CHAPTER 1212

SUBSTANCE ABUSER COMMITMENT OR TREATMENT

H.F. 2426

AN ACT relating to the procedures for involuntary commitment or treatment of substance abusers.

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

Section 1. Section 125.2, Code 1981, is amended by adding the following new subsections:

NEW SUBSECTION. "Respondent" means a person against whom an application is filed under section 3 of this Act.

NEW SUBSECTION. "Clerk" means the clerk of the district court.

NEW SUBSECTION. "Chief medical officer" means the medical director in charge of a public or private hospital, or the director's physician-designee. This chapter does not negate the authority otherwise reposed by chapter 226 in the respective superintendents of the state mental health institutes to make decisions regarding the appropriateness of admissions or discharges of patients of those institutes, however, it is the intent of this chapter that a superintendent who is not a licensed physician shall be guided in these decisions by the chief medical officer of the institute.

NEW SUBSECTION. "Interested person" means a person who, in the discretion of the court, is legitimately concerned that a respondent receive substance abuse treatment services.

Sec. 2. Chapter 125, Code 1981, is amended by adding sections 3 through 22 of this Act after section 125.57 as a new division.

Sec. 3. NEW SECTION. INVOLUNTARY COMMITMENT OR TREATMENT—APPLICATION. Proceedings for the involuntary commitment or treatment of a substance abuser to a facility may be commenced by the county attorney or an interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located or which is the respondent's place of residence. The clerk or the clerk's designee shall assist the applicant in completing the application. The application shall:

1. State the applicant's belief that the respondent is a substance abuser.
2. State any other pertinent facts.
3. Be accompanied by one or more of the following:

a. A written statement of a licensed physician in support of the application.

b. One or more supporting affidavits corroborating the application.

c. Corroborative information obtained and reduced to writing by the clerk or the clerk's designee, but only when circumstances make it infeasible to obtain, or when the clerk considers it appropriate to supplement, the information under either paragraph a or paragraph b.

Sec. 4. NEW SECTION. The applicant, if not the county attorney, may apply for the appointment of counsel if financially unable to employ an attorney to assist the applicant in presenting evidence in support of the application for commitment. If the applicant applies for the appointment of counsel, the application shall include a financial statement as defined in section 336B.1.

Sec. 5. NEW SECTION. SERVICE OF NOTICE. Upon the filing of an application for involuntary commitment, the clerk shall docket the case and immediately notify a district court judge who shall review the application and accompanying documentation. The clerk shall send copies of the application and supporting documentation, together with the notice informing the respondent of the procedures required by this division, to the sheriff, for immediate service upon the respondent. If the respondent is taken into custody under section 9 of this Act, service of the application, documentation, and notice upon the respondent shall be made at the time the respondent is taken into custody.

Sec. 6. NEW SECTION. PROCEDURE AFTER APPLICATION. As soon as practical after the filing of an application for involuntary commitment for treatment, the court shall:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the commitment proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting an attorney. In accordance with those determinations, the court shall allow the respondent to select an attorney or shall assign an attorney to the respondent. If the respondent is financially unable to pay an attorney, the attorney shall be compensated in substantially the same manner as provided by section 815.7, except that if the county has a public defender, the court may assign the public defender or an attorney on the public defender's staff as the respondent's attorney.

2. If the application includes a request for a court-appointed attorney for the applicant and the court is satisfied that a court-appointed attorney is necessary to assist the applicant in a meaningful presentation of the evidence, and that the applicant is financially unable to employ an attorney, the court shall appoint an attorney to represent the applicant. The attorney shall be compensated in substantially the same manner as provided by section 815.7.

3. Issue a written order:

a. Scheduling a tentative time and place for a hearing, subject to the findings of the report required under section 8, subsections 3 and 4 of this Act, but not less than forty-eight hours after notice to the respondent, unless the respondent waives the forty-eight hour notice requirement.

b. Requiring an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report of the examination to the court as required by section 8 of this Act.

