

CHAPTER 253B

CIVIL COMMITMENT ACT

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253B.01 CITATION.

This chapter may be cited as the "Minnesota Commitment and Treatment Act."

History: 1997 c 217 art 1 s 5

253B.02 DEFINITIONS.

[For text of subs 1 and 1a, see M.S.1996]

Subd. 2. Chemically dependent person. "Chemically dependent person" means any person (a) determined as being incapable of self-management or management of personal affairs by reason of the habitual and excessive use of alcohol, drugs, or other mind-altering substances; and (b) whose recent conduct as a result of habitual and excessive use of alcohol, drugs, or other mind-altering substances poses a substantial likelihood of physical harm to self or others as demonstrated by (i) a recent attempt or threat to physically harm self or others, (ii) evidence of recent serious physical problems, or (iii) a failure to obtain necessary food, clothing, shelter, or medical care. "Chemically dependent person" also means a pregnant woman who has engaged during the pregnancy in habitual or excessive use, for a non-medical purpose, of any of the following controlled substances or their derivatives: cocaine, heroin, phencyclidine, methamphetamine, or amphetamine.

[For text of subd 3, see M.S.1996]

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

Subd. 4a. Crime against the person. "Crime against the person" means a violation of or attempt to violate any of the following provisions: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.21 (criminal vehicular homicide and injury); 609.215 (suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.224

(assault in the fifth degree); 609.2242 (domestic assault); 609.23 (mistreatment of persons confined); 609.231 (mistreatment of residents or patients); 609.2325 (criminal abuse); 609.233 (criminal neglect); 609.2335 (financial exploitation of a vulnerable adult); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.265 (abduction); 609.27, subdivision 1, clause (1) or (2) (coercion); 609.28 (interfering with religious observance) if violence or threats of violence were used; 609.322, subdivision 1, clause (2) (solicitation); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.365 (incest); 609.498, subdivision 1 (tampering with a witness); 609.50, clause (1) (obstructing legal process, arrest, and firefighting); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.595 (damage to property); and 609.72, subdivision 3 (disorderly conduct by a caregiver).

[For text of subs 4b to 6, see M.S.1996]

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

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

[For text of subs 7a and 8, see M.S.1996]

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

[For text of subs 10 to 12, see M.S.1996]

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

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

- (1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment; or
 - (2) a recent attempt or threat to physically harm self or others.
- (b) A person is not mentally ill under this section if the impairment is solely due to:
- (1) epilepsy;
 - (2) mental retardation;
 - (3) brief periods of intoxication caused by alcohol, drugs, or other mind-altering substances; or
 - (4) dependence upon or addiction to any alcohol, drugs, or other mind-altering substances.

Subd. 14. Mentally retarded person. "Mentally retarded person" means any person:

(a) who has been diagnosed as having significantly subaverage intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions prior to the person's 22nd birthday; and

(b) whose recent conduct is a result of mental retardation and poses a substantial likelihood of physical harm to self or others in that there has been (i) a recent attempt or threat to physically harm self or others, or (ii) a failure and inability to obtain necessary food, clothing, shelter, safety, or medical care.

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

[For text of subs 16 and 17, see M.S.1996]

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

Subd. 18a. [Renumbered subdivision 18b]

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

Subd. 18b. [Renumbered subdivision 18c]

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

Subd. 18c. **Sexually dangerous person.** (a) A "sexually dangerous person" means a person who:

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

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

[For text of subs 19 to 23, see M.S.1996]

History: 1997 c 217 art 1 s 6-18

253B.03 RIGHTS OF PATIENTS.

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

(b) Restraints shall not be applied to patients with mental retardation except as permitted under section 245.825 and rules of the commissioner of human services. Consent must be obtained from the person or person's guardian except for emergency procedures as permitted under rules of the commissioner adopted under section 245.825.

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

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

Subd. 3. **Visitors and phone calls.** Subject to the general rules of the treatment facility, a patient has the right to receive visitors and make phone calls. The head of the treatment facility may restrict visits and phone calls on determining that the medical welfare of the patient requires it. Any limitation imposed on the exercise of the patient's visitation and phone call rights and the reason for it shall be made a part of the clinical record of the patient.

