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Mentally Ill and Dangerous Commitments Stakeholders Group

The Adult Mental Health Division

December 2013

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Legislative Report

Minnesota Department of **Human Services**

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Legislative Report

Minnesota Department of **Human Services**

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I. Executive summary

The Office of the Legislative Auditor's Evaluation Report on State-Operated Human Services, February 2013, reviewed, among other things, aspects of the treatment of persons committed as mentally ill and dangerous and issues in moving them to less restrictive placements. In response to that report, the Department of Human Services was directed to convene a stakeholder group to make recommendations to the 2014 Legislature.

The stakeholder group, comprised of a wide variety of persons representing diverse viewpoints, reviewed many aspects of the history, commitment procedures, treatment, and release options of persons committed as mentally ill and dangerous.

This report describes problems with the current process as identified by the stakeholders:

- insufficient time, in some cases, of the Minnesota Security Hospital to make complete recommendations to the District Court before it makes its final determination;
- the need for full administrative hearings by the Special Review Board even when the petition for relief (transfer, provisional discharge or discharge) is uncontested;
- the lack of periodic review of persons civilly committed as mentally ill and dangerous;
- lack of qualified and ongoing legal defense counsel for the person civilly committed as mentally ill and dangerous;
- the limited experience of some judges who infrequently handle mentally ill and dangerous civil commitment cases;
- some patients' inability to meet standardized criteria to be considered for less restrictive settings;
- the failure of the state and counties to develop and implement a range of appropriate community placement and service options;
- timeliness of reviews of Special Review Board decisions by the three judge panel;
- the lack of alternatives to the mentally ill and dangerous commitment; and
- differences between mentally ill and mentally ill and dangerous commitments in transfer and discharge options and continuing court jurisdiction.

The stakeholder group respectfully asserts that the issues surrounding those persons civilly committed as mentally ill and dangerous are quite dissimilar from those surrounding the other indeterminate civil commitments and asks that readers be conscious of those differences.

II. Legislation

This report is submitted to the appropriate committees of the 2014 Minnesota Legislature pursuant to Laws of Minnesota 2013, Chapter 108, Article 4, Section 31:

(a) The commissioner of human services, in consultation with the state court administrator, shall convene a stakeholder group to develop recommendations for the legislature that address issues raised in the February 2013 Office of the Legislative Auditor report on State-Operated Services for persons committed to the commissioner as mentally ill and dangerous under Minnesota Statutes, section 253B.18. Stakeholders must include representatives from the Department of Human Services, county human services, county attorneys, commitment defense attorneys, the ombudsman for mental health and developmental disabilities, the federal protection and advocacy system, and consumers and advocates for persons with mental illnesses.

(b) The stakeholder group shall provide recommendations in the following areas:

(1) the role of the special review board, including the scope of authority of the special review board and the authority of the commissioner to accept or reject special review board recommendations;

(2) review of special review board decisions by the district court;

(3) annual district court review of commitment, scope of court authority, and appropriate review criteria;

(4) options, including annual court hearing and review, as alternatives to indeterminate commitment under Minnesota Statutes, section 253B.18; and

(5) extension of the right to petition the court under Minnesota Statutes, section 253B.17, to those committed under Minnesota Statutes, section 253B.18.

The commissioner of human services and the state court administrator shall provide relevant data for the group's consideration in developing these recommendations, including numbers of proceedings in each category and costs associated with court and administrative proceedings under Minnesota Statutes, section 253B.18.

(c) By January 15, 2014, the commissioner of human services shall submit the recommendations of the stakeholder group to the chairs and ranking minority members of the committees of the legislature with jurisdiction over civil commitment and human services issues.

III. Introduction

In February 2013, the Office of the Legislative Auditor of the State of Minnesota issued an Evaluation Report on State Operated Human Services. Chapter 4 of the report was entitled, "Civil Commitment" and reviewed Minnesota's civil commitment process. Chapter 5 was entitled "Minnesota Security Hospital" and reviewed the commitments of persons who are civilly committed as mentally ill and dangerous. These chapters focused on not only the treatment of persons at Minnesota Security Hospital with this classification, but also on the process of their civil commitment and provisional discharge.