Sec. 7. NEW SECTION. RESPONDENT'S ATTORNEY INFORMED. The court shall direct the clerk to furnish at once to the respondent's attorney, copies of the application for involuntary commitment of the respondent and the supporting documentation, and of the court's order issued pursuant to section 6, subsection 3 of this Act. If the respondent is taken into custody under section 9 of this Act, the attorney shall also be advised of that fact. The respondent's attorney shall represent the respondent at all stages of the proceedings and shall attend the commitment hearing.

Sec. 8. NEW SECTION. PHYSICIAN'S EXAMINATION—REPORT— SCHEDULING OF HEARING.

1. An examination of the respondent shall be conducted within a reasonable time and prior to the commitment hearing by one or more licensed physicians as required by the court's order. If the respondent is taken into custody under section 9 of this Act, the examination shall be conducted within twenty-four hours after the respondent is taken into custody. If the respondent desires, the respondent may have a separate examination by a licensed physician of the respondent's own choice. The court shall notify the respondent of the right to choose a physician for a separate examination. The reasonable cost of the examinations shall be paid from county funds upon order of the court if the respondent lacks sufficient funds to pay the cost.

A licensed physician conducting an examination pursuant to this section may consult with or request the participation in the examination of facility personnel, and may include with or attach to the written report of the examination any findings or observations by facility personnel who have been consulted or have participated in the examination.

If the respondent is not taken into custody under section 9 of this Act, but the court is subsequently informed that the respondent has declined to be examined by a licensed physician pursuant to the court order, the court may order limited detention of the respondent as necessary to facilitate the examination of the respondent by the licensed physician.

2. A written report of the examination by a court-designated physician shall be filed with the clerk prior to the hearing date. A written report of an examination by a physician chosen by the respondent may be similarly filed. The clerk shall immediately:

a. Cause a report to be shown to the judge who issued the order.

b. Cause the respondent's attorney to receive a copy of the report of a court-designated physician.

3. If the report of a court-designated physician is to the effect that the respondent is not a substance abuser, the court, without taking further action, may terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of a court-designated physician is to the effect that the respondent is a substance abuser, the court shall schedule a commitment hearing as soon as possible. The hearing shall be held not more than forty-eight hours after the report is filed, excluding Saturdays, Sundays, and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exist for delaying the hearing.

Sec. 9. NEW SECTION. IMMEDIATE CUSTODY. If a person filing an application requests that a respondent be taken into immediate custody, and the judge upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is a substance abuser who is likely to injure himself or herself or other persons if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody by the sheriff, and be detained until the commitment hearing, which shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next business day. The judge may order the respondent detained for the period of time until the hearing is held, and no longer except as provided in section 16 of this Act, in accordance with subsection 1 if possible, and if not, then in accordance with subsection 2 or, only if neither of these alternatives is available in accordance with subsection 3. Detention may be:

1. In the custody of a relative, friend, or other suitable person who is willing and able to accept responsibility for supervision of the respondent, with reasonable restrictions as the judge may order including but not limited to restrictions on or a prohibition of any expenditure, encumbrance, or disposition of the respondent's funds or property.

2. In a suitable hospital, the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered. The hospital may provide treatment which is necessary to preserve the respondent's life, or to appropriately control the respondent's behavior which is likely to result in physical injury to himself or herself or to others if allowed to continue, and other treatment as deemed appropriate by the chief medical officer.

3. In a facility in the community which is suitably equipped and staffed for the purpose, provided that detention in a jail or other facility intended for confinement of those accused or convicted of a crime shall not be ordered, except in cases of actual emergency if no other secure resource is accessible, and then only for a period of not more than twenty-four hours and under close supervision.

The respondent's attorney may be allowed by the court to present evidence and arguments before the court's determination under this section. If such an opportunity is not provided at that time, respondent's attorney shall be allowed to present evidence and arguments after the issuance of the court's order of confinement and while the respondent is confined.

Sec. 10. NEW SECTION. COMMITMENT HEARING.

