SENATE
STATE OF MINNESOTA
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S.F. No. 3028

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DATE	D-PG	OFFICIAL STATUS
03/08/2018		Introduction and first reading
		Referred to Health and Human Services Finance and Policy

A bill for an act

relating to civil commitment; modifying civil commitment laws and procedures; amending Minnesota Statutes 2016, sections 147A.09, subdivision 2; 245.4885, subdivision 1a; 245F.05, subdivision 2; 253B.02, subdivisions 7, 9, 10, by adding a subdivision; 253B.03, subdivisions 6d, 7, 10; 253B.04, subdivision 1a; 253B.045, subdivisions 2, 5, 6; 253B.05, by adding subdivisions; 253B.064, subdivision 1; 253B.07, subdivisions 1, 2, 3, 4, 5; 253B.08, subdivisions 5, 5a; 253B.09, subdivision 1; 253B.092, subdivisions 5, 8; 253B.095, subdivision 3; 253B.10, by adding a subdivision; 253B.12, subdivisions 1, 2, 3; 253B.13, subdivision 1; 253B.15, subdivisions 1, 2, 3, 3a, 3b, 3c, 5, 7, 9, by adding a subdivision; 253B.17, subdivisions 3, 4; 253B.19, subdivision 2; 253B.23, subdivision 1; 256G.02, subdivision 6; 256G.08, subdivision 1; 624.7192; Minnesota Statutes 2017 Supplement, sections 253B.05, subdivision 3; 253B.10, subdivision 1; repealing Minnesota Statutes 2016, section 253B.05, subdivisions 1, 2, 2b, 4.

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

Section 1. Minnesota Statutes 2016, section 147A.09, subdivision 2, is amended to read:

Subd. 2. **Delegation.** Patient services may include, but are not limited to, the following, as delegated by the supervising physician and authorized in the delegation agreement:

(1) taking patient histories and developing medical status reports;

(2) performing physical examinations;

(3) interpreting and evaluating patient data;

(4) ordering or performing diagnostic procedures, including the use of radiographic imaging systems in compliance with Minnesota Rules 2007, chapter 4732;

(5) ordering or performing therapeutic procedures including the use of ionizing radiation in compliance with Minnesota Rules 2007, chapter 4732;

(6) providing instructions regarding patient care, disease prevention, and health promotion;

(7) assisting the supervising physician in patient care in the home and in health care facilities;

(8) creating and maintaining appropriate patient records;

(9) transmitting or executing specific orders at the direction of the supervising physician;

(10) prescribing, administering, and dispensing drugs, controlled substances, and medical devices if this function has been delegated by the supervising physician pursuant to and subject to the limitations of section 147A.18 and chapter 151. For physician assistants who have been delegated the authority to prescribe controlled substances, such delegation shall be included in the physician-physician assistant delegation agreement, and all schedules of controlled substances the physician assistant has the authority to prescribe shall be specified;

(11) for physician assistants not delegated prescribing authority, administering legend drugs and medical devices following prospective review for each patient by and upon direction of the supervising physician;

(12) functioning as an emergency medical technician with permission of the ambulance service and in compliance with section 144E.127, and ambulance service rules adopted by the commissioner of health;

(13) initiating evaluation and treatment procedures essential to providing an appropriate response to emergency situations;

(14) certifying a patient's eligibility for a disability parking certificate under section 169.345, subdivision 2;

(15) assisting at surgery; and

(16) providing medical authorization for admission for emergency care and treatment of a patient under section 253B.05, subdivision ~~2~~ 1a.

Orders of physician assistants shall be considered the orders of their supervising physicians in all practice-related activities, including, but not limited to, the ordering of diagnostic, therapeutic, and other medical services.

Sec. 2. Minnesota Statutes 2016, section 245.4885, subdivision 1a, is amended to read:

Subd. 1a. **Emergency admission.** Effective July 1, 2006, if a child is admitted to a treatment foster care setting, residential treatment facility, or held for emergency care by a

regional treatment center under section 253B.05, subdivision ~~1~~ 1b, the level of care determination must occur within five working days of admission.

Sec. 3. Minnesota Statutes 2016, section 245F.05, subdivision 2, is amended to read:

Subd. 2. **Admission criteria.** For an individual to be admitted to a withdrawal management program, the program must make a determination that the program services are appropriate to the needs of the individual. A program may only admit individuals who meet the admission criteria and who, at the time of admission:

(1) are impaired as the result of intoxication;

(2) are experiencing physical, mental, or emotional problems due to intoxication or withdrawal from alcohol or other drugs;

(3) are being held under apprehend and hold orders under section 253B.07, subdivision 2b;

(4) have been committed under chapter 253B and need temporary placement;

(5) are held under emergency holds or peace and health officer holds under section 253B.05, subdivision ~~1~~ 1a or ~~2~~ 1b; or

(6) need to stay temporarily in a protective environment because of a crisis related to substance use disorder. Individuals satisfying this clause may be admitted only at the request of the county of fiscal responsibility, as determined according to section 256G.02, subdivision 4. Individuals admitted according to this clause must not be restricted to the facility.

Sec. 4. Minnesota Statutes 2016, section 253B.02, is amended by adding a subdivision to read:

Subd. 4d. **Court examiner.** "Court examiner" means a person who is knowledgeable, trained, and practicing in the diagnosis and assessment or in the treatment of the alleged impairment, and who is a licensed physician or licensed psychologist who has a doctoral degree in psychology. Only a court examiner may conduct an assessment as described in Minnesota Rules of Criminal Procedure, rule 20.01, subdivision 4, and rule 20.02, subdivision 2.

Sec. 5. Minnesota Statutes 2016, section 253B.02, subdivision 7, is amended to read:

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

(1) a licensed physician;

(2) a ~~licensed psychologist who has a doctoral degree in psychology or who became a licensed consulting psychologist before July 2, 1975; or~~ mental health professional, as defined in section 245.462, subdivision 18;

(3) ~~an advanced practice registered nurse certified in mental health or~~ a licensed physician assistant~~, except that only a physician or psychologist meeting these requirements may be appointed by the court as described by sections 253B.07, subdivision 3; 253B.092, subdivision 8, paragraph (b); 253B.17, subdivision 3; 253B.18, subdivision 2; and 253B.19, subdivisions 1 and 2, and only a physician or psychologist may conduct an assessment as described by Minnesota Rules of Criminal Procedure, rule 20.~~; or

(4) a court examiner, as defined in subdivision 4d.

