

**CHAPTER 102—S.F.No. 1287**

*An act relating to human services; modifying certain provisions regarding the Minnesota sex offender program; amending Minnesota Statutes 2010, sections 253B.141, subdivision 2; 253B.185, subdivisions 1, 16, by adding subdivisions; 253B.19, subdivision 2; 609.485, subdivision 2.*

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

**ARTICLE 1**

**TRANSFERS AND READMISSIONS**

Section 1. Minnesota Statutes 2010, section 253B.185, is amended by adding a subdivision to read:

Subd. 11a. **Transfer; voluntary readmission to a secure facility.** (a) After a patient has been transferred out of a secure facility pursuant to subdivision 11 and with the consent of the executive director of the Minnesota sex offender program, a patient may voluntarily return to a secure facility operated by the Minnesota sex offender program for a period of up to 60 days.

(b) If the patient is not returned to the facility to which the patient was originally transferred pursuant to subdivision 11 within 60 days of being readmitted to a secure facility, the transfer is revoked and the patient shall remain in a secure facility. The patient shall immediately be notified in writing of the revocation.

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

(d) If the transfer has not been revoked and the patient is to be returned to the facility to which the patient was originally transferred pursuant to subdivision 11, with no substantive change to the conditions of the transfer ordered pursuant to subdivision 11, no action by the special review board or judicial appeal panel is required.

Sec. 2. Minnesota Statutes 2010, section 253B.185, is amended by adding a subdivision to read:

Subd. 11b. **Transfer; revocation.** (a) The executive director of the Minnesota sex offender program or designee may revoke a transfer made pursuant to subdivision 11 and require a patient to return to a secure treatment facility if:

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

(2) the patient has regressed in clinical progress so that the facility to which the patient was transferred is no longer sufficient to meet the patient's needs.

(b) Upon the revocation of the transfer, the patient shall be immediately returned to a secure treatment facility. A report documenting reasons for revocation shall be issued by the executive director or designee within seven days after the patient is returned to the secure treatment facility. Advance notice to the patient of the revocation is not required.

(c) The patient must be provided a copy of the revocation report and informed, orally and in writing, of the rights of a patient under this subdivision. The revocation report shall be served upon the patient and the patient's counsel. The report shall outline the specific reasons for the revocation including, but not limited to, the specific facts upon which the revocation recommendation is based.

(d) A patient whose transfer is revoked must successfully re-petition the special review board and judicial appeal panel prior to being transferred out of a secure facility.

(e) Any patient aggrieved by a transfer revocation decision may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and, after considering the factors in subdivision 11, paragraph (b), shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new transfer out of a secure facility at the time of the revocation hearing.

Sec. 3. Minnesota Statutes 2010, section 253B.185, is amended by adding a subdivision to read:

Subd. 14a. **Provisional discharge; voluntary readmission.** (a) With the consent of the executive director of the Minnesota sex offender program, a patient may voluntarily return to the Minnesota sex offender program from provisional discharge for a period of up to 60 days.

(b) If the patient is not returned to provisional discharge status within 60 days of being readmitted to the Minnesota sex offender program, the provisional discharge is revoked. The patient shall immediately be notified of the revocation in writing. Within 15 days of receiving notice of the revocation, the patient may request a review of the matter before the special review board. The special review board shall review the circumstances of the revocation and, after applying the standards in subdivision 15, paragraph (a), shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The board may recommend a return to provisional discharge status.

(c) If the provisional discharge has not been revoked and the patient is to be returned to provisional discharge, the Minnesota sex offender program 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.

Sec. 4. **EFFECTIVE DATE.**

Sections 1 to 3 are effective the day following final enactment.

## ARTICLE 2

### ABSENT WITHOUT AUTHORIZATION

Section 1. Minnesota Statutes 2010, section 253B.141, subdivision 2, is amended to read:

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 person who is mentally ill and dangerous; ~~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.

Sec. 2. Minnesota Statutes 2010, section 253B.185, subdivision 16, is amended to read:

Subd. 16. **Return of absent patient.** (a) If the a patient is absent without authorization, including failure to return to the custody of the Minnesota sex offender program upon the revocation of a provisional discharge, the head of the treatment facility or designee may request a peace officer to return the patient to the treatment facility shall report the absence to the local law enforcement agency. The head of the treatment facility shall inform the committing court of the revocation or absence, and the committing court or other district court shall direct a 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 treatment facility shall be paid by the commissioner unless paid by the patient or other persons on the patient's behalf issue an order for the apprehension and holding of the patient by a peace officer in any jurisdiction and transportation of the patient to a facility operated by the Minnesota sex offender program or otherwise returned to the custody of the Minnesota sex offender program.

(b) An employee of the Department of Human Services may apprehend, detain, or transport an absent patient at anytime. The immunity provided under section 253B.23, subdivision 4, applies to the apprehension, detention, and transport of an absent patient.