Among the recommendations of the report:

> The Legislature should amend Minnesota Statutes to give district courts continuing jurisdiction over persons civilly committed as Mentally Ill and Dangerous and those committed as Developmentally Disabled, and provide for periodic judicial review of their need for continued commitment.[1]
>
> The Department of Human Services should foster or develop new placement options for individuals ready to be discharged from the Minnesota Security Hospital.[2]

The Laws of Minnesota 2013, Chapter 108, Article 4, section 31 directed the Department of Human Services to convene a stakeholder group to study issues relating to the discharge options of persons civilly committed as mentally ill and dangerous.

The mentally ill and dangerous commitments stakeholder group was chaired by former State Senator Don Betzold. Staff assistance to the group was provided by Faye Bernstein and Wade Brost of the Adult Mental Health Division of the Department of Human Services. A list of the group members and affiliations is attached as Appendix A. The group convened at the offices of the Department of Human Services on September 30, 2013, and held subsequent meetings on October 14, October 28, November 18, December 2, and December 16, for two hour sessions. Persons from greater Minnesota had the opportunity to participate in the meetings by interactive television. All meetings were publicly noticed.

Subgroups met separately to discuss issues of relevance which were reported to the full group.

The Legislation further directed the Department of Human Serves to consult with the Court Administrator. A separate meeting was held with Jeff Shorba, State Court Administrator, at the Minnesota Judicial Center on December 3, 2013, attended by chair Don Betzold and DHS representatives Faye Bernstein and Wade Brost.

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[1] Office of the Legislative Auditor, Program Evaluation Division, *State-Operated Human Services* (St. Paul, 2013), page 80.
[2] *Ibid,* page 112.

IV. Relevant Background Information

A. Brief History of Commitments and Discharge Procedures

The first commitment law was enacted in 1866 with the establishment of the first "insane asylum" at St. Peter MN.[3] Until the 1950's, many other facilities (first called insane asylums, then state hospitals, then regional treatment centers) were built around the state. From 1866 to 1907, there was no separate facility for patients deemed dangerous to the public.

The State Asylum for the Dangerous Insane was authorized at St. Peter in 1907:

> "for the purpose of holding in custody and caring for such insane persons, idiots, imbeciles, and epileptics as may be committed thereto by courts of criminal jurisdiction, or otherwise, or transferred thereto by said board [of control], and for such persons as may be declared insane while confined in any penal institution, or who may be found to be mentally infirm and dangerous..."[4]

The State Asylum for the Dangerous Insane opened in 1910. In 1957, it was renamed the Minnesota Security Hospital.[5] The current Minnesota Security Hospital building was opened in 1982.

Until 1982, when persons were committed as mentally ill or mentally ill and dangerous the treatment facility (usually a state hospital) had to evaluate the patient and report to the court within 60 days whether further treatment was necessary; if so, the commitment became indeterminate.[6] There were no subsequent hearings for patients committed as mentally ill. However, patients committed as mentally ill and dangerous could only be committed for an indeterminate period on final determination after a court hearing.[7]

The transfer and discharge of patients committed as mentally ill has always differed from the procedures used for those committed as mentally ill and dangerous. While patients committed as mentally ill could be discharged by the head of the treatment facility or by the court of commitment,[8] "defectives" who were dangerous to the public initially could not be discharged by the facility; they could only be released after a court hearing in the county of commitment.[9] [10]

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[3] Laws of Minnesota, 1866, chapter 6.
[4] Laws of Minnesota, 1907, chapter 338, section 1.
[5] Laws of Minnesota, 1957, chapter 196.
[6] Minn. Stat. chapter 253A.07, subd. 17(a) and 17(c) (1980).
[7] Laws of Minnesota, 1967, chapter 638, section 7, subd. 17(c).
[8] For example, in 1917, the Legislature repealed the previous commitment statutes and passed new laws regarding the examination, commitment, care and maintenance, release and discharge of persons alleged to be feeble minded, inebriate, or insane. Laws of Minnesota, 1917, Chapter 344.
[9] Laws of Minnesota, 1927, chapter 136.

