house and senate environment and natural resources committees regarding the simplification of wetland law by consolidating public waters wetlands laws with the wetlands conservation act. The report shall include a discussion of the problems and benefits of a consolidation.

Presented to the governor March 19, 1998

Signed by the governor March 23, 1998, 10:45 a.m.

CHAPTER 313—S.F.No. 2373

An act relating to civil commitment; modifying provisions governing release on pass for persons committed as mentally ill and dangerous; allowing temporary jail confinement of persons subject to commitment as sexual psychopathic personalities or sexually dangerous persons; clarifying various provisions and making conforming and technical amendments; amending Minnesota Statutes 1996, sections 253B.15, subdivision 9; and 253B.185, by adding a subdivision; Minnesota Statutes 1997 Supplement, sections 253B.03, subdivision 7; 253B.045, subdivisions 2 and 3; 253B.05, subdivision 3; 253B.07, subdivisions 5 and 7; 253B.09, subdivision 1; 253B.092, subdivisions 6 and 8; 253B.0921; 253B.095, subdivision 3; 253B.12, subdivision 1; 253B.141, subdivision 1; 253B.15, subdivisions 2, 3, 3a, 3b, and 5; 253B.18, subdivisions 4a and 5; and 253B.19, subdivision 3.

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

Section 1. Minnesota Statutes 1997 Supplement, 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 ~~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. 2. Minnesota Statutes 1997 Supplement, section 253B.045, 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~~ 2b, 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. 3. Minnesota Statutes 1997 Supplement, section 253B.045, subdivision 3, is amended to read:

Subd. 3. **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~~ 2b, pending a judicial determination regarding continued commitment pursuant to sections 253B.12 and 253B.13.

Sec. 4. Minnesota Statutes 1997 Supplement, 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. If a petition for the commitment of the person is filed in the district court in the county of the person's residence or of the county in which the treatment facility is located, the court may issue a judicial hold order pursuant to section 253B.07, subdivision ~~6~~ 2b.

(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. The release may not be delayed pending the written order. Before ~~releasing~~ deciding to release 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 who might be endangered if the person was not held;

(2) the examiner whose written statement was a basis for a hold under subdivision 1; 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. 5. Minnesota Statutes 1997 Supplement, 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 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 parties, a court–appointed examiner shall file the report with the court not less than 48 hours prior to the commitment hearing. The court shall ensure that copies of the examiner's report ~~shall be sent~~ are provided to the county attorney, the proposed patient, and the patient's counsel.

Sec. 6. Minnesota Statutes 1997 Supplement, 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 longer than 72 hours, exclusive of Saturdays, Sundays, and legal holidays, unless the court holds a preliminary hearing and determines that 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. The court 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 proposed patient who is seriously disruptive or who is incapable of comprehending and participating in the proceedings. In such instances, the court shall, with specificity on the record, state the behavior of the proposed patient or other circumstances which justify proceeding in the absence of the proposed patient.

(d) The court may continue the ~~court~~ judicial 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. If a proposed patient was acquitted of a crime against the person under section 611.026 immediately preceding the filing of the petition, the court may presume that serious imminent physical harm to the patient or others is likely if the proposed patient is not confined.

(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 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. 7. Minnesota Statutes 1997 Supplement, 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 after careful consideration of reasonable alternative dispositions, including but not limited to, dismissal of petition, voluntary outpatient care, 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 or alternative programs 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. 8. Minnesota Statutes 1997 Supplement, section 253B.092, subdivision 6, is amended to read:

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. A hearing is not required for an appointment under this paragraph. 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~~ relevant 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. The substitute decision–maker may not disclose health records obtained under this paragraph except to the extent necessary to carry out the duties 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 medication, 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.

Sec. 9. Minnesota Statutes 1997 Supplement, section 253B.092, subdivision 8, is amended to read:

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 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. A copy of the order must be given to the patient, the patient's attorney, the county attorney, and the treatment facility. The treatment facility may not begin administration of the neuroleptic medication until it notifies the patient of the court's order authorizing the treatment.

(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.

Sec. 10. Minnesota Statutes 1997 Supplement, section 253B.0921, is amended to read:

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~~ relevant 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. 11. Minnesota Statutes 1997 Supplement, section 253B.095, subdivision 3, is amended to read:

Subd. 3. **DURATION.** The maximum duration of 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 ~~suffer from mental illness, chemical dependency, or mental retardation~~ be mentally ill, chemically dependent, or mentally retarded, and (2) an order is needed to protect the patient or others.

Sec. 12. Minnesota Statutes 1997 Supplement, section 253B.12, subdivision 1, is amended to read:

Subdivision 1. **REPORTS.** (a) If a patient who was committed as mentally ill, mentally retarded, or chemically dependent is discharged from ~~treatment~~ commitment within the first 60 days after the date of the initial 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:

(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, the treatment facility which is needed, and evidence to support the response;

(6) whether the patient satisfies the statutory requirement for continued commitment to a treatment facility, with documentation to support the opinion; and

(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 county attorney, 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~~ filed by the designated agency, which may submit the discharge report as part of its report.

(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. 13. Minnesota Statutes 1997 Supplement, section 253B.141, subdivision 1, is amended to read:

Subdivision 1. **REPORT OF ABSENCE.** (a) If a patient committed under this chapter or detained under a ~~court-ordered~~ judicial 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.