1. At a commitment hearing, evidence in support of the contentions made in the application shall be presented by the applicant, or by an attorney for the applicant, or by the county attorney if the county attorney is the applicant. During the hearing the applicant and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of other interested persons. If the respondent is present at the hearing, as provided in subsection 3, and has been medicated within twelve hours, or a longer period of time as the court may designate, prior to the beginning of the hearing or a session of the hearing, the judge shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

2. A person not necessary for the conduct of the hearing shall be excluded, except that the court may admit a person having a legitimate interest in the hearing. Upon motion of the applicant, the judge may exclude the respondent from the hearing during the testimony of a witness if the judge determines that the witness' testimony is likely to cause the respondent severe emotional trauma.

3. The person who filed the application and a physician or professional who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless prior to the hearing the judge for good cause finds that their presence is not necessary. The respondent shall be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing that the attorney has conversed with the respondent, and that in the attorney's judgment the respondent cannot make a meaningful contribution to the hearing, or that the respondent has waived the right to be present, and the basis for the attorney's conclusions. A stipulation to the respondent's absence shall be reviewed by the judge before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by the respondent's absence.

4. The respondent's welfare is paramount, and the hearing shall be tried as a civil matter and conducted in as informal a manner as is consistent with orderly procedure. Discovery as permitted under the Iowa rules of civil procedure is available to the respondent. The court shall receive all relevant and material evidence, but the court is not bound by the rules of evidence. A presumption in favor of the respondent exists, and the burden of evidence and support of the contentions made in the application shall be upon the person who filed the application. If upon completion of the hearing the court finds that the contention that the respondent is a substance abuser has not been sustained by clear and convincing evidence, the court shall deny the application and terminate the proceeding.

5. If the respondent is not taken into custody under section 9 of this Act, but the court finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order limited detention of the respondent as authorized in section 9 of this Act, as is necessary to ensure that the respondent will not depart from the jurisdiction of the court without the court's approval until the proceeding relative to the respondent has been concluded.

Sec. 11. NEW SECTION. PLACEMENT FOR EVALUATION. If upon completion of the commitment hearing, the court finds that the contention that the respondent is a substance abuser has been sustained by clear and convincing evidence, the court shall order the respondent placed at a facility as expeditiously as possible for a complete evaluation and

appropriate treatment. The court shall furnish to the facility at the time of admission, a written statement of facts setting forth the evidence on which the finding is based. The administrator of the facility shall report to the court no more than fifteen days after the individual is admitted to the facility, which shall include the chief medical officer's recommendation concerning substance abuse treatment. An extension of time may be granted for a period not to exceed seven days upon a showing of good cause. A copy of the report shall be sent to the respondent's attorney who may contest the need for an extension of time if one is requested. If the request is contested, the court shall make an inquiry as it deems appropriate and may either order the respondent released from the facility or grant extension of time for further evaluation.

Sec. 12. NEW SECTION. EVALUATION REPORT. The facility administrator's report to the court of the chief medical officer's substance abuse evaluation of the respondent shall be made no later than the expiration of the time specified in section 11 of this Act. At least two copies of the report shall be filed with the clerk, who shall distribute the copies in the manner described by section 8, subsection 2 of this Act. The report shall state one of the four following alternative findings:

1. That the respondent does not, as of the date of the report, require further treatment for substance abuse. If the report so states, the court shall order the respondent's immediate release from involuntary commitment and terminate the proceedings.

2. That the respondent is a substance abuser who is in need of full-time custody, care, and treatment in a facility, and is considered likely to benefit from treatment. If the report so states, the court may order the respondent's continued placement and commitment to a facility for appropriate treatment.

3. That the respondent is a substance abuser who is in need of treatment, but does not require full-time placement in a facility. If the report so states, the report shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis, and the court may enter an order directing the respondent to submit to the recommended treatment. The order shall provide that if the respondent fails or refuses to submit to treatment, as directed by the court's order, the court may order that the respondent be taken into immediate custody as provided by section 9 of this Act and, following notice and hearing held in accordance with the procedures of sections 5 and 10 of this Act, may order the respondent treated as a patient requiring full-time custody, care, and treatment as provided in subsection 2, and may order the respondent involuntarily committed to a facility.

