

CHAPTER 357—H.F.No. 2612

An act relating to civil commitment; clarifying civil commitment venue; amending Minnesota Statutes 2008, sections 253B.02, by adding a subdivision; 253B.045, subdivision 2; 253B.05, subdivision 3; 253B.064, subdivision 1; 253B.07, subdivisions 1, 2, 2d; 253B.185, subdivision 1; 253B.20, subdivision 4; 253B.23, subdivision 1, by adding a subdivision; Minnesota Statutes 2009 Supplement, section 253B.10, subdivision 3.

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

Section 1. Minnesota Statutes 2008, section 253B.02, is amended by adding a subdivision to read:

Subd. 4c. **County of financial responsibility.** (a) "County of financial responsibility" has the meaning specified in chapter 256G. This definition does not require that the person qualifies for or receives any other form of financial, medical, or social service assistance in addition to the services under this chapter. Disputes about the county of financial responsibility shall be submitted to the commissioner of human services to be determined in the manner prescribed in section 256G.09.

(b) For purposes of proper venue for filing a petition pursuant to section 253B.064, subdivision 1, paragraph (a); 253B.07, subdivision 1, paragraph (a); or 253B.185, subdivision 1, where the designated agency of a county has determined that it is the county of financial responsibility, then that county is the county of financial responsibility until a different determination is made by the appropriate county agencies or the commissioner pursuant to chapter 256G.

Sec. 2. Minnesota Statutes 2008, section 253B.045, subdivision 2, is amended to read:

Subd. 2. **Facilities.** (a) 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 treatment 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 2b, except that the commissioner shall bill the responsible health plan first. If the person has health plan coverage, but the hospitalization does not meet the criteria in subdivision 6 or section 62M.07, 62Q.53, or 62Q.535, the county is responsible. When a person is temporarily confined in a Department of Corrections facility solely under subdivision 1a, and not based on any separate correctional authority:

(1) the commissioner of corrections may charge the county of financial responsibility for the costs of confinement; and

(2) the Department of Human Services shall use existing appropriations to fund all remaining nonconfinement costs. The funds received by the commissioner for the

confinement and nonconfinement costs are appropriated to the department for these purposes.

~~(b) For the purposes of this subdivision, "county of financial responsibility" means the county in which the person resides at the time of confinement has the meaning specified in section 253B.02, subdivision 4c, or, if the person has no residence in this state, the county which initiated the confinement. The charge for confinement in a facility operated by the commissioner of human services 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 2008, 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~~ financial responsibility 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 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 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 person is intoxicated in public and held under this section for detoxification, a treatment facility may release the person without providing notice under paragraph (d) as soon as the treatment facility determines the person is no longer a danger to themselves or others. Notice must be provided to the peace officer or health officer who transported the person, or the appropriate law enforcement agency, if the officer or agency requests notification.

(d) 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.

(e) A person held under a 72-hour emergency hold must be released by the facility within 72 hours unless a court order to hold the person is obtained. A consecutive emergency hold order under this section may not be issued.

Sec. 4. Minnesota Statutes 2008, section 253B.064, subdivision 1, is amended to read:

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~~ financial responsibility or the county where the patient is present. 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 the right to a second independent examiner, pursuant to section 253B.07, subdivisions 3 and 5.

Sec. 5. Minnesota Statutes 2008, 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~~ financial responsibility or the county where the proposed patient is present 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. The designated agency shall appoint a screening team to conduct an investigation. The petitioner may not be a member of the screening team. The investigation must include:

(1) 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, specific reasons must be documented;

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

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

(4) in the case of a commitment based on mental illness, the following information, if it is known or available, that may be relevant to the administration of neuroleptic medications, including the existence of a declaration under section 253B.03, subdivision 6d, or a health care directive under chapter 145C or a guardian, conservator, proxy, or agent 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;

(5) seeking input from the proposed patient's health plan company to provide the court with information about services the enrollee needs and the least restrictive alternatives; and

(6) in the case of a commitment based on mental illness, information listed in clause (4) for other purposes relevant to treatment.

(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. The interviewer shall inform the proposed patient that any information provided by the proposed patient may be included in the prepetition screening report and may be considered in the commitment proceedings. Data collected pursuant to this clause shall be considered private data on individuals. The prepetition screening report is not admissible as evidence except by agreement of counsel or as permitted by this chapter or the rules of court and is not admissible in any court proceedings unrelated to the commitment proceedings.

(c) The prepetition screening team shall provide a notice, written in easily understood language, to the proposed patient, the petitioner, persons named in a declaration under chapter 145C or section 253B.03, subdivision 6d, and, with the proposed patient's consent, other interested parties. The team shall ask the patient if the patient wants the notice read and shall read the notice to the patient upon request. The notice must contain information regarding the process, purpose, and legal effects of civil commitment and early intervention. The notice must inform the proposed patient that:

(1) if a petition is filed, the patient has certain rights, including the right to a court-appointed attorney, the right to request a second examiner, the right to attend hearings, and the right to oppose the proceeding and to present and contest evidence; and

(2) if the proposed patient is committed to a state regional treatment center or group home, the patient may be billed for the cost of care and the state has the right to make a claim against the patient's estate for this cost.