Sec. 6. Minnesota Statutes 2016, section 253B.02, subdivision 9, is amended to read:

Subd. 9. **Health officer.** "Health officer" means:

(1) a licensed physician;

(2) a ~~licensed psychologist~~ mental health professional, as defined in section 245.462, subdivision 18;

~~(3) a licensed social worker;~~

~~(4)~~ (3) a registered nurse working in an emergency room of a hospital;

~~(5)~~ (4) a psychiatric ~~or public health nurse as defined in section 145A.02, subdivision 18~~ mental health nurse;

~~(6)~~ (5) an advanced practice registered nurse (APRN) as defined in section 148.171, subdivision 3; or

~~(7)~~ (6) a mental health practitioner, as defined in section 245.462, subdivision 17, with consultation and approval by a mental health professional providing mental health mobile crisis intervention services as described under section 256B.0624~~; or~~.

~~(8) a formally designated member of a prepetition screening unit established by section 253B.07.~~

Sec. 7. Minnesota Statutes 2016, section 253B.02, subdivision 10, is amended to read:

Subd. 10. **Interested person.** "Interested person" means:

(1) an adult who has a specific interest in the patient or proposed patient, including but not limited to, a public official, including a local welfare agency acting under section 626.5561, a health care provider or its employee or agent, and the legal guardian, spouse, parent, legal counsel, adult child, or next of kin, or other person designated by a patient or proposed patient; or

(2) a health plan company that is providing coverage for a proposed patient.

Sec. 8. Minnesota Statutes 2016, section 253B.03, subdivision 6d, is amended to read:

Subd. 6d. **Adult mental health treatment.** (a) A competent adult may make a declaration of preferences or instructions regarding intrusive mental health treatment. These preferences or instructions may include, but are not limited to, consent to or refusal of these treatments. A declaration of preferences or instructions may be a health care directive under chapter 145C or a psychiatric directive under section 253B.03, subdivision 6d.

(b) A declaration may designate a proxy to make decisions about intrusive mental health treatment. A proxy designated to make decisions about intrusive mental health treatments and who agrees to serve as proxy may make decisions on behalf of a declarant consistent with any desires the declarant expresses in the declaration.

(c) A declaration is effective only if it is signed by the declarant and two witnesses. The witnesses must include a statement that they believe the declarant understands the nature and significance of the declaration. A declaration becomes operative when it is delivered to the declarant's physician or other mental health treatment provider. The physician or provider must comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. The physician or provider shall continue to obtain the declarant's informed consent to all intrusive mental health treatment decisions if the declarant is capable of informed consent. A treatment provider may not require a person to make a declaration under this subdivision as a condition of receiving services.

(d) The physician or other provider shall make the declaration a part of the declarant's medical record. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider must promptly notify the declarant and document the notification in the declarant's medical record. If the declarant has been committed as a patient under this chapter, the physician or provider may subject a declarant to intrusive treatment in a manner contrary to the declarant's expressed wishes, only upon order of the committing court. If the declarant is not a committed patient under this chapter, the physician or provider may subject the declarant to intrusive treatment in a manner contrary to the

declarant's expressed wishes, only if the declarant is committed as mentally ill or mentally ill and dangerous to the public and a court order authorizing the treatment has been issued.

(e) A declaration under this subdivision may be revoked in whole or in part at any time and in any manner by the declarant if the declarant is competent at the time of revocation. A revocation is effective when a competent declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.

(f) A provider who administers intrusive mental health treatment according to and in good faith reliance upon the validity of a declaration under this subdivision is held harmless from any liability resulting from a subsequent finding of invalidity.

(g) In addition to making a declaration under this subdivision, a competent adult may delegate parental powers under section 524.5-211 or may nominate a guardian under sections 524.5-101 to 524.5-502.

Sec. 9. Minnesota Statutes 2016, section 253B.03, subdivision 7, is amended to read:

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 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 development and review of a program plan shall be conducted as required under the license or certification of the treatment facility or program. If there are no requirements under the license or certification of the treatment facility or program, the program plan shall be reviewed quarterly. 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.

Sec. 10. Minnesota Statutes 2016, section 253B.03, subdivision 10, is amended to read:

Subd. 10. **Notification.** All persons admitted or committed to a treatment facility or temporarily confined under section 253B.045 shall be notified in writing of their rights

regarding hospitalization and other treatment ~~at the time of admission~~. This notification must include:

(1) patient rights specified in this section and section 144.651, including nursing home discharge rights;

(2) the right to obtain treatment and services voluntarily under this chapter;

(3) the right to voluntary admission and release under section 253B.04;

(4) rights in case of an emergency admission under section 253B.05, including the right to documentation in support of an emergency hold and the right to a summary hearing before a judge if the patient believes an emergency hold is improper;

(5) the right to request expedited review under section 62M.05 if additional days of inpatient stay are denied;

(6) the right to continuing benefits pending appeal and to an expedited administrative hearing under section 256.045 if the patient is a recipient of medical assistance or MinnesotaCare; and

(7) the right to an external appeal process under section 62Q.73, including the right to a second opinion.

Sec. 11. Minnesota Statutes 2016, section 253B.04, subdivision 1a, is amended to read:

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 health care ~~power of attorney~~ directive 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 or by a substitute decision maker appointed by the court 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 or subdivision 1b 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.

Sec. 12. Minnesota Statutes 2016, section 253B.045, subdivision 2, is amended to read:

Subd. 2. **Facilities.** (a) Each county or a group of counties shall maintain or provide by contract a facility for confinement of persons held temporarily for observation, evaluation, diagnosis, treatment, and care. When the temporary confinement is provided at a regional treatment center, the commissioner shall charge the county of financial responsibility for the costs of confinement of persons hospitalized under section 253B.05, subdivisions ~~1~~ 1a and ~~2~~ 1b, and section 253B.07, subdivision 2b, except that the commissioner shall bill the responsible health plan first. Any charges not covered, including co-pays and deductibles shall be the responsibility of the county. If the person has health plan coverage, but the hospitalization does not meet the criteria in subdivision 6 or section 62M.07, 62Q.53, or 62Q.535, the county is responsible. When a person is temporarily confined in a Department of Corrections facility solely under subdivision 1a, and not based on any separate correctional authority:

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

(2) the Department of Human Services shall use existing appropriations to fund all remaining nonconfinement costs. The funds received by the commissioner for the confinement and nonconfinement costs are appropriated to the department for these purposes.