In 1967, a new procedure was established. A person committed as mentally ill and dangerous could only be transferred to another state treatment center, or discharged, by order of a majority of a three judge panel composed of probate judges appointed by the chief justice of the Supreme Court.[11]

That process was modified in 1971, when an administrative proceeding was created to review cases before they were heard by the three judge panel. A Special Review Board was established under the then Department of Public Welfare (now Department of Human Services) to conduct hearings on petitions for transfer from the Minnesota Security Hospital to another facility. Patients were not allowed to transfer out of the Minnesota Security Hospital unless it appeared to the satisfaction of the Commissioner, after a hearing before and a recommendation by the Special Review Board, that such transfer was appropriate.[12] A party who disagreed with the decision of the Special Review Board and the Commissioner could then seek review by the three probate judge Supreme Court Appeal Panel.[13]

Efforts in the 1990's to incorporate sex offender commitments into the mentally ill and dangerous commitment procedures negatively affected dispositions to settings other than the Minnesota Security Hospital for those facing commitment as mentally ill and dangerous. Under the Minnesota Commitment Act of 1982, it was significantly easier than it is today to be committed to settings less restrictive than the Minnesota Security Hospital. The court could commit a person to "a regional treatment center designated by the commissioner or to a treatment facility." The requirement that a person committed as mentally ill and dangerous must be sent to "a secure treatment facility" (further defined as the Minnesota Security Hospital) did not become law until 1997, when the sex offender commitments were folded into the mentally ill and dangerous commitment process. Prior to 1997, only proposed patients who were acquitted of a crime against the person, pursuant to a verdict of not guilty by reason of mental illness, had the burden of going forward in the presentation of evidence shifted to them. Now, all proposed patients are subject to this provision. The requirement of 253B.18, Subd, 1 that "the court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available" also resulted from the application of the mentally ill and dangerous commitment provisions to the sex offender commitments.

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[10] A 1945 law said "no person found by the committing court to be dangerous to the public shall be released except upon order of a court of competent jurisdiction." Laws of Minnesota, 1945, chapter 425, section 2.
[11] Laws of Minnesota, 1967, chapter 638, section 15, subd. 2.
[12] Laws of Minnesota, 1971, chapter 232, section 7.
[13] Laws of Minnesota, 1971, chapter 232, sections 9, 12.

B. Current Law

A person who is mentally ill is defined as:

> (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 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 recent *attempt or threat to physically harm self or others*; (emphasis added)
>
> or
>
> > (4) recent and volitional conduct involving significant damage to substantial property…"[14]

A person who is mentally ill and dangerous to the public is defined as:

> "(a) A "person who is mentally ill and dangerous to the public" is a person:
>
> > (1) *who is mentally ill*; and
> >
> > (2) who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act *causing or attempting to cause serious physical harm to another* and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another…"[15] (Emphasis added)

[14] Minn. Stat. 253B.02, subd 13 (2013).
[15] Minn. Stat. 253B.02, subd. 17 (2013).

As noted in the Office of the Legislative Auditor's Evaluation Report,[16] the statutory definitions of a "mentally ill person" and a "mentally ill and dangerous person" overlap. Both include the basic definition of a mentally ill person. Whereas a person committed as mentally ill must be a danger to either self or others, a person committed as mentally ill and dangerous must pose a danger to others. The "overt act" which demonstrates that a person is mentally ill and dangerous can range from a simple assault to murder. A person can be committed as mentally ill and dangerous without injuring anyone if the overt act had the potential of causing serious physical harm.[17]

The time period to commit a person as mentally ill is limited to an initial period of six months but can be extended up to one year after a court hearing. [18] [19] After that, the commitment must terminate unless a new petition is filed with the court.