Subd. 4. **Special visitation; religion.** A patient has the right to meet with or call a personal physician, spiritual advisor, and counsel at all reasonable times. The patient has the right to continue the practice of religion.

Subd. 4a. **Disclosure of patient's admission.** Upon admission to a facility where federal law prohibits unauthorized disclosure of patient or resident identifying information to callers and visitors, the patient or resident, or the legal guardian or conservator of the patient or resident, shall be given the opportunity to authorize disclosure of the patient's or resident's presence in the facility to callers and visitors who may seek to communicate with the patient or resident. To the extent possible, the legal guardian or conservator of a patient or resident shall consider the opinions of the patient or resident regarding the disclosure of the patient's or resident's presence in the facility.

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

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

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

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

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

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

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

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

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

[For text of subd 6a, see M.S.1996]

Subd. 6b. **Consent for mental health treatment.** A competent person admitted voluntarily to a treatment facility may be subjected to intrusive mental health treatment only with the person's written informed consent. For purposes of this section, "intrusive mental health treatment" means electroshock therapy and neuroleptic medication and does not include treatment for mental retardation. An incompetent person who has prepared a directive under subdivision 6d regarding treatment with intrusive therapies must be treated in accordance with this section, except in cases of emergencies.

Subd. 6c. [Repealed, 1997 c 217 art 1 s 118]

[For text of subd 6d, see M.S.1996]

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.

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

Subd. 9. [Repealed, 1997 c 217 art 1 s 118]

[For text of subd 10, see M.S.1996]

History: 1997 c 217 art 1 s 19-28

253B.04 VOLUNTARY TREATMENT AND ADMISSION PROCEDURES.

Subdivision 1. Voluntary admission and treatment. Voluntary admission is preferred over involuntary commitment and treatment. Any person 16 years of age or older may request to be admitted to a treatment facility as a voluntary patient for observation, evaluation, diagnosis, care and treatment without making formal written application. Any person under the age of 16 years may be admitted as a voluntary patient with the consent of a parent or legal guardian if it is determined by independent examination that there is reasonable evidence that (a) the proposed patient is mentally ill, mentally retarded, or chemically dependent; and (b) the proposed patient is suitable for treatment. The head of the treatment facility shall not arbitrarily refuse any person seeking admission as a voluntary patient.

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

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

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

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

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

(d) A mental health provider that provides treatment in reliance on the written consent given by the designated agency under this subdivision is not civilly or criminally liable for

performing treatment without consent. This paragraph does not affect any other liability that may result from the manner in which the treatment is performed.

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

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

Subd. 2. Release. Every patient admitted for mental illness or mental retardation under this section shall be informed in writing at the time of admission that the patient has a right to leave the facility within 12 hours of making a request, unless held under another provision of this chapter. Every patient admitted for chemical dependency under this section shall be informed in writing at the time of admission that the patient has a right to leave the facility within 72 hours, exclusive of Saturdays, Sundays, and holidays, of making a request, unless held under another provision of this chapter. The request shall be submitted in writing to the head of the treatment facility or the person's designee.

History: 1997 c 217 art 1 s 29

253B.045 TEMPORARY CONFINEMENT.

Subdivision 1. Restriction. Except when ordered by the court pursuant to a finding of necessity to protect the life of the proposed patient or others, no person subject to the provisions of this chapter shall be confined in a jail or correctional institution, except pursuant to chapter 242 or 244.

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

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, pending a judicial determination regarding continued commitment pursuant to sections 253B.12 and 253B.13.

Subd. 4. Treatment. The designated agency shall take reasonable measures to assure proper care and treatment of a person temporarily confined pursuant to this section.

History: 1982 c 581 s 11; 1983 c 141 s 1; 1989 c 209 art 2 s 1; 1996 c 451 art 5 s 8; 1997 c 217 art 1 s 64,65,117

253B.05 EMERGENCY ADMISSION.

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

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

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

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

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

Subd. 2a. [Repealed, 1997 c 217 art 1 s 118]

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

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.

