Sec. 35. Section 53.40, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A request in writing for a ballot may be made by any member of the armed forces of the United States who is or will be a qualified voter on the day of the election at which the ballot is to be cast, at any time before the election. Any member of the armed forces of the United States may request ballots for all elections to be held ~~within a calendar year~~ through the next two general elections. The request may be made by using the federal postcard application form and indicating that the applicant wishes to receive ballots for all elections as permitted by state law. The county commissioner shall send the applicant a ballot for each election held ~~during the calendar year in which~~ after the application is received and through the next two general elections. The commissioner shall forward a copy of the absentee ballot request to other commissioners who are responsible under section 47.2, subsection 2, for conducting elections in which the applicant is eligible to vote.

Sec. 36. Section 53.53, Code 2003, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. A federal write-in ballot received by the state commissioner of elections shall be forwarded immediately to the appropriate county commissioner. However, if the state commissioner receives a federal write-in ballot after election day and before noon on the Monday following an election, the state commissioner shall at once verify that the voter has complied with the requirements of this section and that the voter's federal write-in ballot is eligible to be counted. If the ballot is eligible to be counted, the state commissioner shall notify the appropriate county commissioner and make arrangements for the ballot to be transmitted to the county for counting. If the ballot is not eligible to be counted, the state commissioner shall mail the ballot to the appropriate commissioner along with notification that the ballot is ineligible to be counted. The county commissioner shall keep the ballot with the other records of the election.

NEW UNNUMBERED PARAGRAPH. The county commissioner shall notify a voter when the voter's federal write-in ballot was not counted and shall give the voter the reason the ballot was not counted.

Sec. 37. IMMEDIATE EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment and applies to elections held on or after September 15, 2004.

Approved April 16, 2004

CHAPTER 1084

CONFINEMENT OF DANGEROUS
OR MENTALLY INCOMPETENT PERSONS

S.F. 2272

AN ACT relating to detaining or the placement of criminal defendants who are mentally incompetent or dangerous.

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

Section 1. Section 13B.4, subsection 1, Code 2003,[1] is amended to read as follows:

1. The state public defender shall coordinate the provision of legal representation of all

[1] "Code Supplement 2003" probably intended

indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under section 811.1A or chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and on a reopening of a sentence proceeding, and may provide for the representation of indigents in proceedings instituted pursuant to section 908.11. The state public defender shall not engage in the private practice of law.

Sec. 2. Section 229A.7, subsection 1, Code 2003, is amended to read as follows:

1. If the person charged with a sexually violent offense has been found incompetent to stand trial and the person is about to be released pursuant to ~~section 812.5~~ chapter 812, or the person has been found not guilty of a sexually violent offense by reason of insanity, if a petition has been filed seeking the person's commitment under this chapter, the court shall first hear evidence and determine whether the person did commit the act or acts charged. At the hearing on this issue, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or insanity affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on the person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this chapter.

Sec. 3. Section 331.653, subsection 63, Code 2003,[2] is amended to read as follows:

63. Carry out duties relating to the confinement of persons ~~with mental illness or~~ who are considered dangerous persons under section 811.1A or persons with a mental disorder as provided in ~~section 812.5~~ chapter 812.

Sec. 4. NEW SECTION. 811.1A DETENTION HEARING.

1. When a defendant is awaiting sentencing after conviction for a felony or is pursuing an appeal in such a case following sentencing, and the defendant would otherwise be eligible to be admitted to bail under this chapter, but it appears by clear and convincing evidence that if released the defendant is likely to pose a danger to another person or to the property of others, the defendant may be detained under the authority of this section and in the manner provided in subsection 2.

2. The following procedures shall apply to a detention hearing:

a. The prosecuting attorney may initiate a detention hearing by a verified ex parte written motion. Upon such motion, the district court may issue a warrant for the immediate arrest of the defendant, if the defendant is not in custody.

b. The defendant shall be brought before the district court within twenty-four hours after arrest, or if the defendant is in custody, the defendant shall be brought before the district court within twenty-four hours of the prosecuting attorney's filing of the motion. The detention hearing shall be held within seventy-two hours of the defendant's arrest, or if the defendant is in custody, the detention hearing shall be held within seventy-two hours of the filing of the motion.

c. The defendant shall be entitled to representation by counsel, including appointed counsel if indigent, and shall be entitled to the right of cross-examination and to present information, to testify, and to present witnesses in the defendant's own behalf, but shall not be entitled to being admitted to bail.

d. Testimony of the defendant given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, except that such testimony shall be admissible

[2] "Code Supplement 2003" probably intended

in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

e. Appeals from orders of detention may be taken in the manner provided under section 811.2, subsection 7.

f. If the trial court issues an order of detention, the order shall be accompanied by a written finding of fact and the reasons for the detention order.

g. For the purposes of such proceedings, the trial court is not divested of jurisdiction by the filing of a notice of appeal.

