DRAFT ONLY
NOT APPROVED FOR INTRODUCTION

HOUSE BILL NO.

Emergency detentions and hospitalizations-amendments.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

AN ACT relating to the hospitalization of mentally ill persons; recreating and amending provisions related to the emergency custody, involuntary hospitalization and directed outpatient treatment of persons with a mental illness; providing definitions; specifying responsibilities for state and local agencies, officers and treatment coordinators; specifying the payment and reimbursement of costs for emergency custody, involuntary hospitalization and directed outpatient treatment; making conforming amendments; repealing existing provisions regarding the hospitalization of mentally ill persons; requiring rulemaking; specifying applicability; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

****

STAFF COMMENT

This draft reflects the changes the Committee requested and adopted at the November meeting. The note below is a carryover from the previous draft:

The primary changes made in this draft compared to the draft provided by the county attorneys are: (1) general renumbering to conform with LSO's usual drafting standards; (2) combining several provisions from articles 5, 6, and 7 in the provided draft into a single article for "General Provisions"; (3) including provisions related to minors in Article 6 (the substantive provisions); and (4) moving the definitions (currently 25-10-601 in the provided draft) to immediately follow the short title and purpose of the act (25-10-503 in this draft).

****

Section 1. W.S. 25-10-501 through 25-10-512, 25-10-601 through 25-10-608 and 25-10-701 are created to read:

CHAPTER 10 – PERSONS WITH MENTAL ILLNESSES

ARTICLE 5 – GENERAL PROVISIONS

25-10-501. Short Title.

This act shall be known and may be cited as "The Mental Illness Act."

25-10-502. Purpose.

Mental illness may render a person incapable of voluntarily obtaining treatment because the person is unable to make rational decisions or because the person does not understand that he is ill or the severity of the illness. The purpose of this act is to clarify the process to protect and provide treatment to persons with a mental illness and to ensure public safety and welfare. This act is intended to encourage the voluntary treatment of mental illness and remove the stigma associated with mental illnesses and mental illness generally.

25-10-503. Definitions.

(a) As used in this act:

(i) "Court" means the district court where a patient is placed in emergency custody or to which a

patient's case is transferred for further proceedings under this act;

(ii) "Dangerous to himself or others" means that, as a result of mental illness, a person:

(A) Evidences a substantial probability of physical harm to himself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm; or

(B) Evidences a substantial probability of physical harm to other individuals as manifested by a recent overt homicidal act, attempt or threat or other violent act, attempt or threat which places others in reasonable fear of serious physical harm to them; or

(C) Evidences behavior manifested by recent acts or omissions that, due to mental illness, he is unable to satisfy basic needs for nourishment, essential medical care, shelter or safety so that a substantial probability exists that death, serious physical injury, serious physical debilitation, serious mental debilitation,

destabilization from lack of or refusal to take prescribed psychotropic medications for a diagnosed condition or serious physical disease will imminently ensue, unless the individual receives prompt and adequate treatment for this mental illness. No person, however, shall be deemed to be unable to satisfy his need for nourishment, essential medical care, shelter or safety if he is able to satisfy those needs with the supervision and assistance of others who are willing and available;

(D) While this definition requires evidence of recent acts or omissions of endangerment, either to self or others, a court may consider a person's mental health history in determining whether directed outpatient commitment or involuntary hospitalization is warranted.

(iii) "Department" means the department of health;

(iv) "Directed outpatient treatment" means treatment for a person who is no longer in state custody but who is still subject to the orders of a court issued under this act;

(v) "Emergency custody" means a patient who is temporarily in the care and custody of the state and includes the transportation of a patient to and the hold of a patient at a facility;

(vi) "Evaluation" means the diagnostic assessment of a mental condition by an examiner;

(vii) "Evaluation report" means a written summary of an evaluation that, at a minimum, includes the date of the evaluation, the treatment that the patient has received while subject to this act, the patient's response to any treatment, the psychotropic medications prescribed and administered to the patient and the patient's current mental and physical condition;

(viii) "Examiner" means a licensed psychiatrist, licensed physician, advanced practice registered nurse, physician assistant, psychologist, professional counselor, addictions therapist, clinical social worker and marriage and family therapist;

(ix) "Facility" means a place where a patient may be placed while in emergency custody or subject to involuntary hospitalization. "Facility" includes treatment facilities;

(x) "Involuntary hospitalization" means the placement of a patient in the care and custody of the state indefinitely and includes being transported and held at a facility;

(xi) "Mental illness" means a physical, emotional, mental or behavioral disorder which causes a person to be dangerous to himself or others and which requires treatment, but do not include addiction to drugs or alcohol, drug or alcohol intoxication or developmental disabilities;

****

STAFF COMMENT

The definition of "mental illness" is based on the definition in Title 25 that will take effect on July 1, 2022. The current definition of mental illness in 25-10-101(a) is below:

(ix) "Mental illness" and "mentally ill" mean a physical, emotional, mental or behavioral disorder which

causes a person to be dangerous to himself or others and which requires treatment, but do not include addiction to drugs or alcohol, drug or alcohol intoxication or developmental disabilities, except when one (1) or more of those conditions co-occurs as a secondary diagnosis with a mental illness;

