Legislative Services Agency

LEGISLATIVE GUIDE TO INVOLUNTARY HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS

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Involuntary Hospitalization — Mental Illness

I. Overview.

This Legislative Guide discusses the historical, constitutional, and statutory basis for the involuntary hospitalization process[1] involved in the commitment of an adult person with mental illness for treatment in Iowa. The Guide includes a discussion of recent legislative changes involving involuntary commitment placements to Iowa's involuntary hospitalization statute in chapter 229 of the Iowa Code. The Guide does not cover involuntary hospitalization issues relating to prison and jail inmates, chemically dependent persons, persons with developmental disabilities or mental retardation, or minors.[2]

References, unless otherwise noted, are to the 2001 Iowa Code and the 2001 Iowa Code Supplement.

II. Introduction.

In December of 1999, the Surgeon General of the United States issued his first report on mental illness. The report stressed the fundamental importance of mental health to overall health and well-being and further recognized that mental disorders affect nearly one in five Americans in any given year. The report characterized these mental disorders as real illnesses that can be just as serious and disabling as certain physical diseases. The report further concluded that approximately 10 percent of children and adults receive mental health services from mental health specialists or general medical providers in a given year, and one in six adults obtains mental health services either from health care providers, the clergy, social service agencies, or schools in a given year.[3] The Surgeon General's findings underscore the widespread incidence of mental illness and the great need for mental health services.

Mental Health Services in Iowa. The state of Iowa operates four mental health institutes, including facilities in Cherokee, Clarinda, Independence, and Mount Pleasant. At the local level, mental health services are provided by community mental health centers, hospitals, and various private providers and practitioners. Recipients of publicly funded mental health services in Iowa include persons with primary or secondary diagnoses of mental retardation, chronic mental illness, and developmental disability. Public funding for mental health services in Iowa is provided by state, federal, and county governments, and a patient's county of legal settlement is liable for the costs associated with the custody, care, and commitment of a patient at a state hospital. The state pays for mental health services

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[1] The terms "involuntary hospitalization" and "civil commitment" are often used interchangeably. In theory, both terms signify the confinement of persons with mental illness for the purpose of treatment without their consent. Note, Contemporary Studies Project: Facts and Fallacies About Iowa Civil Commitment, 55 Iowa L. Rev. 895, 896-97 (1970), hereinafter Iowa Commitment Project. Under Iowa Code ch. 229, the term "commitment" refers to a court order which places a respondent in the custody and care of a public or private hospital, or of an alternative placement facility. Iowa Code § 229.14(2-4). "Involuntary hospitalization" is used in this Guide to refer to the judicial process for ordering the treatment and placement of with persons with mental illness in Iowa.

[2] While this Legislative Guide focuses on the judicial process for involuntary hospitalization, the policy debate in recent years has included a number of related issues. Nationwide, significant attention has focused on the availability and feasibility of both public and private funding sources for mental health treatment, including the growth of managed care and the attempt to gain parity in insurance, treatment options for individuals with a dual diagnosis of mental illness and chemical dependency, the expansion of involuntary outpatient treatment options, the creation of mental health diversion courts for persons with mental illness who commit crimes, and the enactment of sexually violent predator laws which allow the civil commitment of those persons considered sexually violent predators to mental treatment facilities after they have completed their prison sentences.

[3] U.S. Department of Health and Human Services, Mental Health: A Report of the Surgeon General. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, National Institutes of Health, National Institute of Mental Health, 1999, p.19.

for persons without a "county of legal settlement," meaning without a county responsible for payment. The total cost of operating the state mental health institutes in FY 1997 was $42.0 million.[4]

III. Historical Background.

Overview. From colonial times until the 1960s, in many states civil commitment decisions regarding persons with mental illness were frequently made by physicians and mental health professionals, with little concern for the civil and legal rights of the mental health patients. Today, however, every state employs more rigorous legal standards and greater procedural control over the commitment process. The model for these reforms has been the criminal justice system, which grants the accused a number of rights, including the right to notice of the proceedings, the right to an attorney, and the right to be heard by an impartial decision maker.

