

SECOND REGULAR SESSION

# HOUSE BILL NO. 1597

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HARDING (Sponsor), BOUCHER, HARLAN AND VILLA.

Read 1<sup>st</sup> time January 23, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3236L.011

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### AN ACT

To amend chapter 459, RSMo, by adding thereto sixteen new sections relating to declarations for mental health treatment.

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

Section A. Chapter 459, RSMo, is amended by adding thereto sixteen new sections, to  
2 be known as sections 459.100, 459.103, 459.106, 459.109, 459.112, 459.115, 459.118, 459.121,  
3 459.124, 459.127, 459.130, 459.133, 459.136, 459.139, 459.142 and 459.145, to read as follows:

**459.100. As used in sections 459.100 to 459.145, the following terms shall mean:**

- 2       (1) "Attending physician", the same meaning as such term is defined in section  
3 **459.010;**
- 4       (2) "Attorney-in-fact", an adult validly appointed under the laws of this state to  
5 **make mental health treatment decisions for a principal under a declaration for mental**  
6 **health treatment. Attorney-in-fact includes an alternative attorney-in-fact;**
- 7       (3) "Declaration", a document making a declaration of preferences or instructions  
8 **regarding mental health treatment and executed in accordance with the requirements of**  
9 **sections 459.100 to 459.145;**
- 10       (4) "Incapable", in the opinion of the court in a protective custody proceeding or  
11 **in the opinion of two physicians, a person's ability to receive and evaluate information**  
12 **effectively or communicate decisions is impaired to such an extent that the person**  
13 **currently lacks the capacity to make mental health treatment decisions;**
- 14       (5) "Mental health treatment", convulsive treatment, treatment of mental illness  
15 **with psychoactive medication, admission to and retention in a health care facility for a**  
16 **period not to exceed seventeen days for care or treatment of mental illness, and outpatient**  
17 **services;**

- 18 (6) "Outpatient services", treatment for a mental or emotional disorder that is
- 19 obtained by appointment and provided on an outpatient basis;
- 20 (7) "Provider", a mental health treatment provider;
- 21 (8) "Representative", an attorney-in-fact.

2 **459.103. 1. Any competent adult person may make a declaration of preferences and**  
3 **instructions regarding mental health treatment. Such preferences and instructions may**  
4 **include, but are not limited to, consent to or refusal of mental health treatment.**

5 **2. A declaration for mental health treatment shall be in effect for a period of three**  
6 **years or until revoked. The authority of an attorney-in-fact and any alternative attorney-**  
7 **in-fact named in the declaration shall be in effect as long as the declaration appointing the**  
8 **attorney-in-fact is in effect or until the attorney-in-fact withdraws. If a declaration for**  
9 **mental health treatment has been invoked and is effective at the expiration of three years**  
10 **after its execution, the declaration remains effective until the principal is no longer**  
11 **incapable.**

12 **459.106. 1. All health care and mental health care organizations shall maintain**  
13 **written policies and procedures applicable to all capable adult persons who are receiving**  
14 **mental health treatment by or through the organization. Such policies and procedures**  
15 **shall provide for:**

16 (1) **Delivery of the following written information on materials without**  
17 **recommendation:**

18 (a) **Information on the rights of such persons under Missouri law to make mental**  
19 **health treatment decisions, including the right to accept or refuse mental health treatment**  
20 **and the right to execute declarations for mental health treatment;**

21 (b) **Information on the policies of the organization with respect to implementation**  
22 **of the rights of such persons under Missouri law to make mental health treatment**  
23 **decisions;**

24 (c) **A copy of the declaration for mental health treatment set forth in section**  
25 **459.145; and**

26 (d) **The name of an individual who can provide additional information concerning**  
27 **the forms for declarations for mental health treatment;**

28 (2) **Documenting in a prominent place in such person's medical record whether he**  
29 **or she has executed a declaration for mental health treatment;**

30 (3) **Ensuring compliance by the organization with Missouri law relating to**  
31 **declarations for mental health treatment;**

32 (4) **Educating the staff and community on issues relating to declarations for mental**  
33 **health treatment.**

23           **2. An organization shall not be required to furnish a copy of a declaration for**  
24 **mental health treatment if the organization has reason to believe that a person has received**  
25 **a copy of a declaration in the form set forth in section 459.145 within the preceding twelve-**  
26 **month period or has a validly executed declaration.**

27           **3. The requirements of this section are in addition to any other requirements that**  
28 **may be imposed by federal law and shall be interpreted in a manner consistent with federal**  
29 **law. Nothing in this section shall require any health care or mental health care**  
30 **organization, or any employee or agent of an organization, to act in a manner inconsistent**  
31 **with federal law or contrary to individual religious or philosophical beliefs.**