Persons who are committed as mentally ill and dangerous to the public are still ordered to involuntary treatment for an initial period of 60 days.[20] After the initial commitment period of 60 days, the judge can commit a person as mentally ill and dangerous for an indeterminate period, commit the person as mentally ill (not mentally ill and dangerous) for up to six months, or dismiss the proceedings entirely.

The trial court retains jurisdiction over commitments of mentally ill persons. The trial court loses jurisdiction over future commitment proceedings involving mentally ill and dangerous persons.[21] The Special Review Board holds administrative hearings on petitions for transfer, provisional discharge, or discharge of mentally ill and dangerous persons.[22] If further review is sought by either party, a formal hearing is conducted before a statewide panel of three district court judges.[23] The decision of this three judge panel (also called the Judicial Appeal Panel or the Supreme Court Appeal Panel) can be appealed to the Minnesota Court of Appeals.

At present there are approximately 500 persons who are committed as mentally ill and dangerous in Minnesota. Approximately 325 of those are inpatient at State Operated Forensic Services

[16] Office of the Legislative Auditor, Program Evaluation Division, *State-Operated Human Services* (St. Paul, 2013), page 77.
[17] Any change in the statutory definition of what constitutes a mentally ill and dangerous person was considered well beyond the scope of the stakeholders group. Any change perceived as making it easier or making it harder to commit would be controversial. If further analysis is desired, a separate study of the statutory definitions may be needed.
[18] Minn. Stat. 253B.09, subd. 5. (2013).
[19] Minn. Stat. 253B.13, subd. 1 (2013).
[20] Minn. Stat. chap 253B.18, subd. 3 (2013).
[21] With the exception of petitions for a court order authorizing neuroleptic medications and guardianships/conservatorships.
[22] Minn. Stat. 253B.18, subd. 4c (2013).
[23] Minn. Stat. 253B.19 (2013).

(SOFS)[24] and 175 reside in the community in varying degrees of integration. The inpatient population at State Operated Forensic Services, while previously increasing at the net rate of approximately 10 to 15 per year, has more recently been decreasing at that same approximate net rate due to more provisional discharges.

[24] SOFS is comprised of the Forensic Nursing Home, the Forensic Transition Services Program, and the Minnesota Security Hospital.

V. Issues Discussed by the Stakeholder Group

All discussions of the stakeholder group, whether resulting in a recommendation that was specifically requested by the Legislation, or which resulted in a recommendation that the group respectfully makes absent specific request, are summarized below, in no particular order. Discussions and recommendations do not precisely follow the five points of the Legislation as the group found that issues often overlapped and moved into other worthy discussions. Brief responses to those points are found in Section VI, Responses to the Legislature. Final recommendations are found in Section VII, Report Recommendations.

A. 60 day Reports

When a person is initially committed as mentally ill and dangerous, the Minnesota Security Hospital must file a written treatment report with the committing court within 60 days.[25] Following the report, the committing court must hold a review hearing within fourteen days to determine if the order should be final. This hearing can be extended up to one year by agreement of both parties, but the Court does not have the discretion to continue the hearing on its own motion.[26] The report by Minnesota Security Hospital still must be completed within the 60 days with no option for extension. In some complex cases, additional evaluation time may be necessary for the Minnesota Security Hospital to make its recommendations to the court and might lead to treatment reports that more accurately depict the person's condition.

B. Uncontested Special Review Board Petitions

The Special Review Board conducts administrative hearings for the Department of Human Services on petitions for:

- transfer to a non-secure facility, such as transfer from the Minnesota Security Hospital to the Forensic Transition Services Program, both part of State Operated Forensic Services and on the St. Peter campus,
- a provisional discharge, for instance, from the Transition Services Program to an adult foster care home in the person's home community, or
- a discharge from the mentally ill and dangerous commitment, often referred to as a "full discharge" meaning that the person will have no civil commitment in place.