Prior to 1976, a person could be involuntarily committed in Iowa by one of four means: the two-physician certification process,[5] the district court,[6] the juvenile court,[7] or a local county commission of hospitalization.[8] Under this statute, any person could file a sworn information alleging a person was "believed to be mentally ill, and a fit subject for custody and treatment" in a state hospital.[9] "Mental illness" was defined broadly to include "every type of mental disease or mental disorder."[10]

County Hospitalization Commissions. The agency most involved in the involuntary hospitalization of persons was the local county hospitalization commission, which was composed of an attorney, a licensed physician, and a clerk of the local district court. Once the county commission of hospitalization determined there was reasonable cause to believe the allegations of mental illness, a hearing was scheduled.[11] Prior to the hearing, the commission appointed a physician to examine the person and to certify whether the person was in good mental health or was mentally ill.[12] If the commission found from the evidence that it would be in the best interests of the person to be examined at a state mental health institute, it ordered the person to be observed and treated at the screening center at the hospital in the district nearest to the county.[13] Upon hearing, the court issued a commitment order based upon the recommendation of the superintendent of the hospital at which the screening center was located.[14] Under this statute, a district court did not have original jurisdiction unless the person to be committed had been adjudicated a criminal sexual psychopath; however, the district court was authorized to hear appeals by patients from an adjudication of mental illness by the commission.[15]

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[4] Financing Mental Health Services in Iowa, Legislative Fiscal Bureau, 1999.
[5] Iowa Code § 227.15 (1975).
[6] Iowa Code § 225A.11 (1975) (Iowa's Criminal Sexual Psychopath Statute).
[7] Iowa Code § 232.34 (1975)
[8] Iowa Code §§ 228.1, 228.8 (1975).
[9] Iowa Code § 229.1 (1975).
[10] Iowa Code § 229.40 (1975).
[11] Iowa Code § 229.2 (1975).
[12] Iowa Code § 229.6 (1975).
[13] Iowa Code § 229.9 (1975).
[14] Iowa Code § 229.9 (1975).
[15] Iowa Code § 229.17 (1975).

1975 Legislative Reform. The Iowa involuntary hospitalization statute of 1975 was enacted to correct a civil commitment process which had become viewed as "largely self-propelled and uncontrolled" due in part to "administrative overdiscretion," "lack of expertise," and lack of procedural structure.[16] The 1975 law attempted to balance competing legal and medical perspectives by designing "procedures to be implemented before commitment which [would], on the one hand, maximize the likelihood that the person committed in fact requires treatment, and [would], on the other hand, result in prompt and effective treatment of those who warrant it, with the minimum of legal impediments consistent with the objective of ensuring accuracy in the commitment decision."[17] Under this legislation, the district court was given the sole responsibility for making the final decision in the commitment process, and with the authority to exercise discretion concerning the most suitable and least restrictive treatment programs for those persons found to have a serious mental impairment.[18]

This legislation also expanded the type of outpatient treatment the court could order.[19] This expansion was in response to the concern that the hospitalization commission had authority only to admit or commit an individual on a full-time basis or not at all, and no authority to utilize certain outpatient facilities.[20] The possibility of ordering outpatient treatment was also a response to a growing legal concern that the committing court utilize the least restrictive methods regarding a patient's continued detention.[21]

IV. Constitutional Due Process Limitations.

A. General Principles.

Overview. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states from unfairly or arbitrarily depriving individuals of life, liberty, or property.[22] Procedural due process limits the exercise of power by state and federal governments, by requiring that they follow certain procedures in criminal and civil matters, such as proper notice, and the opportunity for a fair and impartial hearing. In cases where an individual has claimed a violation of due process rights, the courts must determine whether the individual has been deprived of "life, liberty, or property," and what procedural protections are "due" that individual. What process is due depends upon the facts and circumstances of a particular case.[23]

Dangerousness. Civil commitment of an individual with mental illness constitutes a significant deprivation of that individual's liberty that requires due process protection.[24] In a

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[16] Bezanson, Involuntary Treatment of the Mentally Ill in Iowa: The 1975 Legislation, 61 Iowa L. Rev. 261-264 (1975) citing Iowa Contemporary Studies Project: Facts and Fallacies About Iowa Civil Commitment, 55 Iowa L. Rev. 895, 980, (1970)(thereinafter Contemporary Studies Project).

[17] Id. at 267.

[18] Id. at 265.

