

FILED APR 6 1977

Reprinted 4/77

SENATE FILE 333

By COMMITTEE ON HUMAN RESOURCES

Passed Senate, Date 4-14-77 (p.1025) Passed House, Date _____

Vote: Ayes 44 Nays 0 Vote: Ayes _____ Nays _____

Approved 6/30/77

A BILL FOR

1 An Act to make certain clarifying and corrective revisions
2 in and additions to chapter two hundred twenty-nine
3 (229) of the Code, and certain related statutes, relating
4 to hospitalization of the mentally ill.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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S-3352

SENATE FILE 333

1 Amend Senate File 333, page 4; line 21, by
2 inserting after the word "continue." the following:
3 "The patient's right to refuse treatment by
4 chemotherapy shall also not apply during any period
5 of custody authorized by the court pursuant to
6 sections 229.13 or 229.14 of the Code."

S-3352 FILED & ADOPTED (p.1025)
APRIL 14, 1977

BY JOHN S. MURRAY

19

S-3329

SENATE FILE 333

1 Amend Senate File 333 as follows:
2 1. Page 9, by inserting after line 15 the following
3 new section:
4 "Sec. ____ . Section two hundred twenty-nine point
5 forty-four (229.44), Code 1977, is repealed."

S-3329 FILED - Adopted 4/14(1025)
APRIL 12, 1977

BY JOHN S. MURRAY
CHARLES P. MILLER

1 Section 1. Section two hundred twenty-nine point one
2 (229.1), Code 1977, is amended by adding the following new
3 subsections:

4 NEW SUBSECTION. "Director" or "state director" means the
5 director of that division of the department of social ser-
6 vices having jurisdiction of the state mental health
7 institutes, or that director's designee.

8 NEW SUBSECTION. "Chemotherapy" means treatment of an
9 individual by use of a drug or substance which cannot legally
10 be delivered or administered to the ultimate user without
11 a physician's prescription or medical order.

12 Sec. 2. Section two hundred twenty-nine point ten (229.10),
13 subsection one (1), Code 1977, is amended by adding the follow-
14 ing new unnumbered paragraph:

15 NEW UNNUMBERED PARAGRAPH. If the respondent is not taken
16 into custody under section two hundred twenty-nine point
17 eleven (229.11) of the Code, but the court is subsequently
18 informed that the respondent has declined to be examined by
19 the licensed physician or physicians pursuant to the court
20 order, the court may order such limited detention of the
21 respondent as is necessary to facilitate the examination of
22 the respondent by the licensed physician or physicians.

23 Sec. 3. Section two hundred twenty-nine point eleven
24 (229.11), unnumbered paragraph one (1), Code 1977, is amended
25 to read as follows:

26 If the applicant requests that the respondent be taken
27 into immediate custody and the judge, upon reviewing the
28 application and accompanying documentation, finds probable
29 cause to believe that the respondent is seriously mentally
30 impaired and is likely to injure himself or herself or other
31 persons if allowed to remain at liberty, the judge may enter
32 a written order directing that the respondent be taken into
33 immediate custody by the sheriff or his or her deputy and
34 be detained until the hospitalization hearing, which shall
35 be held no more than five days after the date of the order,

1 except that if the fifth day after the date of the order is
2 a Saturday, Sunday, or a holiday, the hearing may be held
3 on the next succeeding business day. The judge may order
4 the respondent detained for ~~that~~ the period of time until
5 the hearing is held, and no longer, in accordance with
6 subsection 1 if possible, and if not then in accordance with
7 subsection 2 or, only if neither of these alternatives are
8 available, in accordance with subsection 3. Detention may
9 be:

10 Sec. 4. Section two hundred twenty-nine point twelve
11 (229.12), Code 1977, is amended by adding the following new
12 unnumbered paragraph:

13 NEW UNNUMBERED PARAGRAPH. If the respondent is not taken
14 into custody under section two hundred twenty-nine point
15 eleven (229.11) of the Code, but the court subsequently finds
16 good cause to believe that the respondent is about to depart
17 from the jurisdiction of the court, the court may order such
18 limited detention of the respondent as is authorized by section
19 two hundred twenty-nine point eleven (229.11) of the Code
20 and is necessary to insure that the respondent will not depart
21 from the jurisdiction of the court without the court's approval
22 until the proceeding relative to the respondent has been
23 concluded.

