, and to otherwise supervise and direct the operation of the panel. The chief judge shall designate one of the other judges to act as chief judge whenever the chief judge is unable to act.

(b) If the supreme court creates the judicial panel authorized by this section, all petitions for civil commitment brought under subdivision 1 shall be filed with the supreme court instead of with the district court in the county where the proposed patient is present, notwithstanding any provision of subdivision 1 to the contrary. Otherwise, all of the other applicable procedures contained in this chapter apply to commitment proceedings conducted by a judge on the panel.

Sec. 101. Minnesota Statutes 1996, section 253B.19, subdivision 1, is amended to read:

Subdivision 1. **CREATION.** The supreme court shall establish an appeal panel composed of three judges and four alternate judges appointed from among the acting judges of the state. Panel members shall serve for terms of one year each. Only three judges need hear any case. One of the regular three appointed judges shall be designated as the chief judge of the appeal panel. The chief judge is vested with power to fix the time and place of all hearings before the panel, issue all notices, subpoena witnesses, appoint counsel for the patient, if necessary, and supervise and direct the operation of the appeal panel. The chief judge shall designate one of the other judges or an alternate judge to act as chief judge in any case where the chief judge is unable to act. No member of the appeal panel shall take part in the consideration of any case in which that judge committed the patient. The chief justice of the supreme court shall determine the compensation of the judges serving on the appeal panel. The compensation shall be in addition to their regular compensation as judges. All compensation and expenses of the appeal panel and all allowable fees and costs of the patient's counsel shall be established and paid by the department of human services.

Sec. 102. Minnesota Statutes 1996, section 253B.19, subdivision 2, is amended to read:

Subd. 2. **PETITION; HEARING.** The committed person or the county attorney of the county from which a patient was committed as mentally ill and dangerous to the public was committed, or as a sexual psychopathic personality or as a sexually dangerous person may petition the appeal panel for a rehearing and reconsideration of a decision by the commissioner. The petition shall be filed with the supreme court within 30 days after the decision of the commissioner is signed. The supreme court shall refer the petition to the chief judge of the appeal panel. The chief judge shall notify the patient, the county attorney of the county of commitment, the designated agency, the commissioner, the head of the treatment facility, any interested person, and other persons the chief judge designates, of the time and place of the hearing on the petition. The notice shall be given

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at least 14 days prior to the date of the hearing. The hearing shall be within 45 days of the filing of the petition unless an extension is granted for good cause. Any person may oppose the petition. The appeal panel may appoint examiners and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all proceedings. The patient, patient's counsel, and the county attorney of the committing county may be present and present and cross-examine all witnesses. The petitioning party bears the burden of going forward with the evidence. The party opposing discharge bears the burden of proof by clear and convincing evidence that the respondent is in need of commitment.

Sec. 103. Minnesota Statutes 1996, section 253B.19, subdivision 3, is amended to read:

Subd. 3. **DECISION.** A majority of the appeal panel shall rule upon the petition. The order of the appeal panel shall supersede the order of the commissioner in the cases. No order of the appeal panel granting a transfer, discharge or provisional discharge shall be made effective sooner than 15 days after it is issued. The panel shall not modify conditions of a transfer or provisional discharge from those approved by the commissioner without the commissioner's consent. The panel may not consider petitions for relief other than those considered by the commissioner from which the appeal is taken. The panel may not grant a transfer or provisional discharge on terms or conditions that were not presented to the commissioner or the special review board.

Sec. 104. Minnesota Statutes 1996, section 253B.19, subdivision 5, is amended to read:

Subd. 5. **APPEAL.** A party aggrieved by an order of the appeal panel may appeal from the decision of the appeal panel to the court of appeals as in other civil cases. A party may seek review of a decision by the appeals panel within 60 days after a copy is sent to the parties by the clerk of appellate courts. The filing of an appeal shall immediately suspend the operation of any order granting transfer, discharge or provisional discharge, pending the determination of the appeal.

Sec. 105. Minnesota Statutes 1996, section 253B.20, subdivision 1, is amended to read:

Subdivision 1. **NOTICE TO COURT.** When a committed person is discharged, provisionally discharged, transferred to another treatment facility, or partially hospitalized, or when the person dies, is absent without authorization, or is returned, the treatment facility having custody of the patient shall notify the committing court, the county attorney, and the patient's attorney.

Sec. 106. Minnesota Statutes 1996, section 253B.20, subdivision 3, is amended to read:

Subd. 3. **NOTICE TO DESIGNATED AGENCY.** The head of the treatment facility, upon the provisional discharge or ~~partial institutionalization~~ of any committed person, shall notify the designated agency before the patient leaves the treatment facility. Whenever possible the notice shall be given at least one week before the patient is to leave the facility.

Sec. 107. Minnesota Statutes 1996, section 253B.20, subdivision 4, is amended to read:

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Subd. 4. **AFTERCARE SERVICES.** Prior to the date of discharge, or provisional discharge or partial institutionalization of any committed person, the designated agency of the county of the patient's residence, in cooperation with the head of the treatment facility, and the patient's physician, if notified pursuant to subdivision 6, shall establish a continuing plan of aftercare services for the patient including a plan for medical and psychiatric treatment, nursing care, vocational assistance, and other assistance the patient needs. The designated agency shall provide case management services, supervise and assist the patient in finding employment, suitable shelter, and adequate medical and psychiatric treatment, and aid in the patient's readjustment to the community.

Sec. 108. Minnesota Statutes 1996, section 253B.20, subdivision 6, is amended to read:

Subd. 6. **NOTICE TO PHYSICIAN.** The head of the treatment facility shall notify the physician of any committed person at the time of the patient's discharge, or provisional discharge or partial institutionalization, unless the patient objects to the notice.

Sec. 109. Minnesota Statutes 1996, section 253B.20, subdivision 7, is amended to read:

Subd. 7. **SERVICES.** A committed person may at any time after discharge, provisional discharge or partial institutionalization treatment, apply to the head of the treatment facility within whose district the committed person resides for treatment. The head of the treatment facility, on determining that the applicant requires service, may provide needed services related to mental illness, mental retardation, or chemical dependency to the applicant. The services shall be provided in regional centers under terms and conditions established by the commissioner.