4. That the respondent is a substance abuser who is in need of treatment, but in the opinion of the chief medical officer is not responding to the treatment provided. If the report so states, the report shall include the facility administrator's recommendation for alternative placement, and the court may order the respondent's transfer to the recommended placement or to another placement after consultation with respondent's attorney and the facility administrator who made the report under this subsection.

Sec. 13. NEW SECTION. CUSTODY, DISCHARGE, AND TERMINATION OF PROCEEDING.

1. A respondent committed under section 12, subsection 2 of this Act, shall remain in the custody of a facility for treatment for a period of thirty days, unless sooner discharged. The department is not required to pay the cost of any medication or procedure provided to the respondent during that period which is not necessary or appropriate to the specific objectives of detoxification and treatment of substance abuse. At the end of the thirty-day period, the respondent shall be discharged automatically unless the administrator of the facility, before

expiration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 3 of this Act, for a further period not to exceed ninety days.

2. A respondent recommitted under subsection 1 who has not been discharged by the facility before the end of the ninety-day period shall be discharged at the expiration of that period unless the administrator of the facility, before expiration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 3 of this Act, for a further period not to exceed ninety days.

3. Upon the filing of an application for recommitment under subsection 1 or 2, the court shall schedule a recommitment hearing for no later than ten days after the date the application is filed. A copy of the application, the notice of hearing, and any reports shall be served or provided in the manner and to the persons as required by sections 5 through 8, 11, and 12 of this Act.

4. Following a respondent's discharge from a facility or from treatment, the administrator of the facility shall immediately report that fact to the court which ordered the respondent's commitment or treatment. The court shall issue an order confirming the respondent's discharge from the facility or from treatment, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by certified mail to the facility and the respondent.

Sec. 14. NEW SECTION. PERIODIC REPORTS REQUIRED.

1. No more than thirty days after entry of a court order for commitment to a facility under section 12, subsection 2 of this Act, and thereafter at successive intervals not to exceed ninety days for as long as involuntary commitment of the respondent continues, the administrator of the facility shall report to the court which entered the order. The report shall be submitted in the manner required by section 12 of this Act, shall state whether in the opinion of the chief medical officer the respondent's condition has improved, remains unchanged, or has deteriorated, and shall indicate the further length of time the respondent will be required to remain at the facility.

2. No more than sixty days after entry of a court order for treatment of a respondent under section 12, subsection 3 of this Act, and thereafter at successive intervals not to exceed ninety days for as long as involuntary treatment continues, the administrator of the facility shall report to the court which entered the order. The report shall be submitted in the manner required by section 12 of this Act, shall state whether in the opinion of the chief medical officer the respondent's condition has improved, remains unchanged, or has deteriorated, and shall indicate the further length of time the respondent will require treatment by the facility. If the respondent fails or refuses to submit to treatment as ordered by the court, the administrator of the facility shall at once notify the court, which shall order the respondent committed for treatment as provided by section 12, subsection 3 of this Act, unless the court finds that the failure or refusal was with good cause, and that the respondent is willing to receive treatment as provided in the court's order, or in a revised order if the court sees fit to enter one. If the administrator of the facility reports to the court that the respondent requires full-time custody, care, and treatment in a facility, and the respondent is willing to be admitted voluntarily to the facility for these purposes, the court may enter an order approving the placement upon consultation with the administrator of the facility in which the respondent is to be placed. If the respondent is unwilling to be admitted voluntarily to the facility, the procedure for determining involuntary commitment, as provided in section 12, subsection 3 of this Act, shall be followed.

Sec. 15. NEW SECTION. STATUS DURING APPEAL. If a respondent appeals to the supreme court from a lower court's finding that commitment is warranted, the respondent shall remain committed if already in custody, pursuant to an order of immediate custody under

section 9 of this Act or pursuant to an order for evaluation and treatment under section 11 of this Act, before notice of appeal was filed, unless the supreme court orders otherwise.

