

## 726.7 WANTON NEGLECT OF A RESIDENT OF A HEALTH CARE FACILITY.

1. A person commits wanton neglect of a resident of a health care facility when the person knowingly acts in a manner likely to be injurious to the physical, or mental or moral welfare of a resident of a health care facility as defined in section 135C.1. Wanton neglect of a resident of a health care facility is a serious misdemeanor.

2. A person who commits wanton neglect resulting in serious injury to a resident of a health care facility is guilty of a class "C" felony.

3. A person who commits wanton neglect not resulting in serious injury to a resident of a health care facility is guilty of an aggravated misdemeanor.

Sec. 14. Sections 1 and 2 of this Act, being deemed of immediate importance, take effect upon enactment.

Approved May 6, 1991

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**CHAPTER 108****CIVIL COMMITMENT PROCEEDINGS***S.F. 453*

**AN ACT** relating to judicial officers having jurisdiction over civil commitment proceedings and providing an effective date.

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

Section 1. Section 125.77, Code 1991, is amended to read as follows:  
125.77 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, a district associate judge, or magistrate who is admitted to the practice of law in this state, 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 125.81, service of the application, documentation, and notice upon the respondent shall be made at the time the respondent is taken into custody.

Sec. 2. Section 125.81, unnumbered paragraph 1, and subsection 1, Code 1991, are amended to read as follows:

If a person filing an application requests that a respondent be taken into immediate custody, and the judge court upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is a chronic substance abuser who is likely to injure the person or other persons if allowed to remain at liberty, the judge court 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 court may order the respondent detained for the period of time until the hearing is held, and no longer except as provided in section 125.88, 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

court 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.

Sec. 3. Section 125.82, subsections 1 through 3, Code 1991, are amended to read as follows:

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 court 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 court may exclude the respondent from the hearing during the testimony of a witness if the judge court 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 court 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 court 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.

Sec. 4. Section 229.7, Code 1991, is amended to read as follows:

**229.7 SERVICE OF NOTICE UPON RESPONDENT.**

Upon the filing of an application for involuntary hospitalization, the clerk shall docket the case and immediately notify a district court judge, district associate judge, or magistrate who is admitted to the practice of law in this state, who shall review the application and accompanying documentation. If the application is adequate as to form, the judge court may set a time and place for a hearing on the application, if feasible, but the hearing shall not be held less than forty-eight hours after notice to the respondent unless the respondent waives such minimum prior notice requirement. The judge court shall direct the clerk to send copies of the application and supporting documentation, together with a notice informing the respondent of the procedures required by this chapter, to the sheriff or the sheriff's deputy for immediate service upon the respondent. If the respondent is taken into custody under section 229.11, service of the application, documentation and notice upon the respondent shall be made at the time the respondent is taken into custody.

Sec. 5. Section 229.13, Code 1991, is amended by adding the following new unnumbered paragraph:

**NEW UNNUMBERED PARAGRAPH.** If, after placement and admission of a respondent in a hospital or other suitable facility, the respondent departs from the hospital or facility without prior proper authorization from the chief medical officer, upon receipt of notification of the respondent's departure by the chief medical officer, a peace officer of the state shall without further order of the court exercise all due diligence to take the respondent into protective custody and return the respondent to the hospital or facility.

Sec. 6. Section 229.21, Code 1991, is amended to read as follows:

## 229.21 JUDICIAL HOSPITALIZATION REFEREE.

1. The judges in each judicial district shall meet and determine, individually for each county in the district, whether 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 229.19 and section 229.22 and by sections 125.75 to 125.94. If the judges find that accessibility of district court judges or magistrates in any county is not sufficient for this purpose, the The chief judge of the each judicial district shall may appoint in that county a at least one judicial hospitalization referee for each county within the district. 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 the chief judge of the judicial district and receive compensation at a rate fixed by the chief judge of the district supreme court. 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 2. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of chronic substance abusers under sections 125.75 to 125.94 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, district associate judge, or magistrate who is admitted to the practice of law in this state is accessible in the county, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 125.77. The referee shall discharge all of the duties imposed upon judges of the district court or magistrates by sections 229.7 to 229.19 229.22 or sections 125.75 to 125.94 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. However, any commitment to a facility regulated and operated under chapter 135C, shall be in accordance with section 135C.23.

4 3. Any respondent with respect to whom the judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a chronic substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 125.82, 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 4. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, 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 125.81, 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, 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 5. 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 125.82 and 125.83. 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. 7. Section 602.6306, subsection 2, Code 1991, is amended to read as follows:

2. District associate judges also have jurisdiction in civil actions for money judgment where the amount in controversy does not exceed five thousand dollars, jurisdiction over involuntary commitment, treatment, or hospitalization proceedings under chapters 125 and 229, jurisdiction of indictable misdemeanors, and felony violations of section 321J.2, and the jurisdiction provided in section 602.7101 when designated as a judge of the juvenile court. While presiding in these subject matters a district associate judge shall employ district judges' practice and procedure.

Sec. 8. Section 602.6405, subsection 1, Code 1991, is amended to read as follows:

1. Magistrates have jurisdiction of simple misdemeanors, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, county and municipal infractions, and small claims. Magistrates have jurisdiction to exercise the powers specified in sections 644.2 and 644.12, and to hear complaints or preliminary informations, issue warrants, order arrests, make commitments, and take bail. Magistrates have jurisdiction over violations of section 123.47 involving persons eighteen years of age, and section 123.49, subsection 2, paragraph "h". Magistrates who are admitted to the practice of law in this state have jurisdiction over all proceedings for the involuntary commitment, treatment, or hospitalization of individuals under chapters 125 and 229, except as otherwise provided under section 229.6A; nonlawyer magistrates have jurisdiction over emergency detention and hospitalization proceedings under sections 125.91 and 229.22. Magistrates have jurisdiction to conduct hearings authorized under section 809.4 and section 809.10, subsection 2.

Sec. 9. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved May 6, 1991

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## CHAPTER 109

### CHILDREN, YOUTH, AND FAMILIES DIVISION — DEPARTMENTAL TRANSFER S.F. 479

**AN ACT** relating to the reassignment of duties from the division of children, youth, and families of the department of human rights to the division of child and family services within the department of human services.

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

Section 1. Section 15.108, subsection 9, paragraph a, Code 1991, is amended to read as follows:

a. Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial, agricultural, and public and private recreation and tourism opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced from them; power and water resources; transportation facilities; available markets; the availability of labor; the banking and financing facilities; the availability of industrial sites; the advantages of the state as a whole, and the particular sections of the state, as