****

(xii) "Patient" means a person with a mental illness who is placed in emergency custody or involuntary hospitalization or who is subject to directed outpatient treatment;

(xiii) "Restraint" means a manual method, physical or mechanical device, material, equipment or medication used to restrict a patient's ability to freely move his arms, legs, body or head. "Restraint" shall not include an orthopedically prescribed device, surgical dressing, bandages, emergency helmet or another similar item used to conduct routine physical examinations and tests, to protect or facilitate healing, to protect a patient from falling or to assist a patient more safely participate in activities;

(xiv) "State hospital" means the Wyoming state hospital at Evanston, Wyoming;

(xv) "Treatment" includes examination, the administration of psychiatric or psychotropic medication, individual and group counseling, mental illness management and education and the development of a discharge plan. "Treatment" shall not include observation, emergency medical care, emergency custody evaluation and monitoring of the patient;

****

STAFF COMMENT

The Committee may wish to consider defining or clarifying what is meant by "psychiatric medication."

****

(xvi) "Treatment coordinator" means the entity designated by the department for a particular county to coordinate proceedings under this act;

(xvii) "Treatment facility" means a facility that is licensed to provide services for inpatient or outpatient

treatment and includes a federal, state or private hospital and healthcare center;

(xviii) "Voluntary admittee" means a person with a mental illness who consents to treatment for the mental illness. A voluntary admittee is not in state custody and is not subject to any order issued in accordance with this act;

****

STAFF COMMENT

The Committee may wish to consider placing the second sentence in the definition of "voluntary admittee" in a substantive provision in this bill draft.

****

(xix) "This act" means W.S. 25-10-501 through 25-10-701.

25-10-504. Patients' Rights.

(a) Each patient shall have under this act the right to:

(i) Remain silent. A patient's statements may be used as evidence to support emergency custody, involuntary hospitalization and directed outpatient treatment;

(ii) Contact an attorney;

(iii) An appointed attorney to represent the patient at legal proceedings held under this act;

(iv) Communicate with others unless specifically restricted in the patient's treatment plan because the communication is likely to be harmful to the patient or another person;

(v) Receive visitors at reasonable times unless specifically restricted in the patient's treatment plan because the communication is likely to be harmful to the patient or another person;

(vi) Be provided with adequate clothing that is clean, in good repair and seasonally appropriate;

(vii) Receive a written copy of the rights specified in this section as soon as practicable after being placed in emergency custody.

25-10-505. Proceedings confidential.

(a) All proceedings and records that directly or indirectly identify an individual placed in custody under this act are confidential and shall not be disclosed unless:

(i) Disclosure is necessary to carry out this act. Disclosure under this paragraph includes disclosure to:

(A) Peace officers;

(B) Examiners;

(C) County attorneys;

(D) Patients' attorneys;

(E) Treatment coordinators;

(F) District courts and district court commissioners;

(G) Treatment facilities;

(H) The state hospital;

(J) The department;

(K) The department of family services;

(M) Parents;

(N) Guardians;

(O) Any person with a power of attorney that encompasses medical or general health matters.

****

STAFF COMMENT

The Committee may wish to consider whether subparagraph (O) above should be more specific in terms of the reference to the power of attorney (for example: "Any person with a power of attorney that provides authority for the person to receive the disclosure.").

****

(ii) The patient or the patient's legal guardian consents; or

(iii) A court of competent jurisdiction determines disclosure is necessary for the conduct of a proceeding before the court.

25-10-506. Department responsibilities and authority.

(a) The department shall:

(i) Monitor the operation of and methods of treatment used by the state hospital and enforce the standards of this act governing the state hospital;

(ii) Investigate complaints from or on behalf of patients in or released from the state hospital or any facility where a patient was placed or held under this act;

(iii) Contract with treatment facilities to meet the treatment needs that arise under this act, including the placement of patients with exceptionally difficult behaviors;

(iv) Not later than one hundred eighty (180) days after the effective date of this section, adopt rules in accordance with the Wyoming Administrative Procedure Act that:

****

STAFF COMMENT

Per the Committee's direction, the language requiring the creation (by rule) of a Medication Review Committee has been deleted. The Committee may wish to consider establishing another process or reinserting language consistent with current law (described below).

Under current statute, the court makes findings as to the patient's competence to make informed choices regarding, among other things, his need for prescribed psychotropic medication. If the court finds the person incompetent, the court may order the administration of that prescribed medication. The hospital's investigation review committee then may consider and determine whether the prescribed medication should be continued if found medically appropriate, and that committee's decisions are subject to review under the Administrative Procedure Act. See W.S. 25-10-110(j)(i)(E).

****

(A) Establishes the process to submit costs in accordance with W.S. 25-10-704 for payment and reimbursement. Rules promulgated under this subparagraph shall include, at a minimum, the process to submit costs to the department;

(B) Establishes the process for the transportation of patients, including, at a minimum, rules that specify:

(I) The entities, including and in addition to peace officers, who are authorized to transport patients;

(II) The manner in which patients may be transported, including the use of restraints;

(III) The transportation to and from facilities and public and private places as necessary to implement this act.

