

SECOND REGULAR SESSION

SENATE BILL NO. 974

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time January 17, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

4413S.011

AN ACT

To repeal sections 537.037, 630.045, 630.140, 630.175, 632.005, and 632.440, RSMo, and to enact in lieu thereof six new sections relating to mental health services.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 537.037, 630.045, 630.140, 630.175, 632.005, and 632.440, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 537.037, 630.045, 630.140, 630.175, 632.005, and 632.440, to read as follows:

537.037. 1. Any physician or surgeon, registered professional nurse or licensed practical nurse licensed to practice in this state under the provisions of chapter 334 or 335, RSMo, or licensed to practice under the equivalent laws of any other state and any person licensed as a mobile emergency medical technician under the provisions of chapter 190, RSMo, may:

(1) In good faith render emergency care or assistance, without compensation, at the scene of an emergency or accident, and shall not be liable for any civil damages for acts or omissions other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering such emergency care;

(2) In good faith render emergency care or assistance, without compensation, to any minor involved in an accident, or in competitive sports, or other emergency at the scene of an accident, without first obtaining the consent of the parent or guardian of the minor, and shall not be liable for any civil damages other than damages occasioned by gross negligence or by willful or wanton acts or omissions by such person in rendering the emergency care.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 2. Any other person who has been trained to provide first aid in a standard
18 recognized training program may, without compensation, render emergency care
19 or assistance to the level for which he or she has been trained, at the scene of an
20 emergency or accident, and shall not be liable for civil damages for acts or
21 omissions other than damages occasioned by gross negligence or by willful or
22 wanton acts or omissions by such person in rendering such emergency care.

23 3. Any mental health professional, as defined in section 632.005, RSMo,
24 or substance abuse counselor, as defined in section 631.005, RSMo, or any
25 practicing medical, osteopathic, or chiropractic physician, or certified nurse
26 practitioner, or physicians' assistant may in good faith render suicide prevention
27 interventions at the scene of a threatened suicide and shall not be liable for any
28 civil damages for acts or omissions other than damages occasioned by gross
29 negligence or by willful or wanton acts or omissions by such person in rendering
30 such suicide prevention interventions.

31 4. Any other person [who has been trained to provide suicide prevention
32 interventions in a standard recognized training program] may, without
33 compensation, render suicide prevention interventions [to the level for which such
34 person has been trained] at the scene of a threatened suicide and shall not be
35 liable for civil damages for acts or omissions other than damages occasioned by
36 gross negligence or by willful or wanton acts or omissions by such person in
37 rendering such suicide prevention interventions.

630.045. The director of the department may [appoint] **authorize** such
2 [personnel] **persons**, including mental health coordinators, as are necessary to
3 carry out the civil involuntary detention requirements of chapter 632, RSMo. [The
4 mental health coordinators shall be subject to the exclusive direction and
5 supervision of the director, or his designee, who shall not be an employee of any
6 mental health facility.]

630.140. 1. Information and records compiled, obtained, prepared or
2 maintained by the residential facility, [day] **mental health** program operated,
3 funded or licensed by the department or otherwise, specialized service, or by any
4 mental health facility or mental health program in which people may be civilly
5 detained pursuant to chapter 632, RSMo, in the course of providing services to
6 either voluntary or involuntary patients, residents or clients shall be confidential.

7 2. The facilities or programs shall disclose information and records
8 including medication given, dosage levels, and individual ordering such medication

9 to the following upon their request:

10 (1) The parent of a minor patient, resident or client;

11 (2) The guardian or other person having legal custody of the patient,
12 resident or client **as permitted by the federal Health Insurance Portability**
13 **and Accountability Act of 1996 (HIPPA) and corresponding federal**
14 **regulations;**

15 (3) The attorney of a patient, resident or client who is a ward of the
16 juvenile court, an alleged incompetent, an incompetent ward or a person detained
17 under chapter 632, RSMo, as evidenced by court orders of the attorney's
18 appointment;

19 (4) An attorney or personal physician as authorized by the patient,
20 resident or client;

21 (5) Law enforcement officers and agencies, information about patients,
22 residents or clients committed pursuant to chapter 552, RSMo, but only to the
23 extent necessary to carry out the responsibilities of their office, and all such law
24 enforcement officers shall be obligated to keep such information confidential;