Sec. 110. Minnesota Statutes 1996, section 253B.21, subdivision 4, is amended to read:

Subd. 4. **FOREIGN JUDGMENTS.** The judgment or order of commitment by a court of competent jurisdiction of another state committing a person to a federal agency for care or treatment in this state, shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order. Consent is given to the application of the law of The committing state in respect consents to the authority of the chief officer of any treatment facility of a federal agency in this state, to retain custody of, transfer, parole, or discharge the committed person.

Sec. 111. Minnesota Statutes 1996, section 253B.22, subdivision 1, is amended to read:

Subdivision 1. **ESTABLISHMENT.** The commissioner shall establish a review board of three or more persons for each regional center to review the admission and retention of its patients institutionalized receiving services under this chapter. One member shall be qualified in the diagnosis of mental illness, mental retardation, or chemical dependency, and one member shall be an attorney. The commissioner may, upon written request from the appropriate federal authority, establish a review panel for any federal treatment facility within the state to review the admission and retention of patients hospitalized under this chapter. For any review board established for a federal treatment facility, one of the persons appointed by the commissioner shall be the commissioner of veterans affairs or the commissioner's designee.

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Sec. 112. Minnesota Statutes 1996, section 253B.23, subdivision 1, is amended to read:

Subdivision 1. **COSTS OF HEARINGS.** (a) In each proceeding under this chapter the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law; to each examiner a reasonable sum for services and for travel; to persons conveying the patient to the place of detention, disbursements for the travel, board, and lodging of the patient and of themselves and their authorized assistants; and to the patient's counsel, when appointed by the court, a reasonable sum for travel and for the time spent in court or in preparing for the hearing. Upon the court's order, the county auditor shall issue a warrant on the county treasurer for payment of the amounts allowed.

(b) Whenever venue of a proceeding has been transferred under this chapter, the costs of the proceedings shall be reimbursed to the county where the proceedings were conducted by the county of the patient's residence by the state.

Sec. 113. Minnesota Statutes 1996, section 253B.23, subdivision 4, is amended to read:

Subd. 4. **IMMUNITY.** All persons acting in good faith, upon either actual knowledge or information thought by them to be reliable, who act pursuant to any provision of this chapter or who procedurally or physically assist in the commitment of any individual, pursuant to this chapter, are not subject to any civil or criminal liability under this chapter. Any privilege otherwise existing between patient and physician, patient and psychologist, patient and examiner, or patient and social worker, is waived as to any physician, psychologist, examiner, or social worker who provides information with respect to a patient pursuant to any provision of this chapter.

Sec. 114. Minnesota Statutes 1996, section 253B.23, subdivision 6, is amended to read:

Subd. 6. **COURT COMMISSIONER.** The Ramsey county court commissioner may act for the judge upon a petition for the commitment of a patient when the judge is unable to act hear and act upon petitions for commitment.

Sec. 115. Minnesota Statutes 1996, section 253B.23, subdivision 7, is amended to read:

Subd. 7. **APPEAL.** The commissioner or any other aggrieved party may appeal to the court of appeals from any order entered under this chapter as in other civil cases. Any district court order or judgment under this chapter or related case law may be appealed within 60 days after the date of filing of the order or entry of judgment. A judgment under section 253B.18, subdivision 1, may be appealed within 60 days after the date of the order entered under section 253B.18, subdivision 2.

Upon perfection of the appeal, the return shall be filed forthwith. The court of appeals shall hear the appeal within 60 ~~90~~ days after service of the notice of appeal. This appeal shall not suspend the operation of the order appealed from until the appeal is determined, unless otherwise ordered by the court of appeals.

Sec. 116. Minnesota Statutes 1996, section 253B.23, subdivision 9, is amended to read:

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Subd. 9. **SEALING OF RECORDS.** Upon a motion by a person who has been the subject of a judicial commitment proceeding, the court for the county in which the person resides may seal all judicial records of the commitment proceedings if it finds that access to the records creates undue hardship for the person. The county attorney shall be notified of the motion and may participate in the hearings. All hearings on the motion shall be in camera. The files and records of the court in proceedings on the motion shall be sealed except to the moving party, the person's attorney, the county attorney, or other persons by court order.

Sec. 117. INSTRUCTION TO REVISOR.

The revisor of statutes shall renumber Minnesota Statutes, section 253B.093, to section 253B.097, and Minnesota Statutes, section 253B.11, to section 253B.045, in 1996 and subsequent editions of Minnesota Statutes.

Sec. 118. REPEALER.

Minnesota Statutes 1996, sections 253B.03, subdivisions 6c and 9; 253B.05, subdivisions 2a and 5; 253B.07, subdivision 6; 253B.08, subdivisions 4 and 6; 253B.091; 253B.12, subdivisions 5 and 8; 253B.13, subdivision 3; 253B.15, subdivisions 4 and 6; 253B.18, subdivision 4; 253B.21, subdivision 5; and 253B.23, subdivision 1a, are repealed.

ARTICLE 2

COST OF CARE LIENS

Section 1. Minnesota Statutes 1996, section 55.10, subdivision 4, is amended to read:

Subd. 4. **WILL SEARCHES, BURIAL DOCUMENTS PROCUREMENT, AND INVENTORY OF CONTENTS.** (a) Upon being furnished with satisfactory proof of death of a sole lessee or the last surviving co-lessee of a safe deposit box, an employee of the safe deposit company shall open the box and examine the contents in the presence of an individual who appears in person and furnishes an affidavit stating that the individual believes:

(1) the box may contain the will or deed to a burial lot or a document containing instructions for the burial of the lessee or that the box may contain property belonging to the estate of the lessee; and

(2) the individual is an interested person as defined in this section and wishes to open the box for any one or more of the following purposes:

(i) to conduct a will search;

(ii) to obtain a document required to facilitate the lessee's wishes regarding body, funeral, or burial arrangements; or

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(iii) to obtain an inventory of the contents of the box.