(C) A process to minimize and manage an admission waitlist for placements in the state hospital under this act;

(D) A process for voluntary admission to and discharge from the state hospital.

****

STAFF COMMENT

The Committee may wish to consider whether the process for voluntary admission should be addressed by rulemaking; current statute provides the process for voluntary applications for admission for treatment. See W.S. 25-10-106.

****

(b) The department is authorized to deposit all monies and earnings received and collected by the state hospital into a special revenue account, which shall be expended only for correcting life safety code problems, the costs of emergency custody and involuntary hospitalizations and to remediate conditions at the state hospital as identified in settlement agreements that are approved by the director of the department and reported to the governor. Any single capital project using funds from the special revenue

account created in this subsection that exceeds two hundred thousand dollars ($200,000.00) shall be approved by the state building commission. Not later than November 1 of each year, the department shall report to the joint appropriations committee detailing the earnings and monies received and the expenditures made from the special revenue account under this subsection.

25-10-507. State hospital duties and responsibilities.

(a) The state hospital shall admit each patient who is ordered by a court to inpatient hospitalization or otherwise provide equivalent or better inpatient placement for the patient. The state hospital shall provide reasonable placement of patients pending transport to another facility or public or private place.

(b) The state hospital may administer prescribed medication to a patient without the patient's consent.

(c) The state hospital may admit a person seeking voluntary admission without a court order.

(d) If adequate treatment for a mental illness cannot be provided to an inmate at a state penal institution, the state hospital may admit the inmate subject to the standard admission rules of the state hospital.

(e) The state hospital shall not discharge a patient admitted from a state penal institution without an order from a court with jurisdiction over the criminal matter that caused the inmate to be incarcerated in the state penal institution.

25-10-508. Treatment facility responsibilities.

(a) Each treatment facility shall admit persons seeking voluntary admission for treatment. If a treatment facility does not have an available bed for a voluntary admittee, the treatment facility shall refer the voluntary admittee to other available and reasonable treatment options.

****
****
STAFF COMMENT

The Committee may wish to consider the breadth of the requirement for a treatment facility to admit voluntary admittees in subsection (a) above.

****

(b) A treatment facility shall not:

(i) Attempt to dissuade a voluntary admittee from seeking and obtaining treatment voluntarily;

(ii) Place a voluntary admittee in emergency custody unless the person is going to immediately leave the facility and the person otherwise qualifies to be placed in emergency custody under this act;

(iii) Place an unconscious person in emergency custody.

25-10-509. Patient attorney responsibilities.

(a) Each attorney representing a patient shall:

(i) Accept service of process for the patient;

(ii) Represent the patient until the case is dismissed or the court allows the attorney to withdraw from the case. Representation shall include representing the patient in all judicial hearings under this chapter.

(b) A patient's attorney is an advocate for the patient and is not the patient's guardian ad litem. A patient's attorney may consider the patient's apparent understanding of legal and medical matters.

25-10-510. County attorney responsibilities.

(a) The county attorney in the county where a person is placed in emergency custody shall review requests submitted by examiners for proceedings under this act.

(b) If the county attorney determines that a request to continue emergency custody meets the requirements and intent of this act, the county attorney shall file a petition entitled in the interest of the patient and shall appear at a hearing to continue emergency custody.

(c) The county attorney shall represent the state in all cases proceeding under this act until the court dismisses the case.

25-10-511. Treatment coordinator responsibilities.

(a) Each treatment coordinator shall:

(i) Appear at hearings and provide recommendations to the court regarding the patient's custody and treatment;

(ii) Monitor all proceedings under this act for all patients to whom they are assigned;

(iii) Provide assistance to achieve timely, efficient and effective treatment, transport and discharge planning for patients;

(iv) If a patient resides in another county:

(A) Notify the treatment coordinator in the patient's county of residence of proceedings involving the patient under this act;

(B) Communicate and coordinate with the treatment coordinator in the patient's county of residence regarding the patient's custody, treatment, transport and discharge planning.

25-10-512. Reporting requirements.

The department may establish any reporting requirement to track activity occurring under this act by adopting rules in accordance with the Wyoming Administrative Procedure Act. Any rules promulgated under this section shall require an entity to report only on matters within the entity's direct scope of involvement under this act.

****
****
STAFF COMMENT

The Committee may wish to consider whether reporting requirements should be specified in statute rather than left to rule of the Department of Health.

****

ARTICLE 6 – CUSTODY, HOSPITALIZATION AND TREATMENT

25-10-601. Process.

(a) Emergency custody, involuntary hospitalization and directed outpatient treatment shall constitute a process continuum under this act. At any hearing held under this act, the court shall consider whether the requirements for emergency custody, involuntary hospitalization or directed outpatient treatment are met and enter an order accordingly, except that the court shall not order a patient to be placed in involuntary hospitalization at the initial hearing unless the patient waives the hearing required under W.S. 25-10-604.

(b) While in the custody of the state, a patient shall be placed in the least restrictive and most therapeutic facility available. A patient shall not be placed in an area with a primary purpose of detaining persons charged with or convicted of a crime, unless there is no other safe alternative available.