24 Sec. 5. Section two hundred twenty-nine point twenty-two
25 (229.22), subsection two (2), Code 1977, is amended to read
26 as follows:

27 2. In the circumstances described in subsection 1, any
28 peace officer who has reasonable grounds to believe that a
29 person is mentally ill, and because of that illness is likely
30 to physically injure himself or herself or others if not
31 immediately detained, may without a warrant take or cause
32 that person to be taken to the nearest available facility
33 as defined in section 229.11, subsections 2 and 3. Immediately
34 upon taking the person into custody, the nearest available
35 magistrate, as defined in section 748.1, shall be notified

1 and shall immediately proceed to the facility. If a person
2 believed mentally ill, and therefore likely to injure himself
3 or herself or others if not immediately detained, is delivered
4 to a hospital by someone other than a peace officer, the chief
5 medical officer shall immediately notify the nearest available
6 magistrate. Until the arrival of the magistrate, treatment,
7 including chemotherapy, may be ordered only to the extent
8 necessary to preserve the person's life or to appropriately
9 control behavior by the person which is likely to result in
10 physical injury to that person or others if allowed to
11 continue. The magistrate shall in the manner prescribed by
12 section 229.8, subsection 1 insure that the person has or
13 is provided legal counsel at the earliest practicable time,
14 and shall arrange for the counsel to be present, if
15 practicable, before proceeding under this section. The peace
16 officer who took the person into custody, or other party who
17 brought the person to the hospital, shall remain until the
18 magistrate's arrival and shall describe the circumstances
19 of the detention matter to the magistrate. If the magistrate
20 finds that there is probable cause to believe that the person
21 is seriously mentally impaired, and because of that impairment
22 is likely to physically injure himself or herself or others
23 if not immediately detained, ~~he or she~~ the magistrate shall
24 enter a written order for the person to be detained in custody
25 and, if the facility where the person is at that time is not
26 an appropriate hospital, transported to an appropriate
27 hospital. The magistrate's order shall state the circum-
28 stances under which the person was taken into custody or
29 otherwise brought to a hospital and the grounds supporting
30 the finding of probable cause to believe that he or she is
31 seriously mentally impaired and likely to physically injure
32 himself or herself or others if not immediately detained.
33 A The order shall be filed with the clerk of the district
34 court in the county where it is anticipated that an application
35 will be filed under section two hundred twenty-nine point

1 six (229.6) of the Code, and a certified copy of the order
2 shall be delivered to the chief medical officer of the hospital
3 where the person is detained, at the earliest practicable
4 time.

5 Sec. 6. Section two hundred twenty-nine point twenty-three
6 (229.23), subsection two (2), Code 1977, is amended to read
7 as follows:

8 2. The right to refuse treatment by shock therapy or
9 chemotherapy, unless the use of these treatments modalities
10 is specifically consented to by the patient's next-of-kin
11 or guardian. The patient's right to refuse treatment by
12 chemotherapy shall not apply during any period of custody
13 authorized by section two hundred twenty-nine point four
14 (229.4), subsection three (3), section two hundred twenty-
15 nine point eleven (229.11) or section two hundred twenty-nine
16 point twenty-two (229.22) of the Code, but this exception
17 shall extend only to chemotherapy treatment which is, in the
18 chief medical officer's judgment, necessary to preserve the
19 patient's life or to appropriately control behavior by the
20 person which is likely to result in physical injury to that
21 person or others if allowed to continue. In any other
22 situation in which, in the chief medical officer's judgment,
23 chemotherapy is appropriate for the patient but the patient
24 refuses to consent thereto and there is no next-of-kin or
25 guardian to give consent, the chief medical officer may request
26 an order authorizing treatment of the patient by chemotherapy
27 from the district court which ordered the patient's
28 hospitalization.