25 (6) The entity or agency authorized to implement a system to protect and
26 advocate the rights of persons with developmental disabilities under the
27 provisions of 42 U.S.C. Sections 15042 to 15044. The entity or agency shall be
28 able to obtain access to the records of a person with developmental disabilities
29 who is a client of the entity or agency if such person has authorized the entity or
30 agency to have such access; and the records of any person with developmental
31 disabilities who, by reason of mental or physical condition is unable to authorize
32 the entity or agency to have such access, if such person does not have a legal
33 guardian, conservator or other legal representative, and a complaint has been
34 received by the entity or agency with respect to such person or there is probable
35 cause to believe that such person has been subject to abuse or neglect. The entity
36 or agency obtaining access to a person's records shall meet all requirements for
37 confidentiality as set out in this section;

38 (7) The entity or agency authorized to implement a system to protect and
39 advocate the rights of persons with mental illness under the provisions of 42
40 U.S.C. 10801 shall be able to obtain access to the records of a patient, resident or
41 client who by reason of mental or physical condition is unable to authorize the
42 system to have such access, who does not have a legal guardian, conservator or
43 other legal representative and with respect to whom a complaint has been received

44 by the system or there is probable cause to believe that such individual has been
45 subject to abuse or neglect. The entity or agency obtaining access to a person's
46 records shall meet all requirements for confidentiality as set out in this
47 section. The provisions of this subdivision shall apply to a person who has a
48 significant mental illness or impairment as determined by a mental health
49 professional qualified under the laws and regulations of the state;

50 (8) To mental health coordinators, but only to the extent necessary to carry
51 out their duties under chapter 632, RSMo.

52 3. The facilities or services may disclose information and records under
53 any of the following:

54 (1) As authorized by the patient, resident or client;

55 (2) To persons or agencies responsible for providing health care services
56 to such patients, residents or clients;

57 (3) To the extent necessary for a recipient to make a claim or for a claim
58 to be made on behalf of a recipient for aid or insurance;

59 (4) To qualified personnel for the purpose of conducting scientific research,
60 management audits, financial audits, program evaluations or similar studies;
61 provided, that such personnel shall not identify, directly or indirectly, any
62 individual patient, resident or client in any report of such research, audit or
63 evaluation, or otherwise disclose patient, resident or client identities in any
64 manner;

65 (5) To the courts as necessary for the administration of chapter 211, RSMo,
66 475, RSMo, 552, RSMo, or 632, RSMo;

67 (6) To law enforcement officers or public health officers, but only to the
68 extent necessary to carry out the responsibilities of their office, and all such law
69 enforcement and public health officers shall be obligated to keep such information
70 confidential;

71 (7) Pursuant to an order of a court or administrative agency of competent
72 jurisdiction;

73 (8) To the attorney representing petitioners, but only to the extent
74 necessary to carry out their duties under chapter 632, RSMo;

75 (9) To the department of social services or the department of health and
76 senior services as necessary to report or have investigated abuse, neglect, or rights
77 violations of patients, residents, or clients;

78 (10) To a county board established pursuant to sections 205.968 to 205.972,

79 RSMo 1986, but only to the extent necessary to carry out their statutory
80 responsibilities. The county board shall not identify, directly or indirectly, any
81 individual patient, resident or client;

82 (11) To parents, legal guardians, treatment professionals, law enforcement
83 officers, and other individuals who by having such information could mitigate the
84 likelihood of a suicide. The facility treatment team shall have determined that the
85 consumer's safety is at some level of risk.

86 4. The facility or program shall document the dates, nature, purposes and
87 recipients of any records disclosed under this section and sections 630.145 and
88 630.150.

89 5. The records and files maintained in any court proceeding under chapter
90 632, RSMo, shall be confidential and available only to the patient, the patient's
91 attorney, guardian, or, in the case of a minor, to a parent or other person having
92 legal custody of the patient, to the petitioner and the petitioner's attorney, and to
93 the Missouri state highway patrol for reporting to the National Instant Criminal
94 Background Check System (NICS). In addition, the court may order the release
95 or use of such records or files only upon good cause shown, and the court may
96 impose such restrictions as the court deems appropriate.

97 6. Nothing contained in this chapter shall limit the rights of discovery in
98 judicial or administrative procedures as otherwise provided for by statute or rule.

99 7. The fact of admission of a voluntary or involuntary patient to a mental
100 health facility under chapter 632, RSMo, may only be disclosed as specified in
101 subsections 2 and 3 of this section.

630.175. 1. No person admitted on a voluntary or involuntary basis to any
2 mental health facility or mental health program in which people are civilly
3 detained pursuant to chapter 632, RSMo, and no patient, resident or client of a
4 residential facility or day program operated, funded or licensed by the department
5 shall be subject to physical or chemical restraint, isolation or seclusion unless it
6 is determined by the head of the facility or the attending licensed physician that
7 the chosen intervention is imminently necessary to protect the health and safety
8 of the patient, resident, client or others and that it provides the least restrictive
9 environment.

