

commenced within three years after the date of death provided that the action must be commenced within six years after the act or omission. The recovery in the action is the amount the jury deems fair and just in reference to the pecuniary loss resulting from the death, and shall be for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court then determines the proportionate pecuniary loss of the persons entitled to the recovery and orders distribution accordingly. Funeral expenses and any demand for the support of the decedent allowed by the court having jurisdiction of the action, are first deducted and paid. Punitive damages may be awarded as provided in section 549.20.

If an action for the injury was commenced by the decedent and not finally determined during his life, it may be continued by the trustee for recovery of damages for the exclusive benefit of the surviving spouse and next of kin, proportionate to the pecuniary loss severally suffered by the death. The court on motion shall make an order allowing the continuance and directing pleadings to be made and issues framed as in actions begun under this section.

Sec. 3. Minnesota Statutes 1982, section 573.02, subdivision 4, is amended to read:

Subd. 4. This section shall not apply to any death or cause of action arising prior to its enactment, nor to any action or proceeding now pending in any court of the state of Minnesota, except, notwithstanding section 645.21, this section shall apply to any death or cause of action arising prior to its enactment which resulted from an intentional act constituting murder, and to any such action or proceeding now pending in any court of the state of Minnesota with respect to issues on which a final judgment has not been entered.

#### Sec. 4. EFFECTIVE DATE.

Section 1 is effective the day following final enactment and applies to all causes of action arising on or after that date. Sections 2 and 3 are effective the day following final enactment.

Approved June 14, 1983

### CHAPTER 348 — S.F.No. 218

*An act relating to commitment of persons who are mentally ill, mentally retarded, or mentally ill and dangerous; requiring mental commitment proceedings for persons acquitted of a criminal charge under section 611.026 to be held in the court in which acquittal took place; modifying the burden of going forward with the evidence on the issues of mental illness, mental retardation, and mental illness and dangerousness in certain commitment cases; amending Minnesota Statutes 1982, sections 253B.02, subdivision 4, and by adding subdivisions; 253B.07, subdivisions 1, 2, 3, and 7, and by adding a subdivision; 253B.08, subdivision 7; 253B.12, subdivision 4; 253B.18, subdivision 1; 253B.19, subdivision 1; 253B.21, subdivision 5; and 253B.23, subdivision 7.*

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

Section 1. Minnesota Statutes 1982, section 253B.02, subdivision 4, is amended to read:

Subd. 4. **COMMITTING COURT.** "Committing court" means probate court or, in a case where commitment proceedings are commenced in response to an acquittal of a crime or offense under section 611.026, "committing court" means the court in which the acquittal took place.

Sec. 2. Minnesota Statutes 1982, section 253B.02, is amended by adding a subdivision to read:

Subd. 4a. **CRIME AGAINST THE PERSON.** "Crime against the person" means a violation of or attempt to violate any of the following provisions: sections 609.185; 609.19; 609.195; 609.20; 609.205; 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.23; 609.231; 609.235; 609.24; 609.245; 609.25; 609.255; 609.265; 609.27, subdivision 1, clause (1) or (2); 609.28 if violence or threats of violence were used; 609.322, subdivision 1, clause (2); 609.342; 609.343; 609.344; 609.345; 609.3641; 609.3642; 609.3643; 609.3644; 609.365; 609.498, subdivision 1; 609.50, clause (1); 609.561; 609.562; and 609.595.

Sec. 3. Minnesota Statutes 1982, section 253B.02, is amended by adding a subdivision to read:

Subd. 20. **VERDICT.** "Verdict" means a jury verdict or a general finding by the trial court sitting without a jury pursuant to the rules of criminal procedure.

Sec. 4. Minnesota Statutes 1982, section 253B.07, subdivision 1, is amended to read:

Subdivision 1. **PRE-PETITION SCREENING.** (a) Prior to filing a petition for commitment of a proposed patient, a prospective petitioner shall apply to the designated agency in the county of the proposed patient's residence or presence 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 pursuant to subdivision 2. In any case coming within this exception, 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. The designated agency shall appoint a screening team to conduct an investigation which shall include:

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(i) a personal interview with the proposed patient and other individuals who appear to have knowledge of the condition of the proposed patient. If the proposed patient is not interviewed, reasons must be documented;

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

(iii) identification, exploration, and listing of the reasons for rejecting or recommending alternatives to involuntary placement.

(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. Data collected pursuant to this clause shall be considered private data on individuals.

(c) When the pre-petition 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.