(b) For the purposes of this subdivision, "county of financial responsibility" has the meaning specified in section 253B.02, subdivision 4c, or, if the person has no residence in this state, the county which initiated the confinement. The charge for confinement in a facility operated by the commissioner of human services shall be based on the commissioner's determination of the cost of care pursuant to section 246.50, subdivision 5. When there is a dispute as to which county is the county of financial responsibility, the county charged for the costs of confinement shall pay for them pending final determination of the dispute over financial responsibility.

Sec. 13. Minnesota Statutes 2016, section 253B.045, subdivision 5, is amended to read:

Subd. 5. **Health plan company; definition.** For purposes of this section, "health plan company" has the meaning given it in section 62Q.01, subdivision 4, and also includes a demonstration provider as defined in section 256B.69, subdivision 2, paragraph (b), or a county or group of counties participating in county-based purchasing according to section 256B.692~~, and a children's mental health collaborative under contract to provide medical assistance for individuals enrolled in the prepaid medical assistance and MinnesotaCare programs according to sections 245.493 to 245.495~~.

Sec. 14. Minnesota Statutes 2016, section 253B.045, subdivision 6, is amended to read:

Subd. 6. **Coverage.** (a) For purposes of this section, "mental health services" means all covered services that are intended to treat or ameliorate an emotional, behavioral, or psychiatric condition and that are covered by the policy, contract, or certificate of coverage of the enrollee's health plan company or by law.

(b) All health plan companies that provide coverage for mental health services must cover or provide mental health services ordered by a court of competent jurisdiction ~~under a court order that is issued on the basis of a behavioral care evaluation performed by a licensed psychiatrist or a doctoral level licensed psychologist, which includes a diagnosis and an individual treatment plan for care in the most appropriate, least restrictive environment. The health plan company must be given a copy of the court order and the behavioral care evaluation. The health plan company shall be financially liable for the evaluation if performed by a participating provider of the health plan company and shall be financially liable for the care included in the court-ordered individual treatment plan if the~~

~~care is covered by the health plan company and ordered to be provided by a participating provider or another provider as required by rule or law~~. This court-ordered coverage must not be subject to a separate medical necessity determination by a health plan company under its utilization procedures.

Sec. 15. Minnesota Statutes 2016, section 253B.05, is amended by adding a subdivision to read:

Subd. 1a. **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 a person's behavior or upon reliable information of a person's recent behavior and, if available, knowledge or reliable information concerning a person's past behavior or treatment, that a person:

(1) has a mental illness or developmental disability and is in danger of harming self or others if not immediately detained; or

(2) is chemically dependent or is intoxicated in public and is in danger of harming self or others if not immediately detained. If a person is chemically dependent or is intoxicated in public and not in danger of causing self-harm, or harm to another person or property, the officer may take the person into custody and transport the person home.

(b) An examiner's written statement or a written statement completed by a health officer that meets the requirements of subdivision 1b shall be sufficient for a peace or health officer to take a person into custody and transport the person to a licensed physician or treatment facility.

(c) A peace or health officer who takes a person into custody and transports the person to a treatment facility shall make a written application for admission of the person to the treatment facility containing:

(1) the officer's statement specifying the reasons and circumstances under which the person was taken into custody;

(2) identifying information on specific persons, to the extent practicable, if danger to those persons is a basis for the emergency hold; and

(3) the officer's name, the agency that employs the officer, and the officer's contact information for purposes of receiving notice under subdivision 3.

(d) A copy of the examiner's written statement and peace or health officer's written application, if made, shall be made available to the person taken into custody.

(e) 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.

Sec. 16. Minnesota Statutes 2016, section 253B.05, is amended by adding a subdivision to read:

Subd. 1b. **Emergency hold.** (a) Any person, including a person transported to a treatment facility under subdivision 1a, may be admitted or held for emergency care and treatment in a treatment facility, except a facility operated by the Minnesota sex offender program, with the consent of the head of the treatment facility upon a written statement by an examiner. The written statement must indicate that:

(1) the examiner has examined the person not more than 15 days prior to admission;

(2) the examiner interviewed the person, and if not, the specific reasons why the person was not interviewed;

(3) the examiner is of the opinion that the person has a mental illness or developmental disability, or is chemically dependent and is in danger of causing harm to self or others if not immediately detained. The statement shall be stated in behavioral terms and not in conclusory language and shall be of sufficient specificity to provide an adequate record for review. If danger to specific persons is a basis for the emergency hold, the statement must identify those persons, to the extent practicable; and

(4) an order of the court cannot be obtained in time to prevent the anticipated injury.

(b) Prior to an examiner making a written statement in accordance with paragraph (a), if a proposed patient has been brought to the treatment facility by another person, the examiner shall make a good faith effort to obtain a statement of information that is available from that person, which must be taken into consideration in deciding whether to place the proposed patient on an emergency hold. To the extent available, the statement must include direct observations of the proposed patient's behaviors, reliable knowledge of recent and past behavior, and information regarding psychiatric history, past treatment, and current mental health providers. The examiner shall also inquire into the existence of health care directives under chapter 145C and advance psychiatric directives under section 253B.03, subdivision 6d.

(c) A copy of the examiner's written statement shall be personally served on the proposed patient immediately upon initiating the emergency hold and a copy shall be maintained by the treatment facility. The proposed patient shall also be informed in writing of the right to

leave after 72 hours pursuant to subdivision 3, the right to a medical examination within 48 hours, and the right to request a change to voluntary status. The treatment facility shall assist the proposed patient in exercising the rights granted in this subdivision.

(d) A person must not be allowed or required to consent to, nor to participate in, a clinical drug trial during an emergency admission or hold under this subdivision. Consent given during a period of an emergency admission or hold is void and unenforceable. This paragraph does not prohibit a person from continuing participation in a clinical drug trial if the person was participating in the drug trial at the time of the emergency admission or hold.