Sec. 14. Minnesota Statutes 1997 Supplement, section 253B.15, subdivision 2, is amended to read:

Subd. 2. **REVOCATION OF PROVISIONAL DISCHARGE.** The 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 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 may request that the designated agency revoke the patient's provisional discharge. Any person making a request shall provide the ~~head of the~~ designated 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. 15. Minnesota Statutes 1997 Supplement, section 253B.15, subdivision 3, is amended to read:

Subd. 3. **PROCEDURE; NOTICE.** Revocation shall be commenced by the designated agency's written notice of intent to revoke provisional discharge given or sent to the patient, the patient's attorney, and the 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. 16. Minnesota Statutes 1997 Supplement, section 253B.15, subdivision 3a, is amended to read:

Subd. 3a. **REPORT TO THE COURT.** Within 48 hours, excluding weekends and holidays, 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. 17. Minnesota Statutes 1997 Supplement, section 253B.15, subdivision 3b, is amended to read:

Subd. 3b. **REVIEW.** The patient or patient's attorney 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. 18. Minnesota Statutes 1997 Supplement, section 253B.15, subdivision 5, is amended to read:

Subd. 5. **RETURN TO FACILITY.** When the designated agency ~~serves~~ gives or sends 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 a facility. The court may order the patient returned to a facility prior to a review hearing only upon finding that immediate return to a facility is necessary 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 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, or if a health or peace officer returns the patient to the treatment facility, and the patient wants judicial review of the

revocation, the patient or the patient's attorney must file the petition for review and affidavit required under subdivision 3b within ~~48 hours~~ 14 days of receipt of the notice of the intent to revoke.

Sec. 19. Minnesota Statutes 1996, section 253B.15, subdivision 9, is amended to read:

Subd. 9. **EXPIRATION OF PROVISIONAL DISCHARGE.** Except as otherwise provided, a provisional discharge is absolute when it expires. If, while on provisional discharge or extended provisional discharge, a patient is discharged as provided in section 253B.16, the discharge shall be absolute.

Notice of the expiration of the provisional discharge shall be given by the head of the treatment facility to the committing court~~,~~; the petitioner, if known; the patient's attorney; the county attorney in the county of commitment; the commissioner~~,~~; and the designated agency.

Sec. 20. Minnesota Statutes 1997 Supplement, 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 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 secure treatment facility. The pass plan must have a specific therapeutic purpose consistent with the treatment plan, must be established for a specific period of time, and must have specific levels of liberty delineated. The county case manager must be invited to participate in the development of the pass plan. 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 local law enforcement agency in the location where the pass is to occur, 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. 21. Minnesota Statutes 1997 Supplement, 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. 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, 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 patient may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before 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 signed. No order by the commissioner shall be effective sooner than 30 days after 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 recommendation 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. 22. Minnesota Statutes 1996, section 253B.185, is amended by adding a subdivision to read:

Subd. 1a. **TEMPORARY CONFINEMENT.** During any hearing held under this section, or pending emergency revocation of a provisional discharge, the court may order the patient or proposed patient temporarily confined in a jail or lockup but only if:

(1) there is no other feasible place of confinement for the patient within a reasonable distance;

(2) the confinement is for less than 24 hours or, if during a hearing, less than 24 hours prior to commencement and after conclusion of the hearing; and

(3) there are protections in place, including segregation of the patient, to ensure the safety of the patient.

Sec. 23. Minnesota Statutes 1997 Supplement, 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.

Presented to the governor March 19, 1998

Signed by the governor March 23, 1998, 10:50 a.m.

CHAPTER 314—S.F.No. 2725

An act relating to real estate; authorizing additional methods for recorder and registrar functions; amending Minnesota Statutes 1996, sections 386.40; 386.41; 508.32; 508.38; and 508A.38; proposing coding for new law in Minnesota Statutes, chapters 386; 508; and 508A.

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

Section 1. Minnesota Statutes 1996, section 386.40, is amended to read:

386.40 **SEAL.**

Every county recorder shall have an official seal and affix the same to all documents requiring the recorder's official signature, except the endorsement mentioned in section 386.41. The seal may be affixed by a stamp that will print a seal that legibly reproduces under photographic or electronic methods. The seal also may be a printed facsimile or it may be electronically generated.

Sec. 2. **[386.409] COUNTY RECORDER'S OFFICIAL SIGNATURE.**

When the county recorder's official signature, or that of a deputy is required under section 386.41, an electronically generated facsimile signature or name may be used.

Sec. 3. Minnesota Statutes 1996, section 386.41, is amended to read:

386.41 **CERTIFICATE OF RECORD.**

Every county recorder shall endorse upon each instrument recorded, over the recorder's official signature, OFFICE OF THE COUNTY RECORDER, ... COUNTY, MINNESOTA, CERTIFIED, FILED, AND/OR RECORDED ON, the date and time when it was ~~received~~ recorded and the document number and/or book and page in which it was recorded; and every instrument shall be considered as recorded at the time so noted.

Sec. 4. **[386.459] OFFICIAL RECORDS; COMPILATION, MAINTENANCE, AND STORAGE OF INFORMATION.**

The county recorder may select and use alternative methods for the compilation, maintenance, and storage of the information contained in the official records listed in sections 386.03, 386.04, 386.05, 386.19, and 386.32, subject to the following conditions:

(1) the methods selected must provide for access to the information contained in the records by those authorized by law to have access to that information; and

(2) the methods selected must provide for the preservation of the information contained in the records to the extent specified by law.