[19] Iowa Code § 229.14 (1977).

[20] Contemporary Studies Project at 923-927.

[21] Bezanson, 61 Iowa L. Rev. at 345, 361-362.

[22] U.S. Const. amend. XIV.

[23] In Mathews v. Eldridge, 424 U.S. 319, 335 (1976), the United States Supreme Court defined the following three-pronged test to determine what process was due in civil commitment cases: (1) the private interest to be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens involved in the additional or substitute procedural requirements.

[24] O'Connor v. Donaldson, 422 U.S. 563, 580 (1975).

1975 case, *O'Connor v. Donaldson*, the United States Supreme Court directly addressed the limitations that due process puts on a state's power to civilly commit an individual for psychiatric care and treatment. In that landmark case, the Supreme Court held that a finding that an individual has a mental illness, by itself, cannot justify a state's confinement of that individual, as long as that individual is not dangerous.[25] Both federal and state courts have interpreted this decision as requiring a finding that an individual pose a danger to self or others as a prerequisite for civil commitment and treatment.

Procedural Protections. Less than a year after *O'Connor* and after the Iowa hospitalization statute of 1975 was enacted, the federal district court for the southern district of Iowa held that Iowa's pre-1975 involuntary hospitalization statute was unconstitutional. The court also held that certain due process protections are required in civil commitment proceedings, including a hearing, the presence of the person to be committed at the hearing, the right to counsel at all significant stages of the commitment process, and the right to findings based upon a clear and convincing evidence standard.[26]

Placement for Treatment. The Supreme Court later expanded the scope of this due process protection to postcommitment proceedings to require the state to provide minimally adequate or reasonable treatment to ensure a respondent's safety and freedom from being unduly restrained.[27] This has been interpreted by the Eighth Circuit Court of Appeals to mean that an involuntarily committed person in Iowa has a protectable liberty interest in an adequate placement that will best meet that person's needs, but not a particular or specific placement.[28] The Iowa Supreme Court has subsequently held that an appropriate placement is a placement dictated by "the right to care and treatment as indicated by sound medical practice," even if that placement is only available outside the state of Iowa.[29] The Court relied on statutory language rather than the federal constitution in making this decision.[30]

B. Placement Procedures Following Commitment Order.

Recently, in *Salcido v. Woodbury County*,[31] the federal district court for the northern district of Iowa considered the issue of whether certain provisions in Iowa Code chapter 229, Iowa's involuntary hospitalization statute, provide adequate due process protections for a committed person's liberty interest in an appropriate placement and treatment after commitment. The case involved a situation where the committed person's county of legal settlement refused to pay for the treatment costs involved following a court order placing the person at a state mental health institute.[32] The court concluded that Iowa's statutory provisions failed to provide any notice, hearing, or impartial decision-making procedures

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[25] Id. at 575-576.
[26] Stamus v. Leonhardt, 414 F. Supp. 439, 447-449 (S.D. Iowa 1976).
[27] Youngberg v. Romeo, 457 U.S. 307, 319 (1982).
[28] Hanson v. Clarke County, Iowa, 867 F.2d 1115, 1120 (8th Cir. 1989).
[29] Jasper County v. McCall, 420 N.W.2d 801, 803 (Iowa 1988).
[30] Id. at 803.
[31] Salcido v. Woodbury County, 119 F.Supp.2d 900 (N.D. Iowa 2000).
[32] If a respondent's expenses are assessed to the county, the court must order the respondent committed to the care of an appropriate hospital or facility on an inpatient or outpatient basis designated through the "single entry point process." Iowa Code 229.14(2)(a). The "single entry point process" is the method whereby counties manage services for the mentally ill, mentally retarded, and developmentally disabled which are paid in whole or in part by county funds. Single entry point (SEP) administrators, also known as central point of coordination (CPC) coordinators, are the administrative gatekeepers of services which require an expenditure of county funds for mental health services. See Iowa Code § 331.439.

that address a county's denial of an involuntarily committed person's liberty interest in an appropriate placement. In some circumstances, certain grievance procedures may overcome the lack of procedural due process safeguards in a statute; however, the court in this case further held that the state's grievance procedures were insufficient to overcome the procedural inadequacies of the statute.[33]

As a result of *Salcido*, the Iowa General Assembly made substantive changes at the end of the 2001 Legislative Session to Iowa Code chapter 229, focusing specifically on the procedural due process rights of involuntarily committed persons in regard to placement procedures following a commitment order. The following discussion of Iowa's involuntary hospitalization statute incorporates those 2001 changes.