(c) If necessary to prevent immediate and serious physical injury to the patient or another person, a licensed physician may administer medication without the patient's consent.

(d) A peace officer may transport patients subject to this act in accordance with the transportation policy of the peace officer's agency.

****

STAFF COMMENT

The Committee may wish to consider whether subsection (d) above conflicts with earlier language in this bill draft that requires the Department of Health to promulgate rules regarding the transportation of patients.

****

(e) No person or entity shall be liable for injury to a patient that occurs while transporting a patient by reasonable means for purposes of this act.

****

STAFF COMMENT

The Committee may wish to consider whether:

- **Subsection (e) above should be amended to make clear that no entity is liable for any damages to a patient occurring during or resulting from transporting a patient.**
- **The Wyoming Governmental Claims Act needs amended to reflect the immunity provided above (see W.S. 1-39-105, below):**

1-39-105. Liability; operation of motor vehicles, aircraft and watercraft.

A governmental entity is liable for damages resulting from bodily injury, wrongful death or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of any motor vehicle, aircraft or watercraft.

****
****

(f) Any motion for a hearing under this act shall include an evaluation report from an evaluation that was conducted within three (3) days of the date the motion is filed, except for a motion to dismiss the case that is filed by the county attorney.

(g) Before the expiration of an ongoing placement, any party may request a hearing for the court to determine whether the patient still has a mental illness and whether continued emergency custody, involuntary hospitalization or directed outpatient treatment is appropriate.

(h) The court shall hold an expedited hearing on any motion filed by any party under this act.

(j) A patient may waive any hearing set under this act if the patient, the patient's attorney and the county attorney consent to waiving the hearing and the entry of a stipulated order.

(k) The court may continue a hearing set under this act only for good cause.

(m) If at any time the court finds that a patient does not have a mental illness, the court shall release the patient from any requirements imposed under this act and shall dismiss the case.

(n) Except during the initial seventy-two (72) hours of emergency custody, if an examiner determines that a patient no longer has a mental illness, the examiner shall promptly submit an evaluation report to the county attorney, the patient's attorney and the treatment

coordinator that states that the patient no longer has a mental illness, provided that:

(i) The county attorney may file an objection to releasing the patient not later than three (3) business days after receiving the evaluation report;

(ii) If the county attorney does not file an objection within three (3) business days, the facility holding the patient shall promptly release the patient;

(iii) A facility shall promptly release the patient if the county attorney provides a written statement, email or facsimile to the examiner stating that the county attorney does not object to the release of the patient;

(iv) After a patient is released under this subsection, the county attorney shall file a motion to dismiss the patient's case.

****

STAFF COMMENT

The Committee may wish to consider whether the court should be responsible for issuing orders for the release of patients after the county attorney fails to object or provides notice of no objection.

The Committee may also wish to consider whether the treatment coordinator should have any role to play in the determination of whether a patient has or no longer has a mental illness.

****
****

(o) A patient who is discharged or otherwise released from emergency custody or involuntary hospitalization ceases to be in the custody of the state.

(p) When a patient is discharged or otherwise released from being subject to the requirements of this act, the facility holding the patient shall make arrangements to transport the patient back to the patient's residence or, if the patient is a transient, to the community where the patient was placed in emergency custody.

25-10-602. Emergency custody.

(a) If a peace officer has reasonable cause to believe a person has a mental illness and the person refuses to

voluntarily consent to transportation to a facility, the peace officer may place the person in emergency custody and transport the person to a facility.

(b) If an examiner has reasonable cause to believe that a person has a mental illness and the person will not voluntarily consent to transportation to a facility, to examination by an examiner or to treatment prescribed by a licensed physician, the examiner may place the person in emergency custody and cause the person to be transported to a facility.

(c) No person with a mental illness shall be placed in emergency custody under this section unless the person will not voluntarily:

(i) Be transported to a facility;

(ii) Remain at the facility; or

(iii) Accept prescribed treatment.

(d) Upon placement of a person in emergency custody, an examiner shall as soon as practicable notify the person both orally and in writing of the patient's rights established in W.S. 25-10-504.

(e) When a person is placed in emergency custody, the peace officer or examiner who placed the person in emergency custody shall promptly prepare an emergency custody evaluation report, which shall include, at a minimum:

(i) The date and time that the patient was placed in emergency custody;

(ii) The name and title of the person who placed the patient in emergency custody;

(iii) The location and reason that the patient was initially contacted;

(iv) The reasons for placing the patient in emergency custody;

(v) Where the patient is currently being held in emergency custody;

(vi) The patient's name, date of birth and address, if known or reasonably discernible.

(f) The person who prepared the emergency custody evaluation report required under subsection (e) of this section shall promptly submit the report to the facility holding the patient, the county attorney and the treatment coordinator.

(g) An examiner shall conduct a preliminary evaluation of a patient within twenty-four (24) hours of the patient's placement in emergency custody to determine if the patient has a mental illness. If an evaluation is not conducted within twenty-four (24) hours of the patient's placement, the facility holding the patient shall promptly release the patient from emergency custody. If the examiner determines that the patient does not have a mental illness, the examiner shall promptly release the patient from emergency custody.