(b) The safe deposit company may not open the box under this section if it has received a copy of letters of office of the representative of the deceased lessee's estate or other applicable court order.

(c) The safe deposit company need not open the box if:

(1) the box has previously been opened under this section for the same purpose;

(2) the safe deposit company has received notice of a written or oral objection from any person or has reason to believe that there would be an objection; or

(3) the lessee's key or combination is not available.

(d) For purposes of this section, the term "interested person" means any of the following:

(1) a person named as personal representative in a purported will of the lessee;

(2) a person who immediately prior to the death of the lessee had the right of access to the box as a deputy;

(3) the surviving spouse of the lessee;

(4) a devisee of the lessee;

(5) an heir of the lessee; or

(6) a person designated by the lessee in a writing acceptable to the safe deposit company which is filed with the safe deposit company before death; or

(7) a state or county agency with a claim authorized by section 256B.15.

(e) For purposes of this section, the term "will" includes a will or a codicil.

(f) If the box is opened for the purpose of conducting a will search, the safe deposit company shall remove any document that appears to be a will and make a true and correct machine copy thereof, replace the copy in the box, and then deliver the original thereof to the clerk of court for the county in which the lessee resided immediately before the lessee's death, if known to the safe deposit company, otherwise to the clerk of the court for the county in which the safe deposit box is located. The will must be personally delivered or sent by registered mail. If the interested person so requests, any deed to burial lot or document containing instructions for the burial of the lessee may be copied by the safe deposit box company and the copy or copies thereof delivered to the interested person.

(g) If the box is opened for the purpose of obtaining a document required to facilitate the lessee's wishes regarding the body, funeral, or burial arrangements, any such document may be removed from the box and delivered to the interested person with a true and correct machine copy retained in the box. If the safe deposit box company discovers a document that appears to be a will, the safe deposit company shall act in accordance with paragraph (f).

(h) If the box is opened for the purpose of obtaining an inventory of the contents of the box, the employee of the safe deposit company shall make, or cause to be made, an inventory of the contents of the box, to which the employee and the interested person

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shall attest under penalty of perjury to be correct and complete. Within ten days of opening the box pursuant to this subdivision, the safe deposit company shall deliver the original inventory of the contents to the court administrator for the county in which the lessee resided immediately before the lessee's death, if known to the safe deposit company, otherwise to the court administrator for the county in which the safe deposit box is located. The inventory must be personally delivered or sent by registered mail. If the interested person so requests, the safe deposit company shall make a true and correct copy of any document in the box and deliver that copy to the interested person. If the contents of the box include a document that appears to be a will, the safe deposit company shall act in accordance with paragraph (f).

(i) The safe deposit company need not ascertain the truth of any statement in the affidavit required to be furnished under this subdivision and when acting in reliance upon an affidavit, it is discharged as if it dealt with the personal representative of the lessee. The safe deposit company is not responsible for the adequacy of the description of any property included in an inventory of the contents of a safe deposit box, nor for conversion of the property in connection with actions performed under this subdivision, except for conversion by intentional acts of the company or its employees, directors, officers, or agents. If the safe deposit company is not satisfied that the requirements of this subdivision have been met, it may decline to open the box.

(j) No contents of a box other than a will and a document required to facilitate the lessee's wishes regarding body, funeral, or burial arrangements may be removed pursuant to this subdivision. The entire contents of the box, however, may be removed pursuant to section 524.3-1201.

Sec. 2. Minnesota Statutes 1996, section 256.015, subdivision 1, is amended to read:

Subdivision 1. **STATE AGENCY HAS LIEN.** When the state agency provides, pays for, or becomes liable for medical care or furnishes subsistence or other payments to a person, the agency ~~has~~ shall have a lien for the cost of the care and payments on any and all causes of action that or recovery rights under any policy, plan, or contract providing benefits for health care or injury which accrue to the person to whom the care or payments were furnished, or to the person's legal representatives, as a result of the occurrence that necessitated the medical care, subsistence, or other payments. For purposes of this section, "state agency" includes authorized agents of the state agency.

Sec. 3. Minnesota Statutes 1996, section 256.015, subdivision 2, is amended to read:

Subd. 2. **PERFECTION; ENFORCEMENT.** (a) The state agency may perfect and enforce its lien under sections 514.69, 514.70, and 514.71, and must file the verified lien statement with the appropriate court administrator in the county of financial responsibility. The verified lien statement must contain the following: the name and address of the person to whom medical care, subsistence, or other payment was furnished; the date of injury; the name and address of vendors furnishing medical care; the dates of the service or payment; the amount claimed to be due for the care or payment; and to the best of the state agency's knowledge, the names and addresses of all persons, firms, or corporations claimed to be liable for damages arising from the injuries.

(b) This section does not affect the priority of any attorney's lien. The state agency is not subject to any limitations period referred to in section 514.69 or 514.71 and has one year from the date notice is first received by it under subdivision 4, paragraph (c), even if

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the notice is untimely, or one year from the date medical bills are first paid by the state agency, whichever is later, to file its verified lien statement. The state agency may commence an action to enforce the lien within one year of (1) the date the notice required by subdivision 4, paragraph (c), is received, or (2) the date the person's cause of action is concluded by judgment, award, settlement, or otherwise, whichever is later.

(c) If the notice required in subdivision 4 is not provided by any of the parties to the claim at any stage of the claim, the state agency will have one year from the date the state agency learns of the lack of notice to commence an action. If amounts on the claim or cause of action are paid and the amount required to be paid to the state agency under subdivision 5 is not paid to the state agency, the state agency may commence an action to recover on the lien against any or all of the parties or entities which have either paid or received the payments.

Sec. 4. Minnesota Statutes 1996, section 256.015, subdivision 4, is amended to read:

Subd. 4. **NOTICE.** The state agency must be given notice of monetary claims against a person, firm, or corporation that may be liable in damages to the injured person when the state agency has paid for or become liable for the cost of medical care or payments related to the injury. Notice must be given as follows:

(a) Applicants for public assistance shall notify the state or county agency of any possible claims they may have against a person, firm, or corporation when they submit the application for assistance. Recipients of public assistance shall notify the state or county agency of any possible claims when those claims arise.