(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 the person, the court shall make every reasonable effort to provide notice of the 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.

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

Subd. 5. [Repealed, 1997 c 217 art 1 s 118]

History: 1997 c 217 art 1 s 30-34

253B.06 INITIAL ASSESSMENT.

Subdivision 1. Mentally ill and mentally retarded persons. Every patient hospitalized as mentally ill or mentally retarded pursuant to section 253B.04 or 253B.05 must be examined by a physician as soon as possible but no more than 48 hours following admission. The physician shall be knowledgeable and trained in the diagnosis of the alleged disability related to the need for admission as a mentally ill or mentally retarded person.

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

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

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

History: 1997 c 217 art 1 s 35

253B.064 COURT-ORDERED EARLY INTERVENTION; PRELIMINARY PROCEDURES.

Subdivision 1. General. (a) An interested person may apply to the designated agency for early intervention of a proposed patient in the county of the patient's residence or presence. If the designated agency determines that early intervention may be appropriate, a pre-petition 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.

Subd. 2. **Prehearing examination; failure to appear.** If a proposed patient fails to appear for the examination, the court may:

(1) reschedule the examination; or

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

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

History: 1997 c 217 art 1 s 36

253B.065 COURT-ORDERED EARLY INTERVENTION; HEARING PROCEDURES.

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

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

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

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

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

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

(1) the proposed patient is mentally ill;

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

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

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

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

History: 1997 c 217 art 1 s 37

253B.066 COURT-ORDERED EARLY INTERVENTION; DECISION; TREATMENT ALTERNATIVES; DURATION.

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

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

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

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

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

History: 1997 c 217 art 1 s 38

253B.07 JUDICIAL COMMITMENT; PRELIMINARY PROCEDURES.

Subdivision 1. Prepetition screening. (a) Prior to filing a petition for commitment of or early intervention for a proposed patient, an interested person shall apply to the designated agency in the county of the proposed patient's residence or presence for conduct of a preliminary investigation, except when the proposed patient has been acquitted of a crime under section 611.026 and the county attorney is required to file a petition for commitment. The designated agency shall appoint a screening team to conduct an investigation which shall include:

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

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

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

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

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

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

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

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

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

county attorney petitions pursuant to acquittal of a criminal charge under section 611.026, the prepetition investigation, if required by this section, shall be completed within seven days after the filing of the petition.

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. 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 may include, to the extent this information is available, a statement and opinion regarding the proposed patient's need for treatment with neuroleptic medication and the patient's capacity to make decisions regarding the administration of neuroleptic medications, and the reasons for the opinion. If a petitioner has been unable to secure a statement from an examiner, the petition shall include documentation that a reasonable effort has been made to secure the supporting statement.

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

Subd. 2b. Apprehend and hold orders. The court may order the treatment facility to hold the person in a treatment facility or direct a health officer, peace officer, or other person to take the proposed patient into custody and transport the proposed patient to a treatment facility for observation, evaluation, diagnosis, care, treatment, and, if necessary, confinement, when:

(1) there has been a particularized showing by the petitioner that serious imminent physical harm to the proposed patient or others is likely unless the proposed patient is apprehended;

(2) the proposed patient has not voluntarily appeared for the examination or the commitment hearing pursuant to the summons; or

(3) a person is held pursuant to section 253B.05 and a request for a petition for commitment has been filed.

The order of the court may be executed on any day and at any time by the use of all necessary means including the imposition of necessary restraint upon the proposed patient. Where possible, a peace officer taking the proposed patient into custody pursuant to this subdivision shall not be in uniform and shall not use a motor vehicle visibly marked as a police vehicle.

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

(1) consult with the person prior to any hearing;

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

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

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

Subd. 4. **Prehearing examination; notice and summons procedure.** (a) A summons to appear for a prehearing examination and the commitment hearing shall be served upon the proposed patient. A plain language notice of the proceedings and notice of the filing of the petition shall be given to the proposed patient, patient's counsel, the petitioner, any interested person, and any other persons as the court directs.