32           **4. No health care or mental health care organization shall be subject to criminal**  
33 **prosecution or civil liability for failure to comply with this section.**

**459.109. A declaration may designate a competent adult to act as attorney-in-fact**  
2 **to make decisions about mental health treatment. An alternative attorney-in-fact may also**  
3 **be designated to act as attorney-in-fact if the original designee is unable or unwilling to act**  
4 **at any time. An attorney-in-fact who has accepted the appointment in writing may make**  
5 **decisions about mental health treatment on behalf of the principal only when the principal**  
6 **is incapable. Such decisions shall be consistent with any desires the principal has**  
7 **expressed in the declaration.**

**459.112. A declaration is effective only if it is signed by the principal and two**  
2 **competent adult witnesses. The witnesses must attest that the principal:**

3           **(1) Is known to them;**

4           **(2) Signed the declaration in their presence; and**

5           **(3) Appears to be of sound mind and not under duress, fraud, or undue influence.**

**459.115. A declaration is operative when it is delivered to the principal's physician**  
2 **or other mental health treatment provider and remains valid until revoked or expired. If**  
3 **the principal is incapable, the physician or provider shall act in accordance with an**  
4 **operative declaration. If the principal is capable of providing informed consent or refusal,**  
5 **the physician or provider shall obtain the principal's informed consent to all mental health**  
6 **treatment decisions.**

**459.118. 1. An attorney-in-fact shall not make mental health treatment decisions**  
2 **unless the principal is incapable.**

3           **2. An attorney-in-fact is not, as a result of acting in such capacity, personally liable**  
4 **for the cost of treatment provided to the principal.**

5           **3. Except to the extent the right is limited by the declaration or federal law, an**  
6 **attorney-in-fact has the same right as the principal to receive information regarding the**  
7 **proposed mental health treatment and to receive, review, and consent to disclosure of**

8 medical records relating to such treatment. Such right of access does not waive any  
9 evidentiary privilege.

10 4. In exercising authority pursuant to the declaration, an attorney-in-fact shall act  
11 consistently with the desires of the principal as expressed in the declaration. If the  
12 principal's desires are not expressed in the declaration and not otherwise known by the  
13 attorney-in-fact, the attorney-in-fact shall act in what the attorney-in-fact in good faith  
14 believes to be the best interest of the principal.

15 5. An attorney-in-fact is not subject to criminal prosecution, civil liability, or  
16 professional disciplinary action for any action taken in good faith pursuant to a declaration  
17 for mental health treatment.

459.121. No person shall be required to execute or refrain from executing a  
2 declaration as a criterion for insurance, as a condition for receiving mental or physical  
3 health services, or as a condition of discharge from a health care facility.

459.124. If presented with a declaration, a physician or other provider shall make  
2 the declaration a part of the principal's medical record. When acting under the authority  
3 of a declaration, a physician or provider shall comply with the declaration to the fullest  
4 extent possible, consistent with reasonable medical practice, the availability of treatments  
5 requested, and applicable law. If the physician or other provider is unable or unwilling  
6 at any time to carry out preferences or instructions contained in a declaration or the  
7 decisions of the attorney-in-fact, the physician or provider may withdraw from providing  
8 treatment if withdrawal is consistent with the exercise of independent medical judgment  
9 that is in the best interest of the principal. Upon withdrawal, a physician or provider shall  
10 promptly notify the principal and the attorney-in-fact and document the notification in the  
11 principal's medical record.

459.127. 1. A physician or provider may subject the principal to mental health  
2 treatment in a manner contrary to the principal's wishes as expressed in a declaration for  
3 mental health treatment only:

4 (1) If the principal is committed for mental health treatment or evaluation pursuant  
5 to sections 632.300 to 632.475, RSMo, or sections 632.480 to 632.513, RSMo; or

6 (2) In an emergency situation endangering life or health.

7 2. A declaration does not limit the authority provided in sections 632.300 to  
8 632.475, RSMo, and sections 632.480 to 632.513, RSMo, to take a person into custody, or  
9 to admit, retain, or treat a person in a health care facility.

459.130. A declaration may be revoked in whole or in part at any time by the  
2 principal if the principal is not incapable. A revocation is effective when a capable  
3 principal communicates the revocation to the attending physician or other provider. The

4 attending physician or other provider shall note the revocation as part of the principal's  
5 medical record.

459.133. A physician or other provider who administers or does not administer  
2 mental health treatment according to and in good faith reliance upon the validity of a  
3 declaration is not subject to criminal prosecution, civil liability, or professional disciplinary  
4 action resulting from a subsequent finding of a declaration's invalidity.