(b) A person providing medical care services to a recipient of public assistance shall notify the state agency when the person has reason to believe that a third party may be liable for payment of the cost of medical care.

(c) A person who is a party to a claim upon which the state agency may be entitled to a lien under this section shall notify the state agency of its potential lien claim before filing a claim, commencing an action, or negotiating a settlement. at each of the following stages of a claim: (1) when a claim is filed; (2) when an action is commenced; and (3) when a claim is concluded by payment, award, judgment, settlement, or otherwise. Every party involved in any stage of a claim under this subdivision is required to provide notice to the state agency at that stage of the claim. However, when one of the parties to the claim provides notice at that stage, every other party to the claim is deemed to have provided the required notice at that stage of the claim. If the required notice under this paragraph is not provided to the state agency, every party will be deemed to have failed to provide the required notice. A person who is a party to a claim includes the injured person or the person's legal representative, the plaintiff, the defendants, or persons alleged to be responsible for compensating the injured person or plaintiff, and any other party to the cause of action or claim, regardless of whether the party knows the state agency has a potential or actual lien claim.

Notice given to the county agency is not sufficient to meet the requirements of paragraphs (b) and (c).

Sec. 5. Minnesota Statutes 1996, section 256B.042, subdivision 1, is amended to read:

Subdivision 1. **LIEN FOR COST OF CARE.** When the state agency provides, pays for, or becomes liable for medical care, it shall have a lien for the cost of the care

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upon any and all causes of action or recovery rights under any policy, plan, or contract providing benefits for health care or injury, which accrue to the person to whom the care was furnished, or to the person's legal representatives, as a result of the illness or injuries which necessitated the medical care.

Sec. 6. Minnesota Statutes 1996, section 256B.042, subdivision 2, is amended to read:

Subd. 2. **LIEN ENFORCEMENT.** (a) The state agency may perfect and enforce its lien by following the procedures set forth in sections 514.69, 514.70 and 514.71, and its verified lien statement shall be filed with the appropriate court administrator in the county of financial responsibility. The verified lien statement shall contain the following: the name and address of the person to whom medical care was furnished, the date of injury, the name and address of the vendor or vendors furnishing medical care, the dates of the service, the amount claimed to be due for the care, and, to the best of the state agency's knowledge, the names and addresses of all persons, firms, or corporations claimed to be liable for damages arising from the injuries. This section shall not affect the priority of any attorney's lien.

(b) The state agency is not subject to any limitations period referred to in section 514.69 or 514.71 and has one year from the date notice is first received by it under subdivision 4, paragraph (c), even if the notice is untimely, or one year from the date medical bills are first paid by the state agency, whichever is later, to file its verified lien statement. The state agency may commence an action to enforce the lien within one year of (1) the date the notice required by subdivision 4, paragraph (c), is received or (2) the date the recipient's cause of action is concluded by judgment, award, settlement, or otherwise, whichever is later. For purposes of this section, "state agency" includes authorized agents of the state agency.

(c) If the notice required in subdivision 4 is not provided by any of the parties to the claim at any stage of the claim, the state agency will have one year from the date the state agency learns of the lack of notice to commence an action. If amounts on the claim or cause of action are paid and the amount required to be paid to the state agency under subdivision 5, is not paid to the state agency, the state agency may commence an action to recover on the lien against any or all of the parties or entities which have either paid or received the payments.

Sec. 7. Minnesota Statutes 1996, section 256B.042, subdivision 4, is amended to read:

Subd. 4. **NOTICE.** The state agency must be given notice of monetary claims against a person, firm, or corporation that may be liable to pay part or all of the cost of medical care when the state agency has paid or become liable for the cost of that care. Notice must be given as follows:

(a) Applicants for medical assistance shall notify the state or local agency of any possible claims when they submit the application. Recipients of medical assistance shall notify the state or local agency of any possible claims when those claims arise.

(b) A person providing medical care services to a recipient of medical assistance shall notify the state agency when the person has reason to believe that a third party may be liable for payment of the cost of medical care.

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(c) A person who is a party to a claim upon which the state agency may be entitled to a lien under this section shall notify the state agency of its potential lien claim before filing a claim, commencing an action, or negotiating a settlement, at each of the following stages of a claim: (1) when a claim is filed; (2) when an action is commenced; and (3) when a claim is concluded by payment, award, judgment, settlement, or otherwise. Every party involved in any stage of a claim under this subdivision is required to provide notice to the state agency at that stage of the claim. However, when one of the parties to the claim provides notice at that stage, every other party to the claim is deemed to have provided the required notice at that stage of the claim. If the required notice under this paragraph is not provided to the state agency, all parties to the claim are deemed to have failed to provide the required notice. A person who is a party to a claim includes the injured person or the person's legal representative, the plaintiff, the defendants, or persons alleged to be responsible for compensating the injured person or plaintiff, and any other party to the cause of action or claim, regardless of whether the party knows the state agency has a potential or actual lien claim.

Notice given to the local agency is not sufficient to meet the requirements of paragraphs (b) and (c).

Sec. 8. Minnesota Statutes 1996, section 256B.37, subdivision 1, is amended to read:

Subdivision 1. **SUBROGATION.** Upon furnishing medical assistance to any person having who has private accident or health care coverage, or receives or has a right to receive health or medical care from any type of organization or entity, or having has a cause of action arising out of an occurrence that necessitated the payment of medical assistance, the state agency or the state agency's agent shall be subrogated, to the extent of the cost of medical care furnished, to any rights the person may have under the terms of the coverage, or against the organization or entity providing or liable to provide health or medical care, or under the cause of action.

The right of subrogation created in this section includes all portions of the cause of action, notwithstanding any settlement allocation or apportionment that purports to dispose of portions of the cause of action not subject to subrogation.

