

1 SEC. 4. Chapter two hundred seventeen (217), Code 1973, is
2 amended by adding the following new section:

3 NEW SECTION. An inmate who objects to confinement in a re-
4 ceiving state pursuant to the interstate corrections compact may
5 request a hearing before a board appointed by the governor and
6 serving at his pleasure and composed of three members of the gen-
7 eral public, one of whom shall be a former inmate. Members of the
8 board shall be paid forty dollars per diem and actual and necessary
9 expenses from appropriated funds.

10 The board shall bar the transfer of the inmate to a receiving state
11 when a majority of its members are of the opinion that the transfer
12 does not serve to promote the treatment, rehabilitation, or best inter-
13 ests of the offender. The burden of proof shall lie with the depart-
14 ment of social services and all decisions of the hearing board shall
15 be final.

Approved March 7, 1973.

CHAPTER 179

PLACEMENT OF MENTALLY RETARDED PATIENTS

H. F. 240

AN ACT relating to the placement of patients admitted or committed to the state hospital-schools for the mentally retarded or to a special mental retardation unit in facilities outside those institutions.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Section two hundred twenty-two point fifty-nine
2 (222.59), Code 1973, is amended to read as follows:

3 222.59 Superintendent may return patient.

4 1. The superintendent of a hospital-school or a special unit may,
5 on application of the parent or guardian, at any time return a patient
6 to the parent, or guardian, or. The superintendent in cooperation
7 with other social agencies under the supervision of the Iowa depart-
8 ment of social services either responsible person or community agency,
9 may arrange for the patient to be placed at an appropriate health
10 care facility licensed under chapter one hundred thirty-five C (135C)
11 of the Code or at some other appropriate facility, which may include
12 a foster home or group home, either under an arrangement which
13 involves full-time responsibility for the patient by such facility, or
14 as part of an arrangement under which the patient is to participate
15 in one or more educational, developmental or employment programs
16 conducted by other responsible persons, agencies or facilities. Such
17 return or placement may be made at any time, even though such the
18 patient was committed by a court, upon recommendation of the pro-
19 fessional staff of the hospital-school or special unit that the patient
20 is unlikely to benefit from further treatment, training, instruction,
21 or care at the institution or is likely to improve his life status in an
22 alternate facility.

23 2. In planning for the placement of a patient outside the hospital-
24 school or special unit, it shall be the superintendent's responsibility
25 to arrange for representation of the patient's interest by the patient's

26 parent or legal guardian. If the patient has no living parent and no
27 legal guardian other than the department or one of its officers or
28 employees, the superintendent shall request some person who has
29 demonstrated by prior activities an informed concern for the welfare
30 and habilitation of the mentally retarded, and who is not an officer
31 or employee of the department nor of any agency or facility which
32 is a party to the arrangement for placement of the patient, to act as
33 the patient's advocate. The superintendent may request some such
34 person to serve as advocate for a patient who has no legal guardian
35 if either or both of the patient's parents are living but are deemed
36 unlikely to or have shown themselves unable to represent the patient's
37 interest effectively due to physical or mental infirmity, residence out-
38 side the state at such a distance as to make their effective participa-
39 tion unfeasible, or lack of interest demonstrated by refusal to par-
40 ticipate in planning for the patient's placement or by failure to
41 respond within thirty days to a letter sent by restricted certified mail
42 to the last known address of the parent or parents.

43 3. ~~Such action~~ Each proposed placement shall be reported to the
44 state director, who may approve, modify, alter, or rescind the action
45 if deemed necessary. In so doing, the superintendent of the hospital-
46 school or special unit involved shall certify in writing to the state
47 director that there has been compliance with subsection two (2) of
48 this section and that the patient's parent, guardian or advocate is or
49 is not satisfied with the proposed placement, as the case may be. In
50 the latter case, the state director shall afford the parent, guardian or
51 advocate an opportunity to explain objections to the proposed place-
52 ment and, if he decides to approve the proposed placement despite
53 such objection, shall advise the parent, guardian or advocate of his
54 right to appeal the decision pursuant to subsection four (4) of this
55 section.