Proceedings before the Special Review Board may be contested or uncontested. Regardless, the same procedure is used: A hearing is scheduled, parties (including victims) are notified in writing, extensive staff resources are expended to prepare a background report and a risk assessment for the hearing, the hearing is conducted (often by ITV, where the patient, the patient's counsel, and treatment staff are at the St. Peter campus and the Special Review Board is in St. Paul), a written recommendation is submitted to the Commissioner within 21 days and the

[25] Minn. Stat. 253B.18, subd 2(a) (2013).
[26] Minn. Stat. 253B.18, subd 2(b) (2013).

Commissioner's order is issued within 14 days. The parties must wait 30 days after the Commissioner approves the plan before it can be implemented.[27] This entire process is time-consuming and expensive but must be followed even when no one contests the petition.

If authorized by Statute, the Department of Human Services can develop and implement an expedited process in uncontested cases which would still have a basic review of pertinent records by the Special Review Board and the parties. If any party objects to an expedited process, then a full hearing would be required. An expedited Special Review Board process would be cost effective and move the appropriate patients into less expensive treatment placements in a timely fashion.

C. Lack of Periodic Review

Persons civilly committed as mentally ill and dangerous can only proceed from one facility to another by petition to the Special Review Board, that petition being initiated either by themselves or the medical director.[28] If neither files a petition, the patient will remain in the current status indefinitely even if the patient no longer benefits from further treatment there. There are currently 69 people who have been in State Operated Forensic Services for more than 5 years, and 28 of them have been in for more than 10 years, without a review by the Special Review Board.[29] As recommended by the Legislative Auditor's Evaluation Report, there should be periodic reviews of persons civilly committed as mentally ill and dangerous.

Annual court hearings, whether by a district court or some other judicial proceeding, would be time consuming, expensive, and, by nature, adversarial. However, some periodic review is necessary for those patients who rarely or never seek reviews. Since the Special Review Board is more cost-effective, a hearing should be scheduled for any patient who has not appeared before the Board at least once every three years.

In addition to a request for relief (transfer, provisional discharge, or discharge), the Special Review Board should also review barriers to the patient's progress, effectively creating an environment in which a neutral party, the Board, would review and consider proposals from all parties towards a common goal of patient progress and recovery. Recommendations from the Special Review Board to the Commissioner could include the need for specialized treatment and evaluation, barriers in treatment, programs and policies, and be designed to assist the patient in making progress in treatment. The Special Review Board, in its unique position of reviewing all persons civilly committed as mentally ill and dangerous, could then be tasked with creating an annual summation of barriers to treatment progress they have seen in the past year.

[27] With the option of a waiver of the 30 days.
[28] Minn. Stat. 253B.18, subd. 5(a) (2013).
[29] Department of Human Services data.

D. Impediments to Patient Progress

When a person is committed as mentally ill and dangerous, treatment staff, in conjunction with the client to the degree possible, develop an *individualized* treatment plan[30] which is intended to direct the client's care and would presumably entail the necessary steps for the client to take towards provisional discharge. Yet, the requirements for transfer, provisional discharge, and discharge are standardized, and must be applied consistently to all patients. The standards, set forth in statute, are:

- To qualify for a transfer, the following factors must be considered: (1) the person's clinical progress and present treatment needs; (2) the need for security to accomplish continuing treatment; (3) the need for continued institutionalization; (4) which facility can best meet the person's needs; and (5) whether transfer can be accomplished with a reasonable degree of safety for the public.[31]

- To qualify for a provisional discharge, the following factors must be considered: (1) whether the patient's course of hospitalization and present mental status indicate there is no longer a need for treatment and supervision in the patient's current treatment setting; and (2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.[32]

- To qualify for a discharge from commitment, the patient must be capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.[33]