Sec. 5. Section 812.3, Code 2003, is amended to read as follows:

812.3 MENTAL INCOMPETENCY OF ACCUSED.

1. If at any stage of a criminal proceeding ~~it reasonably appears~~ the defendant or the defendant's attorney, upon application to the court, alleges specific facts showing that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend further proceedings ~~must be suspended~~ and ~~a hearing upon that question~~ determine if probable cause exists to sustain the allegations. The applicant has the burden of establishing probable cause. The court may on its own motion schedule a hearing to determine probable cause if the defendant or defendant's attorney has failed or refused to make an application under this section and the court finds that there are specific facts showing that a hearing should be held on that question. The defendant shall not be compelled to testify at the hearing and any testimony of the defendant given during the hearing shall not be admissible on the issue of guilt, except such testimony shall be admissible in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

2. Upon a finding of probable cause sustaining the allegations, the court shall suspend further criminal proceedings and order the defendant to undergo a psychiatric evaluation to determine whether the defendant is suffering a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense. The order shall also authorize the evaluator to provide treatment necessary and appropriate to facilitate the evaluation. If an evaluation has been conducted within thirty days of the probable cause finding, the court is not required to order a new evaluation and may use the recent evaluation during a hearing under this chapter. Any party is entitled to a separate psychiatric evaluation by a psychiatrist or licensed, doctorate-level psychologist of their own choosing.

Sec. 6. Section 812.4, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

812.4 HEARING.

1. A hearing shall be held within fourteen days of the filing of the order for an evaluation, or within five days of the court's motion or the filing of an application, if the defendant has had a psychiatric evaluation within thirty days of the probable cause finding, and upon which the court decides to rely. Pending the hearing, no further proceedings shall be taken under the complaint or indictment and the defendant's right to a speedy indictment and speedy trial shall be tolled until the court finds the defendant competent to stand trial.

2. The defendant shall be entitled to representation by counsel, including appointed counsel if indigent, and shall be entitled to the right of cross-examination and to present evidence.

3. Testimony of the defendant given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, except that such testimony shall be admissible in proceedings under section 811.2, subsection 8, and section 811.8, and in perjury proceedings.

Sec. 7. Section 812.5, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

812.5 COMPETENCY HEARING — FINDINGS.

The court shall receive all relevant and material evidence offered at the hearing and shall

not be bound by the formal rules of evidence. The evidence shall include the psychiatric evaluation ordered under section 812.3 or conducted within thirty days of the probable cause finding.

1. If the court finds the defendant is competent to stand trial, the court shall reinstate the criminal proceedings suspended under section 812.3.

2. If the court, by a preponderance of the evidence, finds the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend the criminal proceedings indefinitely and order the defendant to be placed in a treatment program pursuant to section 812.6 and shall make further findings of record as necessary under section 812.6.

Sec. 8. NEW SECTION. 812.6 PLACEMENT AND TREATMENT.

1. If the court finds the defendant does not pose a danger to the public peace and safety, is otherwise qualified for pretrial release, and is willing to cooperate with treatment, the court shall order, as a condition of pretrial release, that the defendant obtain mental health treatment designed to restore the defendant to competency.

2. If the court finds by clear and convincing evidence that the defendant poses a danger to the public peace or safety, or that the defendant is otherwise not qualified for pretrial release, or the defendant refuses to cooperate with treatment, the court shall commit the defendant to an appropriate inpatient treatment facility as provided in paragraphs "a" and "b".[3] The defendant shall receive mental health treatment designed to restore the defendant to competency.

a. A defendant who poses a danger to the public peace or safety, or who is otherwise not qualified for pretrial release, shall be committed as a safekeeper to the custody of the director of the department of corrections at the Iowa medical and classification center, or other appropriate treatment facility as designated by the director, for treatment designed to restore the defendant to competency.

b. A defendant who does not pose a danger to the public peace or safety, but is otherwise being held in custody, or who refuses to cooperate with treatment, shall be committed to the custody of the director of human services at a department of human services facility for treatment designed to restore the defendant to competency.

3. A defendant ordered to obtain treatment or committed to a facility under this section may refuse treatment by chemotherapy or other somatic treatment. The defendant's right to refuse chemotherapy treatment or other somatic treatment shall not apply if in the judgment of the director or the director's designee of the facility where the defendant has been committed determines such treatment is necessary to preserve the life of the defendant or to appropriately control behavior of the defendant which is likely to result in physical injury to the defendant or others. If in the judgment of the director of the facility or the director's designee where the defendant has been committed, chemotherapy or other somatic treatments are necessary and appropriate to restore the defendant to competency and the defendant refuses to consent to the use of these treatment modalities, the director of the facility or the director's designee shall request from the district court which ordered the commitment of the defendant an order authorizing treatment by chemotherapy or other somatic treatments.