Sec. 17. Minnesota Statutes 2017 Supplement, section 253B.05, subdivision 3, is amended to read:

Subd. 3. **Duration of hold; release procedures; change of status.** ~~(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 financial responsibility or of the county in which the treatment facility is located, the court may issue a judicial hold order pursuant to section 253B.07, subdivision 2b.~~

~~(b) During the 72-hour hold period, a court may not release a person held under this section unless the court has received a written petition for release and held a summary hearing regarding the release. The petition must include the name of the person being held, the basis for and location of the hold, and a statement as to why the hold is improper. The petition also must include copies of any written documentation under subdivision 1 or 2 in support of the hold, unless the person holding the petitioner refuses to supply the documentation. The hearing must be held as soon as practicable and may be conducted by means of a telephone conference call or similar method by which the participants are able to simultaneously hear each other. If the court decides to release the person, the court shall direct the release and shall issue written findings supporting the decision. The release may not be delayed pending the written order. Before deciding to release the person, the court shall make every reasonable effort to provide notice of the proposed release to:~~

~~(1) any specific individuals identified in a statement under subdivision 1 or 2 or individuals identified in the record who might be endangered if the person was not held;~~

~~(2) the examiner whose written statement was a basis for a hold under subdivision 1; and~~

~~(3) the peace or health officer who applied for a hold under subdivision 2.~~

~~(c) If a person is intoxicated in public and held under this section for detoxification, a treatment facility may release the person without providing notice under paragraph (d) as soon as the treatment facility determines the person is no longer a danger to themselves or others. Notice must be provided to the peace officer or health officer who transported the person, or the appropriate law enforcement agency, if the officer or agency requests notification.~~

~~(d) Notwithstanding section 144.293, subdivisions 2 and 4, if a treatment facility releases or discharges a person during the 72-hour hold period or if the person leaves the facility without the consent of the treating health care provider, 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. This paragraph does not apply to the extent that the notice would violate federal law governing the confidentiality of alcohol and drug abuse patient records under Code of Federal Regulations, title 42, part 2.~~

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

(a) A person transported to a treatment facility under the authority of a peace or health officer pursuant to subdivision 1a shall be examined and a determination shall be made about the need for an emergency hold as soon as possible, but within 12 hours of the person's arrival at the treatment facility. The peace or health officer hold ends upon initiation of an emergency hold under subdivision 1b, the person's voluntary admission to the treatment facility, the examiner's decision not to admit the person to the treatment facility, or 12 hours after the person's arrival at the treatment facility, whichever occurs first.

(b) Any person subject to an emergency hold pursuant to this section may be held for up to 72 hours, exclusive of Saturdays, Sundays, and legal holidays, after the person has received service of the examiner's written statement for emergency hold. A person held under this section must be released at the end of 72 hours unless a court order to hold the person is obtained. A consecutive emergency hold order under this section must not be issued.

(c) If a petition for the commitment of a person is filed, the court may issue a judicial hold order pursuant to section 253B.07, subdivision 2b.

(d) During the 72-hour hold, a court must not release a person under this section unless the court has received a written petition for release and held a summary hearing regarding

the release. The written petition must include the name of the person being held, the basis for and location of the hold, and a statement stating why the hold is improper. The petition must also include copies of any written documentation required under subdivision 1a or 1b in support of the hold, unless the person or facility holding the petitioner refuses to supply the documentation. The summary hearing must be held as soon as practicable and may be conducted by means of telephone conference call, interactive video conference, or similar method by which the participants are able to simultaneously hear each other.

(e) Before deciding to release the person, the court shall make every reasonable effort to provide notice of the proposed release and reasonable opportunity to be heard to:

(1) any specific persons identified in the record or identified in a statement under subdivision 1a or 1b who might be endangered if the person is not held;

(2) the examiner whose written statement was the basis for the hold under subdivision 1b; and

(3) the peace or health officer who applied for a hold under subdivision 1a.

(f) If the court decides to release the person, the court shall direct the release and shall issue written findings supporting the decision. The release must not be delayed pending the written order.

(g) Notwithstanding section 144.293, subdivisions 2 and 4, if a treatment facility releases or discharges a person during the 72-hour hold period, the examiner refuses to admit the person, or the person leaves the facility without the consent of the treatment provider, the head of the treatment facility shall immediately notify the agency that employs the peace or health officer who initiated the hold to transport the person to the treatment facility under this section. This paragraph does not apply to the extent that the notice would violate federal law governing the confidentiality of alcohol and drug abuse patient records under Code of Federal Regulations, title 42, part 2.

(h) If a person is intoxicated in public and held under this section for detoxification, a treatment facility may release the person without providing notice under paragraph (g) as soon as the treatment facility determines the person is no longer in danger of harming self or others. Notice must be provided to the peace or health officer who transported the person, or the appropriate law enforcement agency, if the officer or agency requests notification.

Sec. 18. Minnesota Statutes 2016, section 253B.064, subdivision 1, is amended to read:

Subdivision 1. **General.** (a) An interested person may apply to the designated agency for early intervention of a proposed patient in the county of financial responsibility or the

county where the patient is present. If the designated agency determines that early intervention may be appropriate, a prepetition screening report must be prepared pursuant to section 253B.07, subdivision 1. The county attorney may file a petition for early intervention following the procedures of section 253B.07, subdivision 2.

(b) The proposed patient is entitled to representation by counsel, pursuant to section 253B.07, subdivision 2c. The proposed patient shall be examined by ~~an~~ a court examiner, and has the right to a second independent court examiner, pursuant to section 253B.07, subdivisions 3 and 5.

Sec. 19. Minnesota Statutes 2016, section 253B.07, subdivision 1, is amended to read:

Subdivision 1. **Prepetition screening.** (a) Prior to filing a petition for commitment of or early intervention for a proposed patient, an interested person shall apply to the designated agency in the county of financial responsibility or the county where the proposed patient is present for conduct of a preliminary investigation, except when the proposed patient has been acquitted of a crime under section 611.026 and the county attorney is required to file a petition for commitment. The designated agency shall appoint a screening team to conduct an investigation. The petitioner may not be a member of the screening team. The investigation must include:

(1) ~~a personal~~ an interview with the proposed patient and other individuals who appear to have knowledge of the condition of the proposed patient. In-person interviews are preferred. If the proposed patient is not interviewed, specific reasons must be documented;

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

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

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

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

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

(b) In conducting the investigation required by this subdivision, the screening team shall have access to all relevant medical records of proposed patients currently in treatment facilities. The interviewer shall inform the proposed patient that any information provided by the proposed patient may be included in the prepetition screening report and may be considered in the commitment proceedings. Data collected pursuant to this clause shall be considered private data on individuals. The prepetition screening report is not admissible as evidence except by agreement of counsel or as permitted by this chapter or the rules of court and is not admissible in any court proceedings unrelated to the commitment proceedings.

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

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

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

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

(d) When the prepetition screening team recommends commitment, a written report shall be sent to the county attorney for the county in which the petition is to be filed. The statement of facts contained in the written report must meet the requirements of subdivision 2, paragraph (b).

(e) The prepetition screening team shall refuse to support a petition if the investigation does not disclose evidence sufficient to support commitment. Notice of the prepetition screening team's decision shall be provided to the prospective petitioner, to any specific individuals identified in the examiner's statement, and to the proposed patient.

