

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1026

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DATE	D-PG	OFFICIAL STATUS
03/24/2011	700	Introduction and first reading Referred to Judiciary and Public Safety
04/18/2011	1393	Withdrawn and re-referred to Health and Human Services
04/27/2011	1415a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety
01/26/2012	3650	Author added Lourey

A bill for an act

relating to human services; establishing a sex offender civil commitment petition screening panel for purposes of determining whether the civil commitment of certain sex offenders is appropriate; requiring county payment of certain expenses; providing for the identification and development of alternative treatment facilities; providing for reduction in custody petitions for patients in alternative programs or assisted living units; requiring implementation of the statewide judicial panel for commitment proceedings regarding sexual psychopathic personalities and sexually dangerous persons; providing for consideration of alternatives to commitment or alternative treatment programs in certain cases; including provisions governing a stay of commitment; amending Minnesota Statutes 2010, sections 244.05, subdivision 7; 246B.10; 253B.095, subdivisions 1, 2, 3; 253B.185, subdivisions 1, 4, 8, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapters 246B; 253B.

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

Section 1. Minnesota Statutes 2010, section 244.05, subdivision 7, is amended to read:

Subd. 7. **Sex offenders; civil commitment determination.** (a) Before the commissioner releases from prison any inmate convicted under section 609.342, 609.343, 609.344, 609.345, or 609.3453, or sentenced as a patterned offender under section 609.3455, subdivision 3a, and determined by the commissioner to be in a high risk category, the commissioner shall make a preliminary determination whether, in the commissioner's opinion, a petition under section 253B.185 may be appropriate. The commissioner's opinion must be based on a recommendation of a Department of Corrections screening committee ~~and a legal review and recommendation from independent counsel knowledgeable in the legal requirements of the civil commitment process. The commissioner may retain a retired judge or other attorney to serve as independent counsel.~~

(b) In making this decision, the commissioner shall have access to the following data only for the purposes of the assessment and referral decision:

(1) private medical data under section 13.384 or sections 144.291 to 144.298, or welfare data under section 13.46 that relate to medical treatment of the offender;

(2) private and confidential court services data under section 13.84;

(3) private and confidential corrections data under section 13.85; and

(4) private criminal history data under section 13.87.

(c) If the commissioner determines that a petition may be appropriate, the commissioner shall forward this determination, along with a summary of the reasons for the determination, to the ~~county attorney in the county where the inmate was convicted~~ sex offender civil commitment petition screening panel under section 253B.184 no later than 12 months before the inmate's release date. If the inmate is received for incarceration with fewer than 12 months remaining in the inmate's term of imprisonment, or if the commissioner receives additional information less than 12 months before release that makes the inmate's case appropriate for referral, the commissioner shall forward the determination as soon as is practicable. Upon receiving the commissioner's preliminary determination, the ~~county attorney~~ petition screening panel shall proceed in the manner provided in section ~~253B.185~~ 253B.184. The commissioner shall release to the ~~county attorney~~ petition screening panel all requested documentation maintained by the department.

Sec. 2. Minnesota Statutes 2010, section 246B.10, is amended to read:

246B.10 LIABILITY OF COUNTY; REIMBURSEMENT.

(a) The civilly committed sex offender's county shall pay to the state a portion of the cost of care provided in the Minnesota sex offender program to a civilly committed sex offender who has legally settled in that county. A county's payment must be made from the county's own sources of revenue and payments must equal ten percent of the cost of care, as determined by the commissioner, for each day or portion of a day, that the civilly committed sex offender spends at the facility. If payments received by the state under this chapter exceed 90 percent of the cost of care, the county is responsible for paying the state the remaining amount. The county is not entitled to reimbursement from the civilly committed sex offender, the civilly committed sex offender's estate, or from the civilly committed sex offender's relatives, except as provided in section 246B.07.