(d) The pre-petition screening team shall refuse to support a petition if the investigation does not disclose evidence sufficient to support commitment. Notice of the pre-petition screening team's decision shall be provided to the prospective petitioner.

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

(f) If a court petitions for commitment pursuant to the rules of criminal procedure or a county attorney petitions pursuant to acquittal of a criminal charge under section 611.026, the pre-petition investigation, if required by this section, shall be completed within seven days after the filing of the petition.

Sec. 5. Minnesota Statutes 1982, section 253B.07, subdivision 2, is amended to read:

Subd. 2. **THE PETITION.** Any interested person may file a petition for commitment in the probate court of the county of the proposed patient's residence or presence. Following an acquittal of a person of a criminal charge under section 611.026, the petition shall be filed by the county attorney of the county in which the acquittal took place and the petition shall be filed with the court in which the acquittal took place, and that court shall be the committing court for purposes of chapter 253B. The petition shall set forth the name and address of the proposed patient, the name and address of his 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 over what period of time it occurred. Each factual allegation

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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. The petition shall be accompanied by a written statement by an examiner stating that he 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 and should be committed to a treatment facility. The statement shall include the reasons for the opinion. 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. 6. Minnesota Statutes 1982, section 253B.07, is amended by adding a subdivision to read:

**Subd. 2a. PETITION FOLLOWING ACQUITTAL; REFERRAL.** When a petition is filed pursuant to subdivision 2 with the court in which acquittal of a criminal charge took place, the court shall assign the judge before whom the acquittal took place to hear the commitment proceedings unless that judge is unavailable.

Sec. 7. Minnesota Statutes 1982, section 253B.07, subdivision 3, is amended to read:

**Subd. 3. EXAMINERS.** After a petition has been filed, the probate court or other court in which the petition was filed shall appoint an examiner. At the proposed patient's request, the court shall appoint a second examiner of the patient's choosing to be paid for by the county at a rate of compensation fixed by the court.

Sec. 8. Minnesota Statutes 1982, section 253B.07, subdivision 7, is amended to read:

**Subd. 7. PRELIMINARY HEARING.** (a) No proposed patient may be held pursuant to subdivision 6 for longer than 72 hours, exclusive of Saturdays, Sundays, and legal holidays, unless the court holds a preliminary hearing and determines that probable cause exists to continue to hold him.

(b) The proposed patient, his 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. If the court finds it to be reliable, it may admit hearsay evidence, including written reports.

(c) The court may order the continued holding of the proposed patient if it finds, by a preponderance of the evidence, that serious imminent physical harm to the patient or others is likely if the proposed patient is not confined. The fact that a proposed patient was acquitted of a crime against the person under section

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611.026 immediately preceding the filing of the petition constitutes evidence that serious imminent physical harm to the patient or others is likely if the proposed patient is not confined and shifts the burden of going forward in the presentation of evidence to the proposed patient; provided that the standard of proof remains as required by this chapter.

Sec. 9. Minnesota Statutes 1982, section 253B.08, subdivision 7, is amended to read:

Subd. 7. **EVIDENCE.** The court shall admit all relevant evidence at the hearing. The court shall make its determination upon the entire record pursuant to the rules of evidence.

In any case where the petition was filed immediately following a criminal proceeding in which the proposed patient was acquitted under section 611.026, the court shall take judicial notice of the record of the criminal proceeding.

Sec. 10. Minnesota Statutes 1982, section 253B.12, subdivision 4, is amended to read:

Subd. 4. **HEARING; STANDARD OF PROOF.** The probate committing court shall not make a final determination of the need to continue commitment unless a hearing is held and the court finds by clear and convincing evidence that (1) the person continues to be mentally ill, mentally retarded or chemically dependent; (2) involuntary commitment is necessary for the protection of the patient or others; and (3) there is no alternative to involuntary commitment.

In determining whether a person continues to be mentally ill, the court need not find that there has been a recent attempt or threat to physically harm himself or others, or a recent failure to provide necessary food, clothing, shelter, or medical care for himself. Instead, the court must find that the patient is likely to attempt to physically harm himself or others, or to fail to provide necessary food, clothing, shelter, or medical care for himself unless involuntary commitment is continued.