This means that when offering treatment, Forensic Services is expected to service two potentially conflicting tasks – public protection and ethical patient care. Forensic Services historically employed a consistent standard of practice and treatment interventions for patients to meet in order to qualify for a transfer, provisional discharge, or discharge. This resulted in patients failing to advance based on their unwillingness or inability to do tasks which were a "benchmark" but may or may not have been related to their danger to the public or their recovery

Parallel to other mental health settings, Forensic Services recognized that this "one size fits all" approach was not in the best interests of the patient and has more recently worked to expand individualized care. [34] However, not all treatment staff uniformly embraced this. Cultural change of this nature takes time and involves many stakeholders internal and external to Forensic

[30] Minn. Stat. 245.467, subd 3 (2013).
[31] Minn. Stat. 253B.18, subd. 6 (2013).
[32] Minn. Stat. 253B.18, subd. 7 (2013).
[33] Minn. Stat 253B.18, subd. 15 (2013).
[34] The Department of Human Services also initiated a collaborative effort with Hennepin County to review specific cases of individuals at Forensic Services who encountered unique barriers to provisional discharge; this effort has been successful and could be replicated with other counties.

Service's Programs. This reality, combined with staffing shortages (particularly in the area of psychiatry), has made the culture change of Forensic Services slower than some members of the stakeholder group (particularly advocates and family members) would like. The per diem rate at Anoka Metro Regional Treatment Center is more than twice that of Forensic Services. It should be noted that stakeholder group members from State Operated Forensic Services, while acknowledging past programming that emphasized security and adherence to rules, were clear and unwavering in their commitment to a person-centered approach. These members assert that a person-centered approach can co-exist with risk management, with the ultimate goal of assisting patients to achieve an optimal level of independence and community integration.

E. Training for Judges and Lawyers

The experience of counsel and trial courts in the handling of civil commitments varies considerably throughout the state. The inexperience of either or both can have a tremendous impact on the result of the case. The stakeholder group feels that judges and lawyers practicing civil commitment law should be required to complete annual continuing education requirements specific to this very specialized area of law. Advances in technology have made continuing education much more convenient than in the past.

F. Lack of Legal Representation

Persons who are civilly committed are entitled to legal representation as long as the civil commitment is in effect.[35] Despite this requirement, many defense lawyers cease involvement with their committed clients' cases following the final determination at the 60 day hearing. The stakeholder group feels very strongly that this lack of representation affects the client's progress through the system in ways both small and large, including a direct impact on whether the client can successfully plan for and prepare a petition to the Special Review Board.

G. Community Placements and Services

Even when patients are deemed appropriate for transfer to less restrictive settings, there are an inadequate number of community options. Some facilities are short term and therefore cannot accept long term patients. Other facilities refuse to accept patients who were found to be dangerous to the public, even if current circumstances (advanced age, for instance) make the patient at no imminent risk of harm to the public. Forensic Assertive Community Treatment (ACT) Teams have not been developed, and ACT Teams currently operating have not been utilized to their fullest potential for this population. County Case Management is of varying degrees of quality and capacity. Additionally, there is often a lack of understanding and clarity regarding the roles and responsibilities of the State and the county in the development, implementation, and amendment of the Provisional Discharge document. The stakeholder group

[35] "…the court shall appoint a qualified attorney to represent the respondent … the attorney shall represent the patient until the court dismisses the petition or the commitment and discharges the attorney." Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act, Rule 9.

felt that education is needed to ensure that the individualized Provisional Discharge document represents the needs of the client at all times.

Supportive housing options are limited but would satisfy the need for both independence and supervision of those persons deemed suitable. This lack of placements and services creates a log jam for persons ready to leave the hospital, but also has necessitated the return to St. Peter of several persons who could not find nursing home placement when they were in need of that level of care. Minnesota's Olmstead Plan[36] requires that a timeline be established for the transition of persons from Minnesota Security Hospital who have been recommended for discharge. The stakeholder group found the lack of community placements and services to be very serious and in need of immediate attention.