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

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

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. Copies of the examiner's report shall be sent to the county attorney, the proposed patient, and the patient's counsel.

Subd. 6. [Repealed, 1997 c 217 art 1 s 118]

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 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.

History: 1997 c 217 art 1 s 39-48

253B.08 JUDICIAL COMMITMENT; HEARING PROCEDURES.

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

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

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

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

Subd. 4. [Repealed, 1997 c 217 art 1 s 118]

Subd. 5. Absence permitted. (a) The court may permit the proposed patient to waive the right to attend the hearing if it determines that the waiver is freely given. At the time of the hearing the patient shall not be so under the influence of drugs, medication, or other treatment so as to be hampered in participating in the proceedings. When the licensed physician or licensed psychologist attending the patient is of the opinion that the discontinuance of drugs, medication, or other treatment is not in the best interest of the patient, the court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the patient has received during the 48 hours immediately prior to the hearing.

(b) The court, on its own motion or on the motion of any party, may exclude or excuse a 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 justifying proceeding in the absence of the proposed patient.

Subd. 5a. Witnesses. The proposed patient or the patient's counsel and the county attorney may present and cross-examine witnesses, including examiners, at the hearing. The

court may in its discretion receive the testimony of any other person. Opinions of court-appointed examiners may not be admitted into evidence unless the examiner is present to testify, except by agreement of the parties.

Subd. 6. [Repealed, 1997 c 217 art 1 s 118]

[For text of subs 7 and 8, see M.S.1996]

History: 1997 c 217 art 1 s 49–54

253B.09 DECISION; STANDARD OF PROOF; DURATION.

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 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.

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

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

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

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

Subd. 3a. **Reporting judicial commitments involving private treatment programs or facilities.** Notwithstanding section 253B.23, subdivision 9, when a court commits a patient to a treatment program or facility other than a state-operated program or facility, the court shall report the commitment to the commissioner through the supreme court information system for purposes of providing commitment information for firearm background checks under section 245.041.

Subd. 5. **Initial commitment period.** The initial commitment begins on the date that the court issues its order or warrant under section 253B.10, subdivision 1. For persons committed as mentally ill, mentally retarded, or chemically dependent the initial commitment shall not exceed six months.

History: 1997 c 217 art 1 s 55–59

253B.091 [Repealed, 1997 c 217 art 1 s 118]

253B.092 STANDARDS AND CRITERIA FOR ADMINISTRATION OF NEUROLEPTIC MEDICATION; PROCEDURES.

Subdivision 1. **General.** Neuroleptic medications may be administered to patients subject to early intervention or civil commitment as mentally ill or mentally ill and dangerous only as provided in this section. For purposes of this section, "patient" includes a proposed patient who is the subject of a petition for early intervention or commitment.

Subd. 2. Administration without judicial review. Neuroleptic medications may be administered without judicial review in the following circumstances:

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

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

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

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

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

Subd. 4. Patients with capacity to make informed decision. A patient who has the capacity to make an informed decision regarding the administration of neuroleptic medication may consent or refuse consent to administration of the medication. The informed consent of a patient must be in writing.

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

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

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

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

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

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

Subd. 6. Patients without capacity to make informed decision; substitute decision-maker. (a) Upon request of any person, and upon a showing that administration of neuroleptic medications may be recommended and that the person may lack capacity to make decisions regarding the administration of neuroleptic medication, the court shall appoint a substitute decision-maker with authority to consent to the administration of neuroleptic medication as provided in this section. The substitute decision-maker must be an individual or a community or institutional multidisciplinary panel designated by the local mental health authority. In appointing a substitute decision-maker, the court shall give preference to a guardian or conservator, proxy, or attorney-in-fact with authority to make health care decisions

for the patient. The court may provide for the payment of a reasonable fee to the substitute decision-maker for services under this section or may appoint a volunteer.

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

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

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

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

Subd. 7. Standards for making decision regarding administration of neuroleptic medication. (a) When a person lacks capacity to make decisions regarding the administration of neuroleptic medication, the substitute decision-maker or the court shall use the standards in this subdivision in making a decision regarding administration of the medication.