Sec. 9. Minnesota Statutes 1996, section 514.71, is amended to read:

514.71 **RELEASE.**

No release of such causes of action, or any of them, or of any judgment thereon shall be valid or effectual as against such lien unless such lienholder shall join therein, or execute a release of such lien, and the claimant, or assignee of such lien, may enforce such lien by action against the person, firm, or corporation liable for such damages, and against any person who received payment for such damages, which action shall be commenced and tried in the county in which such lien shall be filed, unless ordered removed to another county by the court for cause. If the claimant shall prevail in such action, the court may allow reasonable attorneys' fees and disbursements. Such action shall be commenced within two years after the filing of such lien.

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Sec. 10. Minnesota Statutes 1996, section 514.980, subdivision 2, is amended to read:

Subd. 2. **MEDICAL ASSISTANCE AGENCY OR AGENCY.** "Medical assistance agency" or "agency" means the state or any county medical assistance agency that state department of human services when it provides a medical assistance benefit.

Sec. 11. Minnesota Statutes 1996, section 514.981, subdivision 2, is amended to read:

Subd. 2. **ATTACHMENT.** (a) A medical assistance lien attaches and becomes enforceable against specific real property as of the date when the following conditions are met:

- (1) payments have been made by an agency for a medical assistance benefit;
- (2) notice and an opportunity for a hearing have been provided under paragraph (b);
- (3) a lien notice has been filed as provided in section 514.982;
- (4) if the property is registered property, the lien notice has been memorialized on the certificate of title of the property affected by the lien notice; and
- (5) all restrictions against enforcement have ceased to apply.

(b) An agency may not file a medical assistance lien notice until the medical assistance recipient and the recipient's spouse or ~~their~~ the recipient's legal representatives have representative has been sent, by certified or registered mail, written notice of the agency's lien rights and there has been an opportunity for a hearing under section 256.045. In addition, the agency may not file a lien notice unless the agency determines as medically verified by the recipient's attending physician that the medical assistance recipient cannot reasonably be expected to be discharged from a medical institution and return home.

(c) An agency may not file a medical assistance lien notice against real property while it is the home of the recipient's spouse.

(d) An agency may not file a medical assistance lien notice against real property that was the homestead of the medical assistance recipient or the recipient's spouse when the medical assistance recipient received medical institution services if any of the following persons are lawfully residing in the property:

- (1) a child of the medical assistance recipient if the child is under age 21 or is blind or permanently and totally disabled according to the supplemental security income criteria;
- (2) a child of the medical assistance recipient if the child resided in the homestead for at least two years immediately before the date the medical assistance recipient received medical institution services, and the child provided care to the medical assistance recipient that permitted the recipient to live without medical institution services; or
- (3) a sibling of the medical assistance recipient if the sibling has an equity interest in the property and has resided in the property for at least one year immediately before the date the medical assistance recipient began receiving medical institution services.

(e) A medical assistance lien applies only to the specific real property described in the lien notice.

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Sec. 12. Minnesota Statutes 1996, section 514.982, subdivision 1, is amended to read:

Subdivision 1. **CONTENTS.** A medical assistance lien notice must be dated and must contain:

(1) the full name, last known address, and social security number of the medical assistance recipient and the full name, address, and social security number of the recipient's spouse;

(2) a statement that medical assistance payments have been made to or for the benefit of the medical assistance recipient named in the notice, specifying the first date of eligibility for benefits;

(3) a statement that all interests in real property owned by the persons named in the notice may be subject to or affected by the rights of the agency to be reimbursed for medical assistance benefits; and

(4) the legal description of the real property upon which the lien attaches, and whether the property is registered property.

Sec. 13. Minnesota Statutes 1996, section 514.982, subdivision 2, is amended to read:

Subd. 2. **FILING.** Any notice, release, or other document required to be filed under sections 514.980 to 514.985 must be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any document filed under sections 514.980 to 514.985. The commissioner of human services shall reimburse the county agency for filing fees paid under this section. An attestation, certification, or acknowledgment is not required as a condition of filing. Upon filing of a medical assistance lien notice, the registrar of titles shall record it on the certificate of title of each parcel of property described in the lien notice. The county recorder of each county shall establish an index of medical assistance lien notices, other than those that affect only registered property, showing the names of all persons named in the medical assistance lien notices filed in the county, arranged alphabetically. The index must be combined with the index of state tax lien notices. If the property described in the medical assistance lien notice is registered property, the registrar of titles shall record it on the certificate of title for each parcel of property described in the lien notice. If the property described in the medical assistance lien notice is abstract property, the recorder shall file the medical assistance lien in the county's grantor-grantee indexes and any tract indexes the county maintains for each parcel of property described in the lien notice. The recorder shall return recorded medical assistance lien notices for abstract property to the agency at no cost. If the agency provides a duplicate copy of a medical assistance lien notice for registered property, the registrar of titles shall show the recording data for the medical assistance lien notice on the copy and return it to the agency at no cost. The filing or mailing of any notice, release, or other document under sections 514.980 to 514.985 is the responsibility of the agency. The agency shall send a copy of the medical assistance lien notice by registered or certified mail to each record owner and mortgagee of the real property.

Sec. 14. Minnesota Statutes 1996, section 514.985, is amended to read:

514.985 AMOUNTS RECEIVED TO SATISFY LIEN.

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Amounts received by the state agency to satisfy a medical assistance lien filed by the state agency must be deposited in the state treasury and credited to the fund from which the medical assistance payments were made. Amounts received by a county medical assistance agency to satisfy a medical assistance lien filed by the county medical assistance agency must be deposited in the county treasury and credited to the fund from which the medical assistance payments were made forwarded to the agency and deposited and credited as provided for in this section.

Sec. 15. Minnesota Statutes 1996, section 524.1-201, is amended to read:

524.1-201 **GENERAL DEFINITIONS.**

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in chapters 524 and 525:

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under article III, part 3.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(5) "Child" includes any individual entitled to take as a child under law by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(6) "Claims" includes liabilities of the decedent whether arising in contract or otherwise and liabilities of the estate which arise after the death of the decedent including funeral expenses and expenses of administration. The term does not include taxes, demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate, tort claims, foreclosure of mechanic's liens, or to actions pursuant to section 573.02.