(h) If an examiner determines that the patient does have a mental illness:

(i) Emergency custody of the patient may continue for not more than seventy-two (72) hours from the time the patient was initially placed in emergency custody. For purposes of this paragraph:

(A) The seventy-two (72) hour period excludes weekends and legal holidays;

(B) For persons placed in emergency custody on a Saturday, Sunday or legal holiday, the seventy-two (72) hour limit shall begin at 8:00 a.m. on the next business day.

(ii) The examiner shall promptly submit a written summary of the emergency custody evaluation report to the facility holding the patient, the county attorney and the treatment coordinator. The summary shall identify, at a minimum, the provision under W.S. 25-10-503(a)(ii) for which the patient's condition qualifies as a mental illness

because the patient is dangerous to himself or others and the specific symptoms causing that qualification.

25-10-603. Continued emergency custody.

(a) To continue a patient's placement in emergency custody, the county attorney shall file a petition entitled in the interest of the patient under this act. The emergency custody evaluation report and a written summary shall be attached to any petition filed under this subsection. For purposes of a petition filed under this subsection, service of process may be made by sending a copy of the petition to the patient's attorney and to the patient by mail, email, facsimile or hand delivery.

(b) The court shall hold a hearing on the petition before the expiration of the time specified in W.S. 25-10-602(h)(i), subject to the following:

(i) If a hearing is not held within the time specified in W.S. 25-10-602(h)(i), the patient shall be released from emergency custody;

(ii) If the court finds by a preponderance of the evidence that the patient has a mental illness, the court may continue emergency custody for not more than twenty-one (21) days after the date of the hearing, or until another date specified in a stipulated order to continue emergency custody that is submitted to the court;

****

STAFF COMMENT

The Committee requested information on possible issues regarding the 21-day maximum period for continued emergency custody. In this bill draft, a person cannot be held in continued emergency custody unless the court finds by a preponderance of the evidence that the person has a mental illness. Then, at least once every seven days while a person is in continued emergency custody, an examiner must examine the person and submit an evaluation report.

The United States Supreme Court has recognized that, "for the ordinary citizen, commitment to a mental hospital produces a massive curtailment of liberty, and in consequence requires due process protection." Vitek v. Jones, 445 U.S. 480, 491–92 (1980) (quotations and citations omitted). To determine whether the procedures used to confine a person against his will comports with due-process requirements, courts use the balancing test set out in Mathews v. Eldridge, 424 U.S. 319, 335 (1976), and consider: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of the interest with the procedures; and (3) the government's interest (including any burdens that additional procedures would entail). See Parham v. J.R., 442 U.S. 584, 599–617 (1979) (applying the balancing test to the voluntary commitment of children to state hospitals).

Various courts have held that a hearing is not required before a person is involuntarily committed on an emergency basis. See, e.g., Luna v. Van Zandt, 554 F. Supp. 68, 72 (S.D. Tex. 1982); Doe v. Gallinot, 486 F. Supp. 983, 993 (C.D. Cal. 1979), aff'd, 657 F.2d 1017 (9th Cir. 1981); Coll v. Hyland, 411 F. Supp. 905, 910–11 (D.N.J. 1976). But courts have consistently held that a person "must be given a hearing within a reasonable time to test whether the confinement is based upon probable cause." See In re Barnard, 455 F.2d 1370, 1374–75 (D.C. Cir. 1971).

Courts have varied widely in evaluating the constitutionality of the time commitment or detention is allowed before a hearing is held or, in other words, what process is due after a deprivation of liberty has occurred. Some courts have upheld statutes that allow a person to be detained without a hearing for ten days or longer. See, e.g., Project Release v. Prevost, 722 F.2d 960, 974 (2d Cir. 1974) (15 days); Donahue v. R.I. Dep't of Mental Health, 632 F. Supp. 1456, 1471 (D.R.I. 1976) (ten days as the "outermost periphery of what is permissible); Coll, 411 F. Supp. at 910–11 (20 days); Logan v. Arafeh, 346 F. Supp. 1265, 1268-70 (D. Conn. 1972) (45 days). Other courts have held that hearings must be held much sooner after a person is placed involuntarily in emergency detention or custody. See, e.g., In re Barnard, 455 F.2d at 1375 (seven days); Doremus v. Farrell, 407 F. Supp. 509, 515 (D. Neb. 1975) (five days); Bartley v. Kremens, 402 F. Supp. 1039, 1049 (E.D. Pa. 1975) (three days).

****
****

(iii) If the court finds that the patient does not have a mental illness, the court shall order the patient released from emergency custody.

(c) Not less than one (1) time during every seven (7) days a person is held in continued emergency custody, an

examiner shall submit an evaluation report of the patient to the court, the county attorney, the patient's attorney and the treatment coordinator.

****

STAFF COMMENT

The Committee may wish to consider whether:

- **There should be a process specified in statute for a patient to seek termination of continued emergency custody before the end of the period in the court's order.**
- **The patient should be released if the evaluation report shows that the patient is no longer suffering from a mental illness.**

****

25-10-604. Involuntary hospitalization.