10 2. Every use of physical or chemical restraint, isolation or seclusion and
11 the reasons therefor shall be made a part of the clinical record of the patient,
12 resident or client under the signature of the head of the facility or the attending

13 licensed physician.

14 3. Physical or chemical restraint, isolation or seclusion shall not be
15 considered standard treatment or habilitation and shall cease as soon as the
16 circumstances causing the need for such action have ended.

17 **4. The use of security escort devices, including devices designed**
18 **to restrict physical movement, which are used to maintain safety and**
19 **security and to prevent escape during transport outside of a facility,**
20 **shall not be considered physical restraint within the meaning of this**
21 **section. Individuals who have been civilly detained pursuant to**
22 **sections 632.300 to 632.475, RSMo, may be placed in security escort**
23 **devices when transported outside of the facility if it is determined by**
24 **the head of the facility or the attending licensed physician that the use**
25 **of security escort devices is necessary to protect the health and safety**
26 **of the patient, resident, client or others or is necessary to prevent**
27 **escape. Individuals who have been civilly detained pursuant to sections**
28 **632.480 to 632.513, RSMo, or committed pursuant to chapter 552, RSMo,**
29 **shall be placed in security escort devices when transported outside of**
30 **the facility unless it is determined by the head of the facility or the**
31 **attending licensed physician that security escort devices are not**
32 **necessary to protect the health and safety of the patient, resident, client**
33 **or others or not necessary to prevent escape.**

34 **5. Extraordinary measures employed by the head of the facility**
35 **to ensure the safety and security of patients, residents, clients and**
36 **others during times of natural or man-made disasters shall not be**
37 **considered restraint, isolation or seclusion within the meaning of this**
38 **section.**

632.005. As used in chapter 631, RSMo, and this chapter, unless the
2 context clearly requires otherwise, the following terms shall mean:

3 (1) "Comprehensive psychiatric services", any one, or any combination of
4 two or more, of the following services to persons affected by mental disorders other
5 than mental retardation or developmental disabilities: inpatient, outpatient, day
6 program or other partial hospitalization, emergency, diagnostic, treatment, liaison,
7 follow-up, consultation, education, rehabilitation, prevention, screening,
8 transitional living, medical prevention and treatment for alcohol abuse, and
9 medical prevention and treatment for drug abuse;

10 (2) "Council", the Missouri advisory council for comprehensive psychiatric
11 services;

12 (3) "Court", the court which has jurisdiction over the respondent or patient;

13 (4) "Division", the division of comprehensive psychiatric services of the
14 department of mental health;

15 (5) "Division director", director of the division of comprehensive psychiatric
16 services of the department of mental health, or his designee;

17 (6) "Head of mental health facility", superintendent or other chief
18 administrative officer of a mental health facility, or his designee;

19 (7) "Judicial day", any Monday, Tuesday, Wednesday, Thursday or Friday
20 when the court is open for business, but excluding Saturdays, Sundays and legal
21 holidays;

22 (8) "Licensed physician", a physician licensed pursuant to the provisions
23 of chapter 334, RSMo, or a person authorized to practice medicine in this state
24 pursuant to the provisions of section 334.150, RSMo;

25 (9) "Likelihood of serious harm" means any one or more of the following
26 but does not require actual physical injury to have occurred:

27 (a) A substantial risk that serious physical harm will be inflicted by a
28 person upon his own person, as evidenced by recent threats, including verbal
29 threats, or attempts to commit suicide or inflict physical harm on
30 himself. Evidence of substantial risk may also include information about patterns
31 of behavior that historically have resulted in serious harm previously being
32 inflicted by a person upon himself;

33 (b) A substantial risk that serious physical harm to a person will result or
34 is occurring because of an impairment in his capacity to make decisions with
35 respect to his hospitalization and need for treatment as evidenced by his current
36 mental disorder or mental illness which results in an inability to provide for his
37 own basic necessities of food, clothing, shelter, safety or medical care or his
38 inability to provide for his own mental health care which may result in a
39 substantial risk of serious physical harm. Evidence of that substantial risk may
40 also include information about patterns of behavior that historically have resulted
41 in serious harm to the person previously taking place because of a mental disorder
42 or mental illness which resulted in his inability to provide for his basic necessities
43 of food, clothing, shelter, safety or medical or mental health care; or