(7) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) "Disability" means cause for a protective order as described by section 525.54.

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(13) "Distributee" means any person who has received or who will receive property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee with respect to property which the trustee has received from a personal representative only to the extent of distributed assets or their increment remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Estate" includes all of the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.

(16) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(17) "Foreign personal representative" means a personal representative of another jurisdiction.

(18) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(21) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person" is as described in section 525.54, other than a minor.

(23) "Informal proceedings" means those conducted by the judge, the registrar, or the person or persons designated by the judge for probate of a will or appointment of a personal representative in accordance with sections 524.3-301 to 524.3-311.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(27) "Lease" includes an oil, gas, or other mineral lease.

(28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

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(32) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

(35) "Person" means an individual, a corporation, an organization, or other legal entity.

(36) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(37) "Petition" means a written request to the court for an order after notice.

(38) "Proceeding" includes action at law and suit in equity.

(39) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(40) "Protected person" is as described in section 525.54, subdivision 1.

(42) "Registrar" refers to the judge of the court or the person designated by the court to perform the functions of registrar as provided in section 524.1-307.

(43) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(44) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

(45) "Special administrator" means a personal representative as described by sections 524.3-614 to 524.3-618.

(46) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will, this chapter or chapter 525. "Successors" also means a funeral director or county government that provides the funeral and burial of the decedent, or a state or county agency with a claim authorized under section 256B.15.

(49) "Supervised administration" refers to the proceedings described in sections 524.3-501 to 524.3-505.

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(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(53) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 528, custodial arrangements pursuant to sections 149.11 to 149.14, 318.01 to 318.06, 527.21 to 527.44, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" is as described in section 525.54, subdivision 1.

(56) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

Sec. 16. Minnesota Statutes 1996, section 524.3-801, is amended to read:

524.3-801 NOTICE TO CREDITORS.

(a) Unless notice has already been given under this section, upon appointment of a general personal representative in informal proceedings or upon the filing of a petition for formal appointment of a general personal representative, notice thereof, in the form prescribed by court rule, shall be given under the direction of the court administrator by publication once a week for two successive weeks in a legal newspaper in the county wherein the proceedings are pending giving the name and address of the general personal representative and notifying creditors of the estate to present their claims within four months after the date of the court administrator's notice which is subsequently published or be forever barred, unless they are entitled to further service of notice under paragraph (b) or (c).

(b)(1) Within three months after: (i) the date of the first publication of the notice; or (ii) June 16, 1989, whichever is later, the personal representative may determine, in the personal representative's discretion, that it is or is not advisable to conduct a reasonably diligent search for creditors of the decedent who are either not known or not identified. If the personal representative determines that a reasonably diligent search is advisable, the personal representative shall conduct the search.

(2) If the notice is first published after June 16, 1989, the personal representative shall, within three months after the date of the first publication of the notice, serve a copy of the notice upon each then known and identified creditor in the manner provided in paragraph (c). If the decedent or a predeceased spouse of the decedent received assistance for which a claim could be filed under section 246.53, 256B.15, 256D.16, or 261.04, the personal representative shall serve a copy of the notice on the commissioner of human services in the manner provided in paragraph (e) on or before the date of the first publication of the notice. The copy of the notice served on the commissioner of hu-

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man services shall include the full name, date of birth, and social security number of the decedent or the predeceased spouse who received assistance for which a claim could be filed under any of the sections listed in this paragraph. Notwithstanding any will or other instrument or law to the contrary, except as allowed in this paragraph no property subject to administration by the estate may be distributed by the estate or the personal representative until 70 days after the date the notice is served upon the commissioner, as provided in paragraph (c) unless the local agency consents. An affidavit of service shall be prima facie evidence of service and, if it contains a legal description of the affected real property, may be filed or recorded in the office of the county recorder or registrar of titles to establish compliance with the notice requirement established in this paragraph. This restriction on distribution does not apply to the personal representative's sale of real or personal property while the estate is open but does apply to the net proceeds the estate receives from the sale. If notice was first published under the applicable provisions of law under the direction of the court administrator before June 16, 1989, and if a personal representative is empowered to act at any time after June 16, 1989, the personal representative shall, within three months after June 16, 1989, serve upon the then known and identified creditors in the manner provided in paragraph (c) a copy of the notice as published, together with a supplementary notice requiring each of the creditors to present any claim within one month after the date of the service of the notice or be forever barred.

(3) Under this section, a creditor is "known" if: (i) the personal representative knows that the creditor has asserted a claim that arose during the decedent's life against either the decedent or the decedent's estate; or (ii) the creditor has asserted a claim that arose during the decedent's life and the fact is clearly disclosed in accessible financial records known and available to the personal representative. Under this section, a creditor is "identified" if the personal representative's knowledge of the name and address of the creditor will permit service of notice to be made under paragraph (c).

(c) The personal representative shall serve a copy of any notice and any supplementary notice required by paragraph (b), clause (1) or (2), upon each creditor of the decedent who is then known to the personal representative and identified, except a creditor whose claim has either been presented to the personal representative or paid, either by delivery of a copy of the required notice to the creditor, or by mailing a copy of the notice to the creditor by certified, registered, or ordinary first class mail addressed to the creditor at the creditor's office or place of residence.

(d)(1) Effective for decedents dying on or after July 1, 1997, if the decedent or a predeceased spouse of the decedent received assistance for which a claim could be filed under section 246.53, 256B.15, 256D.16, or 261.04, the personal representative or the attorney for the personal representative shall serve the commissioner of human services with notice in the manner prescribed in paragraph (c) as soon as practicable after the appointment of the personal representative. The notice must state the decedent's full name, date of birth, and social security number and, to the extent then known after making a reasonably diligent inquiry, the full name, date of birth, and social security number for each of the decedent's predeceased spouses. The notice may also contain a statement that, after making a reasonably diligent inquiry, the personal representative has determined that the decedent did not have any predeceased spouses or that the personal representative has been unable to determine one or more of the previous items of information for a prede-

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ceased spouse of the decedent. A copy of the notice to creditors must be attached to and be a part of the notice to the commissioner.