(a) If the county attorney determines that an evaluation report supports the involuntary hospitalization of a patient, the county attorney shall file a motion for involuntary hospitalization not less than three (3) days before the expiration of any existing placement order.

****

STAFF COMMENT

In subsection (b) below, the Committee may wish to consider whether an examiner (and not just a physician) can give testimony.

****

(b) If after hearing testimony from a licensed physician, the court finds by clear and convincing evidence that the patient has a mental illness and that involuntary hospitalization is the least restrictive placement available, the court may order that the patient be placed in involuntary hospitalization.

(c) During involuntary hospitalization:

(i) Any party may request a hearing for the court to determine if involuntary hospitalization is still appropriate;

(ii) Three (3) months after a patient is placed in involuntary hospitalization and every six (6) months thereafter, the facility where the patient is placed must submit to the county attorney, the patient's attorney and the treatment coordinator an evaluation report, the current

treatment plan for the patient and a recommendation for the least restrictive placement available for the patient;

(iii) At least one (1) time every twelve (12) months, the court shall hold a review hearing to determine whether the patient still has a mental illness and if the patient is in the least restrictive placement available.

25-10-605. Directed outpatient treatment.

(a) If the court finds by a preponderance of the evidence that a patient has a mental illness as defined by W.S. 25-10-503(a)(ii)(C), the court may order the patient to directed outpatient treatment if it is appropriate and the least restrictive placement available.

(b) Before ordering a patient to directed outpatient treatment, the court shall approve an initial directed outpatient treatment plan.

(c) A treatment coordinator shall supervise directed outpatient treatment. At least one (1) time every six (6) months, the treatment coordinator shall submit a directed

outpatient treatment report to the court, the county attorney and the patient's attorney. The report shall include, at a minimum, the patient's current mental condition, the current treatment plan for the patient and a recommendation for the least restrictive placement available.

(d) At least one (1) time every twelve (12) months, the court shall hold a hearing to determine whether the patient still has a mental illness and, if so, what the least restrictive placement available is for the patient.

(e) If an examiner determines that a patient has not complied with a directed outpatient treatment order, the examiner may place the patient in emergency custody in accordance with W.S. 25-10-602.

25-10-606. Minors; mental illness treatment.

(a) A parent, guardian or custodian of a minor shall obtain treatment for a minor's mental illness or mental illness in the same manner as any other illness, injury or health condition.

****

STAFF COMMENT

Under current law, the parent or guardian of a minor or incompetent person may consent to treatment. In the context of emergency detention, if a parent or guardian does not consent to the minor's treatment, a petition may be filed under the Child Protection Act. W.S. 25-10-109(f).

The Committee may wish to consider whether this requirement is better suited for Title 14 instead of Title 25.

The Committee may also wish to consider how subsection (a) would interact with W.S. 14-2-206(b), included below:

14-2-206. Protection of parental rights.

(a) The liberty of a parent to the care, custody and control of their child is a fundamental right that resides first in the parent.

(b) The state, or any agency or political subdivision of the state, shall not infringe the parental right as provided under this section without demonstrating that the interest of the government as applied to the parent or child is a compelling state interest addressed by the least restrictive means.

****

(b) A minor may consent to treatment of a mental illness the same as any other health care treatment as provided in W.S. 14-1-101(b).

****

STAFF COMMENT

W.S. 14-1-101(b) specifies the circumstances in which a minor can consent to healthcare treatment as if he were an adult:

14-1-101. Age of majority; rights on emancipation.

(b) A minor may consent to health care treatment to the same extent as if he were an adult when any one (1) or more of the following circumstances apply:

(i) The minor is or was legally married;

(ii) The minor is in the active military service of the United States;

(iii) The parents or guardian of the minor cannot with reasonable diligence be located and the minor's need for health care treatment is sufficiently urgent to require immediate attention;

(iv) The minor is living apart from his parents or guardian and is managing his own affairs regardless of his source of income;

(v) The minor is emancipated under W.S. 14-1-201 through 14-1-206;

(vi) The minor is twelve (12) years of age or older, is a smoker or user of tobacco products and the health care to which the minor consents is a tobacco cessation program approved by the department of health pursuant to W.S. 9-4-1204.

In light of this provision, the Committee may wish to consider whether subsection (b) above in the bill draft is necessary.

****

25-10-607. Minors; investigation.

When a minor is placed in emergency custody, the facility holding the minor shall attempt to notify the minor's parent or guardian that the minor is in emergency custody and where the minor is being held. If the facility is unable to contact the minor's parent or guardian and the minor's parent or guardian does not contact the facility within twenty-four (24) hours of the minor being placed in emergency custody, the facility shall report the circumstances to the department of family services and to the county attorney for that county.

****

STAFF COMMENT

The Committee discussed this issue at the November meeting regarding whether to clarify which county attorney is to be contacted in the section above (that is, the county attorney of the county where the facility is located, or where the minor resides, for example).

****

25-10-608. Minors; department of family services custody.

The department of family services shall obtain emergency treatment for a minor in its custody with a mental illness in the same manner as any other illness, injury or condition requiring medical, dental or other treatment.

Section 2. W.S. 7-6-112(a)(ii) is amended to read:

7-6-112. Applicability of provisions.