Sec. 16. NEW SECTION. STATUS IF COMMITMENT DELAYED. If a court directs a respondent who was previously ordered taken into immediate custody under section 9 of this Act to be placed at a facility for evaluation and appropriate treatment under section 11 of this Act, and no suitable facility can immediately admit the respondent, the respondent shall remain in custody as previously ordered by the court, notwithstanding the time limits stated in section 9 of this Act, until a suitable facility can admit the respondent. The court shall take appropriate steps to expedite the admission of the respondent to a suitable facility at the earliest feasible time.

Sec. 17. NEW SECTION. RESPONDENTS CHARGED WITH OR CONVICTED OF CRIME.

1. If a court orders a respondent placed at a facility for evaluation and treatment under section 11 of this Act at a time when the respondent has been convicted of a public offense, or when there is pending against the respondent an unresolved formal charge of a public offense, and the respondent's liberty has therefore been restricted in any manner, the findings of fact required by section 11 of this Act shall clearly so inform the administrator of the facility where the respondent is placed.

2. The commitment powers of the court under section 204.409, subsection 2 supersede the procedures and requirements of this division.

Sec. 18. NEW SECTION. JUDICIAL HOSPITALIZATION REFEREE. Judicial hospitalization referees shall be utilized as provided in section 229.21 for performing the duties of the court prescribed by this division.

Sec. 19. NEW SECTION. EMERGENCY DETENTION.

1. The procedure prescribed by this section shall only be used for an intoxicated person who has threatened, attempted, or inflicted physical self-harm or harm on another, and is likely to inflict physical self-harm or harm on another unless immediately detained, or who is incapacitated by a chemical substance, if that person cannot be taken into immediate custody under sections 3 and 9 of this Act because immediate access to the court is not possible.

2. A peace officer who has reasonable grounds to believe that the circumstances described in subsection 1 are applicable, may, without a warrant, take or cause that person to be taken to the nearest available facility referred to in section 9, subsection 2 or 3 of this Act. Such an intoxicated or incapacitated person may also be delivered to a facility by someone other than a peace officer upon a showing of reasonable grounds. Upon delivery of the person to a facility under this section, the chief medical officer may order treatment of the person, but only to the extent necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue. The peace officer or other person who delivered the person to the facility shall describe the circumstances of the matter to the administrator. If the administrator in consultation with the chief medical officer has reasonable grounds to believe that the circumstances in subsection 1 are applicable, the administrator shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 6. The magistrate shall immediately proceed to the facility where the person is detained, except that if the administrator's communication with the magistrate occurs between the hours of midnight and seven a.m. and the magistrate deems it appropriate under the circumstances described by the administrator, the magistrate may delay going to the facility, and in that case, shall give the administrator verbal instructions either directing that the person be released forthwith, or authorizing the person's continued detention at the facility. In the latter case, the magistrate shall:

a. Arrive at the facility where the person is being detained as soon as possible and no later than twelve o'clock noon of the same day on which the administrator's communication occurred.

b. By the close of business on the next working day file with the clerk a written report stating the substance of the communication with the administrator on which the person's continued detention was ordered.

3. Upon arrival at the facility, the magistrate shall at once review the validity of the detention. Unless convinced upon initial inquiry that there are no grounds for further detention of the person, the magistrate shall ensure that the person has or is provided legal counsel at the earliest practical time in the manner prescribed by section 6, subsection 1 of this Act, and shall arrange for the counsel to be present, if practical, before proceeding further under this subsection. The magistrate shall immediately notify counsel of the respondent's emergency detention. Counsel shall be afforded an opportunity to visit the respondent and to make appropriate preparations before or after the magistrate's order is issued. If the magistrate finds, upon review of the information presented by the administrator under subsection 2 and of other information or evidence the magistrate deems relevant, that there is probable cause to believe that the circumstances described in subsection 1 are applicable, the magistrate shall enter a written order detaining the person at the facility, or, if the facility where the person is at the time is not an appropriate facility, detaining and transporting the person to an appropriate facility. The magistrate's order shall state the circumstances under which the person was detained or otherwise delivered to a facility, and the grounds supporting the finding of probable cause to believe that person is a substance abuser likely to physically injure himself or herself or others if not detained. The order shall be filed with the clerk in the county where it is anticipated that an application will be filed under section 3 of this Act, and a certified copy of the order shall be delivered to the administrator of the facility where the person is detained, at the earliest practical time.