Sec. 9. NEW SECTION. 812.8 MENTAL STATUS REPORTS.

The psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant, or the director of the facility where the defendant is being held and treated pursuant to a court order, shall provide a written status report to the court regarding the defendant's mental disorder within thirty days of the defendant's placement pursuant to section 812.6. The report shall also state whether it appears that the defendant can be restored to competency in a reasonable amount of time. Progress reports shall be provided to the court every sixty days or less thereafter until the defendant's competency is restored or the placement of the defendant is terminated.

[3] See chapter 1175, §392 herein

Sec. 10. NEW SECTION. 812.9 RESTORATION OF MENTAL COMPETENCY.

1. At any time, upon a finding by a psychiatrist or licensed doctorate-level psychologist that there is a substantial probability that the defendant has acquired the ability to appreciate the charge, understand the proceedings, and effectively assist in the defendant's defense, the psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant or the director of the inpatient facility shall immediately notify the court. After receiving notice the court shall proceed as provided in subsection 4.

2. At any time, a treating psychiatrist or licensed doctorate-level psychologist may notify the court that the defendant receiving outpatient treatment will require inpatient services to continue benefiting from treatment or that it is appropriate for a defendant receiving inpatient treatment services to receive outpatient treatment services. Upon receiving notification, the court shall proceed as provided under subsection 4.

3. At any time upon a finding by a treating psychiatrist or licensed doctorate-level psychologist that there is no substantial probability that the defendant will be restored to competency in a reasonable amount of time, the psychiatrist or licensed doctorate-level psychologist providing outpatient treatment to the defendant or the director of the inpatient facility shall immediately notify the court. Upon receiving notification, the court shall proceed as provided under subsection 4.

4. Upon receiving a notification under this section, the court shall schedule a hearing to be held within fourteen days. The court shall also issue an order to transport the defendant to the hearing if the defendant is in custody or is being held in an inpatient facility. The defendant shall be transported by the sheriff of the county where the court's motion or the application pursuant to section 812.3 was filed.

5. If the court finds by a preponderance of the evidence that the defendant's competency has been restored, the court shall terminate the placement pursuant to section 812.6, and reinstate the criminal proceedings against the defendant, and may order continued treatment to maintain the competency of the defendant.

6. If the court finds by a preponderance of the evidence that the defendant remains incompetent to stand trial but is making progress in regaining competency, the court shall continue the placement ordered pursuant to section 812.6.

7. The court may change the placement of a defendant and the placement may be more restrictive if necessary for the continued progress of the defendant's treatment as shown by clear and convincing evidence.

8. If the court finds by a preponderance of the evidence that there is no substantial probability the defendant's competency will be restored in a reasonable amount of time, the court shall terminate the commitment under section 812.6 in accordance with the provisions of section 812.10.

Sec. 11. NEW SECTION. 812.10 LENGTH OF PLACEMENT — OTHER COMMITMENT PROCEEDINGS — CRIMINAL PROCEEDINGS AFTER TERMINATION OF PLACEMENT.

1. Notwithstanding section 812.9, the defendant shall not remain under placement pursuant to section 812.6 beyond the expiration of the maximum term of confinement for the criminal offense of which the defendant is accused, or eighteen months from the date of the original adjudication of incompetence to stand trial, including time in jail, or the time when the court finds by a preponderance of the evidence that there is no substantial probability that the defendant will be restored to competency in a reasonable amount of time under section 812.9, subsection 8, whichever occurs first. When the defendant's placement in an inpatient facility equals the length of the maximum term of confinement, the complaint for the criminal offense of which the defendant is accused shall be dismissed with prejudice.

2. When the defendant's commitment equals eighteen months, the court shall schedule a hearing to determine whether the defendant is competent to stand trial pursuant to section 812.9, subsection 5. If the defendant is not competent to stand trial after eighteen months, the court shall terminate the placement under section 812.6 in accordance with the provisions of subsection 1.

3. Upon the termination of the defendant's placement pursuant to subsection 1, or pursuant

to section 812.9, subsection 8, the state may commence civil commitment proceedings or any other appropriate commitment proceedings.

4. If upon termination of the defendant's placement pursuant to subsection 2 or pursuant to section 812.9, subsection 8, and it appears thereafter that the defendant has regained competency, the state may make application to reinstate the prosecution of the defendant and hearing shall be held on the matter in the same manner as if the court has received notice under section 812.9, subsection 4.