(2) Notwithstanding a will or other instrument or law to the contrary, except as allowed in this paragraph, no property subject to administration by the estate may be distributed by the estate or the personal representative until 70 days after the date the notice is served on the commissioner as provided in paragraph (c), unless the local agency consents as provided for in clause (6). This restriction on distribution does not apply to the personal representative's sale of real or personal property, but does apply to the net proceeds the estate receives from these sales. The personal representative, or any person with personal knowledge of the facts, may provide an affidavit containing the description of any real or personal property affected by this paragraph and stating facts showing compliance with this paragraph. If the affidavit describes real property, it may be filed or recorded in the office of the county recorder or registrar of titles for the county where the real property is located. This paragraph does not apply to proceedings under sections 524.3-1203 and 525.31, or when a duly authorized agent of a county is acting as the personal representative of the estate.

(3) At any time before an order or decree is entered under section 524.3-1001 or 524.3-1002, or a closing statement is filed under section 524.3-1003, the personal representative or the attorney for the personal representative may serve an amended notice on the commissioner to add variations or other names of the decedent or a predeceased spouse named in the notice, the name of a predeceased spouse omitted from the notice, to add or correct the date of birth or social security number of a decedent or predeceased spouse named in the notice, or to correct any other deficiency in a prior notice. The amended notice must state the decedent's name, date of birth, and social security number, the case name, case number, and district court in which the estate is pending, and the date the notice being amended was served on the commissioner. If the amendment adds the name of a predeceased spouse omitted from the notice, it must also state that spouse's full name, date of birth, and social security number. The amended notice must be served on the commissioner in the same manner as the original notice. Upon service, the amended notice relates back to and is effective from the date the notice it amends was served, and the time for filing claims arising under section 246.53, 256B.15, 256D.16 or 261.04 is extended by 60 days from the date of service of the amended notice. Claims filed during the 60-day period are undischarged and unbarred claims, may be prosecuted by the entities entitled to file those claims in accordance with section 524.3-1004, and the limitations in section 524.3-1006 do not apply. The personal representative or any person with personal knowledge of the facts may provide and file or record an affidavit in the same manner as provided for in clause (1).

(4) Within one year after the date an order or decree is entered under section 524.3-1001 or 524.3-1002 or a closing statement is filed under section 524.3-1003, any person who has an interest in property that was subject to administration by the estate may serve an amended notice on the commissioner to add variations or other names of the decedent or a predeceased spouse named in the notice, the name of a predeceased spouse omitted from the notice, to add or correct the date of birth or social security number of a decedent or predeceased spouse named in the notice, or to correct any other deficiency in a prior notice. The amended notice must be served on the commissioner in the same manner as the original notice and must contain the information required for amendments under clause (3). If the amendment adds the name of a predeceased spouse omitted from the

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notice, it must also state that spouse's full name, date of birth, and social security number. Upon service, the amended notice relates back to and is effective from the date the notice it amends was served. If the amended notice adds the name of an omitted predeceased spouse or adds or corrects the social security number or date of birth of the decedent or a predeceased spouse already named in the notice, then, notwithstanding any other laws to the contrary, claims against the decedent's estate on account of those persons resulting from the amendment and arising under section 246.53, 256B.15, 256D.16, or 261.04 are undischarged and unbarred claims, may be prosecuted by the entities entitled to file those claims in accordance with section 524.3-1004, and the limitations in section 524.3-1006 do not apply. The person filing the amendment or any other person with personal knowledge of the facts may provide and file or record an affidavit describing affected real or personal property in the same manner as clause (1).

(5) After one year from the date an order or decree is entered under section 524.3-1001 or 524.3-1002, or a closing statement is filed under section 524.3-1003, no error, omission, or defect of any kind in the notice to the commissioner required under this paragraph or in the process of service of the notice on the commissioner, or the failure to serve the commissioner with notice as required by this paragraph, makes any distribution of property by a personal representative void or voidable. The distributee's title to the distributed property shall be free of any claims based upon a failure to comply with this paragraph.

(6) The local agency may consent to a personal representative's request to distribute property subject to administration by the estate to distributees during the 70-day period after service of notice on the commissioner. The local agency may grant or deny the request in whole or in part and may attach conditions to its consent as it deems appropriate. When the local agency consents to a distribution, it shall give the estate a written certificate evidencing its consent to the early distribution of assets at no cost. The certificate must include the name, case number, and district court in which the estate is pending, the name of the local agency, describe the specific real or personal property to which the consent applies, state that the local agency consents to the distribution of the specific property described in the consent during the 70-day period following service of the notice on the commissioner, state that the consent is unconditional or list all of the terms and conditions of the consent, be dated, and may include other contents as may be appropriate. The certificate must be signed by the director of the local agency or the director's designees and is effective as of the date it is dated unless it provides otherwise. The signature of the director or the director's designee does not require any acknowledgment. The certificate shall be prima facie evidence of the facts it states, may be attached to or combined with a deed or any other instrument of conveyance and, when so attached or combined, shall constitute a single instrument. If the certificate describes real property, it shall be accepted for recording or filing by the county recorder or registrar of titles in the county in which the property is located. If the certificate describes real property and is not attached to or combined with a deed or other instrument of conveyance, it shall be accepted for recording or filing by the county recorder or registrar of titles in the county in which the property is located. The certificate constitutes a waiver of the 70-day period provided for in clause (2) with respect to the property it describes and is prima facie evidence of service of notice on the commissioner. The certificate is not a waiver or relinquishment of any claims arising under section 246.53, 256B.15, 256D.16, or 261.04, and does not otherwise constitute a waiver of any of the personal representative's duties under this

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paragraph. Distributees who receive property pursuant to a consent to an early distribution shall remain liable to creditors of the estate as provided for by law.

(7) All affidavits provided for under this paragraph:

(i) shall be provided by persons who have personal knowledge of the facts stated in the affidavit;

(ii) may be filed or recorded in the office of the county recorder or registrar of titles in the county in which the real property they describe is located for the purpose of establishing compliance with the requirements of this paragraph; and

(iii) are prima facie evidence of the facts stated in the affidavit.