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

(g) If the proposed patient has been acquitted of a crime under section 611.026, the county attorney shall apply to the designated county agency in the county in which the acquittal took place for a preliminary investigation unless substantially the same information relevant to the proposed patient's current mental condition, as could be obtained by a preliminary investigation, is part of the court record in the criminal proceeding or is contained in the report of a mental examination conducted in connection with the criminal proceeding. If a court petitions for commitment pursuant to the Rules of Criminal or Juvenile Procedure or a county attorney petitions pursuant to acquittal of a criminal charge under section 611.026, the prepetition investigation, if required by this section, shall be completed within seven days after the filing of the petition.

Sec. 20. Minnesota Statutes 2016, section 253B.07, subdivision 2, is amended to read:

Subd. 2. **The petition.** (a) Any interested person, except a member of the prepetition screening team, may file a petition for commitment in the district court of the county of financial responsibility or the county where the proposed patient is present. If the head of the treatment facility believes that commitment is required and no petition has been filed, the head of the treatment facility shall petition for the commitment of the person.

(b) The petition shall set forth the name and address of the proposed patient, the name and address of the patient's nearest relatives, and the reasons for the petition. The petition must contain factual descriptions of the proposed patient's recent behavior, including a description of the behavior, where it occurred, and the time period over which it occurred. Each factual allegation must be supported by observations of witnesses named in the petition. Petitions shall be stated in behavioral terms and shall not contain judgmental or conclusory statements.

(c) The petition shall be accompanied by a written statement by an examiner stating that the examiner has examined the proposed patient within the 15 days preceding the filing of the petition and is of the opinion that the proposed patient ~~is suffering a designated disability~~

has a mental illness, developmental disability, or is chemically dependent and should be civilly committed to a treatment facility, community-based treatment, or a less restrictive or alternative setting. The statement shall include the reasons for the opinion. In the case of a commitment based on mental illness, the petition and the examiner's statement shall include, to the extent this information is available, a statement and opinion regarding the proposed patient's need for treatment with neuroleptic medication and the patient's capacity to make decisions regarding the administration of neuroleptic medications, and the reasons for the opinion. If use of neuroleptic medications is recommended by ~~the treating physician~~ a qualified treating professional, the petition for commitment must, if applicable, include or be accompanied by a request for proceedings under section 253B.092. Failure to include the required information regarding neuroleptic medications in the examiner's statement, or to include a request for an order regarding neuroleptic medications with the commitment petition, is not a basis for dismissing the commitment petition. If a petitioner has been unable to secure a statement from an examiner, the petition shall include documentation that a reasonable effort has been made to secure the supporting statement.

Sec. 21. Minnesota Statutes 2016, section 253B.07, subdivision 3, is amended to read:

Subd. 3. **Court examiners.** After a petition has been filed, the court shall appoint ~~an~~ a court 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 court examiner of the patient's choosing to be paid for by the county at a rate of compensation fixed by the court.

Sec. 22. Minnesota Statutes 2016, section 253B.07, subdivision 4, is amended to read:

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 court 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.

Sec. 23. Minnesota Statutes 2016, section 253B.07, subdivision 5, is amended to read:

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. The court shall ensure that copies of the court examiner's report are provided to the county attorney, the proposed patient, and the patient's counsel.

Sec. 24. Minnesota Statutes 2016, section 253B.08, subdivision 5, is amended to read:

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~~ professional responsible for the patient's treatment 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.

Sec. 25. Minnesota Statutes 2016, section 253B.08, subdivision 5a, is amended to read:

Subd. 5a. **Witnesses.** The proposed patient or the patient's counsel and the county attorney may present and cross-examine witnesses, including court 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 court examiner is present to testify, except by agreement of the parties.

Sec. 26. Minnesota Statutes 2016, section 253B.09, subdivision 1, is amended to read:

Subdivision 1. **Standard of proof.** (a) If the court finds by clear and convincing evidence that the proposed patient is a person who is mentally ill, developmentally disabled, or chemically dependent 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 or alternative programs which can meet the patient's treatment needs consistent with section 253B.03, subdivision 7.

(b) 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, assertive community treatment teams, and regional treatment center services. The court shall also consider the proposed patient's treatment preferences and willingness to participate voluntarily 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.

(c) ~~If the commitment as mentally ill, chemically dependent, or developmentally disabled is to a service facility provided by the commissioner of human services, the court shall order the commitment to the commissioner. The commissioner shall designate the placement of the person to the court.~~ If the court finds that there is no reasonable alternative disposition to judicial commitment and that the least restrictive alternative is a community-based provider or program that will accept the patient and is less restrictive than a regional treatment center, the court may commit the patient to both the community-based provider or program and to the commissioner, in the event that treatment in a regional treatment center becomes the least restrictive alternative in the future.

(d) ~~If the court finds a proposed patient to be a person who is mentally ill under section 253B.02, subdivision 13, paragraph (a), clause (2) or (4), the court shall commit to a community-based program that meets the proposed patient's needs. For purposes of this paragraph, a community-based program may include inpatient mental health services at a community hospital.~~ If the patient's needs require admission to a regional treatment center, custody of the patient and authority and responsibility for the commitment must be transferred to the commissioner for as long as the higher level of care is needed. When hospitalization in the regional treatment center is no longer needed, the patient may be provisionally discharged to an appropriate placement or released to a community provider that is willing

and able to readmit the patient to its program or facility. Upon readmission to a community provider, the commitment, its authority, and responsibilities revert to the community provider. Both entities accepting commitment shall coordinate their admissions and discharge planning to facilitate timely access to one another's services as the needs of the patient require, and shall coordinate program planning consistent with section 253B.03, subdivision 7.

Sec. 27. Minnesota Statutes 2016, section 253B.092, subdivision 5, is amended to read:

Subd. 5. **Determination of capacity.** (a) There is a rebuttable presumption that a patient ~~is presumed to have~~ has capacity to make decisions regarding administration of neuroleptic medication.

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

(1) ~~whether the person demonstrates~~ has 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~~ has 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~~ a symptom of the person's mental illness, 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.

Sec. 28. Minnesota Statutes 2016, section 253B.092, subdivision 8, is amended to read:

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 court 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 court 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. A copy of the order must be given to the patient, the patient's attorney, the county attorney, and the treatment facility. The treatment facility may not begin administration of the neuroleptic medication until it notifies the patient of the court's order authorizing the treatment.

(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.