(b) The county shall, out of local money, pay the state:

(1) five percent of the cost of the housing, treatment, and supervision of individuals who have received a stay of commitment under section 253B.095 or who have been placed in an alternative facility under section 246B.20; or

(2) 25 percent of costs for patients who do not have a conviction as an adult for a sex offense, as defined in section 609.3457, subdivision 4.

Sec. 3. **[246B.20] ALTERNATIVE FACILITIES.**

The commissioner of human services shall identify existing alternative settings to which civilly committed sex offenders in the alternative program and assisted living unit of the Minnesota sex offender program can be appropriately and safely transferred or provisionally discharged or in which patients who are committed to an alternative program under section 253B.185, subdivision 1c, may be placed. If existing alternative facilities are insufficient in number or inadequate to provide for the care and supervision of individuals being transferred or provisionally discharged, or for individuals who are committed to an alternative program or whose commitment is stayed, the commissioner shall develop and operate alternative facilities.

Sec. 4. **[246B.30] PETITION FOR REDUCTION IN CUSTODY.**

The head of the treatment facility may exercise the authority under section 253B.185, subdivision 9, paragraph (c), to file a petition for a reduction in custody on behalf of an individual in the alternative program or assisted living unit who does not initiate a petition for a reduction in custody.

Sec. 5. Minnesota Statutes 2010, section 253B.095, subdivision 1, is amended to read:

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. If the petition is brought under section 253B.185, the patient must be released to the custody of the commissioner of human services for the provision of treatment, services, and supervision under the Minnesota sex offender program.

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

(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 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;

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

(4) a condition that the patient is prohibited from giving consent to participate in a clinical drug trial while the court order is in effect.

(e) Notwithstanding paragraph (d), clause (4), during the period of a stay of commitment, the court may allow the patient to give consent to participate in a specific psychiatric clinical drug trial if the treating psychiatrist testifies or submits an affidavit that the patient may benefit from participating in the trial because, after providing other treatment options for a reasonable period of time, those options have been ineffective. The treating psychiatrist must not be the psychiatrist conducting the psychiatric clinical drug trial. The court must determine that, under the circumstances of the case, the patient is competent to choose to participate in the trial, that the patient is freely choosing to participate in the trial, that the compulsion of the stayed commitment is not being used to coerce the person to participate in the clinical trial, and that a reasonable person may choose to participate in the clinical trial.

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

Sec. 6. Minnesota Statutes 2010, section 253B.095, subdivision 2, is amended to read:

Subd. 2. **Case manager.** When a court releases a patient under this section, the court shall direct the case manager or, for petitions under section 253B.185, the Minnesota sex offender program, to report to the court at least once every 90 days and shall immediately report a substantial failure of a patient or provider to comply with the conditions of the release.

Sec. 7. Minnesota Statutes 2010, section 253B.095, subdivision 3, is amended to read:

Subd. 3. **Duration.** (a) Except as provided in paragraph (b), 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 be mentally ill, chemically dependent, or developmentally disabled, and (2) an order is needed to protect the patient or others.

(b) For a petition under section 253B.185, the stayed order may be for an indeterminate period of time or for a period of time longer than those specified in paragraph (a).

Sec. 8. [253B.184] SEX OFFENDER CIVIL COMMITMENT SCREENING PANEL.

(a) A sex offender civil commitment screening panel is established. The panel is comprised of five members, to be appointed as follows:

(1) two retired judges appointed by the chief justice of the Supreme Court;

(2) two attorneys experienced in mental health and commitment law appointed by the attorney general; and

(3) one licensed psychologist or psychiatrist appointed by the commissioner of human services.

(b) The screening panel shall review a preliminary determination made by the commissioner of corrections under section 244.05, subdivision 7, that a petition under section 253B.185 may be appropriate and make a final determination as to whether the county attorney may proceed with a petition under section 253B.185. The screening panel shall notify the county attorney in the county where the inmate was convicted of its determination under this section.