(a) This act does not apply to:

(ii) Representation of an individual in proceedings for hospitalization of mentally ill persons under W.S. ~~25-10-101 through 25-10-127~~ 25-10-501 through 25-10-705;

Section 3. W.S. 35-1-613(a)(xiv), as created by 2021 Wyoming Session Laws, Chapter 79, Section 1, and effective July 1, 2022, is amended to read:

35-1-613. Definitions.

(a) As used in this act:

(xiv) "Adults with acute mental illness" means persons who are subject to an emergency ~~detention~~ custody under W.S. ~~25-10-109~~ 25-10-602, an involuntary hospitalization order under W.S. ~~25-10-110~~ 25-10-604 or a directed outpatient ~~commitment~~ treatment order under W.S. ~~25-10-110.1~~ 25-10-605, or who were released from an emergency ~~detention~~ custody or were discharged from an involuntary hospitalization or directed outpatient ~~commitment~~ treatment order within the last six (6) months;

Section 4. W.S. 35-1-620(b)(xi), as created by 2021 Wyoming Session Laws, Chapter 79, Section 1, and effective July 1, 2022, is amended to read:

35-1-620. Powers and duties of the department and its divisions.

(b) The department shall:

(xi) Prioritize behavioral health centers for the delivery of ~~gatekeeping~~ services by treatment coordinators as provided by W.S. ~~25-10-112(g)~~ 25-10-701(g) and only assume the expenses associated with a ~~gatekeeper~~ treatment coordinator under W.S. ~~25-10-112(j)~~ 25-10-701(j) when the ~~gatekeeper~~ treatment coordinator has been contracted through a behavioral health center."

Section 5. W.S. 25-10-112, as amended by 2021 Wyoming Session Laws, Chapter 79, Section 1, and effective July 1, 2022, is amended and renumbered as 25-10-701 to read:

~~25-10-112.~~ 25-10-701. Liability for costs of emergency custody, involuntary hospitalization and proceedings therefor.

(a) Subject to the provisions of subsections (d) and (e) of this section, the county in which a person is ~~detained~~ placed in emergency custody or in which involuntary hospitalization proceedings are brought shall pay the costs of:

(i) The first seventy-two (72) hours of ~~detention~~ emergency custody, in addition to any Saturday, Sunday or legal holiday that falls within the seventy-two (72) hours, pursuant to W.S. ~~25-10-109~~ 25-10-602, including costs of medical treatment for those conditions:

(A) That resulted in the emergency ~~detention~~ custody of the person; or

(B) That are attributable to affirmative actions taken by the person that have placed the person in danger of suicide or serious bodily harm and require immediate medical attention.

(ii) Proceedings for ~~detention~~ emergency custody or involuntary hospitalization pursuant to W.S. ~~25-10-109 or 25-10-110~~ 25-10-602, 25-10-603 or 25-10-604. The costs of these proceedings include the cost of appointed counsel and examiners;

(iii) Clothing, if the person does not have and cannot afford to purchase adequate clothing; and

(iv) Costs incurred under W.S. ~~25-10-125(b)~~ 25-10-504(a)(vi).

(b) Subject to the provisions of subsection (d) of this section, when a ~~detained~~ person in emergency custody or proposed patient is not a resident of Wyoming, the department shall pay the costs listed in paragraphs (a)(i) through (iii) of this section.

(c) The county shall pay for the first seventy-two (72) hours as provided in subsection (a) of this section even if the patient waives the hearing required under W.S. ~~25-10-109~~ 25-10-602 and proceeds to ~~voluntary outpatient~~

~~treatment,~~ directed outpatient ~~commitment~~ treatment or involuntary hospitalization proceedings. Subject to the provisions of subsections (d) and (e) of this section, if continued emergency ~~detention~~ custody is ordered pursuant to W.S. ~~25-10-109(k)(iii)~~ 25-10-603, the county's liability for any costs of ~~detention~~ emergency custody, treatment or transportation shall terminate after the first seventy-two (72) hours of ~~detention~~ custody, in addition to any Saturday, Sunday or legal holiday. The department shall be responsible for those costs after the expiration of the county's responsibility for payments of the costs. All costs of treatment, transportation and continued emergency ~~detention~~ custody incurred after the first seventy-two (72) hours of ~~detention~~ custody, in addition to any Saturday, Sunday or legal holiday, shall be paid by:

(i) The department for persons hospitalized in the state hospital; and

(ii) The department for persons hospitalized in other hospitals, consistent with ~~W.S. 25-10-110(j) and 25-10-104~~ the provisions of this act.

(d) The hospital or other treatment provider shall attempt to recover all costs of treatment from public and private health insurance and from government benefit programs, including the veterans' administration, the Indian health service of the United States department of health and human services and any other federal agency that may be responsible for the costs of treatment, prior to seeking payment from the county or the department. The hospital or other treatment provider shall have discharged its obligation to recover costs under this subsection if it:

(i) Repealed by Laws 2016, ch. 102, § 3.