Sec. 29. Minnesota Statutes 2016, section 253B.095, subdivision 3, is amended to read:

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 be mentally ill, chemically dependent, or developmentally disabled, and (2) an order is needed ~~to protect the patient or others.~~ because the person is likely to attempt to cause harm to self or others, or fail to obtain the necessary food, clothing, shelter, personal care, or medical care, without the supervision of a stayed commitment.

Sec. 30. Minnesota Statutes 2017 Supplement, section 253B.10, subdivision 1, is amended to read:

Subdivision 1. **Administrative requirements.** (a) 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.

(b) The commissioner shall prioritize patients being admitted from jail or a correctional institution who are:

(1) ordered confined in a state hospital for an examination under Minnesota Rules of Criminal Procedure, rules 20.01, subdivision 4, paragraph (a), and 20.02, subdivision 2;

(2) under civil commitment for competency treatment and continuing supervision under Minnesota Rules of Criminal Procedure, rule 20.01, subdivision 7;

(3) found not guilty by reason of mental illness under Minnesota Rules of Criminal Procedure, rule 20.02, subdivision 8, and under civil commitment or are ordered to be detained in a state hospital or other facility pending completion of the civil commitment proceedings; or

(4) committed under this chapter to the commissioner after dismissal of the patient's criminal charges.

Patients described in this paragraph must be admitted to a service operated by the commissioner within 48 hours. The commitment must be ordered by the court as provided in section 253B.09, subdivision 1, paragraph (c).

(c) 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.

(d) 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 court examiners, and the prepetition report, and any medical and behavioral information available shall be provided at the time of admission of a patient to the designated treatment facility. This information shall also be provided by the head of the treatment facility to treatment facility staff in a consistent and timely manner and pursuant to all applicable laws.

Sec. 31. Minnesota Statutes 2016, section 253B.10, is amended by adding a subdivision to read:

Subd. 3a. **Interim custody and treatment of committed person.** When a patient is present in a treatment facility at the time of the court's commitment order, the commitment order shall constitute authority for that facility to confine and provide treatment to the patient until the patient is transferred to the facility to which the patient has been committed or a regional treatment facility, unless the court orders otherwise.

Sec. 32. Minnesota Statutes 2016, section 253B.12, subdivision 1, is amended to read:

Subdivision 1. **Reports.** (a) If a patient who was committed as a person who is mentally ill, developmentally disabled, or chemically dependent is discharged from commitment within the first 60 days after the date of the initial 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 a person who is mentally ill, developmentally disabled, 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~~.~~; and

(8) a statement from the patient, if possible, regarding acceptance of treatment.

(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 county attorney, 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 filed by the designated agency, which may submit the discharge report as part of its report.

(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~~ court-ordered treatment, the proceedings must be terminated by the committing court and the patient discharged from the treatment facility or community-based treatment program, unless the patient voluntarily chooses to receive services.

(f) If no written report is filed within the required time, the court must notify the county, treatment facility, and designated agency and require a written report to be filed within five business days. If a written report is not filed within the five business days a hearing must be held within three business days.

Sec. 33. Minnesota Statutes 2016, section 253B.12, subdivision 2, is amended to read:

Subd. 2. **Basis for discharge.** ~~If no written report is filed within the required time or~~ If the written statement describes the patient as not in need of further ~~institutional care and~~ court-ordered treatment, the proceedings shall be terminated by the committing court, and the patient shall be discharged from the treatment facility or community-based treatment program, unless the patient voluntarily chooses to receive services.

Sec. 34. Minnesota Statutes 2016, section 253B.12, subdivision 3, is amended to read:

Subd. 3. **Examination.** Prior to the review hearing, the court shall inform the patient of the right to an independent examination by ~~an~~ a court 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.

Sec. 35. Minnesota Statutes 2016, section 253B.13, subdivision 1, is amended to read:

Subdivision 1. **Mentally ill or chemically dependent persons.** (a) 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.

(b) At the conclusion of the prescribed period under paragraph (a), commitment may not be continued unless a new petition is filed pursuant to section 253B.07 and hearing and determination made on it. If the petition was filed before the end of the previous commitment and, for good cause shown, the hearing and the determination is not completed by the end of the commitment period, the court may extend the previous commitment for up to 14 days to allow for the completion of the hearing and the issuance of a determination. The standard of proof at the hearing on the new petition shall be the standard specified in section 253B.12, subdivision 4. 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.~~

Sec. 36. Minnesota Statutes 2016, section 253B.15, subdivision 1, is amended to read:

Subdivision 1. **Provisional discharge.** (a) 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 a person who is mentally ill and dangerous to the public, or a sexually dangerous person or a sexual psychopathic personality.

(b) When a person who has been committed to the commissioner is ready for provisional discharge before being placed in a regional treatment facility, the head of the treatment facility where the patient is placed pending transfer may provisionally discharge the patient pursuant to this subdivision.

(c) Each patient released on provisional discharge shall have a written aftercare plan developed with input from the patient 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.

(d) The aftercare plan shall be reviewed on a ~~quarterly~~ monthly 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.

Sec. 37. Minnesota Statutes 2016, section 253B.15, subdivision 2, is amended to read:

Subd. 2. **Revocation of provisional discharge.** The designated agency may revoke a provisional discharge if:

(1) 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 to more intensive community-based treatment; or

(2) 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

(3) 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 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.

Sec. 38. Minnesota Statutes 2016, section 253B.15, subdivision 3, is amended to read:

Subd. 3. **Procedure; notice.** Revocation shall be commenced by the designated agency's written notice of intent to revoke provisional discharge given or sent to the patient, the patient's attorney, and the treatment facility from which the patient was provisionally

discharged or the patient's current provider of community-based treatment. 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.

Sec. 39. Minnesota Statutes 2016, section 253B.15, subdivision 3a, is amended to read:

Subd. 3a. **Report to the court.** Within 48 hours, excluding weekends and holidays, 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 from which the patient was provisionally discharged or the patient's current provider of community-based treatment within 48 hours of giving notice to the patient under subdivision 3.

Sec. 40. Minnesota Statutes 2016, section 253B.15, subdivision 3b, is amended to read:

Subd. 3b. **Review.** The patient or patient's attorney 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~~ the treatment facility from which the patient was provisionally discharged, another treatment facility that consents to receive the patient, or more intensive community-based treatment. 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.

Sec. 41. Minnesota Statutes 2016, section 253B.15, subdivision 3c, is amended to read:

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 more intensive community-based treatment; 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.