V. Iowa Statutory Provisions.

A. Application.

An application for involuntary hospitalization of an individual may be filed by any "interested person," who thereby becomes the "applicant."[34] The application must state the applicant's belief that the individual is "seriously mentally impaired." The term "seriously mentally impaired" means the condition of a person who because of a mental illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness is likely to injure the person's self or others, or is likely to inflict serious emotional injury on the person's family members or others, or who is unable to satisfy the person's basic physical needs with the likelihood that the person will suffer physical injury or debilitation, or death.[35] "Mental illness" means every type of mental disease or disorder, except mental retardation, insanity, diminished responsibility, or mental incompetency as the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure.[36] The application must also state any other pertinent facts and must be accompanied by a physician's written statement or other corroborative information.[37]

B. Order for Evaluation and Treatment.

If the court[38] determines the application for involuntary hospitalization is adequate, the court will set a date for the hospitalization hearing, but the hearing shall not be held less than 48 hours after the person, who now becomes the "respondent," receives notice unless the respondent waives this notice requirement.[39] The court must also order the respondent to be examined by a licensed physician who must submit a report to the court.[40] The law also provides for the selection or appointment of counsel to represent the respondent,[41]

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[33] Salcido at 925.
[34] Iowa Code § 229.6.
[35] Iowa Code § 229.1(15).
[36] Iowa Code § 229.1(8).
[37] Iowa Code § 229.6.
[38] Iowa Code § 229.7. The chief judge of each judicial district is authorized under current law to appoint judicial hospitalization referees to relieve the workload of magistrates and district court judges. Iowa Code § 229.21. Because of funding shortfalls in FY 1999-2000, the Iowa Supreme Court dismissed the judicial hospitalization referees and their duties were assumed by district judges, district associate judges, and magistrates. (Supreme Court Order by Justice McGivern, October 2000.) Proposed legislation to restore funding for the referees for FY 2001-2002 was unsuccessful. SF 271 (2001 Session).
[39] Iowa Code §§ 229.7, 229.8.
[40] Iowa Code § 229.10.
[41] Iowa Code § 229.8.

and that notice of the application for involuntary hospitalization be sent to the respondent,[42] the county attorney,[43] the respondent's attorney,[44] and the patient advocate.[45]

At the hospitalization hearing, the county attorney presents evidence in support of the application for hospitalization.[46] During the hearing, the applicant and the respondent have the opportunity to testify and present and cross-examine witnesses, and the court may receive the testimony of any other "interested person."[47] If upon completion of the hearing the court makes a finding the respondent suffers from a serious mental impairment by clear and convincing evidence,[48] the court orders the respondent committed and placed in a hospital or alternative facility for a complete psychiatric evaluation and appropriate treatment on either an inpatient or outpatient basis.[49]

C. Hospitalization.

Within fifteen days of placement, the chief medical officer of the treatment facility or program must send a psychiatric report on the respondent to the court stating one of the following four alternative findings:

1. The respondent no longer requires further treatment for serious mental impairment. In that case, the court releases the respondent from involuntary hospitalization and terminates the proceeding.

2. The respondent continues to be seriously mentally impaired and requires full-time inpatient treatment.

3. The respondent continues to be seriously mentally impaired and needs treatment, but does not require full-time hospitalization. In this case, the chief medical officer must recommend treatment on an outpatient or other appropriate basis.