459.136. None of the following persons shall serve as an attorney-in-fact:

2 (1) The attending physician or mental health service provider, or an employee of  
3 the physician or provider, if the physician, provider, or employee is unrelated to the  
4 principal by blood, marriage, or adoption; or

5 (2) An owner, operator, or employee of a health care facility in which the principal  
6 is a patient or resident, if the owner, operator, or employee is unrelated to the principal by  
7 blood, marriage, or adoption.

459.139. None of the following persons shall serve as a witness to the signing of a  
2 declaration:

3 (1) The attending physician or mental health service provider, or a relative of the  
4 physician or provider; or

5 (2) An owner, operator, or relative of an owner or operator of a health care facility  
6 in which the principal is a patient or resident.

459.142. 1. An attorney-in-fact may withdraw by giving notice to the principal. If  
2 a principal is incapable, the attorney-in-fact may withdraw by giving notice to the  
3 attending physician or provider. The attending physician or provider shall note the  
4 withdrawal as part of the principal's medical record.

5 2. A person who has withdrawn pursuant to subsection 1 of this section may  
6 rescind the withdrawal by executing an acceptance after the date of withdrawal. The  
7 acceptance shall be in the same form as provided by section 459.145 for accepting an  
8 appointment. A person who rescinds a withdrawal shall give notice to the principal if the  
9 principal is capable or the principal's health care provider if the principal is incapable.

459.145. A declaration for mental health treatment shall be in substantially the  
2 following form:

3 **DECLARATION FOR MENTAL HEALTH TREATMENT**

4 I, ....., being an adult of sound mind, willfully and voluntarily make this  
5 declaration for mental health treatment. I want this declaration to be followed if a court  
6 or two physicians determine that I am unable to make decisions for myself because my  
7 ability to receive and evaluate information effectively or communicate decisions is impaired  
8 to such an extent that I lack the capacity to refuse or consent to mental health treatment.

9 "Mental health treatment" means treatment of mental illness with psychoactive  
10 medication, admission to and retention in a health care facility for a period up to seventeen  
11 days, convulsive treatment and outpatient services that are specified in this declaration.

12 **CHOICE OF DECISION MAKER**

13 **If I become incapable of giving or withholding informed consent for mental health**  
14 **treatment, I want these decisions to be made by: (INITIAL ONLY ONE)**

15 **..... My appointed representative consistent with my desires, or, if my desires are**  
16 **unknown by my representative, in what my representative believes to be my best interests.**

17 **..... By the mental health treatment provider who requires my consent in order to**  
18 **treat me, but only as specifically authorized in this declaration.**

19 **APPOINTED REPRESENTATIVE**

20 **If I have chosen to appoint a representative to make mental health treatment**  
21 **decisions for me when I am incapable, I am naming that person here. I may also name an**  
22 **alternate representative to serve. Each person I appoint must accept my appointment in**  
23 **order to serve. I understand that I am not required to appoint a representative in order**  
24 **to complete this declaration.**

25

26 **I hereby appoint:**

27 **NAME .....**

28 **ADDRESS .....**

29 **TELEPHONE # .....**

30

31 **to act as my representative to make decisions regarding my mental health treatment if I**  
32 **become incapable of giving or withholding informed consent for that treatment.**

33 **(OPTIONAL)**

34 **If the person named above refuses or is unable to act on my behalf, or if I revoke**  
35 **that person's authority to act as my representative, I authorize the following person to act**  
36 **as my representative:**

37

38 **NAME .....**

39 **ADDRESS .....**

40 **TELEPHONE # .....**

41

42 **My representative is authorized to make decisions that are consistent with the**  
43 **wishes I have expressed in this declaration or, if not expressed, as are otherwise known to**  
44 **my representative. If my desires are not expressed and are not otherwise known by my**  
**representative, my representative is to act in what he or she believes to be my best interests.**

45 My representative is also authorized to receive information regarding proposed mental  
46 health treatment and to receive, review, and consent to disclosure of medical records  
47 relating to that treatment.

48 **DIRECTIONS FOR**  
49 **MENTAL HEALTH TREATMENT**

50 This declaration permits me to state my wishes regarding mental health treatments  
51 including psychoactive medications, admission to and retention in a health care facility for  
52 mental health treatment for a period not to exceed seventeen days, convulsive treatment,  
53 and outpatient services.

54 If I become incapable of giving or withholding informed consent for mental health  
55 treatment, my wishes are:

56 I CONSENT TO THE FOLLOWING MENTAL HEALTH TREATMENTS: (May  
57 include types and dosage of medications, short-term inpatient treatment, a preferred  
58 provider or facility, transport to a provider or facility, convulsive treatment, or alternative  
59 outpatient treatments.)

60 .....  
61 .....  
62 .....

