State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3984

05/04/2016 Authored by Barrett
The bill was read for the first time and referred to the Committee on Health and Human Services Reform

A bill for an act

relating to human services; including the need for treatment in the criteria for civil commitment of a person who is mentally ill; amending Minnesota Statutes 2014, sections 253B.02, subdivisions 10, 13; 253B.03, subdivision 6d; 253B.05, subdivisions 1, 2; 253B.064, subdivision 3; 253B.065, subdivision 5; 253B.066, subdivision 3; 253B.07, subdivision 2b; 253B.09, subdivision 5; 253B.092, subdivision 3; 253B.095, subdivision 3; 253B.12, subdivision 4; 253B.15, subdivisions 2, 3c, 5; Minnesota Statutes 2015 Supplement, section 253B.07, subdivision 7.

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

Section 1. Minnesota Statutes 2014, section 253B.02, subdivision 10, is amended to read:

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

(1) an adult, including but not limited to, a public official, including a local welfare agency acting under section 626.5561, and the legal guardian, spouse, parent, legal counsel, adult child, next of kin, or other person ~~designated by a proposed patient~~; or

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

Sec. 2. Minnesota Statutes 2014, section 253B.02, subdivision 13, is amended to read:

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

(1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;

(2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;

(3) a mental illness in which the person demonstrates a substantial need for treatment by meeting the following criteria:

(i) if not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional, or physical harm that significantly impairs judgment, reason, behavior, or capacity to recognize reality;

(ii) substantially impairs the person's capacity to make an informed decision regarding treatment and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages, and alternatives are explained to the person; and

(iii) has a reasonable prospect of being treatable by outpatient, inpatient, or combined inpatient and outpatient treatment;

~~(3)~~ (4) a recent attempt or threat to physically harm self or others; or

~~(4)~~ (5) recent and volitional conduct involving significant damage to substantial property.

(b) A person is not mentally ill under this section if the impairment is solely due to:

(1) epilepsy;

(2) developmental disability;

(3) brief periods of intoxication caused by alcohol, drugs, or other mind-altering substances; or

(4) dependence upon or addiction to any alcohol, drugs, or other mind-altering substances.

Sec. 3. Minnesota Statutes 2014, 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.

(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) Except as provided in paragraph (f), 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 declaration under this subdivision may not be revoked in whole or in part and in any manner by the declarant if the declarant is receiving treatment during the first 90 days of court-ordered early intervention treatment under sections 253B.064 to 253B.066.

~~(f)~~ (g) 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)~~ (h) 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. 4. Minnesota Statutes 2014, section 253B.05, subdivision 1, is amended to read:

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:

(i) is in danger of causing injury to self or others; or

(ii) has a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a person who is mentally ill; and

(3) an order of the court cannot be obtained in time to prevent the anticipated injury or address the substantial need for treatment specified by the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3).

(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.

Sec. 5. Minnesota Statutes 2014, section 253B.05, subdivision 2, is amended to read:

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 (1) is mentally ill or developmentally disabled and in danger of injuring self or others if not immediately detained; or (2) is mentally ill and has a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), 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.

(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 or has a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a mentally ill

person 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.

Sec. 6. Minnesota Statutes 2014, section 253B.064, subdivision 3, is amended to read:

Subd. 3. **County ~~option~~ participation.** ~~Nothing in sections 253B.064 to 253B.066 requires~~ To the extent permitted by availability of funds, a county ~~to use~~ must use the early intervention procedures under sections 253B.064 to 253B.066.

Sec. 7. Minnesota Statutes 2014, section 253B.065, subdivision 5, is amended to read:

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

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

(1) the proposed patient is mentally ill;

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

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

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

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

(iii) the grossly disturbed behavior or faulty perceptions significantly interfere with the proposed patient's ability to obtain substantially needed treatment as determined by the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3).

For purposes of this paragraph, a proposed patient who was released under section 253B.095 and whose release was not revoked is not considered to have received court-ordered inpatient treatment under section 253B.09.

(c) The court may order early intervention treatment if the court finds by clear and convincing evidence that a pregnant woman is a chemically dependent person. A chemically dependent person for purposes of this section is a woman who has during pregnancy engaged in excessive use, for a nonmedical purpose, of controlled substances or their derivatives, alcohol, or inhalants that will pose a substantial risk of damage to the brain or physical development of the fetus.