4. The respondent continues to be seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further inpatient treatment and continued hospitalization. In this case, the chief medical officer must recommend an appropriate alternative placement for the respondent.[50]

Upon receipt of the chief medical officer's report for the continued hospitalization, the court shall issue an order for appropriate treatment.[51] The chief medical officer or one of the medical officer's designees must file periodic reports on the respondent's condition as

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[42] Iowa Code § 229.7.
[43] Iowa Code § 229.8.
[44] Iowa Code § 229.9.
[45] Iowa Code § 229.9A. The advocate's role is to protect the respondent's rights during the involuntary hospitalization process. The advocate is a person who must have an "informed concern for the welfare and rehabilitation of the mentally ill" and who is not an officer or employee of the Department of Human Services nor of any agency providing care or treatment to persons with mental illness. Iowa Code § 229.19.
[46] Iowa Code § 229.12(1).
[47] Iowa Code § 229.12(1). Although the respondent has the right to be present at the hospitalization hearing, the court may determine that the respondent's presence is not in the respondent's best interests. Iowa Sup.Ct.R. for Involuntary Hospitalization of Mentally Ill 12.19 (4th ed.).
[48] Iowa Code § 229.13(1).
[49] Iowa Code § 229.13.
[50] Iowa Code § 229.14(1)(a-d).
[51] Iowa Code § 229.14(2).

long as the respondent continues to be involuntarily hospitalized.[52] In addition, the medical director of the facility treating the patient has similar reporting requirements.[53]

D. Placement Order and Hearing.

Following receipt of the chief medical officer's report indicating the respondent continues to be seriously mentally impaired and in need of some form of treatment, the court must issue a placement order for appropriate treatment.[54] The court is required to provide notice to the respondent and the respondent's attorney or the patient advocate concerning the placement order. The court must also advise the respondent and the respondent's attorney that the respondent has a right to request a placement hearing to determine if the order for placement is appropriate. The respondent's request for a placement hearing must be in writing and signed by the respondent or the respondent's designee, and must be filed with the district court clerk within seven days of issuance of the placement order. The court may, on its own motion, order that a placement hearing be held. The respondent also has a right to be represented by an attorney during the placement hearing.[55]

E. Immediate Custody and Emergency Detention.

Chapter 229 contains an immediate custody provision. The law directs the sheriff or the sheriff's deputy to take the individual against whom an application has been filed into immediate custody if the judge finds probable cause to believe, based upon the application and accompanying documentation, that the respondent has a serious mental impairment and is likely to injure the respondent or other persons if allowed to remain at liberty.[56] The court is required to consider the least restrictive alternatives to hospitalization in detaining the respondent under this law, including whether the respondent should be detained in the custody of a relative, friend, or other suitable person willing to accept the responsibility or a community mental health facility.[57]

The statute also provides an emergency hospitalization procedure for a person with mental illness. This provision is only utilized when the regular commitment procedures are unavailable because there is no immediate access to the district court.[58] Under this statutory provision, a peace officer who has reasonable grounds to believe a person is mentally ill, and because of that illness is likely to physically injure the person's self or others if not immediately detained, may take that person to the nearest available facility.[59] A suitable facility is defined as a suitable hospital or a public or private facility which is equipped and staffed for mental health care.[60]

[52] Iowa Code § 229.15(1).
[53] Iowa Code § 229.15(2).
[54] Iowa Code § 229.14(2).
[55] Iowa Code § 229.14A(5)(c).
[56] Iowa Code § 229.11.
[57] Iowa Code § 229.14.
[58] Iowa Code § 229.22(1).
[59] Iowa Code § 229.22(2).
[60] Iowa Code § 229.11(2),(3).

F. Termination of Commitment.

When the chief medical officer determines that a patient who is receiving treatment and care for serious mental impairment under the provisions of chapter 229 no longer requires such treatment or care, the chief medical officer shall tentatively discharge the respondent and submit a report to the district court which ordered the patient's hospitalization or care and custody. Upon receipt of the report, the court shall issue an order discharging the patient from the hospital or from the appropriate care and custody, and shall terminate all further proceedings.[61]

VI. Summary.

Chapter 229 of the Iowa Code, the current statutory framework for the involuntary hospitalization of an adult person with mental illness in Iowa, is based upon historical and constitutional considerations and the development of both federal and state case law over the past 25 years. The state's exercise of the authority to civilly commit an adult person with mental illness for care and treatment has progressed from what were often ad hoc decisions by individual physicians and local county commissions of hospitalization to a more formalized process, with the courts employing a balance of both medical and legal perspectives to order needed treatment and custody while protecting a person's liberty interest under constitutional and state law. The United States Supreme Court and federal and state courts in Iowa have extended the due process protections of this liberty interest beyond the initial commitment procedure to continued mental health treatment and posttreatment procedures.

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[61] Iowa Code § 229.16.