63 I DO NOT CONSENT TO THE FOLLOWING MENTAL HEALTH  
64 TREATMENT: (Consider including your reasons, such as past adverse reaction, allergies,  
65 or misdiagnosis. Be aware that a person may be treated without consent if the person is  
66 held pursuant to civil commitment law.)

67 .....  
68 .....  
69 .....

70 ADDITIONAL INFORMATION ABOUT MY MENTAL HEALTH TREATMENT  
71 NEEDS: (Consider including mental or physical health history, dietary requirements,  
72 religious concerns, people to notify, and other matters of importance.)

73 .....  
74 .....  
75 .....

76  
77 YOU MUST SIGN HERE FOR THIS DECLARATION TO BE EFFECTIVE:

78 .....

79 (Signature/Date)

80

**AFFIRMATION OF WITNESSES**

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- I affirm that the person signing this declaration:**
- (a) Is personally known to me;**
- (b) Signed or acknowledged his or her signature on this declaration in my presence;**
- (c) Appears to be of sound mind and not under duress, fraud, or undue influence;**
- (d) Is not related to me by blood, marriage, or adoption;**
- (e) Is not a patient or resident in a facility that I or my relative owns or operates;**
- (f) Is not my patient and does not receive mental health services from me or my relative; and**
- (g) Has not appointed me as a representative in this document.**

**Witnessed by:**

.....

**Signature of Witness (Printed Name of Witness/Date)**

95

.....

**Signature of Witness (Printed Name of Witness/Date)**

**ACCEPTANCE OF APPOINTMENT AS REPRESENTATIVE**

**I accept this appointment and agree to serve as representative to make mental health treatment decisions. I understand that I must act consistently with the desires of the person I represent, as expressed in this declaration or, if not expressed, as otherwise known by me. If I do not know the desires of the person I represent, I have a duty to act in what I believe in good faith to be that person's best interest. I understand that this document gives me authority to make decisions about mental health treatment only while that person has been determined to be incapable of making those decisions by a court or two physicians. I understand that the person who appointed me may revoke this declaration in whole or in part by communicating the revocation to the attending physician or other provider when the person is not incapable.**

109

.....

**Signature of Representative (Printed name/Date)**

112

.....

**Signature of Alternate (Printed name)**

**Representative/Date**

**NOTICE TO PERSON MAKING A DECLARATION  
FOR MENTAL HEALTH TREATMENT**

**This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:**

**This document allows you to make decisions in advance about certain types of mental health treatment: psychoactive medication, short-term (not to exceed seventeen days) admission to a treatment facility, convulsive treatment, and outpatient services. Outpatient services are mental health services provided by appointment by licensed professionals and programs. The instructions that you include in this declaration will be followed only if a court or two physicians believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments. Your instructions may be overridden if you are being held pursuant to civil commitment law.**

**You may also appoint a person as your representative to make treatment decisions for you if you become incapable. The person you appoint has a duty to act consistently with your desires as stated in this document or, if not stated, as otherwise known by the representative. If your representative does not know your desires, he or she must make decisions in your best interests. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your representative at any time. A "representative" is also referred to as an "attorney-in-fact" in state law but this person does not need to be an attorney-at-law.**

**This document will continue in effect for a period of three years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable.**

**You have the right to revoke this document in whole or in part at any time you have not been to be incapable. YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT OR TWO PHYSICIANS. A revocation is effective when it is communicated to your attending physician or other provider.**

**If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration will not be valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.**

**NOTICE TO PHYSICIAN OR PROVIDER**

**Under Missouri law, a person may use this declaration to provide consent for mental health treatment or to appoint a representative to make mental health treatment**

153 **decisions when the person is incapable of making those decisions. A person is "incapable"**  
154 **when, in the opinion of a court or two physicians, the person's ability to receive and**  
155 **evaluate information effectively or communicate decisions is impaired to such an extent**  
156 **that the person currently lacks the capacity to make mental health treatment decisions.**  
157 **This document becomes operative when it is delivered to the person's physician or other**  
158 **provider and remains valid until revoked or expired. Upon being presented with this**  
159 **declaration, a physician or provider must make it a part of the person's medical record.**  
160 **When acting under authority of the declaration, a physician or provider must comply with**  
161 **it to the fullest extent possible. If the physician or provider is unwilling to comply with the**  
162 **declaration, the physician or provider may withdraw from providing treatment consistent**  
163 **with professional judgment and must promptly notify the person and the person's**  
164 **representative and document the notification in the person's medical record. A physician**  
165 **or provider who administers or does not administer mental health treatment according to**  
166 **and in good faith reliance upon the validity of this declaration is not subject to criminal**  
167 **prosecution, civil liability, or professional disciplinary action resulting from a subsequent**  
168 **finding of the declaration's invalidity.**