Sec. 42. Minnesota Statutes 2016, section 253B.15, subdivision 5, is amended to read:

Subd. 5. **Return to facility.** When the designated agency gives or sends 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~~ the facility from which the patient was provisionally discharged or another treatment facility that consents to receive the patient. 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 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~~ that 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~~ facility 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, or if a health or peace officer returns the patient to the treatment facility, and the patient wants judicial review of the revocation, the patient or the patient's attorney must file the petition for review and affidavit required under subdivision 3b within 14 days of receipt of the notice of the intent to revoke.

Sec. 43. Minnesota Statutes 2016, section 253B.15, subdivision 7, is amended to read:

Subd. 7. **Modification and extension of provisional discharge.** (a) A provisional discharge may be modified upon agreement of the parties.

(b) A provisional discharge may be extended only in those circumstances where the patient has not achieved the goals set forth in the provisional discharge plan or continues to need the supervision or assistance provided by an extension of the provisional discharge. In determining whether the provisional discharge is to be extended, the ~~head of the facility~~ designated agency shall consider the willingness and ability of the patient to voluntarily obtain needed care and treatment.

~~(c) The designated agency shall recommend extension of a provisional discharge only after a preliminary conference with the patient and other appropriate persons. The patient shall be given the opportunity to object or make suggestions for alternatives to extension.~~

~~(d)~~ (c) Any ~~recommendation for~~ proposed extension shall be ~~made~~ provided in writing to ~~the head of the facility and to~~ the patient and the patient's attorney at least 30 days prior to the expiration of the provisional discharge, unless the patient cannot be located or is unavailable to receive the notice of proposed extension. The ~~written recommendation submitted~~ proposal for extension shall include: the specific grounds for ~~recommending~~ proposing the extension, ~~the date of the preliminary conference and results,~~ the anniversary date of the provisional discharge, the termination date of the provisional discharge, and the proposed length of extension. If the grounds for ~~recommending~~ proposing the extension occur less than 30 days before its expiration, the ~~written recommendation~~ proposal for extension shall occur as soon as practicable.

~~(e)~~ (d) The ~~head of the facility~~ designated agency shall extend a provisional discharge only after providing the patient an opportunity for a meeting to object or suggest alternatives to an extension. The designated agency shall ~~issue~~ provide a written decision to the patient and the patient's attorney regarding extension within five days after receiving ~~the recommendation from the designated agency.~~ input from or holding a meeting with the patient, or after the patient has declined to provide input or participate in such a meeting. Input may be sought from the community-based treatment team or other appropriate persons chosen by the patient.

Sec. 44. Minnesota Statutes 2016, section 253B.15, is amended by adding a subdivision to read:

Subd. 8a. **Continuation of provisional discharge upon extension of commitment.** When a provisional discharge extends until the end of the period of commitment and the court, before the commitment expires, extends the commitment under section 253B.12 or issues a new commitment order under section 253B.13, the provisional discharge shall continue for the duration of the new or extended period of commitment ordered unless the commitment order provides otherwise or the provisional discharge is revoked pursuant to this section. Continuation of the provisional discharge under this subdivision does not require compliance with the procedures in subdivision 7.

Sec. 45. Minnesota Statutes 2016, section 253B.15, subdivision 9, is amended to read:

Subd. 9. **Expiration of provisional discharge.** (a) Except as otherwise provided, a provisional discharge is absolute when it expires. If, while on provisional discharge or extended provisional discharge, a patient is discharged as provided in section 253B.16, the discharge shall be absolute.

(b) Notice of the expiration of the provisional discharge shall be given by the ~~head of the treatment facility~~ designated agency to the committing court; the petitioner, if known; the patient's attorney; the county attorney in the county of commitment; ~~the commissioner; and the designated agency~~ and the treatment facility from which the patient was provisionally discharged.

Sec. 46. Minnesota Statutes 2016, section 253B.17, subdivision 3, is amended to read:

Subd. 3. **Court examiners.** The court shall appoint ~~an~~ a court examiner and, at the patient's request, shall appoint a second court 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 court examiners shall file a report with the court not less than 48 hours prior to the hearing under this section.

Sec. 47. Minnesota Statutes 2016, section 253B.17, subdivision 4, is amended to read:

Subd. 4. **Evidence.** The patient, patient's counsel, the petitioner and the county attorney shall be entitled to be present at the hearing and to present and cross-examine witnesses, including court examiners. The court may hear any relevant testimony and evidence which is offered at the hearing.

Sec. 48. Minnesota Statutes 2016, section 253B.19, subdivision 2, is amended to read:

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

(b) For an appeal under paragraph (a), the Supreme Court shall refer the petition to the chief judge of the judicial appeal panel. The chief judge shall notify the patient, the county attorney of the county of commitment, the designated agency, the commissioner, the head of the treatment facility, any interested person, and other persons the chief judge designates, of the time and place of the hearing on the petition. The notice shall be given at least 14 days prior to the date of the hearing.

(c) Any person may oppose the petition. The patient, the patient's counsel, the county attorney of the committing county or the county of financial responsibility, and the commissioner shall participate as parties to the proceeding pending before the judicial appeal panel and shall, except when the patient is committed solely as mentally ill and dangerous, no later than 20 days before the hearing on the petition, inform the judicial appeal panel and the opposing party in writing whether they support or oppose the petition and provide a summary of facts in support of their position. The judicial appeal panel may appoint court examiners and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all proceedings. The patient, the patient's counsel, and the county attorney of the committing county or the county of financial responsibility have the right to be present and may present and cross-examine all witnesses and offer a factual and legal basis in support of their positions. The petitioning party seeking discharge or provisional discharge bears the burden of going forward with the evidence, which means presenting a prima facie case with competent evidence to show that the person is entitled to the requested relief. If the petitioning party has met this burden, the party opposing discharge or provisional discharge bears the burden of proof by clear and convincing evidence that the discharge or provisional discharge should be denied. A party seeking transfer under section 253B.18, subdivision 6, must establish by a preponderance of the evidence that the transfer is appropriate.

Sec. 49. Minnesota Statutes 2016, section 253B.23, subdivision 1, is amended to read:

Subdivision 1. **Costs of hearings.** (a) In each proceeding under this chapter the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law; to each court examiner a reasonable sum for services and for travel; to persons conveying the patient to the place of detention, disbursements for the travel, board, and lodging of the patient and of themselves and their authorized assistants; and to the patient's counsel, when appointed by the court, a reasonable sum for travel and for the time spent in court or in preparing for the hearing. Upon the court's order, the county auditor shall issue a warrant on the county treasurer for payment of the amounts allowed, excluding the costs of the court examiner, which must be paid by the state courts.