(ii) Certifies to the county or the department that:

(A) The patient has no public or private health insurance;

(B) There are no other government benefit programs from which it can recover the costs of treatment; and

(C) If the patient might qualify for benefits, payment has been denied after submitting a written demand for payment to all federal agencies that may be responsible for the costs of treatment, including the veterans' administration and the Indian health service of the United States department of health and human services. Payment shall be deemed denied if a written demand for payment is made and no response is received within three (3) months of being properly submitted. If a demand is paid after having been deemed denied under this subparagraph, and after the county or department has paid the hospital or other treatment provider, the amount of the demand payment shall be remitted to the county or department, whichever entity paid the hospital or other treatment provider. If a county or the department has paid a hospital or other treatment provider, the county or the department shall have a subrogation right against any entity to whom the hospital or provider sent a written demand.

(e) When a person is ~~detained under W.S. 25-10-109~~ placed in emergency custody under W.S. 25-10-602, the county in which the person resided shall be liable for

costs of treatment for the first seventy-two (72) hours of ~~detention~~ emergency custody, in addition to any Saturday, Sunday or legal holiday that falls within the seventy-two (72) hours. If the person remains in ~~detention~~ emergency custody after the hearing pursuant to W.S. ~~25-10-109(k)(iii)~~ 25-10-603, the department shall directly, or under contract with local providers, provide treatment for those conditions specified in paragraph (a)(i) of this section until the person is released from ~~detention~~ emergency custody or involuntary commitment is ordered, subject to payment of costs as provided in this subsection or subsection (c) of this section.

(f) For purposes of this section, "costs" shall not include the expenses for any medical procedures that are not:

(i) Related to the assessment of or necessary treatment for the suspected mental illness; or

(ii) Otherwise specified in paragraph (a)(i) of this section.

(g) The department in consultation with each board of county commissioners may establish a single point of responsibility or ~~gatekeeper~~ treatment coordinator. The department and each board of county commissioners shall give preference to a behavioral health center as defined by W.S. 35-1-613(a)(xvi) as the single point of responsibility. ~~Gatekeeper~~ Treatment coordinator duties shall include, but are not limited to, providing guidance on issues of ~~detention~~ emergency custody and involuntary treatment and monitoring and coordinating timely, efficient and effective patient treatment ~~prior to~~ before, during and after any emergency ~~detention~~ custody or involuntary treatment under this act. No behavioral health center designated under this subsection shall charge fees for ~~gatekeeping~~ treatment coordinator services provided under this article. No ~~gatekeeper~~ treatment coordinator designated under this subsection shall provide inpatient psychiatric treatment to patients under this act, unless the ~~gatekeeper~~ treatment coordinator has been approved by the department of health to provide these services.

(h) The county attorney shall notify the department and any ~~gatekeeper~~ treatment coordinator of any ~~detention~~

emergency custody, continued emergency ~~detention~~ custody order, directed outpatient ~~commitment~~ treatment or involuntary hospitalization order within twenty-four (24) hours.

(j) The department, boards of county commissioners, designated hospitals, ~~gatekeepers~~ treatment coordinators and other treatment providers may, upon contract or agreement, coordinate and monitor the services and payments required for the treatment of persons with mental illness as provided under this section. Pursuant to contract or agreement, the department may assume any part of the expenses associated with a ~~gatekeeper~~ treatment coordinator which expenses would otherwise be the responsibility of a county under this act, including expenses for the transportation of patients to appropriate care settings. The department may only assume any part of the expenses associated with a ~~gatekeeper~~ treatment coordinator when the ~~gatekeeper~~ treatment coordinator has been contracted through a behavioral health center as defined by W.S. 35-1-613(a)(xvi).

Section 6. W.S. 25-10-101 through 25-10-111 and 25-10-113 through 25-10-129 are repealed.

Section 7.

(a) The provisions of this act shall:

(i) Apply to any person placed in emergency custody, involuntary hospitalization or directed outpatient treatment on or after the effective date of this section;

(ii) Apply to any person who is believed to have a mental illness requiring emergency custody, involuntary hospitalization or directed outpatient treatment on or after the effective date of this section;

(iii) Apply for the calculation and reimbursement of costs and fees for any person placed in emergency custody, involuntary hospitalization or directed outpatient treatment on or after the effective date of this section;

(iv) Not apply to any person for whom emergency detention proceedings, involuntary hospitalization

proceedings or directed outpatient commitment proceedings have been initiated before the effective date of this section or to any person who is currently in emergency detention, involuntary hospitalization or subject to a directed outpatient commitment order before the effective date of this act. For persons specified under this paragraph, the provisions of W.S. 25-10-101 through 25-10-129, as they existed on June 30, 2022, shall apply.

Section 8. Not later than one hundred eighty (180) days after the effective date of this section, the department shall promulgate all rules necessary to implement this act, including the rules that the department is required to promulgate under W.S. 25-10-506(a)(iv), as created by this act.

Section 9.

(a) Except as provided in subsection (b) of this section, this act is effective July 1, 2022.

(b) Section 8 and 9 of this act are effective immediately upon completion of all acts necessary for a

bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

****

STAFF COMMENT

The Committee may wish to delay the effective date of this act to allow sufficient time for rulemaking (for example, the county attorneys' draft requires the rules to be promulgated within 180 days of the effective date).

****

(END)