(d) For purposes of paragraphs (b) and (c), none of the following constitute a refusal to accept appropriate mental health treatment:

(1) a willingness to take medication but a reasonable disagreement about type or dosage;

(2) a good faith effort to follow a reasonable alternative treatment plan, including treatment as specified in a valid advance directive under chapter 145C or section 253B.03, subdivision 6d;

(3) an inability to obtain access to appropriate treatment because of inadequate health care coverage or an insurer's refusal or delay in providing coverage for the treatment; or

(4) an inability to obtain access to needed mental health services because the provider will only accept patients who are under a court order or because the provider gives persons under a court order a priority over voluntary patients in obtaining treatment and services.

Sec. 8. Minnesota Statutes 2014, section 253B.066, subdivision 3, is amended to read:

Subd. 3. **Duration.** The order for early intervention shall not exceed ~~90 days~~ 12 months.

Sec. 9. Minnesota Statutes 2014, section 253B.07, subdivision 2b, is amended to read:

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

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

(2) there has been a particularized showing by the petitioner that there is a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a person who is mentally ill, unless the proposed patient is immediately apprehended;

~~(2)~~ (3) the proposed patient has not voluntarily appeared for the examination or the commitment hearing pursuant to the summons; or

~~(3)~~ (4) a person is held pursuant to section 253B.05 and a request for a petition for commitment has been filed.

The order of the court may be executed on any day and at any time by the use of all necessary means including the imposition of necessary restraint upon the proposed patient. Where possible, a peace officer taking the proposed patient into custody pursuant to this subdivision shall not be in uniform and shall not use a motor vehicle visibly marked as a police vehicle. Except as provided in section 253D.10, subdivision 2, in the case of an individual on a judicial hold due to a petition for civil commitment under chapter 253D, assignment of custody during the hold is to the commissioner of human services. The commissioner is responsible for determining the appropriate placement within a secure treatment facility under the authority of the commissioner.

Sec. 10. Minnesota Statutes 2015 Supplement, section 253B.07, subdivision 7, is amended to read:

Subd. 7. **Preliminary hearing.** (a) No proposed patient may be held in a treatment facility under a judicial hold pursuant to subdivision 2b longer than 72 hours, exclusive of Saturdays, Sundays, and legal holidays, unless the court holds a preliminary hearing and determines that the standard is met to hold the person.

(b) The proposed patient, patient's counsel, the petitioner, the county attorney, and any other persons as the court directs shall be given at least 24 hours written notice of the preliminary hearing. The notice shall include the alleged grounds for confinement. The proposed patient shall be represented at the preliminary hearing by counsel. The court may admit reliable hearsay evidence, including written reports, for the purpose of the preliminary hearing.

(c) The court, on its motion or on the motion of any party, may exclude or excuse a proposed patient who is seriously disruptive or who is incapable of comprehending and participating in the proceedings. In such instances, the court shall, with specificity on the record, state the behavior of the proposed patient or other circumstances which justify proceeding in the absence of the proposed patient.

(d) The court may continue the judicial hold of the proposed patient if it finds, by a preponderance of the evidence, that serious physical harm to the proposed patient or others is likely if the proposed patient is not immediately confined, or there is an unmet substantial need for treatment under section 253B.02, subdivision 13, paragraph (a), clause (3), for a mentally ill person if the proposed patient is not immediately confined. If a proposed patient was acquitted of a crime against the person under section 611.026 immediately preceding the filing of the petition, the court may presume that serious physical harm to the patient or others is likely if the proposed patient is not immediately confined.

(e) Upon a showing that a person subject to a petition for commitment may need treatment with neuroleptic medications and that the person may lack capacity to make decisions regarding that treatment, the court may appoint a substitute decision-maker as provided in section 253B.092, subdivision 6. The substitute decision-maker shall meet with the proposed patient and provider and make a report to the court at the hearing under section 253B.08 regarding whether the administration of neuroleptic medications is appropriate under the criteria of section 253B.092, subdivision 7. If the substitute decision-maker consents to treatment with neuroleptic medications and the proposed patient does not refuse the medication, neuroleptic medication may be administered to the patient. If the substitute decision-maker does not consent or the patient refuses, neuroleptic medication may not be administered without a court order, or in an emergency as set forth in section 253B.092, subdivision 3.