(c) Upon receiving either the report or the apprehend and hold order in paragraph (a), a law enforcement agency shall enter information on the patient into the missing persons file of the National Crime Information Center database according to the missing

persons practices. Where probable cause exists of a violation of section 609.485, a law enforcement agency shall also seek a felony arrest warrant and enter the warrant in the National Crime Information Center database.

(d) For the purposes of ensuring public safety and the apprehension of an absent patient, and notwithstanding state and federal data privacy laws, the Minnesota sex offender program shall disclose information about the absent patient relevant to the patient's apprehension and return to law enforcement agencies where the absent patient is likely to be located or likely to travel through and to agencies with statewide jurisdiction.

(e) Upon receiving either the report or the apprehend and hold order in paragraph (a), a patient shall be apprehended and held by a peace officer in any jurisdiction pending return to a facility operated by the Minnesota sex offender program or otherwise returned to the custody of the Minnesota sex offender program.

(f) A patient detained solely 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.

These limitations do not apply to a patient being held for criminal prosecution, including for violation of section 609.485.

(g) If a patient is detained under this subdivision, the Minnesota sex offender program 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 a facility operated by the Minnesota sex offender program, as determined by its executive director. The expense of detaining and transporting a patient shall be the responsibility of the Minnesota sex offender program.

(h) Immediately after an absent patient is apprehended, the Minnesota sex offender program or the law enforcement agency that apprehended or returned the absent patient shall notify the law enforcement agency that first received the absent patient report under this subdivision, and that agency shall cancel the missing persons entry from the National Crime Information Center computer.

Sec. 3. Minnesota Statutes 2010, section 609.485, subdivision 2, is amended to read:

Subd. 2. **Acts prohibited.** Whoever does any of the following may be sentenced as provided in subdivision 4:

(1) escapes while held pursuant to a lawful arrest, in lawful custody on a charge or conviction of a crime, or while held in lawful custody on an allegation or adjudication of a delinquent act;

(2) transfers to another, who is in lawful custody on a charge or conviction of a crime, or introduces into an institution in which the latter is confined, anything usable in making such escape, with intent that it shall be so used;

(3) having another in lawful custody on a charge or conviction of a crime, intentionally permits the other to escape;

(4) escapes while in a facility designated under section 253B.18, subdivision 1, pursuant to a court commitment order after a finding of not guilty by reason of mental illness or mental deficiency of a crime against the person, as defined in section 253B.02, subdivision 4a. Notwithstanding section 609.17, no person may be charged with or convicted of an attempt to commit a violation of this clause;

(5) escapes while in or under the supervision of a facility designated under section 246B.01, subdivision 2a; 246B.02; 253B.18, subdivision 1; 253B.185, subdivision 1, paragraph (d); or Minnesota Statutes 1992, section 526.10;

(6) escapes while on pass status or provisional discharge according to section 253B.18 or 253B.185; or

(7) escapes while a client of the Minnesota sex offender program as defined in section 246B.01, subdivision 1a, or subject to a court hold order under section 253B.185.

For purposes of clauses (1) and (7), "escapes while held in lawful custody" or "escapes while a client of the Minnesota sex offender program" includes absconding from electronic monitoring or ~~absconding~~ after removing an electronic monitoring device from the person's body.

#### Sec. 4. **EFFECTIVE DATE.**

Sections 1 to 3 are effective the day following final enactment.

### ARTICLE 3

#### COMMITMENT PROCEDURE

Section 1. Minnesota Statutes 2010, section 253B.185, subdivision 1, is amended to read:

Subdivision 1. **Commitment generally.** (a) 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. For purposes of this section, "sexual psychopathic personality" includes any individual committed as a "psychopathic personality" under Minnesota Statutes 1992, section 526.10.

(b) 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 district court of the county 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.

(c) 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, except that section 253B.18, subdivisions 2 and 3, shall not apply.

(d) 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.

(e) After a final determination that a patient is a sexually dangerous person or sexual psychopathic personality, the court shall order commitment for an indeterminate period of time and the patient shall be transferred, provisionally discharged, or discharged, only as provided in this section.

**EFFECTIVE DATE.** This section is effective the day following final enactment and applies to all petitions filed on or after that date.

## ARTICLE 4

### COMMUNITY NOTIFICATION

Section 1. Minnesota Statutes 2010, section 253B.185, is amended by adding a subdivision to read:

Subd. 10a. **Scope of community notification.** (a) Notification of the public and disclosure of information under section 244.052, subdivision 4, regarding an individual who was committed under this section or Minnesota Statutes 1992, section 526.10, is as provided under section 244.052, subdivision 4, paragraphs (b), clause (3), and (g), and subdivision 4b, regardless of the individual's assigned risk level.

(b) After four years from the date of an order for provisional discharge or discharge of civil commitment, the individual may petition the head of the treatment facility from which the individual was provisionally discharged or discharged to have the scope of notification and disclosure based solely upon the individual's assigned risk level under section 244.052.