H. The Review of Special Review Board Decisions by the Three Judge Panel

After commitment on final determination, the patient must petition the Special Review Board for any transfer, provisional discharge, or discharge. Any party who wants to review a Special Review Board decision can seek a rehearing by the three judge panel.

Although a three judge panel may not be necessary or expedient to hear petitions after the Special Review Board, the stakeholder group preferred the current process as it ensures judges who are knowledgeable and experienced in this field of law.

To expedite the review process, the stakeholder group recommends that additional three judge panels be established as reviews are not timely, sometimes taking approximately one year to be heard.[37]

I. Alternatives to Commitment as Mentally Ill and Dangerous

Under current law, a judge has limited choices in the commitment of a person who is alleged to be mentally ill and dangerous to the public. Either the person meets the statutory definitions, and is committed as mentally ill and dangerous, or the person does not meet the definitions.

The judge could commit the person as mentally ill but also continue (meaning to keep the case open without making a finding) the allegation of dangerous. The judge cannot stay (meaning to make a finding but not impose it) a finding of dangerous indefinitely.

Under current law, all mentally ill and dangerous persons must be committed to Minnesota Security Hospital, even if the Minnesota Security Hospital recommends the patient could be

[36] An Olmstead Plan is how a state documents its plan to provide services to persons with disabilities in the most integrated settings possible. It arises from a civil rights case, *Olmstead v. L.C.*, in which the Supreme Court held that persons with disabilities cannot be kept in segregated settings when they can be supported in community settings.

[37] It should be noted that the timeliness of the Special Review Board has improved in the past year with increased Board members and meeting times.

treated elsewhere. The patient has the burden to prove that other options exist, even though there may not be any. The trial judge should have the option of finding that a person committed as mentally ill and dangerous would be appropriate for treatment in an alternative program.

Currently, no court at any level can amend an order which committed a person as mentally ill and dangerous. A person who was once a danger to the public might no longer be considered dangerous. In those cases, it could be appropriate for a court to dismiss the finding of dangerousness, but extend the commitment as a mentally ill person for an extended period.

Likewise, the court does not have the ability to suspend a finding of dangerousness. If a person has completed treatment and has not shown aggressive behavior for a significant period of time, a court could be given the option of suspending the finding of dangerousness to the public, which could offer more placement options to the person. Upon review at a later date, the court could dismiss or reinstate the dangerousness finding.

J. Extension of the Right to Petition under Minnesota Statutes, section 253B.17

A person committed as mentally ill has the right, at any time, to petition the commitment court for a discharge of the commitment. A person committed as mentally ill and dangerous does not have that right because the trial court loses jurisdiction over the commitment once the commitment becomes final.[38]

The person committed as mentally ill and dangerous has the right to petition for transfer, provisional discharge, or discharge to the Special Review Board. The petition can be filed at any time, subject to a six month limit from the conclusion of one proceeding before the filing of a new petition. The medical director, on the other hand, may file a petition on the patient's behalf at any time.

Given the current right to petition the Special Review Board and appeal to the three judge panel, there would not seem to be a substantial benefit in extending the right to a district court review to those persons committed as mentally ill and dangerous.

[38] District courts may hear petitions to authorize the administration of neuroleptic medications to patients who were committed as mentally ill and dangerous.

VI. Responses to the Legislature

The following is a discussion of the items included in the Legislation. As noted prior, the stakeholder group was a diverse set of individuals who represented many sides of the issue and were well experienced in this area. They were thus unable to view the issues posed by the Legislation in isolation and went further to create a more thorough and comprehensive review of the whole system for persons civilly committed as mentally ill and dangerous. Below are brief responses to the specific issues directed by the Legislation; broader information on all discussions can be found in the body of this report in Section V, pages 11 to 16.

1. **The role of the special review board, including the scope of authority of the special review board and the authority of the commissioner to accept or reject special review board recommendations.**

The stakeholder group recommends that the Special Review Board remain the body that reviews transfers, provisional discharges, and discharges. However the stakeholder group further recommends that the Special Review Board, considering its unique expertise, expand its scope to include reviews of barriers to the patient's progress.

