

253B.18 PERSONS WHO ARE MENTALLY ILL AND DANGEROUS TO THE PUBLIC.

Subdivision 1. **Procedure.** (a) Upon the filing of a petition alleging that a proposed patient is a person who 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 a person who 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. The court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety. 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 a person who 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.

(b) Once a patient is admitted to a treatment facility pursuant to a commitment under this subdivision, treatment must begin regardless of whether a review hearing will be held under subdivision 2.

Subd. 2. **Review; hearing.** (a) 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 a person who is 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.

(b) The court may, with agreement of the county attorney and attorney for the patient:

(1) waive the review hearing under this subdivision and immediately order an indeterminate commitment under subdivision 3; or

(2) continue the review hearing for up to one year.

(c) If the court finds that the patient should be committed as a person who is mentally ill, but not as a person who is mentally ill and dangerous to the public, the court may commit the person as a person who is mentally ill and the person shall be deemed not to have been found to be dangerous to the public for the purposes of subdivisions 4a 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 a person who is 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 a person who 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 a person who is mentally ill and dangerous and who is confined at a secure treatment facility or has been transferred out of a state-operated services facility according to section 253B.18, subdivision 6, shall not be released on a pass

unless the pass is part of a pass plan that has been approved by the medical director of the secure treatment facility. The pass plan must have a specific therapeutic purpose consistent with the treatment plan, must be established for a specific period of time, and must have specific levels of liberty delineated. The county case manager must be invited to participate in the development of the pass plan. At least ten days prior to a determination on the plan, the medical director shall notify the designated agency, the committing court, the county attorney of the county of commitment, an interested person, the local law enforcement agency where the facility is located, the county attorney and the local law enforcement agency in the location where the pass is to occur, the petitioner, and the petitioner's counsel of the plan, the nature of the passes proposed, and their right to object to the plan. If any notified person objects prior to the proposed date of implementation, the person shall have an opportunity to appear, personally or in writing, before the medical director, within ten days of the objection, to present grounds for opposing the plan. The pass plan shall not be implemented until the objecting person has been furnished that opportunity. Nothing in this subdivision shall be construed to give a patient an affirmative right to a pass plan.

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 a person who is 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 a person who is 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. 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 or a doctoral level psychologist with forensic experience 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 a reduction in custody or to appeal a revocation of provisional discharge. A "reduction in custody" means transfer from a secure treatment facility, discharge,

and provisional discharge. 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.

(b) The special review board must review each denied petition under subdivision 5 for barriers and obstacles preventing the patient from progressing in treatment. Based on the cases before the board in the previous year, the special review board shall provide to the commissioner an annual summation of the barriers to treatment progress, and recommendations to achieve the common goal of making progress in treatment.

(c) A petition filed by a person committed as mentally ill and dangerous to the public under this section must be heard as provided in subdivision 5 and, as applicable, subdivision 13. A petition filed by a person committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253D, or committed as both mentally ill and dangerous to the public under this section and as a sexual psychopathic personality or as a sexually dangerous person must be heard as provided in section 253D.27.

Subd. 5. Petition; notice of hearing; attendance; order. (a) A petition for a reduction in custody 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 head of the treatment facility must schedule a hearing before the special review board for any patient who has not appeared before the special review board in the previous three years, and schedule a hearing at least every three years thereafter. The medical director may petition at any time.

(b) Fourteen days prior to the hearing, the committing court, the county attorney of the county of commitment, the designated agency, interested person, the petitioner, and the petitioner's counsel shall be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The patient may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before the hearing. The board shall provide the commissioner with written findings of fact and recommendations within 21 days of the hearing. The commissioner shall issue an order no later than 14 days after receiving the recommendation of the special review board. A copy of the order shall be mailed to every person entitled to statutory notice of the hearing within five days after it is signed. No order by the commissioner shall be effective sooner than 30 days after the order is signed, unless the county attorney, the patient, and the commissioner agree that it may become effective sooner.

(c) The special review board shall hold a hearing on each petition prior to making its recommendation to the commissioner. The special review board proceedings are not contested cases as defined in chapter 14. Any person or agency receiving notice that submits documentary evidence to the special review board prior to the hearing shall also provide copies to the patient, the patient's counsel, the county attorney of the county of commitment, the case manager, and the commissioner.

(d) 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.

(e) In making their recommendations and order, the special review board and commissioner must consider any statements received from victims under subdivision 5a.

Subd. 5a. **Victim notification of petition and release; right to submit statement.** (a) As used in this subdivision:

(1) "crime" has the meaning given to "violent crime" in section 609.1095, and includes criminal sexual conduct in the fifth degree and offenses within the definition of "crime against the person" in section 253B.02, subdivision 4a, and also includes offenses listed in section 253D.02, subdivision 8, paragraph (b), regardless of whether they are sexually motivated;

(2) "victim" means a person who has incurred loss or harm as a result of a crime the behavior for which forms the basis for a commitment under this section or chapter 253D; and

(3) "convicted" and "conviction" have the meanings given in section 609.02, subdivision 5, and also include juvenile court adjudications, findings under Minnesota Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved, and findings in commitment cases under this section or chapter 253D that an act or acts constituting a crime occurred.