(8) This paragraph applies to the estates of decedents dying on or after July 1, 1997. Clause (5) also applies with respect to all notices served on the commissioner of human services before July 1, 1997, under Laws 1996, chapter 451, article 2, section 55. All notices served on the commissioner before July 1, 1997, pursuant to Laws 1996, chapter 451, article 2, section 55, shall be deemed to be legally sufficient for the purposes for which they were intended, notwithstanding any errors, omissions or other defects.

Sec. 17. Minnesota Statutes 1996, section 524.3-1004, is amended to read:

524.3-1004 **LIABILITY OF DISTRIBUTEES TO CLAIMANTS.**

After assets of an estate have been distributed and subject to section 524.3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. If a personal representative closes an estate without giving notice as required under section 524.3-801, paragraph (d), notwithstanding any other law to the contrary, claims arising under sections 246.53, 256B.15, 256D.16, and 261.04 shall be undischarged and unbarred claims. The governmental entities entitled to file claims under those sections shall be entitled to prosecute their claims against distributees as provided for in this section, and the limitations in section 524.3-1006 shall not apply. No distributee shall be liable to claimants for amounts in excess of the value of the distributee's distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against the first distributee loses the right of contribution against other distributees.

Sec. 18. Minnesota Statutes 1996, section 524.3-1201, is amended to read:

524.3-1201 **COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.**

(a) Thirty days after the death of a decedent, (i) any person indebted to the decedent, (ii) any person having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent, or (iii) any safe deposit company, as defined in section 55.01, controlling the right of access to decedent's safe deposit box shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action or deliver the entire contents of the safe deposit box to a person claiming to be the successor of the decedent, or a state or county agency with a claim authorized by section 256B.15, upon

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being presented a certified death certificate of the decedent and an affidavit, in duplicate, made by or on behalf of the successor stating that:

(1) the value of the entire probate estate, wherever located, including specifically any contents of a safe deposit box, less liens and encumbrances, does not exceed \$20,000;

(2) 30 days have elapsed since the death of the decedent or, in the event the property to be delivered is the contents of a safe deposit box, 30 days have elapsed since the filing of an inventory of the contents of the box pursuant to section 55.10, paragraph (h);

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(4) if presented to a financial institution with a multiple-party account in which the decedent had an interest at the time of death, the amount of the affiant's claim and a good faith estimate of the extent to which the decedent was the source of funds or beneficial owner of the account; and

(4) ~~(5)~~ the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) The claiming successor or state or county agency shall disburse the proceeds collected under this section to any person with a superior claim under section 524.2-403 or 524.3-805.

(d) A motor vehicle registrar shall issue a new certificate of title in the name of the successor upon the presentation of an affidavit as provided in subsection (a).

(e) The person controlling access to decedent's safe deposit box need not open the box or deliver the contents of the box if:

(1) the person has received notice of a written or oral objection from any person or has reason to believe that there would be an objection; or

(2) the lessee's key or combination is not available.

Sec. 19. Minnesota Statutes 1996, section 524.6-207, is amended to read:

524.6-207 RIGHTS OF CREDITORS.

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse, minor children and dependent children or against the state or a county agency with a claim authorized by section 256B.15, if other assets of the estate are insufficient, to the extent the deceased party is the source of the funds or beneficial owner. A surviving party or P.O.D. payee who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to the deceased party's personal representative or the state or a county agency with a claim authorized by section 256B.15 for amounts the decedent owned beneficially immediately before death to the extent necessary to discharge any such claims and charges remaining unpaid after the application of the assets of the decedent's estate. No proceeding to assert this liability shall be commenced by the personal representative un-

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less the personal representative has received a written demand by a surviving spouse, a creditor or one acting for a minor dependent child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless, before payment, the institution has been served with process in a proceeding by the personal representative or the state or a county agency with a claim authorized by section 256B.15, or has been presented by the state or a county agency with a claim authorized by section 256B.15 with an affidavit pursuant to section 524.3-1201. Upon being presented with such an affidavit, the financial institution shall make payment of the multiple-party account to the affiant in an amount equal to the lesser of the claim stated in the affidavit or the extent to which the affidavit identifies the decedent as the source of funds or beneficial owner of the account.

Presented to the governor May 20, 1997

Signed by the governor May 22, 1997, 11:10 a.m.

CHAPTER 218—S.F.No. 203

An act relating to adoption; creating a putative fathers' adoption registry; amending adoption notice and consent provisions relating to fathers; amending Minnesota Statutes 1996, sections 13.99, by adding a subdivision; 257.352, subdivision 3, and by adding subdivisions; 257.58, subdivision 1; 259.21, by adding a subdivision; 259.49, subdivision 1; 260.221, subdivision 1, and by adding a subdivision; and 357.021, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 259; repealing Minnesota Statutes 1996, section 259.51.

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

Section 1. Minnesota Statutes 1996, section 13.99, is amended by adding a subdivision to read:

Subd. 76b. **PUTATIVE FATHERS' ADOPTION REGISTRY.** Data in the putative fathers' adoption registry are classified under section 259.52, subdivision 4.

Sec. 2. Minnesota Statutes 1996, section 257.352, subdivision 3, is amended to read:

Subd. 3. **PRIVATE CHILD-PLACING AGENCY NOTICE OF POTENTIAL PREADOPTIVE OR ADOPTIVE PLACEMENT.** ~~When a private child-placing agency determines that an Indian child is in a dependent or other condition that could lead to a preadoptive or adoptive placement, the agency shall send notice of the condition to the~~ In any voluntary adoptive or preadoptive placement proceeding in which a local social service agency, private child-placing agency, petitioner in the adoption, or any other party has reason to believe that a child who is the subject of an adoptive or preadoptive placement proceeding is or may be an "Indian child," as defined in section 257.351, subdivision 6, and United States Code, title 25, section 1903(4), the agency or person shall notify the Indian child's tribal social service agency within seven days of the determina-

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