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

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

(1) the person's family, community, moral, religious, and social values;

- (2) the medical risks, benefits, and alternatives to the proposed treatment;
- (3) past efficacy and any extenuating circumstances of past use of neuroleptic medications; and
- (4) any other relevant factors.

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

(b) The patient must be examined by a court examiner prior to the hearing. If the patient refuses to participate in an examination, the examiner may rely on the patient's medical records to reach an opinion as to the appropriateness of neuroleptic medication. The patient is entitled to counsel and a second examiner, if requested by the patient or patient's counsel.

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

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

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

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

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

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

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

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

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

History: 1997 c 217 art 1 s 60

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 sec-

tions 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.

History: 1997 c 217 art 1 s 61

253B.093 MS 1996 [Renumbered 253B.097]

253B.095 RELEASE BEFORE COMMITMENT.

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

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

(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; and

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

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

Subd. 2. [Renumbered as part of subdivision 1]

Subd. 2. **Case manager.** When a court releases a patient under this section, the court shall direct the case manager 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.

Subd. 3. [Renumbered subdivision 2]

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, and (2) an order is needed to protect the patient or others.

Subd. 4. [Renumbered as part of subdivision 2]

Subd. 4. **Modification of order.** An order under this section may be modified upon agreement of the parties and approval of the court.

Subd. 5. [Renumbered subdivision 3]

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

Subd. 6. [Renumbered subdivision 4]

Subd. 7. [Renumbered subdivision 5]

History: 1997 c 217 art 1 s 62

253B.097 COMMUNITY-BASED TREATMENT.

Subdivision 1. **Findings.** In addition to the findings required under section 253B.09, subdivision 2, an order committing a person to community-based treatment must include:

(1) a written plan for services to the patient;

(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 in order to obtain an early release from commitment or to avoid a hearing for further commitment; and

(4) consequences of the patient's failure to follow the commitment order. Consequences may include commitment to another setting for treatment.

Subd. 2. Case manager. When a court commits a patient with mental illness to community-based treatment, the court shall appoint a case manager from the county agency or other entity under contract with the county agency to provide case management services.

Subd. 3. Reports. The case manager shall report to the court at least once every 90 days. The case manager shall immediately report a substantial failure of the patient or provider to comply with the conditions of the commitment.

Subd. 4. Modification of order. An order for community-based treatment may be modified upon agreement of the parties and approval of the court.

Subd. 5. Noncompliance. The case manager may petition for a reopening of the commitment hearing if a patient or provider fails to comply with the terms of an order for community-based treatment.

Subd. 6. Immunity from liability. No facility or person is financially liable, personally or otherwise, for actions of the patient if the facility or person follows accepted community standards of professional practice in the management, supervision, and treatment of the patient. For purposes of this subdivision, "person" means official, staff, employee of the facility, physician, or other individual who is responsible for the management, supervision, or treatment of a patient's community-based treatment under this section.

History: 1988 c 623 s 7; 1997 c 217 art 1 s 117

253B.10 PROCEDURES UPON COMMITMENT.

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

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

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

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

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

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

Subd. 5. Transfer to voluntary status. At any time prior to the expiration of the initial commitment period, a patient who has not been committed as mentally ill and dangerous to the public may be transferred to voluntary status upon the patient's application in writing

with the consent of the head of the facility. Upon transfer, the head of the treatment facility shall immediately notify the court in writing and the court shall terminate the proceedings.

History: 1997 c 217 art 1 s 63

253B.11 Subdivision 1. MS 1996 [Renumbered 253B.045, subd 1]

Subd. 2. MS 1996 [Renumbered 253B.045, subd 2]

Subd. 2a. MS 1996 [Renumbered 253B.045, subd 3]

Subd. 3. MS 1996 [Renumbered 253B.045, subd 4]

253B.12 TREATMENT REPORT; REVIEW; HEARING.

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

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

- (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 patient and the patient's counsel that sets forth the information required in paragraph (b).