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

Sec. 50. Minnesota Statutes 2016, section 256G.02, subdivision 6, is amended to read:

Subd. 6. **Excluded time.** "Excluded time" means:

(1) any period an applicant spends in a hospital, sanitarium, nursing home, shelter other than an emergency shelter, halfway house, foster home, community residential setting licensed under chapter 245D, semi-independent living domicile or services program, residential facility offering care, board and lodging facility or other institution for the hospitalization or care of human beings, as defined in section 144.50, 144A.01, or 245A.02, subdivision 14; maternity home, battered women's shelter, or correctional facility; or any facility based on an emergency hold under section 253B.05, subdivisions ~~1~~ 1a and ~~2~~ 1b;

(2) any period an applicant spends on a placement basis in a training and habilitation program, including: a rehabilitation facility or work or employment program as defined in section 268A.01; semi-independent living services provided under section 252.275, and chapter 245D; or day training and habilitation programs and assisted living services; and

(3) any placement for a person with an indeterminate commitment, including independent living.

Sec. 51. Minnesota Statutes 2016, section 256G.08, subdivision 1, is amended to read:

Subdivision 1. **Commitment proceedings.** In cases of voluntary admission or commitment to state or other institutions, the committing county shall initially pay for all costs. This includes the expenses of the taking into custody, confinement, emergency holds

under sections 253B.05, subdivisions ~~1~~ 1a and ~~2~~ 1b, and 253B.07, examination, commitment, conveyance to the place of detention, rehearing, and hearings under section 253B.092, including hearings held under that section which are venued outside the county of commitment.

Sec. 52. Minnesota Statutes 2016, section 624.7192, is amended to read:

624.7192 AUTHORITY TO SEIZE AND CONFISCATE FIREARMS.

(a) This section applies only during the effective period of a state of emergency proclaimed by the governor relating to a public disorder or disaster.

(b) A peace officer who is acting in the lawful discharge of the officer's official duties without a warrant may disarm a lawfully detained individual only temporarily and only if the officer reasonably believes it is immediately necessary for the protection of the officer or another individual. Before releasing the individual, the peace officer must return to the individual any seized firearms and ammunition, and components thereof, any firearms accessories and ammunition reloading equipment and supplies, and any other personal weapons taken from the individual, unless the officer: (1) takes the individual into physical custody for engaging in criminal activity or for observation pursuant to section 253B.05, subdivision ~~2~~ 1a; or (2) seizes the items as evidence pursuant to an investigation for the commission of the crime for which the individual was arrested.

(c) Notwithstanding any other law to the contrary, no governmental unit, government official, government employee, peace officer, or other person or body acting under governmental authority or color of law may undertake any of the following actions with regard to any firearms and ammunition, and components thereof; any firearms accessories and ammunition reloading equipment and supplies; and any other personal weapons:

(1) prohibit, regulate, or curtail the otherwise lawful possession, carrying, transportation, transfer, defensive use, or other lawful use of any of these items;

(2) seize, commandeer, or confiscate any of these items in any manner, except as expressly authorized in paragraph (b);

(3) suspend or revoke a valid permit issued pursuant to section 624.7131 or 624.714, except as expressly authorized in those sections; or

(4) close or limit the operating hours of businesses that lawfully sell or service any of these items, unless such closing or limitation of hours applies equally to all forms of commerce.

(d) No provision of law relating to a public disorder or disaster emergency proclamation by the governor or any other governmental or quasi-governmental official, including but not limited to emergency management powers pursuant to chapters 9 and 12, shall be construed as authorizing the governor or any other governmental or quasi-governmental official of this state or any of its political subdivisions acting at the direction of the governor or another official to act in violation of this paragraph or paragraphs (b) and (c).

(e)(1) An individual aggrieved by a violation of this section may seek relief in an action at law or in equity or in any other proper proceeding for damages, injunctive relief, or other appropriate redress against a person who commits or causes the commission of this violation. Venue must be in the district court having jurisdiction over the county in which the aggrieved individual resides or in which the violation occurred.

(2) In addition to any other remedy available at law or in equity, an individual aggrieved by the seizure or confiscation of an item listed in paragraph (c) in violation of this section may make application for the immediate return of the items to the office of the clerk of court for the county in which the items were seized and, except as provided in paragraph (b), the court must order the immediate return of the items by the seizing or confiscating governmental office and that office's employed officials.

(3) In an action or proceeding to enforce this section, the court must award the prevailing plaintiff reasonable court costs and expenses, including attorney fees.

Sec. 53. **REPEALER.**

Minnesota Statutes 2016, section 253B.05, subdivisions 1, 2, 2b, and 4, are repealed.

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, except to a facility operated by the Minnesota sex offender program, 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, developmentally disabled, or chemically dependent, and is in danger of causing injury to self or others if not immediately detained; and

(3) an order of the court cannot be obtained in time to prevent the anticipated injury.

(b) If the proposed patient has been brought to the treatment facility by another person, the examiner shall make a good faith effort to obtain a statement of information that is available from that person, which must be taken into consideration in deciding whether to place the proposed patient on an emergency hold. The statement of information must include, to the extent available, direct observations of the proposed patient's behaviors, reliable knowledge of recent and past behavior, and information regarding psychiatric history, past treatment, and current mental health providers. The examiner shall also inquire into the existence of health care directives under chapter 145, and advance psychiatric directives under section 253B.03, subdivision 6d.

(c) 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 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.

(d) A patient must not be allowed or required to consent to nor participate in a clinical drug trial during an emergency admission or hold under this subdivision or subdivision 2. A consent given during a period of an emergency admission or hold is void and unenforceable. This paragraph does not prohibit a patient from continuing participation in a clinical drug trial if the patient was participating in the drug trial at the time of the emergency admission or hold.

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 developmentally disabled and in danger of injuring self or others if not immediately detained. 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 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. The peace or health officer who makes the application shall provide the officer's name, the agency that employs the officer, and the telephone number or other contact information for purposes of receiving notice under subdivision 3, paragraph (d).

(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 shall only be made by the following individuals who are knowledgeable, trained, and practicing in the diagnosis and treatment of mental illness or developmental disability; the medical officer, or the officer's designee on duty at the facility, including a licensed physician, a licensed physician assistant, or an advanced practice registered nurse who after preliminary examination has determined that the person has symptoms of mental illness or developmental

disability and appears to be in danger of harming self or others if not immediately detained; 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 danger of harming self or others if not immediately detained or is intoxicated in public.

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. 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.