(c) The screening panel has access to the data specified in section 244.05, subdivision 7, paragraph (b), for purposes of making a determination under this section. If the screening panel determines that the county attorney may proceed with a petition, the screening panel shall release requested documentation to the county attorney, including documentation created by the screening panel or received from the commissioner of corrections.

Sec. 9. 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, provided that the county attorney must not prepare a petition if the sex offender civil commitment petition screening panel has made a determination under section 253B.184 that the county attorney must not proceed with a petition under this section. This limitation does not apply if an inmate is released from prison and the petition is based on behavior that occurs after the inmate is released or on information not known by the screening panel

~~when the panel made its determination. 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~~ Supreme Court for referral to the statewide judicial panel established under subdivision 4. If the proposed patient may qualify for an alternative facility placement under subdivision 1c, the petition must include a statement to this effect and request the court to order an evaluation of the proposed patient to determine the most appropriate disposition and placement.

(c) The county attorney may request a prepetition screening report. If the proposed patient does not have a conviction as an adult for a sex offense, as defined in section 609.3457, subdivision 4, the county attorney shall request a prepetition screening report and the report must identify and recommend alternatives to civil commitment under this section. A petition for commitment under this section of a patient who does not have a conviction as an adult for a sex offense must explain the alternatives to commitment that were considered and whether these alternatives were pursued before the petition was filed.

~~(e)~~ (d) Upon the filing receipt of a petition alleging that a proposed patient is a sexually dangerous person or is a person with a sexual psychopathic personality, the court presiding judge shall hear the petition as provided in section 253B.18.

~~(d)~~ (e) 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 or the court determines that a stay of commitment under section 253B.095 is appropriate or the patient should be placed in an alternative program under subdivision 1c.

~~(e)~~ (f) 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.

Sec. 10. Minnesota Statutes 2010, section 253B.185, is amended by adding a subdivision to read:

Subd. 1c. **Alternative facility placements.** (a) This subdivision applies to a proposed patient who is diagnosed as having a cognitive defect that may affect the patient's ability to effectively participate in, or benefit from, a traditional treatment program

in a secure treatment facility or who, because of advanced age or physical disability, could be effectively and safely managed in an alternative treatment facility or program. For purposes of this subdivision, "cognitive defect" includes significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior, or compromised executive functioning evidenced by subaverage intellectual functioning, learning disabilities, traumatic brain injury, or neurological impairment.

(b) If the court determines that this subdivision applies to a proposed patient, the court shall commit the patient to an alternative facility under section 246B.20 or, if appropriate, issue a stay of commitment under section 253B.095. The court may commit the patient to an alternative program in a secure treatment facility only if an alternative facility is not available and a conditional release is not appropriate or if the court determines that commitment to a secure treatment facility is necessary for public safety.

Sec. 11. Minnesota Statutes 2010, section 253B.185, subdivision 4, is amended to read:

Subd. 4. **Statewide judicial panel; commitment proceedings.** (a) The Supreme Court ~~may~~ shall establish a panel of district judges with statewide authority to preside over commitment proceedings 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~~ this section 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. 12. Minnesota Statutes 2010, section 253B.185, subdivision 8, is amended to read:

Subd. 8. **Petition and report required.** (a) Within 120 days of receipt of a preliminary determination from a court under section 609.1351, or a ~~referral determination~~ from the commissioner of corrections pursuant to section 244.05, subdivision 7 sex offender civil commitment screening panel under section 253B.184 that the county attorney may proceed with a petition, a county attorney shall determine whether good

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8.1 cause under this section exists to file a petition, and if good cause exists, the county
8.2 attorney or designee shall file the petition with the court.

8.3 (b) Failure to meet the requirements of paragraph (a) does not bar filing a petition
8.4 under subdivision 1 any time the county attorney determines pursuant to subdivision 1
8.5 that good cause for such a petition exists.