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

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

[For text of subd 2, see M.S.1996]

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

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

Subd. 3. **Examination.** Prior to the review hearing, the court shall inform the patient of the right to an independent examination by an examiner chosen by the patient and appointed in accordance with provisions of section 253B.07, subdivision 3. The report of the examiner may be submitted at the hearing.

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

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

Subd. 5. [Repealed, 1997 c 217 art 1 s 118]

[For text of subs 6 and 7, see M.S.1996]

Subd. 8. [Repealed, 1997 c 217 art 1 s 118]

History: 1997 c 217 art 1 s 66-69

253B.13 DURATION OF CONTINUED COMMITMENT.

Subdivision 1. **Mentally ill or chemically dependent persons.** If at the conclusion of a review hearing the court finds that the person continues to be mentally ill or chemically dependent and in need of treatment or supervision, the court shall determine the length of continued commitment. No period of commitment shall exceed this length of time or 12 months, whichever is less.

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

Subd. 2. **Mentally retarded persons.** If, at the conclusion of a review hearing the court finds that the person continues to be mentally retarded, the court shall order commitment of the person for an indeterminate period of time, subject to the reviews required by section 253B.03, subdivisions 5 and 7, and subject to the right of the patient to seek judicial review of continued commitment.

Subd. 3. [Repealed, 1997 c 217 art 1 s 118]

History: 1997 c 217 art 1 s 70,71

253B.14 TRANSFER OF COMMITTED PERSONS.

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

History: 1997 c 217 art 1 s 72

253B.141 AUTHORITY TO DETAIN AND TRANSPORT A MISSING PATIENT.

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

that the absence has been reported to the local law enforcement agency. The committing court may issue an order directing the law enforcement agency to transport the patient to an appropriate facility.

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

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

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

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

Subd. 3. Notice of apprehension. Immediately after an absent patient is located, the head of the treatment facility from which the patient is absent, or the law enforcement agency that located or returned the absent patient, shall notify the law enforcement agency that first received the absent patient report under this section and that agency shall cancel the missing persons entry from the National Crime Information Center computer.

History: 1997 c 217 art 1 s 73

253B.15 PROVISIONAL DISCHARGE; PARTIAL INSTITUTIONALIZATION.

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

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

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

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

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.

Subd. 3. Procedure; notice. Revocation shall be commenced by the designated agency's written notice of intent to revoke provisional discharge given 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.

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

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

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

(1) a factual basis for revocation due to:

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

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

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

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

Subd. 4. [Repealed, 1997 c 217 art 1 s 118]

Subd. 5. Return to facility. When the designated agency serves notice of the intent to revoke a patient's provisional discharge, it may also apply to the committing court for an order directing that the patient be returned to 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 and the patient wants judicial review of the revocation, the patient must file the petition for review and affidavit required under subdivision 3b within 48 hours of receipt of the notice of the intent to revoke.

Subd. 6. [Repealed, 1997 c 217 art 1 s 118]

[For text of subs 7 to 9, see M.S.1996]

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

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

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

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

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

[For text of subd 11, see M.S.1996]

History: 1997 c 217 art 1 s 74-82

253B.16 DISCHARGE OF COMMITTED PERSONS.

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

[For text of subd 2, see M.S.1996]

History: 1997 c 217 art 1 s 83

253B.17 RELEASE; JUDICIAL DETERMINATION.

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

[For text of subd 2, see M.S.1996]

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

[For text of subs 4 and 5, see M.S.1996]

History: 1997 c 217 art 1 s 84,85

253B.18 PROCEDURES FOR PERSONS MENTALLY ILL AND DANGEROUS TO THE PUBLIC.

Subdivision 1. **Procedure.** Upon the filing of a petition alleging that a proposed patient is mentally ill and dangerous to the public, the court shall hear the petition as provided in sections 253B.07 and 253B.08. If the court finds by clear and convincing evidence that the proposed patient is mentally ill and dangerous to the public, it shall commit the person to a secure treatment facility or to a treatment facility willing to accept the patient under commitment. In any case where the petition was filed immediately following the acquittal of the proposed patient for a crime against the person pursuant to a verdict of not guilty by reason of mental illness, the verdict constitutes evidence that the proposed patient is mentally ill and dangerous within the meaning of this section. The proposed patient has the burden of going forward in the presentation of evidence. The standard of proof remains as required by this chapter. Upon commitment, admission procedures shall be carried out pursuant to section 253B.10.