(c) If an individual's provisional discharge is revoked for any reason, the four-year time period under paragraph (b) starts over from the date of a subsequent order for provisional discharge or discharge except that the head of the treatment facility or designee may, in the sole discretion of the head or designee, determine that the individual may petition before four years have elapsed from the date of the order of the subsequent provisional discharge or discharge and notify the individual of that determination.

(d) The head of the treatment facility shall appoint a multidisciplinary committee to review and make a recommendation on a petition made under paragraph (b). The head of the treatment facility or designee may grant or deny the petition. There is no review or appeal of the decision. If a petition is denied, the individual may petition again after two years from the date of denial.

(e) Nothing in this subdivision shall be construed to give an individual an affirmative right to petition the head of the treatment facility earlier than four years after the date of an order for provisional discharge or discharge.

(f) The head of the treatment facility shall act in place of the individual's corrections agent for the purpose of section 244.052, subdivision 3, paragraph (h), when the individual is not assigned to a corrections agent.

**EFFECTIVE DATE.** This section is effective the day following final enactment, and applies where the requirement for disclosure of information, pursuant to section 244.052, subdivision 4, arises on or after that date.

**ARTICLE 5****PARTIES TO THE PETITION**

Section 1. Minnesota Statutes 2010, section 253B.19, subdivision 2, is amended to read:

Subd. 2. **Petition; hearing.** (a) A person committed as mentally ill and dangerous to the public under section 253B.18, or the county attorney of the county from which the person was committed or the county of financial responsibility, may petition the judicial appeal panel for a rehearing and reconsideration of a decision by the commissioner under section 253B.18, subdivision 5. The judicial appeal panel must not consider petitions for relief other than those considered by the commissioner from which the appeal is taken. The petition must be filed with the Supreme Court within 30 days after the decision of the commissioner is signed. The hearing must be held within 45 days of the filing of the petition unless an extension is granted for good cause.

(b) A person committed as a sexual psychopathic personality or as a sexually dangerous person under section 253B.185, or committed as both mentally ill and dangerous to the public under section 253B.18 and as a sexual psychopathic personality or as a sexually dangerous person under section 253B.185; the county attorney of the county from which the person was committed or the county of financial responsibility; or the commissioner may petition the judicial appeal panel for a rehearing and reconsideration of a decision of the special review board under section 253B.185, subdivision 9. The petition must be filed with the Supreme Court within 30 days after the decision is mailed by the commissioner as required in section 253B.185, subdivision 9, paragraph (f). The hearing must be held within 180 days of the filing of the petition unless an extension is granted for good cause. If no party petitions the judicial appeal panel for a rehearing or reconsideration within 30 days, the judicial appeal panel shall either issue an order adopting the recommendations of the special review board or set the matter on for a hearing pursuant to this paragraph.

(c) For an appeal under paragraph (a) or (b), the Supreme Court shall refer the petition to the chief judge of the judicial 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 at least 14 days prior to the date of the hearing.

(d) Any person may oppose the petition. The patient, the patient's counsel, the county attorney of the committing county or the county of financial responsibility, and the commissioner shall participate as parties to the proceeding pending before the judicial appeal panel, ~~except when the patient is committed solely as mentally ill and dangerous,~~ and shall, except when the patient is committed solely as mentally ill and dangerous, no later than 20 days before the hearing on the petition, inform the judicial appeal panel and the opposing party in writing whether they support or oppose the petition and provide a summary of facts in support of their position. The judicial 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, the patient's counsel, and the county attorney of the committing county or the county of financial responsibility have the right to be present and may present and cross-examine all witnesses and offer a factual and legal basis in support of their positions. The petitioning party seeking discharge or provisional discharge bears the burden of going forward with

the evidence, which means presenting a prima facie case with competent evidence to show that the person is entitled to the requested relief. If the petitioning party has met this burden, the party opposing discharge or provisional discharge bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied. A party seeking transfer under section 253B.18, subdivision 6, or 253B.185, subdivision 11, must establish by a preponderance of the evidence that the transfer is appropriate.

**EFFECTIVE DATE.** This section is effective the day following final enactment and applies to all judicial appeal panel proceedings in which either a petition for rehearing and reconsideration before the judicial appeal panel is filed or the order of the panel to hold that hearing is issued on or after that date.

## ARTICLE 6

### SEX OFFENDER CIVIL COMMITMENT STATUTES

#### Section 1. **STATUTORY REVIEW.**

The commissioner of human services, in consultation with the revisor of statutes, shall review existing laws relating to civil commitment of individuals as sexual psychopathic personalities or as sexually dangerous persons and propose legislation for the 2012 legislative session that clearly organizes the law and distinguishes it from laws relating to other forms of civil commitment.

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

Presented to the governor May 25, 2011

Signed by the governor May 27, 2011, 10:36 a.m.