4. The chief medical officer of the facility shall examine and may detain the person pursuant to the magistrate's order for a period not to exceed forty- eight hours from the time the order is dated, excluding Saturdays, Sundays, and holidays, unless the order is dismissed by a magistrate. The facility may provide treatment which is necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue or is otherwise deemed medically necessary by the chief medical officer, but shall not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility and released from detention no later than the expiration of the forty-eight hour period, unless an application for involuntary commitment is filed with the clerk pursuant to section 3 of this Act. The detention of a person by the procedure in this section, and not in excess of the period of time prescribed by this section, shall not render the peace officer, physician, or facility detaining the person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, or facility had reasonable grounds to believe that the circumstances described in subsection 1 were applicable.

5. The cost of detention in a facility under the procedure prescribed in this section shall be paid in the same way as if the person had been committed to the facility pursuant to an application filed under section 3 of this Act.

Sec. 20. NEW SECTION. RIGHTS AND PRIVILEGES OF COMMITTED PERSONS. A person who is detained, taken into immediate custody, or committed under this division has the right to:

1. Prompt evaluation, emergency services, and care and treatment as indicated by sound clinical practice.

2. Render informed consent, except for treatment provided pursuant to sections 9 and 19 of this Act. If the person is incompetent treatment may be consented to by the person's next of kin or guardian notwithstanding the person's refusal. If the person refuses treatment which in the opinion of the chief medical officer is necessary or if the person is incompetent and the next of kin or guardian refuses to consent to the treatment or no next of kin or guardian is available the facility may petition a court of appropriate jurisdiction for approval to treat the person.

3. The protection of the person's constitutional rights.

4. Enjoy all legal, medical, religious, social, political, personal, and working rights and privileges, which the person would enjoy if not detained, taken into immediate custody, or committed, consistent with the effective treatment of the person and of the other persons in the facility. If the person's rights are restricted, the physician's direction to that effect shall be noted in the person's record. The person or the person's next of kin or guardian shall be advised of the person's rights and be provided a written copy upon the person's admission to or arrival at the facility.

Sec. 21. NEW SECTION. COMMITMENT RECORDS—CONFIDENTIALITY. Records of the identity, diagnosis, prognosis, or treatment of a person which are maintained in connection with the provision of substance abuse treatment services are confidential, consistent with the requirements of section 125.37, and with the federal confidentiality regulations authorized by the Drug Abuse Office and Treatment Act, 21 U.S.C. sec. 1175 (1976) and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, 42 U.S.C. sec. 4582 (1976).

Sec. 22. NEW SECTION. SUPREME COURT RULES. The supreme court may prescribe rules of pleading, practice, and procedure and the forms of process, writs, and notices, for all commitment proceedings in a court of this state under this chapter. Any rules so prescribed shall be drawn for the purpose of simplifying and expediting the proceedings, so far as is consistent with the rights of the parties involved. The rules shall not abridge, enlarge, or modify the substantive rights of a party to a commitment proceeding under this chapter.

Sec. 23. Section 125.12, subsection 3, Code 1981, is amended to read as follows:

3. The director shall provide for adequate and appropriate treatment for substance abusers and intoxicated persons admitted under sections 125.33 ~~to 125.35 and 125.53~~ and 125.34, or under section 3, 9, or 19 of this Act. Treatment shall not be provided at a correctional institution except for inmates.

Sec. 24. Section 125.34, Code 1981, is amended to read as follows:

125.34 TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL.

1. An intoxicated person may come voluntarily to a facility for emergency treatment. A person who appears to be intoxicated or incapacitated by a chemical substance in a public place and in need of help ~~shall~~ may be taken to a facility by a peace officer under section 19 of this Act. If the person refuses the proffered help, the person may be arrested and charged with intoxication under section 123.46, if applicable.