29 Sec. 7. Section two hundred twenty-nine point twenty-five
30 (229.25), subsection four (4), Code 1977, is amended to read
31 as follows:

32 4. The person who is hospitalized or that person's guar-
33 dian, if the person is a minor or is not legally competent
34 to do so, signs an ~~informal~~ informed consent to release infor-
35 mation. Each signed consent shall designate specifically

1 the person or agency to whom the information is to be sent,
2 and the information may be sent only to that person or agency.

3 Sec. 8. Section two hundred twenty-nine point forty-two
4 (229.42), unnumbered paragraph one (1), Code 1977, is amended
5 to read as follows:

6 If a person wishing to make application for voluntary
7 admission to a mental hospital established by chapter two
8 hundred twenty-six (226) of the Code is unable to pay the
9 costs of hospitalization or those responsible for such person
10 are unable to pay such costs, application for authorization
11 of voluntary admission must be made to any clerk of the
12 district court before application for admission is made to
13 the hospital. After determining the county of legal settlement
14 the said clerk shall, on forms provided by the state director,
15 authorize such person's admission to a mental health hospital
16 as a voluntary case. The clerk shall at once provide a
17 duplicate copy of the form to the county board of supervisors.
18 The costs of the hospitalization shall be paid by the county
19 of legal settlement to the state comptroller and credited
20 to the general fund of the state, providing the mental health
21 hospital rendering the services has certified to the county
22 auditor of the responsible county the amount chargeable thereto
23 and has sent a duplicate statement of such charges to the
24 state comptroller.

25 Sec. 9. Chapter two hundred twenty-nine (229), Code 1977,
26 is amended by adding the following new section:

27 NEW SECTION. STATUS OF PERSONS HOSPITALIZED UNDER FORMER
28 LAW.

29 1. Each person admitted or committed to a hospital for
30 treatment of mental illness on or before December 31, 1975
31 who remained so hospitalized, or was on convalescent leave
32 or was receiving care in another facility on transfer from
33 such hospitalization, on or after January 1, 1976 shall be
34 considered to have been hospitalized under this chapter, and
35 its provisions shall apply to each such person on and after

1 the effective date of this section, except as otherwise
2 provided by subsection three (3) of this section.

3 2. Hospitalization of any person for treatment of mental
4 illness, either voluntary or involuntary, on or before December
5 31, 1975 shall not be deemed to constitute a finding of or
6 to equate with nor raise a presumption of incompetency, or
7 to cause the person who was so hospitalized to be deemed a
8 lunatic, a person of unsound mind, or a person under legal
9 disability for any purpose, including but not limited to the
10 circumstances enumerated in section two hundred twenty-nine
11 point twenty-seven (229.27), subsection one (1) of the Code.
12 Nothing in this subsection shall be construed to invalidate
13 any specific declaration of incompetence of a person who was
14 so hospitalized if the declaration was made pursuant to a
15 separate procedure authorized by law for that purpose, and
16 did not result automatically from the person's hospitalization.

17 3. Where a person was hospitalized involuntarily for
18 treatment of mental illness on or before December 31, 1975
19 and remained so hospitalized, or was on convalescent leave
20 or was receiving care in another facility on transfer from
21 such hospitalization, on or after January 1, 1976, but was
22 subsequently discharged prior to the effective date of this
23 section, this section shall not be construed to require:

24 a. The filing after the effective date of this section
25 of any report relative to that person's status which would
26 have been required to be filed prior to the effective date
27 of this section if that person had initially been hospitalized
28 under this chapter as amended by Acts of the Sixty-sixth
29 General Assembly, 1975 Session, chapter one hundred thirty-
30 nine (139), sections one (1) through thirty (30).

31 b. That legal proceedings be taken under this chapter,
32 as so amended, to clarify the status of the person so
33 hospitalized, unless that person or the district court
34 considers such proceedings necessary in a particular case
35 to appropriately conclude the matter.

