

SECOND REGULAR SESSION

HOUSE BILL NO. 1890

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MOORE (Sponsor), TILLEY, FISHER, GRISAMORE,
WILDBERGER, NANCE, BIVINS, SCHAAF AND MEINERS (Co-sponsors).

Read 1st time January 29, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

4626L.01I

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 comprehensive psychiatric 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,
2 are repealed and six new sections enacted in lieu thereof, to be known as sections 537.037,
3 630.045, 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
2 nurse licensed to practice in this state under the provisions of chapter 334 or 335, RSMo, or
3 licensed to practice under the equivalent laws of any other state and any person licensed as a
4 mobile emergency medical technician under the provisions of chapter 190, RSMo, may:

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

6 2. The facilities or programs shall disclose information and records including medication
7 given, dosage levels, and individual ordering such medication to the following upon their
8 request:

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

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

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

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

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

21 (6) The entity or agency authorized to implement a system to protect and advocate the
22 rights of persons with developmental disabilities under the provisions of 42 U.S.C. Sections
23 15042 to 15044. The entity or agency shall be able to obtain access to the records of a person
24 with developmental disabilities who is a client of the entity or agency if such person has
25 authorized the entity or agency to have such access; and the records of any person with
26 developmental disabilities who, by reason of mental or physical condition is unable to authorize
27 the entity or agency to have such access, if such person does not have a legal guardian,
28 conservator or other legal representative, and a complaint has been received by the entity or
29 agency with respect to such person or there is probable cause to believe that such person has been
30 subject to abuse or neglect. The entity or agency obtaining access to a person's records shall
31 meet all requirements for confidentiality as set out in this section;

32 (7) The entity or agency authorized to implement a system to protect and advocate the
33 rights of persons with mental illness under the provisions of 42 U.S.C. 10801 shall be able to
34 obtain access to the records of a patient, resident or client who by reason of mental or physical
35 condition is unable to authorize the system to have such access, who does not have a legal
36 guardian, conservator or other legal representative and with respect to whom a complaint has
37 been received by the system or there is probable cause to believe that such individual has been
38 subject to abuse or neglect. The entity or agency obtaining access to a person's records shall
39 meet all requirements for confidentiality as set out in this section. The provisions of this
40 subdivision shall apply to a person who has a significant mental illness or impairment as
41 determined by a mental health professional qualified under the laws and regulations of the state;

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

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

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

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

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

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

56 (5) To the courts as necessary for the administration of chapter 211, RSMo, 475, RSMo,
57 552, RSMo, or 632, RSMo;

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

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

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

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

67 (10) To a county board established pursuant to sections 205.968 to 205.972, RSMo 1986,
68 but only to the extent necessary to carry out their statutory responsibilities. The county board
69 shall not identify, directly or indirectly, any individual patient, resident or client;

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

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

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

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

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

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

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

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

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

27 **5. Extraordinary measures employed by the head of the facility to ensure the safety**
28 **and security of patients, residents, clients, and other persons during times of natural or**
29 **manmade disasters shall not be considered restraint, isolation, or seclusion within the**
30 **meaning of this section.**

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

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

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

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

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

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

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

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

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

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

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

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

39 (c) A substantial risk that serious physical harm will be inflicted by a person upon
40 another as evidenced by recent overt acts, behavior or threats, including verbal threats, which
41 have caused such harm or which would place a reasonable person in reasonable fear of sustaining
42 such harm. Evidence of that substantial risk may also include information about patterns of
43 behavior that historically have resulted in physical harm previously being inflicted by a person
44 upon another person;

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

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

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

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

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

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

70 (16) "Psychiatric nurse", a registered professional nurse who is licensed under chapter
71 335, RSMo, and who has had at least two years of experience as a registered professional nurse
72 in providing psychiatric nursing treatment to individuals suffering from mental disorders;

73 (17) "Psychiatric social worker", a person with a master's or further advanced degree
74 from an accredited school of social work, practicing pursuant to chapter 337, RSMo, and with

75 a minimum of one year training or experience in providing psychiatric care, treatment or services
76 in a psychiatric setting to individuals suffering from a mental disorder;

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

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

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

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

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

632.440. No officer of a public or private agency, mental health facility or mental health
2 program; no head, attending staff or consultant of any such agency, facility or mental health
3 program; no mental health coordinator, registered professional nurse, licensed physician, mental
4 health professional nor any other public official performing functions necessary for the
5 administration of this chapter; no peace officer responsible for detaining a person pursuant to this
6 chapter; and no peace officer responsible for detaining or transporting, or both, any person upon
7 the request of any mental health coordinator pursuant to section 632.300 or 632.305 or acting
8 pursuant to the request of a guardian who is acting pursuant to chapter 475, RSMo, or upon the
9 request of the head of any supervisory mental health program who is acting pursuant to section
10 632.337, regardless of whether such peace officer is outside the jurisdiction for which he serves
11 as a peace officer during the course of such detention or transportation, or both, shall be civilly
12 liable for **investigating**, detaining, transporting, conditionally releasing or discharging a person
13 pursuant to this chapter or chapter 475, RSMo, at or before the end of the period for which the
14 person was admitted or detained for evaluation or treatment so long as such duties were
15 performed in good faith and without gross negligence.

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