Regarding the Commissioner's authority to accept or reject recommendations from the Special Review Board, the stakeholder group recommended that this Policy be changed so that the Commissioner could reject an unfavorable recommendation from the Board.

2. **Review of special review board decisions by the district court.**

The stakeholder group recommends that Special Review Board decisions continue to be reviewed by the three judge panel rather than the district court.

3. **Annual district court review of commitment, scope of court authority, and appropriate review criteria.**

The stakeholder group does not recommend an annual review by district court but does recommend periodic reviews by the Special Review Board. (Please see Section C, page 12)

4. **Options, including annual court hearing and review, as alternatives to indeterminate commitment under Minnesota Statutes, section 253B.18.**

The stakeholder group recommends that, while the civil commitment of persons committed under Minnesota Statutes, section 253B.18 remain indeterminate at this time, those persons receive a review at a minimum of every three years by the Special Review Board.

5. **Extension of the right to petition the court under Minnesota Statutes, section 253B.17, to those committed under Minnesota Statutes, section 253B.18**.

The stakeholder group does not recommend that persons committed as mentally ill and dangerous be extended the right to petition under Minnesota Statutes, section 253B.17 except as is already allowed concerning the administration of neuroleptic medication.

VII. Report recommendations

- Authorize the Department of Human Services, through the Minnesota Security Hospital, to submit an addendum to the 60 day report if the court directs. Amend Minnesota Statute 253B.18, subd. 2(b) to allow the District Court to have the discretion to continue the final determination hearing beyond 60 days absent agreement by both parties.

- Amend Minnesota Statute 253B.18, subd. 5 to allow for an expedited process in uncontested cases and authorize/direct the Department of Human Services to develop and implement an expedited process in uncontested cases for petitions to the Special Review Board for transfer, provisional discharge or discharge. This would be a paper review.

- Amend Minnesota Statute 253B.18, subd. 5 to require that each person civilly committed as mentally ill and dangerous have a review by the Special Review Board at least once every three years.

- Amend Minnesota Statute 253B.18, subd. 4c to allow the Special Review Board to have the additional responsibility of reviewing the barriers or obstacles to a patient progressing in treatment.

- Amend Minnesota Statute 253B.18, subd. 4c to require that the Special Review Board submit an annual report to the Department of Human Services which includes trends in barriers or obstacles in cases that have come before them for review.

- Recommend that the Department of Human Services offer increased resources to State Operated Forensic Services to further expand person-center planning/treatment to reflect individual treatment needs.

- Recommend that the Department of Human Services, in consultation with the Court Administrator, develop a training module of continuing education requirements particular to the courts and attorneys who practice in the area of civil commitment.

- Request the Court Administrator take whatever means necessary to enforce the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act, Rule 9, to ensure representation throughout the duration of the civil commitment.

- Direct the Department of Human Services to devote considerable resources and efforts towards the establishment of community placement options for persons civilly committed as mentally ill and dangerous. These options should optimize both the person's recovery and community safety.

- Direct the Department of Human Services to develop and implement an education campaign, with input from counties, advocacy organizations, and other stakeholders to

promote best practices for provisional discharge documents and educate stakeholders on the roles and responsibilities of parties regarding, including but not limited to, the development, implementation and amendment to the provisional discharge documents and practices.

- Special Review Board decisions should continue to be reviewed by the three judge panel. Additional panels and judges should be appointed so that the panels can process the reviews in a more timely manner.

- Direct the Department of Human Services to change State Operated Services Policy 10020 to allow the Commissioner to reject an unfavorable recommendation from the Special Review Board.

- Establish a stakeholder group to review the mentally ill and dangerous definition, discharge criteria, and the constitutionality of the mentally ill and dangerous commitment being of indeterminate length.

VIII. Appendix A

MI & D Stakeholder Group Members

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