Sec. 11. Minnesota Statutes 2014, section 253B.09, subdivision 5, is amended to read:

Subd. 5. **Initial commitment period.** The initial commitment begins on the date that the court issues its order or warrant under section 253B.10, subdivision 1. For persons committed as mentally ill, developmentally disabled, or chemically dependent the initial commitment shall not exceed ~~six~~ 12 months.

Sec. 12. Minnesota Statutes 2014, section 253B.092, subdivision 3, is amended to read:

Subd. 3. **Emergency administration.** A treating physician may administer neuroleptic medication to a patient who does not have capacity to make a decision regarding administration of the medication if the patient is in an emergency situation. Medication may be administered for so long as the emergency continues to exist, up to 14 days, if the treating physician determines that the medication is necessary to prevent serious, immediate physical harm to the patient or to others or the patient has a substantial need for treatment shown by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a person who is mentally ill. If a request for authorization

to administer medication is made to the court within the 14 days, the treating physician may continue the medication through the date of the first court hearing, if the emergency continues to exist. If the request for authorization to administer medication is made to the court in conjunction with a petition for commitment or early intervention and the court makes a determination at the preliminary hearing under section 253B.07, subdivision 7, that there is sufficient cause to continue the physician's order until the hearing under section 253B.08, the treating physician may continue the medication until that hearing, if the emergency continues to exist. The treatment facility shall document the emergency in the patient's medical record in specific behavioral terms.

Sec. 13. Minnesota Statutes 2014, 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:

(i) to protect the patient or others; or

(ii) to continue the treatment of the patient who has a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a person who is mentally ill.

Sec. 14. Minnesota Statutes 2014, section 253B.12, subdivision 4, is amended to read:

Subd. 4. **Hearing; standard of proof.** The committing court shall not make a final determination of the need to continue commitment unless the court finds by clear and convincing evidence that:

(1) the person continues to be mentally ill, developmentally disabled, or chemically dependent;

(2) involuntary commitment is necessary for:

(i) the protection of the patient or others; or

(ii) the treatment of the patient who has a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a person who is mentally ill; and

(3) there is no alternative to involuntary commitment.

In determining whether a person continues to be mentally ill, chemically dependent, or developmentally disabled, the court need not find that there has been a recent attempt or threat to physically harm self or others, or a recent failure to provide necessary personal

food, clothing, shelter, or medical care. Instead, the court must find (i) that the patient is likely to attempt to physically harm self or others, or to fail to provide necessary personal food, clothing, shelter, or medical care unless involuntary commitment is continued; or (ii) that the patient has a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a person who is mentally ill.

Sec. 15. Minnesota Statutes 2014, 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

(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; or the patient has a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a person who is mentally ill; 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. 16. Minnesota Statutes 2014, 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~~

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

(iii) the patient having a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a person who is mentally ill; 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. 17. Minnesota Statutes 2014, 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 facility. The court may order the patient returned to a facility prior to a review hearing only upon finding that immediate return to a facility is necessary because there is a serious likelihood that the safety of the patient or others will be jeopardized, in that (1) the patient's need for food, clothing, shelter, or medical care is not being met, or will not be met in the near future~~, or~~; (2) the patient has attempted or threatened to seriously harm self or others; or (3) the patient has a substantial need for treatment by meeting the criteria in section 253B.02, subdivision 13, paragraph (a), clause (3), for a person who is mentally ill. 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 consents to receive the patient. If necessary, the head of the treatment facility may request the committing court to direct a health or peace officer in the county where the patient is located to return the patient to the treatment facility or to another treatment facility which consents to receive the patient. The expense of returning the patient to a regional treatment center shall be paid by the commissioner unless paid by the patient or the patient's relatives. If the court orders the patient to return to the treatment facility, 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. 18. **STUDY AND CONFORMING LEGISLATION.**

The commissioner of human services shall review existing statutes relating to civil commitment of persons who are mentally ill and other mental health statutes and propose

legislation for the 2017 legislative session that clarifies, conforms, implements, and resolves any conflicts with the inclusion of a substantial need for treatment as a criteria for civil commitment for persons who are mentally ill.