2. If no facility is readily available the person may be taken to an emergency medical service customarily used for incapacitated persons. The peace officer in detaining the person and in taking the person to a facility~~, is taking the person into protective custody and~~ shall make every reasonable effort to protect the person's health and safety. In ~~taking~~ detaining the person ~~into protective custody,~~ the detaining officer may take reasonable steps for self-protection. ~~A taking into protective custody~~ Detaining a person under ~~this~~ section 19 of this Act is not an arrest and no entry or other record shall be made to indicate that the person who

is ~~taken into protective custody~~ detained has been arrested or charged with a crime.

3. A person who ~~comes voluntarily or is brought to~~ arrives at a facility and voluntarily submits to examination shall be examined by a licensed physician as soon as possible, but not later than twelve hours after the person ~~comes voluntarily or is brought to~~ arrives at the facility. ~~He~~ The person may then be admitted as a patient or referred to another health facility. The referring facility shall arrange for ~~his~~ transportation.

~~4. A person who is found to be intoxicated or incapacitated by a chemical substance after examination by a qualified health professional shall be required to remain at the facility until the qualified health professional determines that the person is not likely to inflict physical self harm or inflict physical harm on others. If the person is detained longer than twenty-four hours the qualified health professional shall examine him or her at least once every twelve hours to determine if further detention is necessary. The qualified health professional shall enter a written order for the person to be detained in custody. Such order shall state the circumstances under which the person was taken into custody and the grounds supporting the finding or probable cause to believe that he or she is sufficiently impaired or incapacitated by a chemical substance to cause physical injury to himself or herself or others if released. The order shall be filed in the district court of the area in which the person is detained.~~

~~5~~ 4. If a ~~patient~~ person is voluntarily admitted to a facility, ~~his~~ the person's family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, ~~his~~ the request shall be respected.

~~6~~ 5. A peace officer who acts in compliance with this section is acting in the course of ~~his~~ the officer's official duty and is not criminally or civilly liable therefor, unless such acts constitute willful malice or abuse.

~~7~~ 6. If the physician in charge of the facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

7. A licensed physician and surgeon or osteopathic physician and surgeon, facility administrator, or an employee or a person acting as or on behalf of the facility administrator, is not criminally or civilly liable for acts in conformity with this chapter, unless the acts constitute willful malice or abuse.

Sec. 25. Section 125.44, unnumbered paragraph 6, Code 1981, is amended to read as follows:

The department is liable for the cost of care, treatment, and maintenance of a substance abuser admitted to the facility voluntarily or pursuant to section ~~125.34, 125.35,~~ 3, 9, or 19 of this Act or section 321.281, 321.283, subsection 3, or 204.409, subsection 2 ~~or 229.52~~ only to those facilities that have a contract with the department under this section, only for the amount computed according to and within the limits of liability prescribed by this section, and only when the substance abuser is unable to pay ~~such~~ the costs and there is no other person, firm, corporation or insurance company bound to pay ~~such~~ the costs.

Sec. 26. Section 125.45, subsection 1, Code 1981 Supplement, is amended to read as follows:

1. Except as provided in section 125.43, each county shall pay for the remaining twenty-five percent of the cost of the care, maintenance, and treatment under this chapter of residents of that county from the levy authorized by section 331.421, subsection 13. The commission shall establish guidelines for use by the counties in estimating the amount of expense which the county will incur each year. The facility shall certify to the county of residence once each month twenty-five percent of the unpaid cost of the care, maintenance, and treatment of a substance abuser. However, the approval of the board of supervisors is required before payment is made by a county for costs incurred which exceed a total of five hundred dollars for one year for treatment provided to any one substance abuser, except that approval is not required for the cost of treatment provided to a substance abuser who is ~~committed~~ detained pursuant to section ~~125.35~~ 19 of this Act. A facility may, upon approval of the board of supervisors, submit to a county a billing for the aggregate amount of all care, maintenance, and

treatment of substance abusers who are residents of that county for each month. The board of supervisors may demand an itemization of billings at any time or may audit them.