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

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

Subd. 4. [Repealed, 1997 c 217 art 1 s 118]

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. At least ten days prior to a determination on the plan, the medical director shall notify the designated agency, the committing court, the county attorney of the county of commitment, an interested person, the petitioner, and the petitioner's counsel of the plan, the nature of the passes proposed, and their right to object to the plan. If any notified person objects prior to the proposed date of implementation, the person shall have an opportunity to appear, personally or in writing, before the medical director, within ten days of the objection, to present grounds for opposing the plan. The pass plan shall not be implemented until the objecting person has been furnished that opportunity. Nothing in this subdivision shall be construed to give a patient an affirmative right to a pass plan.

Subd. 4b. **Pass-eligible status; notification.** The following patients committed to a secure treatment facility shall not be placed on pass-eligible status unless that status has been approved by the medical director of the secure treatment facility:

(a) a patient who has been committed as mentally ill and dangerous and who

(1) was found incompetent to proceed to trial for a felony or was found not guilty by reason of mental illness of a felony immediately prior to the filing of the commitment petition;

(2) was convicted of a felony immediately prior to or during commitment as mentally ill and dangerous; or

(3) is subject to a commitment to the commissioner of corrections; and

(b) a patient who has been committed as a psychopathic personality, a sexually psychopathic personality, or a sexually dangerous person.

At least ten days prior to a determination on the status, the medical director shall notify the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner, and the petitioner's counsel of the proposed status, and their right to request review by the special review board. If within ten days of receiving notice any notified person requests review by filing a notice of objection with the commissioner and the head of the treatment facility, a hearing shall be held before the special review board. The proposed status shall not be implemented unless it receives a favorable recommendation by a majority of the board and approval by the commissioner. The order of the commissioner is appealable as provided in section 253B.19.

Nothing in this subdivision shall be construed to give a patient an affirmative right to seek pass-eligible status from the special review board.

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

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

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 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 doc-

umentary 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.

Subd. 6. Transfer. Mentally ill and dangerous patients shall not be transferred out of a secure treatment facility unless it appears to the satisfaction of the commissioner, after a hearing and favorable recommendation by a majority of the special review board, that the transfer is appropriate. Transfer may be to other regional centers under the commissioner's control. In those instances where a commitment also exists to the department of corrections, transfer may be to a facility designated by the commissioner of corrections.

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

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

Subd. 7. Provisional discharge. Mentally ill and dangerous patients shall not be provisionally discharged unless it appears to the satisfaction of the commissioner, after a hearing and a favorable recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society.

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

[For text of subd 8, see M.S.1996]

Subd. 9. Provisional discharge; review. A provisional discharge pursuant to this section shall not automatically terminate. A full discharge shall occur only as provided in subdivision 15. The commissioner shall notify the patient that the terms of a provisional discharge continue unless the patient requests and is granted a change in the conditions of provisional discharge or unless the patient petitions the special review board for a full discharge and the discharge is granted.

[For text of subs 10 and 11, see M.S.1996]

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

[For text of subd 13, see M.S.1996]

Subd. 14. Voluntary readmission. (a) With the consent of the head of the treatment facility, a patient may voluntarily return from provisional discharge for a period of up to 30 days, or up to 60 days with the consent of the designated agency. If the patient is not returned to provisional discharge status within 60 days, the provisional discharge is revoked. Within 15 days of receiving notice of the change in status, the patient may request a review of the matter before the special review board. The board may recommend a return to a provisional discharge status.

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

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

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

History: 1997 c 217 art 1 s 86-88,90-99

NOTE: Subdivision 4 was also amended by Laws 1997, chapter 217, article 1, section 89, to read as follows:

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

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

253B.185 PROCEDURES FOR COMMITMENT OF PERSONS WITH SEXUAL PSYCHOPATHIC PERSONALITIES AND SEXUALLY DANGEROUS PERSONS.