(b) A county attorney who files a petition to commit a person under this section or chapter 253D shall make a reasonable effort to provide prompt notice of filing the petition to any victim of a crime for which the person was convicted. In addition, the county attorney shall make a reasonable effort to promptly notify the victim of the resolution of the petition.

(c) Before provisionally discharging, discharging, granting pass-eligible status, approving a pass plan, or otherwise permanently or temporarily releasing a person committed under this section from a treatment facility, the head of the treatment facility shall make a reasonable effort to notify any victim of a crime for which the person was convicted that the person may be discharged or released and that the victim has a right to submit a written statement regarding decisions of the medical director, special review board, or commissioner with respect to the person. To the extent possible, the notice must be provided at least 14 days before any special review board hearing or before a determination on a pass plan. Notwithstanding section 611A.06, subdivision 4, the commissioner shall provide the judicial appeal panel with victim information in order to comply with the provisions of this section. The judicial appeal panel shall ensure that the data on victims remains private as provided for in section 611A.06, subdivision 4.

(d) This subdivision applies only to victims who have requested notification through the Department of Corrections electronic victim notification system, or by contacting, in writing, the county attorney in the county where the conviction for the crime occurred. A request for notice under this subdivision received by the commissioner of corrections through the Department of Corrections electronic victim notification system shall be promptly forwarded to the prosecutorial authority with jurisdiction over the offense to which the notice relates or, following commitment, the head of the treatment facility. A county attorney who receives a request for notification under this paragraph following commitment shall promptly forward the request to the commissioner of human services.

(e) The rights under this subdivision are in addition to rights available to a victim under chapter 611A. This provision does not give a victim all the rights of a "notified person" or a person "entitled to statutory notice" under subdivision 4a, 4b, or 5 or section 253D.14.

Subd. 6. **Transfer.** A patient who is mentally ill and dangerous 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:

- (1) the person's clinical progress and present treatment needs;
- (2) the need for security to accomplish continuing treatment;
- (3) the need for continued institutionalization;
- (4) which facility can best meet the person's needs; and
- (5) whether transfer can be accomplished with a reasonable degree of safety for the public.

Subd. 7. **Provisional discharge.** A patient who is mentally ill and dangerous 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: (1) 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 (2) 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.

Subd. 8. **Provisional discharge plan.** A provisional discharge plan shall be developed, implemented and monitored by the designated agency in conjunction with the patient, the treatment facility and other appropriate persons. The designated agency shall, at least quarterly, review the plan with the patient and submit a written report to the commissioner and the treatment facility concerning the patient's status and compliance with each term of the plan.

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.

Subd. 10. **Provisional discharge; revocation.** The head of the treatment facility may revoke a provisional discharge if any of the following grounds exist:

- (i) the patient has departed from the conditions of the provisional discharge plan;
 - (ii) the patient is exhibiting signs of a mental illness which may require in-hospital evaluation or treatment;
- or
- (iii) the patient is exhibiting behavior which may be dangerous to self or others.

Revocation shall be commenced by a notice of intent to revoke provisional discharge, which shall be served upon the patient, patient's counsel, and the designated agency. 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.

In all nonemergency situations, prior to revoking a provisional discharge, the head of the treatment facility shall obtain a report from the designated agency outlining the specific reasons for recommending

the revocation, including but not limited to the specific facts upon which the revocation recommendation is based.

The patient must be provided a copy of the revocation report and informed orally and in writing of the rights of a patient under this section.

Subd. 11. **Exceptions.** If an emergency exists, the head of the treatment facility may revoke the provisional discharge and, either orally or in writing, order that the patient be immediately returned to the treatment facility. In emergency cases, a report documenting reasons for revocation shall be submitted by the designated agency within seven days after the patient is returned to the treatment facility.

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.

Subd. 13. **Appeal.** Any patient aggrieved by a revocation decision or any interested person may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and shall recommend to the commissioner whether or not the revocation shall be upheld. The special review board may also recommend a new provisional discharge at the time of a revocation hearing.

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 patient who is mentally ill and dangerous 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 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.

[See Note.]

History: 1982 c 581 s 18; 1983 c 216 art 1 s 83; 1983 c 251 s 19-22; 1983 c 348 s 11; 1984 c 623 s 6,7; 1984 c 654 art 5 s 58; 1986 c 444; 1991 c 148 s 3,4; 1992 c 571 art 3 s 4; 1997 c 217 art 1 s 86-99; 1998 c 313 s 20,21; 1999 c 118 s 3-5; 2000 c 260 s 97; 2002 c 221 s 29-36; 2005 c 136 art 3 s 19,20; art 5 s 3; 2008 c 326 art 2 s 7-9; 2010 c 300 s 24,25; 2012 c 155 s 6; 2013 c 49 s 22; 2013 c 59 art 1 s 1; 2015 c 71 art 2 s 18,19; 2016 c 158 art 1 s 103; 2018 c 194 s 1

NOTE: The amendment to subdivision 15 by Laws 2018, chapter 194, section 1, is effective May 30, 2018, for any person committed as mentally ill and dangerous, including any pending petition for a reduction in custody, unless, for such a pending petition, an order of the commissioner or the judicial appeal panel discharging the person from commitment has been issued. Laws 2018, chapter 194, section 1, the effective date.