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THE MINNESOTA COMMITMENT ACT

- Part I: An outline of the significant due process features of the 1982 recodification.
- Part II: An outline of the 1983 amendments, including a selective listing of new procedures for dealing with persons acquitted of crimes by reason of mental illness or mental deficiency.

Part I. SIGNIFICANT FEATURES OF THE 1982 LAW

On August 1, 1982, a new Civil Commitment Law became effective in Minnesota (Chapter 253B of Minnesota Statutes 1982). The law established judicial procedures for the involuntary confinement of persons determined to be mentally ill, chemically dependent, or mentally retarded, and increased the due process protections afforded persons subject to commitment. The new law embodied the recommendations made by the Supreme Court Study Commission in its 1979 report Civil Commitment in Minnesota. Some of the more significant features of the 1982 law are set out below.

New Definitions of Disability

chemically dependent person:

one incapable of managing his affairs because of habitual and excessive use of alcohol or drugs, with the added requirement that the conduct of such a person poses a substantial risk of physical harm to self or others.

mentally ill person:

one with a substantial psychiatric disorder, whose behavior poses a substantial likelihood of physical harm to self or others.

mentally retarded person:

one diagnosed as having significant subaverage intellectual functioning, whose conduct poses a likelihood of physical harm to self or others.

Rights of Patients

The new law reorganized the patients' rights language of the previous statute and added new language authorizing:

- patient consent for surgery or medical treatment (not related to the mental disorder), unless the person is incompetent;
- patient access to medical records; and
- vigorous advocacy by an attorney for proposed patients from the time that a petition has been filed.

Judicial Commitment: Preliminary Procedures

- Pre-petition screening which includes a personal interview with the proposed patient must be conducted by a county social service team prior to the filing of a commitment petition.
- Only one examiner need be appointed by the court, but it must be a person knowledgeable in the diagnosis and treatment of the impairment alleged in the petition. A second examiner of the patient's choosing can be appointed, if the patient requests.
- A new notice and summons procedure effects the presence of the proposed patient at the hearing and at the pre-hearing examination, without unnecessary coercion. Apprehend and hold orders may now be used only where (a) there has been a showing that imminent harm is likely; or (b) the proposed patient has failed to respond to a previous summons for an examination.
- There is a new requirement that a probable cause hearing be held within 72 hours after a person's confinement pursuant to a hold order.

Judicial Commitment

- Hearings are required to be held in courtrooms or courtroom-like facilities.
- The standard of proof for commitment is set at "clear and convincing." This is greater than "by a preponderance" (the usual civil standard) but less than "beyond a reasonable doubt" (the usual criminal standard).
- Initial commitments are limited to six months and a treatment report must be filed between 60 and 90 days after the initial order.

- Continued commitments are restricted. They are permitted only after a second treatment report has been filed and a hearing held to determine the need for extended confinement.
 - Mentally ill and chemically dependent persons may be confined under a continuing commitment order for a period not to exceed 12 months.
 - Mentally retarded persons may be committed for an indeterminate period of time.

Provisional Discharge

The head of a treatment facility may authorize the physical release of a committed person from a facility, without discharging the commitment. Such a release, which is permitted only under a specific agreed-upon plan, is called a provisional discharge. The new law:

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| <ul style="list-style-type: none"> ● sets specific standards for revocation of the provisional discharges, | <ul style="list-style-type: none"> ● requires that a notice of intended revocation be sent to the patient, and | <ul style="list-style-type: none"> ● requires a court hearing on request after such a notice to the patient. |
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Procedures for Persons Found to Be Mentally Ill and Dangerous

Minnesota has a separate category of commitments for mentally ill persons who are considered by virtue of recent overt acts to present a clear danger to public safety. Commitment of these persons is dealt with in separate sections of the new law.

The initial judicial hearing and standard of proof is the same as for persons suffering from other disabilities.

But once the court has determined that a person is mentally ill and dangerous, based upon the 60 day report and hearing, a separate set of provisions become operative:

- Commitment is for an indeterminate period of time;
- Transfers, discharges, and provisional discharges are handled through a Special Review Board which issues recommendations to the Commissioner of Public Welfare;
- For a patient to be discharged, there must be a finding that he is:
 - capable of adjustment to an open society;
 - no longer dangerous; and
 - no longer in need of inpatient care.

Part II. AMENDMENTS TO THE COMMITMENT ACT (1983)

Refinements in the Commitment Process

- Persons with organic brain disorders were included in the listing of persons defined as mentally ill.
- Minors may consent to treatment under certain conditions, and persons under age 16 may be admitted as voluntary patients with the consent of a parent or legal guardian.
- Peace officers may execute emergency holds on persons who are intoxicated in public.
- Members of the Red Lake Band of Chippewa Indians who have been committed by the Tribal Court may be confined in state hospitals, so long as due process protections are afforded to them.

(Laws 1983, Chapter 251)

Commitment of Individuals Acquitted of Crimes by Reason
of Mental Illness or Mental Deficiency

Persons who have been acquitted of crimes pursuant to a defense of mental illness or mental deficiency are subject to the following special provisions of the civil commitment statute:

- The court where the acquittal took place is authorized to hear the commitment proceeding and to take judicial notice of the record of the criminal proceeding.
- If the commitment petition is filed immediately after the acquittal, the verdict constitutes evidence that the proposed patient is "mentally ill and dangerous" within the meaning of the commitment law, and shifts the burden of going forward with evidence to the proposed patient.

(Laws 1983, Chapter 340)