1 Sec. 10. Section two hundred twenty-six point twenty-three
2 (226.23), Code 1977, is amended to read as follows:

3 226.23 CONVALESCENT LEAVE OF PATIENTS. Upon the recom-
4 mendation of the superintendent and ~~the-written-consent-of~~
5 ~~the-district-court-which-ordered-hospitalization~~ in accordance
6 with section two hundred twenty-nine point fifteen (229.15),
7 subsection four (4), of the Code in the case of an involuntary
8 patient, the state director may place on convalescent leave
9 said patient for a period not to exceed one year, under such
10 conditions as are prescribed by said state director.

11 Sec. 11. Section two hundred twenty-seven point ten
12 (227.10), Code 1977, is amended by striking the section and
13 inserting in lieu thereof the following:

14 227.10 TRANSFERS FROM COUNTY OR PRIVATE INSTITUTIONS.
15 Patients who have been admitted at public expense to any
16 institution to which this chapter is applicable may be
17 involuntarily transferred to the proper state hospital for
18 the mentally ill in the manner prescribed by sections two
19 hundred twenty-nine point six (229.6) through two hundred
20 twenty-nine point thirteen (229.13) of the Code. The
21 application required by section two hundred twenty-nine point
22 six (229.6) may be filed by the state director or the
23 director's designee, or by the administrator of the institution
24 where the patient is then being maintained or treated. If
25 the patient was admitted to that institution involuntarily,
26 the state director may arrange and complete the transfer,
27 and shall report it as required of a chief medical officer
28 under section two hundred twenty-nine point fifteen (229.15),
29 subsection four (4) of the Code. The transfer shall be made
30 at county expense, and the expense recovered, as provided
31 in section two hundred twenty-seven point seven (227.7) of
32 the Code.

33 Sec. 12. Section two hundred twenty-seven point eleven
34 (227.11), Code 1977, is amended to read as follows:

35 227.11 TRANSFERS FROM STATE HOSPITALS. A county chargeable

1 with the expense of a patient in a state hospital for the
2 mentally ill shall remove such patient to a county or private
3 institution for the mentally ill which has complied with the
4 aforesaid rules when the state director or the director's
5 designee so orders on a finding that said patient is suffering
6 from chronic mental illness or from senility and will receive
7 equal benefit by being so transferred. A county shall remove
8 to its county care facility any patient in a state hospital
9 for the mentally ill upon ~~a finding by a commission, consisting~~
10 request of the superintendent of the state hospital in which
11 the patient is confined ~~and a physician or physicians chosen~~
12 ~~by the board of supervisors of the county of the patient's~~
13 ~~residence, said physician or physicians to be paid by the~~
14 ~~county of the patient's residence, that such patient can be~~
15 ~~properly cared for in the county care facility, and the finding~~
16 ~~of the commission, after its~~ pursuant to the superintendent's
17 authority under section two hundred twenty-nine point fifteen
18 (229.15), subsection four (4), of the Code, and approval by
19 the board of supervisors of the county of the patient's
20 residence, shall be complete authority for such removal.
21 In no case shall a patient be thus transferred except upon
22 compliance with section 229.14, subsection 4, or without the
23 written consent of a relative, friend, or guardian if such
24 relative, friend, or guardian pays the expense of the care
25 of such patient in a state hospital.

26 Patients transferred to a public or private facility under
27 this section may subsequently be placed on convalescent or
28 limited leave or transferred to a different facility for
29 continued full-time custody, care and treatment when, in the
30 opinion of the attending physician or the chief medical officer
31 of the hospital from which the patient was so transferred,
32 the best interest of the patient would be served by such leave
33 or transfer. However, if the patient was originally
34 hospitalized involuntarily, the leave or transfer shall be
35 made in compliance with section two hundred twenty-nine point

1 fifteen (229.15), subsection four (4) of the Code.