44 (c) A substantial risk that serious physical harm will be inflicted by a

45 person upon another as evidenced by recent overt acts, behavior or threats,
46 including verbal threats, which have caused such harm or which would place a
47 reasonable person in reasonable fear of sustaining such harm. Evidence of that
48 substantial risk may also include information about patterns of behavior that
49 historically have resulted in physical harm previously being inflicted by a person
50 upon another person;

51 (10) "Mental health coordinator", a mental health professional [employed
52 by the state of Missouri] who has knowledge of the laws relating to hospital
53 admissions and civil commitment and who is [appointed] **authorized** by the
54 director of the department, or his designee, to serve a designated geographic area
55 or mental health facility and who has the powers, duties and responsibilities
56 provided in this chapter;

57 (11) "Mental health facility", any residential facility, public or private, or
58 any public or private hospital, which can provide evaluation, treatment and,
59 inpatient care to persons suffering from a mental disorder or mental illness and
60 which is recognized as such by the department or any outpatient treatment
61 program certified by the department of mental health. No correctional institution
62 or facility, jail, regional center or mental retardation facility shall be a mental
63 health facility within the meaning of this chapter;

64 (12) "Mental health professional", a psychiatrist, resident in psychiatry,
65 psychologist, psychiatric nurse or psychiatric social worker;

66 (13) "Mental health program", any public or private residential facility,
67 public or private hospital, public or private specialized service or public or private
68 day program that can provide care, treatment, rehabilitation or services, either
69 through its own staff or through contracted providers, in an inpatient or
70 outpatient setting to persons with a mental disorder or mental illness or with a
71 diagnosis of alcohol abuse or drug abuse which is recognized as such by the
72 department. No correctional institution or facility or jail may be a mental health
73 program within the meaning of this chapter;

74 (14) "Ninety-six hours" shall be construed and computed to exclude
75 Saturdays, Sundays and legal holidays which are observed either by the court or
76 by the mental health facility where the respondent is detained;

77 (15) "Peace officer", a sheriff, deputy sheriff, county or municipal police
78 officer or highway patrolman;

79 (16) "Psychiatric nurse", a registered professional nurse who is licensed

80 under chapter 335, RSMo, and who has had at least two years of experience as a
81 registered professional nurse in providing psychiatric nursing treatment to
82 individuals suffering from mental disorders;

83 (17) "Psychiatric social worker", a person with a master's or further
84 advanced degree from an accredited school of social work, practicing pursuant to
85 chapter 337, RSMo, and with a minimum of one year training or experience in
86 providing psychiatric care, treatment or services in a psychiatric setting to
87 individuals suffering from a mental disorder;

88 (18) "Psychiatrist", a licensed physician who in addition has successfully
89 completed a training program in psychiatry approved by the American Medical
90 Association, the American Osteopathic Association or other training program
91 certified as equivalent by the department;

92 (19) "Psychologist", a person licensed to practice psychology under chapter
93 337, RSMo, with a minimum of one year training or experience in providing
94 treatment or services to mentally disordered or mentally ill individuals;

95 (20) "Resident in psychiatry", a licensed physician who is in a training
96 program in psychiatry approved by the American Medical Association, the
97 American Osteopathic Association or other training program certified as
98 equivalent by the department;

99 (21) "Respondent", an individual against whom involuntary civil detention
100 proceedings are instituted pursuant to this chapter;

101 (22) "Treatment", any effort to accomplish a significant change in the
102 mental or emotional conditions or the behavior of the patient consistent with
103 generally recognized principles or standards in the mental health professions.

632.440. No officer of a public or private agency, mental health facility or
2 mental health program; no head, attending staff or consultant of any such agency,
3 facility or mental health program; no mental health coordinator, registered
4 professional nurse, licensed physician, mental health professional nor any other
5 public official performing functions necessary for the administration of this
6 chapter; no peace officer responsible for detaining a person pursuant to this
7 chapter; and no peace officer responsible for detaining or transporting, or both,
8 any person upon the request of any mental health coordinator pursuant to section
9 632.300 or 632.305 or acting pursuant to the request of a guardian who is acting
10 pursuant to chapter 475, RSMo, or upon the request of the head of any supervisory
11 mental health program who is acting pursuant to section 632.337, regardless of

12 whether such peace officer is outside the jurisdiction for which he serves as a
13 peace officer during the course of such detention or transportation, or both, shall
14 be civilly liable for **investigating**, detaining, transporting, conditionally releasing
15 or discharging a person pursuant to this chapter or chapter 475, RSMo, at or
16 before the end of the period for which the person was admitted or detained for
17 evaluation or treatment so long as such duties were performed in good faith and
18 without gross negligence.

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