Sec. 12. Section 815.7, Code 2003, is amended to read as follows:

815.7 FEES TO ATTORNEYS.

An attorney who has not entered into a contract authorized under section 13B.4 and who is appointed by the court to represent any person charged with a crime in this state, seeking postconviction relief, against whom a contempt action is pending, appealing a criminal conviction, appealing a denial of postconviction relief, or subject to a proceeding under section 811.1A or chapter 229A or 812, or to serve as counsel for any person or guardian ad litem for any child in juvenile court, shall be entitled to reasonable compensation and expenses. For appointments made on or after July 1, 1999, the reasonable compensation shall be calculated on the basis of sixty dollars per hour for class "A" felonies, fifty-five dollars per hour for class "B" felonies, and fifty dollars per hour for all other cases. The expenses shall include any sums as are necessary for investigations in the interest of justice, and the cost of obtaining the transcript of the trial record and briefs if an appeal is filed. The attorney need not follow the case into another county or into the appellate court unless so directed by the court. If the attorney follows the case into another county or into the appellate court, the attorney shall be entitled to compensation as provided in this section. Only one attorney fee shall be so awarded in any one case except that in class "A" felony cases, two may be authorized.

Sec. 13. Section 815.9, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

For purposes of this chapter, ~~chapter~~ chapters 13B, ~~chapter~~ 229A, ~~chapter~~ 232, ~~chapter~~ 665, ~~chapter~~ 812, 814, ~~chapter~~ and 822, and section 811.1A, and the rules of criminal procedure, a person is indigent if the person is entitled to an attorney appointed by the court as follows:

Sec. 14. Section 815.10, subsection 1, Code 2003, is amended to read as follows:

1. The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender's designee pursuant to section 13B.4, to represent an indigent person at any stage of the criminal, postconviction, contempt, commitment under chapter 229A, detention under section 811.1A, competency under chapter 812, or juvenile proceedings or on appeal of any criminal, postconviction, contempt, commitment under chapter 229A, detention under section 811.1A, competency under chapter 812, or juvenile action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases, the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815.9. Only one attorney shall be appointed in all cases, except that in class "A" felony cases the court may appoint two attorneys.

Sec. 15. Section 904.201, subsection 3, paragraph b, Code 2003, is amended to read as follows:

b. Persons committed by the courts as mentally incompetent to stand trial ~~under section 812.4~~ pursuant to section 812.6.

Sec. 16. Sections 812.1 and 812.2, Code 2003, are repealed.

Approved April 16, 2004

CHAPTER 1085

MEDICAL ASSISTANCE AND
STATE SUPPLEMENTARY ASSISTANCE PROGRAMS
— MISCELLANEOUS CHANGES

H.F. 2134

AN ACT relating to the medical assistance and state supplementary assistance programs, providing an effective date, and providing for retroactive applicability.

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

Section 1. Section 135C.1, subsection 17, Code Supplement 2003, is amended to read as follows:

17. "Residential care facility" means any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours accommodation, board, personal assistance and other essential daily living activities to three or more individuals, not related to the administrator or owner thereof within the third degree of consanguinity, who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis <u>or who by reason of illness, disease, or physical or mental infirmity are unable to sufficiently or properly care for themselves but who do not require the services of a registered or licensed practical nurse except on an emergency basis if home and community-based services, other than nursing care, as defined by this chapter and departmental rule, are provided</u>. <u>For the purposes of this definition, the home and community-based services to be provided are limited to the type included under the medical assistance program provided pursuant to chapter 249A, are subject to cost limitations established by the department of human services under the medical assistance program, and except as otherwise provided by the department of inspections and appeals with the concurrence of the department of human services are limited in capacity to the number of licensed residential care facilities and the number of licensed residential care facility beds in the state as of December 1, 2003.</u>

Sec. 2. Section 135C.4, Code 2003, is amended to read as follows:

135C.4 RESIDENTIAL CARE FACILITIES.

Each facility licensed as a residential care facility shall provide an organized continuous twenty-four-hour program of care commensurate with the needs of the residents of the home and under the immediate direction of a person approved and certified by the department whose combined training and supervised experience is such as to ensure adequate and competent care. All admissions to residential care facilities shall be based on an order written by a physician certifying that the individual being admitted does not require nursing services <u>or that the individual's need for nursing services can be avoided if home and community-based services, other than nursing care, as defined by this chapter and departmental rule, are provided</u>. <u>For the purposes of this section, the home and community-based services to be provided shall be limited to the type included under the medical assistance program provided pursuant to chapter 249A, shall be subject to cost limitations established by the department of human services under the medical assistance program, and except as otherwise provided by the department of inspections and appeals with the concurrence of the department of human services shall be limited in capacity to the number of licensed residential care facilities and the number of licensed residential care facility beds in the state as of December 1, 2003.</u>

Sec. 3. <u>NEW SECTION</u>. 222.60A COST OF ASSESSMENT.

Notwithstanding any provision of this chapter to the contrary, any amount attributable to any fee assessed pursuant to section 249A.21 that would otherwise be the liability of any county shall be paid by the state. The department may transfer funds from the appropriation