Sec. 11. Minnesota Statutes 1982, section 253B.18, subdivision 1, is amended to read:

Subdivision 1. **PROCEDURE.** Upon the filing of a petition alleging that a proposed patient is mentally ill and dangerous to the public, the court shall hear the petition as provided in sections 253B.07 and 253B.08. If the court finds by clear and convincing evidence that the proposed patient is mentally ill and dangerous to the public, it shall commit the person to the Minnesota Security Hospital, a regional center designated by the commissioner or to a treatment facility. In any case where the petition was filed immediately following the acquittal of the proposed patient for a crime against the person pursuant to a verdict of not guilty by reason of mental illness, the verdict constitutes evidence

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that the proposed patient is mentally ill and dangerous within the meaning of this section and shifts the burden of going forward in the presentation of evidence to the proposed patient; provided that the standard of proof remains as required by this chapter. Admission procedures shall be carried out pursuant to section 253B.10.

Sec. 12. Minnesota Statutes 1982, section 253B.19, subdivision 1, is amended to read:

Subdivision 1. **CREATION.** The supreme court shall establish an appeal panel composed of three probate judges and two alternate probate judges appointed from among the acting probate judges of the state. Panel members shall serve for terms of one year each. Only three judges need hear any case. One of the regular three appointed judges shall be designated as the chief judge of the appeal panel. The chief judge is vested with power to fix the time and place of all hearings before the panel, issue all notices, subpoena witnesses, appoint counsel for the patient, if necessary, and supervise and direct the operation of the appeal panel. The chief judge shall designate one of the other judges or an alternate judge to act as chief judge in any case where he is unable to act. No member of the appeal panel shall take part in the consideration of any case in which that judge committed the patient in the probate court. The chief justice of the supreme court shall determine the compensation of the judges serving on the appeal panel. The compensation shall be in addition to their regular compensation as probate judges. All compensation and expenses of the appeal panel and all allowable fees and costs of the patient's counsel shall be paid by the department of public welfare.

Sec. 13. Minnesota Statutes 1982, section 253B.21, subdivision 5, is amended to read:

Subd. 5. **TRANSFER.** Upon receipt of a certificate of a federal agency that facilities are available for the care or treatment of any committed person, the head of the treatment facility may transfer the person to a federal agency for care or treatment. Upon the transfer, the committing court shall be notified by the transferring agency. No person shall be transferred to a federal agency if he is confined pursuant to conviction of any felony or gross misdemeanor or if he has been acquitted of the charge solely on the ground of insanity under section 611.026, unless prior to transfer the committing court enters an order for the transfer after appropriate motion and hearing.

Written notice of the transfer shall be given to the patient's spouse or parent, or if none be known, to some other interested person.

Sec. 14. Minnesota Statutes 1982, section 253B.23, subdivision 7, is amended to read:

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Subd. 7. **APPEAL.** The commissioner or any other aggrieved party may appeal to the district court of appeals from any order entered under this chapter as in the manner prescribed in section 487.39 other civil cases.

Upon perfection of the appeal, the return shall be filed forthwith. The district court of appeals shall hear the appeal within 45 days after service of the notice of appeal. This appeal shall not suspend the operation of the order appealed from until the appeal is determined, unless otherwise ordered by the district court of appeals. ~~Notwithstanding any contrary provision in section 487.39, an appeal may be taken from the determination of a district court judge to the supreme court without leave of the supreme court.~~

Sec. 15. **EFFECTIVE DATE.**

This act is effective August 1, 1983 and applies to commitment proceedings under chapter 253B commenced on or after that date.

Approved June 14, 1983

**CHAPTER 349 — S.F.No. 320**

*An act relating to agriculture; making certain changes in the law relating to fertilizer inspection, registration, and labeling; prescribing penalties; amending Minnesota Statutes 1982, sections 17.713, subdivision 7; 17.714, subdivision 1; 17.715, subdivision 1; 17.718, subdivision 1; 17.725, subdivisions 1 and 2; and 17.728, subdivision 4.*

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

Section 1. Minnesota Statutes 1982, section 17.713, subdivision 7, is amended to read:

Subd. 7. **GRADE.** "Grade" means the percentage of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash stated in whole numbers in the same terms, order and percentages as in the guaranteed analysis; provided, however, that fertilizer materials, bone meals, manures, and similar raw materials may be guaranteed in fractional units, and specialty fertilizers may be guaranteed in fractional units of less than one percent of total nitrogen, available phosphorus or phosphoric acid, and soluble potassium or soluble potash.

Sec. 2. Minnesota Statutes 1982, section 17.714, subdivision 1, is amended to read:

Subdivision 1. **REGISTRATION FEE; CERTAIN ITEMS.** Fertilizer brands and grades sold only as small package items or represented and labeled as specialty fertilizer; and soil and plant amendments sold with recommendations

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