The ombudsman for mental health and developmental disabilities shall develop a form for the notice which includes the requirements of this paragraph.

(d) 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. The statement of facts contained in the written report must meet the requirements of subdivision 2, paragraph (b).

(e) 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 and to the proposed patient.

(f) 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 shall determine whether or not to proceed with the petition. Notice of the county attorney's determination shall be provided to the interested party.

(g) 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. 6. Minnesota Statutes 2008, 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~~ financial responsibility or the county where the proposed patient is present. 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 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 the time period 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 shall 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 use of neuroleptic medications is recommended by the treating physician, the petition for commitment must, if applicable, include or be accompanied by a request for proceedings under section 253B.092. Failure to include the required information regarding neuroleptic medications in the examiner's statement, or to include a request for an order regarding neuroleptic medications with the commitment petition, is not a basis for dismissing the commitment petition. 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. 7. Minnesota Statutes 2008, section 253B.07, subdivision 2d, is amended 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 Minnesota county ~~of the person's residence, if the person is a resident of Minnesota~~ where the person currently lives, whether independently or pursuant to a placement. The court shall grant the motion if it determines that the transfer is appropriate and is in the interests of justice. 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. 8. Minnesota Statutes 2009 Supplement, section 253B.10, subdivision 3, is amended to read:

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, health care agent, or parent and the county of ~~the patient's legal residence~~ financial responsibility if the county may be liable for a portion of the cost of treatment. If the committed person was admitted

upon the petition of a spouse, health care agent, or parent the head of the treatment facility shall notify an interested person other than the petitioner.

Sec. 9. Minnesota Statutes 2008, section 253B.185, subdivision 1, is amended to read:

Subdivision 1. **Commitment generally.** Except as otherwise provided in this section, the provisions of this chapter pertaining to persons who are mentally ill and dangerous to the public apply with like force and effect to persons who are alleged or found to be sexually dangerous persons or persons with a sexual psychopathic personality. Before commitment proceedings are instituted, the facts shall first be submitted to the county attorney, who, if satisfied that good cause exists, will prepare the petition. The county attorney may request a prepetition screening report. The petition is to be executed by a person having knowledge of the facts and filed with the ~~committing~~ district court of the county ~~in which the patient has a settlement or~~ of financial responsibility or the county where the patient is present. If the patient is in the custody of the commissioner of corrections, the petition may be filed in the county where the conviction for which the person is incarcerated was entered. Upon the filing of a petition alleging that a proposed patient is a sexually dangerous person or is a person with a sexual psychopathic personality, the court shall hear the petition as provided in section 253B.18. In commitments under this section, the court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety.

Sec. 10. Minnesota Statutes 2008, section 253B.20, subdivision 4, is amended to read:

Subd. 4. **Aftercare services.** Prior to the date of discharge or provisional discharge of any committed person, the designated agency of the county of ~~the patient's residence~~ financial responsibility, 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. 11. Minnesota Statutes 2008, 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, excluding the costs of the examiner, which must be paid by the state courts.

(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~~ financial responsibility.

Sec. 12. Minnesota Statutes 2008, section 253B.23, is amended by adding a subdivision to read:

Subd. 1b. **Responsibility for conducting prepetition screening and filing commitment and early intervention petitions.** (a) The county of financial responsibility is responsible to conduct prepetition screening pursuant to section 253B.07, subdivision 1, and, if statutory conditions for early intervention or commitment are satisfied, to file a petition pursuant to section 253B.064, subdivision 1, paragraph (a); 253B.07, subdivision 1, paragraph (a); or 253B.185, subdivision 1.

(b) Except in cases under section 253B.185, if the county of financial responsibility refuses or fails to conduct prepetition screening or file a petition, or if it is unclear which county is the county of financial responsibility, the county where the proposed patient is present is responsible to conduct the prepetition screening and, if statutory conditions for early intervention or commitment are satisfied, file the petition.

(c) In cases under section 253B.185, if the county of financial responsibility refuses or fails to file a petition, or if it is unclear which county is the county of financial responsibility, then (1) the county where the conviction for which the person is incarcerated was entered, or (2) the county where the proposed patient is present, if the person is not currently incarcerated based on conviction, is responsible to file the petition if statutory conditions for commitment are satisfied.

(d) When a proposed patient is an inmate confined to an adult correctional facility under the control of the commissioner of corrections and commitment proceedings are initiated or proposed to be initiated pursuant to section 241.69, the county where the correctional facility is located may agree to perform the responsibilities specified in paragraph (a).

(e) Any dispute concerning financial responsibility for the costs of the proceedings and treatment will be resolved pursuant to chapter 256G.

(f) This subdivision and the sections of law cited in this subdivision address venue only. Nothing in this chapter is intended to limit the statewide jurisdiction of district courts over civil commitment matters.

Presented to the governor May 13, 2010

Signed by the governor May 17, 2010, 11:10 a.m.