[For text of subs 1 to 3, see M.S.1996]

Subd. 4. Statewide judicial panel; sexual psychopathic personality and sexually dangerous persons commitments. (a) The supreme court may establish a panel of district judges with statewide authority to preside over commitment proceedings of sexual psychopathic personalities and sexually dangerous persons. Only one judge of the panel is required to preside over a particular commitment proceeding. Panel members shall serve for one-year terms. One of the judges shall be designated as the chief judge of the panel, and is vested with the power to designate the presiding judge in a particular case, to set the proper venue for the proceedings, and to otherwise supervise and direct the operation of the panel. The chief judge shall designate one of the other judges to act as chief judge whenever the chief judge is unable to act.

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

History: 1997 c 217 art 1 s 100

253B.19 JUDICIAL APPEAL PANEL; PATIENTS MENTALLY ILL AND DANGEROUS TO THE PUBLIC.

Subdivision 1. Creation. The supreme court shall establish an appeal panel composed of three judges and four alternate judges appointed from among the acting judges of the state.

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

Subd. 2. Petition; hearing. The committed person or the county attorney of the county from which a patient was committed as mentally ill and dangerous to the public, or as a sexual psychopathic personality or as a sexually dangerous person may petition the appeal panel for a rehearing and reconsideration of a decision by the commissioner. The petition shall be filed with the supreme court within 30 days after the decision of the commissioner is signed. The supreme court shall refer the petition to the chief judge of the appeal panel. The chief judge shall notify the patient, the county attorney of the county of commitment, the designated agency, the commissioner, the head of the treatment facility, any interested person, and other persons the chief judge designates, of the time and place of the hearing on the petition. The notice shall be given at least 14 days prior to the date of the hearing. The hearing shall be within 45 days of the filing of the petition unless an extension is granted for good cause. Any person may oppose the petition. The appeal panel may appoint examiners and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all proceedings. The patient, patient's counsel, and the county attorney of the committing county may be present and present and cross-examine all witnesses. The petitioning party bears the burden of going forward with the evidence. The party opposing discharge bears the burden of proof by clear and convincing evidence that the respondent is in need of commitment.

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.

[For text of subd 4, see M.S.1996]

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

History: 1997 c 217 art 1 s 101-104

253B.20 DISCHARGE; ADMINISTRATIVE PROCEDURE.

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

[For text of subd 2, see M.S.1996]

Subd. 3. Notice to designated agency. The head of the treatment facility, upon the provisional discharge of any committed person, shall notify the designated agency before the patient leaves the treatment facility. Whenever possible the notice shall be given at least one week before the patient is to leave the facility.

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, 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.

[For text of subd 5, see M.S.1996]

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

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

History: 1997 c 217 art 1 s 105-109

253B.21 COMMITMENT TO AN AGENCY OF THE UNITED STATES.

[For text of subs 1 to 3, see M.S.1996]

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

Subd. 5. [Repealed, 1997 c 217 art 1 s 118]

History: 1997 c 217 art 1 s 110

253B.22 REVIEW BOARDS.

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

[For text of subs 2 to 5, see M.S.1996]

History: 1997 c 217 art 1 s 111

253B.23 GENERAL PROVISIONS.

Subdivision 1. Costs of hearings. (a) In each proceeding under this chapter the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by

law; to each examiner a reasonable sum for services and for travel; to persons conveying the patient to the place of detention, disbursements for the travel, board, and lodging of the patient and of themselves and their authorized assistants; and to the patient's counsel, when appointed by the court, a reasonable sum for travel and for the time spent in court or in preparing for the hearing. Upon the court's order, the county auditor shall issue a warrant on the county treasurer for payment of the amounts allowed.

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

Subd. 1a. [Repealed, 1997 c 217 art 1 s 118]

[For text of subds 2 and 3, see M.S.1996]

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

[For text of subd 5, see M.S.1996]

Subd. 6. Court commissioner. The Ramsey county court commissioner may hear and act upon petitions for commitment.

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

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

[For text of subd 8, see M.S.1996]

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

History: 1997 c 217 art 1 s 112-116