56 4. If a proposed placement of a patient from a hospital-school or
57 special unit which is not satisfactory to the patient's parent, guardian
58 or advocate is approved by the state director; or a proposed placement
59 which is satisfactory to the patient's parent, guardian or advocate is
60 modified, altered or rescinded by the state director, the parent, guard-
61 ian or advocate may appeal to the department of social services,
62 within thirty days after notification to the parent, guardian or advo-
63 cate of the proposed placement. The department shall give the appel-
64 lant reasonable notice and opportunity for a fair hearing, conducted
65 by the commissioner or his designee who shall act as an impartial
66 arbiter of fact and law. In such hearing the parent, guardian or
67 advocate shall have the opportunity to confront witnesses, to have
68 access to hospital records, to present evidence and witnesses on their
69 behalf and to be represented by counsel. The standard for such fair
70 hearing shall be to provide "that placement which inures to the best
71 interest of the patient."

72 An appellant aggrieved by the result of such hearing may, within
73 thirty days, appeal to the district court of Polk County or of the
74 county in which the appellant resides, by serving notice of such
75 appeal upon the commissioner of social services or his designee, in
76 the manner required for the service of original notice in a civil action.
77 Upon such notice, the department shall furnish the appellant with a
78 copy of any papers filed by him in support of his position, a tran-

79 *script of any testimony taken, and a copy of the department's*
80 *decision.*

81 *In the district court hearings, the parent, guardian or advocate has*
82 *the right to be represented by counsel. The court shall, in all cases*
83 *where the interests of the patient conflict with that of parent, guard-*
84 *ian or advocate, appoint counsel as guardian ad litem for the patient.*

85 *In all cases where an appeal is taken from a proposed placement,*
86 *the proposed placement shall be stayed pending the outcome of said*
87 *appeal.*

88 *5. Placement of a patient outside of a hospital-school or special unit*
89 *under this section shall not relieve the Iowa department of social ser-*
90 *vices of continuing responsibility for the welfare of the patient,*
91 *except in cases of discharge under section two hundred twenty-two*
92 *point fifteen (222.15) or two hundred twenty-two point forty-three*
93 *(222.43) of the Code. Unless such a discharge has occurred, the*
94 *department shall provide for review of each placement arrangement*
95 *made under this section at least once each year, or not more often*
96 *than once each six months upon the written request of the patient's*
97 *parent, guardian or advocate, with a view to ascertaining whether*
98 *such arrangements continue to satisfactorily meet the patient's cur-*
99 *rent needs.*

100 *6. The ~~action~~ proposed return or placement of a patient outside a*
101 *hospital-school or special unit shall be ~~further~~ reported to the board*
102 *of supervisors of the patient's county of legal settlement. The county*
103 *board may not change a placement or program arranged and ap-*
104 *proved under this section if state funds are being made available to*
105 *the county which the county may by law use to pay a portion of the*
106 *cost of care of the patient so placed, however the board may at any*
107 *time propose an alternative placement or program to the state direc-*
108 *tor. No such alternative placement or program shall be carried out*
109 *without the prior written approval of the state director, which shall*
110 *be granted only after evaluation in the same manner as provided by*
111 *this section for initial placements from a hospital-school or special*
112 *unit.*

113 *7. When a patient committed by a court is to be returned to a*
114 *county, ~~either by release the parent or guardian, or placed out from~~*
115 *a hospital-school or a special unit ~~or for the purposes of convalescent~~*
116 *leave as otherwise provided by this section, notice shall be sent to the*
117 *clerk of the court which committed the patient, and to the board of*
118 *supervisors of both the patient's county of legal settlement and the*
119 *county to which the patient is to be released, thirty days prior to the*
120 *time the patient leaves the hospital-school or special unit. Patients*
121 *released from a hospital-school or a special unit may be placed in*
122 *family care by direction of the superintendent under the supervision*
123 *of such institution.*

Approved June 19, 1973.