Sec. 27. Section 229.21, Code 1981, is amended to read as follows:

229.21 JUDICIAL HOSPITALIZATION REFEREE.

1. The judges in each judicial district shall meet and ~~shall~~ determine, individually for each county in the district, whether ~~it appears that~~ one or more district judges or magistrates will be sufficiently accessible in that county to make it feasible for them to perform at all times the duties prescribed by sections 229.7 to 229.20 and section 229.22 and by sections ~~229.51 to 229.53~~ 3 through 22 of this Act. If the judges find that accessibility of district court judges or magistrates in any county is not sufficient for this purpose, the chief judge of the district shall appoint in that county a judicial hospitalization referee. The judges in any district may at any time review their determination, previously made under this subsection with respect to any county in the district, and pursuant to that review may authorize appointment of a judicial hospitalization referee, or abolish the office, in that county.

2. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall be chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the office. The referee shall hold office at the pleasure of and receive compensation at a rate fixed by the chief judge of the district. If the referee expects to be absent from the county for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

3. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of substance abusers under sections 3 through 22 of this Act is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge is accessible in the county, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 5 of this Act. The referee shall thereupon discharge all of the duties imposed upon judges of the district court or magistrates by sections 229.7 to 229.20 or sections 3 through 22 of this Act in the proceeding so initiated. If an emergency hospitalization proceeding is initiated under section 229.22 a judicial hospitalization referee may perform the duties imposed upon a magistrate by that section. Upon termination of the proceeding or issuance of an order under section 229.13 or section 11 of this Act, the referee shall transmit either to the chief judge, or another judge of the district court designated by the chief judge, a statement of the reasons for the referee's action and a copy of any order issued.

4. Any respondent with respect to whom the judicial hospitalization referee has found the contention that ~~he or she~~ the respondent is seriously mentally impaired or a substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 10 of this Act, may appeal from the referee's finding to a judge of the district court by giving the clerk notice in writing, within seven days after the referee's finding is made, that an appeal therefrom is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian or attorney. When so appealed, the matter shall stand for trial de novo. Upon appeal, the court shall schedule a hospitalization or commitment hearing before a district judge at the earliest practicable time.

5. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, ~~he or she~~ the appellant shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11 or section 9 of this Act, in which case the appellant shall be detained as provided in that section until the hospitalization or commitment hearing before the district judge. If

the appellant is in the custody of a hospital or facility at the time of service of the notice of appeal, ~~he or she~~ the appellant shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill or a substance abuser. In that case, the appellant shall remain in custody of the hospital or facility until the hospitalization or commitment hearing before the district court.

6. The hospitalization or commitment hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate order entered, as prescribed by sections 229.12 and 229.13 or sections 10 and 11 of this Act. If the judge orders the appellant hospitalized or committed for a complete psychiatric or substance abuse evaluation, jurisdiction of the matter shall revert to the judicial hospitalization referee.

Sec. 28. Section 125.35 and sections 229.50 through 229.53, Code 1981, are repealed.

Approved May 21, 1982

CHAPTER 1213

REGISTRATION OF GROUP DAY CARE HOMES

H.F. 303

AN ACT relating to the registration of group day care home providers.

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

Section 1. Section 237A.1, subsection 8, Code 1981, is amended to read as follows:

8. "Child care center" or "center" means a facility providing child day care for seven or more children, except when the facility is registered as a group day care home.

Sec. 2. Section 237A.1, subsection 9, Code 1981, is amended to read as follows:

9. a. "Family day care home" means a facility which provides child day care to less than seven children.

b. "Group day care home" means a facility providing child day care for more than six but less than twelve children, with no more than six children at one time being less than six years of age.

Sec. 3. Section 237A.1, subsection 10, Code 1981, is amended to read as follows:

10. "Child day care facility" or "facility" means a child care center, group day care home, or registered family day care home.

Sec. 4. Section 237A.3, Code 1981, is amended to read as follows:

237A.3 REGISTRATION OF FAMILY AND GROUP DAY CARE HOMES.

1. A person who operates or establishes a family day care home may apply to the department for registration under ~~the provisions of~~ this chapter. The department shall issue a certificate of registration upon receipt of a statement from the family day care home that the home complies with rules ~~promulgated~~ adopted by the department. The registration certificate shall be posted in a conspicuous place in the family day care home, shall state the name