2 Sec. 13. Section two hundred twenty-seven point sixteen
3 (227.16), Code 1977, is amended to read as follows:

4 227.16 STATE AID. For each patient heretofore or hereafter
5 received on transfer from a state hospital for the mentally
6 ill under the provisions of section 227.11, or ~~committed to~~
7 placed in a county care facility by a commission of hospitali-
8 zation the procedure prescribed in chapter two hundred twenty-
9 nine (229) of the Code, or any mentally retarded adult patient
10 discharged or removed from the state hospital-schools and
11 cared for and supported by the county in the county care
12 facility or elsewhere outside a state institution for the
13 mentally ill or mentally retarded the county shall be entitled
14 to receive the amount of five dollars per week for each patient
15 from the state mental aid fund hereinafter provided for.

16 EXPLANATION

17 This bill makes a number of amendments to the 1975 Act
18 which revised Iowa's law governing hospitalization of persons
19 for treatment of mental illness. Some of the amendments are
20 corrective or clarifying in nature. The rest of the
21 amendments--those made by sections 2, 3, 4, 5, 6, 9, 10, 11
22 and 12, and the definition of chemotherapy in section 1--are
23 addressed to various problems which have been encountered
24 in the implementation of the 1975 Act.

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LSB 979S
pb/jw/5

See Human Resources 4/19 Do Pass per 4:13 5/10 (p. 2101)

Senate File 333
Human Resources
Gentleman, chair
Hansen
Newhard

SENATE FILE 333

By COMMITTEE ON HUMAN RESOURCES

(AS AMENDED AND PASSED BY THE SENATE APRIL 14, 1977)

Passed Senate; Date ^{per House amendment on amended} 5-17-77 (p. 1648) Passed House, Date 5-13-77 (p. 2176)

Vote: Ayes 46 Nays 0 Vote: Ayes 91 Nays 0

Approved 6-30-78

A BILL FOR

1 An Act to make certain clarifying and corrective revisions
2 in and additions to chapter two hundred twenty-nine
3 (229) of the Code, and certain related statutes, relating
4 to hospitalization of the mentally ill.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

6 *Conference Committee appointed*
7 *Senators Murray (chair), Readinger, Bush, Killits, and Gler 5/19 (p. 1720)*
8 *Repr. Newhard (chair), Neilson, Gentleman, Higgins, and Lipsky 5/19 (p. 2434)*

9 *Second Conference Committee appointed 6/13*
10 *Senators Hill of Paepke (chair), Carr, De Koster, Hill of Paepke, Redmond (1876)*
11 *Repr. Brunson (chair) Walter, Doyle, Hansen, Crawford (p. 2700)*

14 _____ = New Language
15 by the Senate

17 *Passed per Second Committee Report*
18 *Senate 5-9-78 (p. 1330) House 5-9-78 (p. 2365)*
19 *36 - 13 87 - 0*

25

1 Section 1. Section two hundred twenty-nine point one
2 (229.1), Code 1977, is amended by adding the following new
3 subsections:

4 NEW SUBSECTION. "Director" or "state director" means the
5 director of that division of the department of social ser-
6 vices having jurisdiction of the state mental health
7 institutes, or that director's designee.

8 NEW SUBSECTION. "Chemotherapy" means treatment of an
9 individual by use of a drug or substance which cannot legally
10 be delivered or administered to the ultimate user without
11 a physician's prescription or medical order.

12 Sec. 2. Section two hundred twenty-nine point ten (229.10),
13 subsection one (1), Code 1977, is amended by adding the follow-
14 ing new unnumbered paragraph:

15 NEW UNNUMBERED PARAGRAPH. If the respondent is not taken
16 into custody under section two hundred twenty-nine point
17 eleven (229.11) of the Code, but the court is subsequently
18 informed that the respondent has declined to be examined by
19 the licensed physician or physicians pursuant to the court
20 order, the court may order such limited detention of the
21 respondent as is necessary to facilitate the examination of
22 the respondent by the licensed physician or physicians.

23 Sec. 3. Section two hundred twenty-nine point eleven
24 (229.11), unnumbered paragraph one (1), Code 1977, is amended
25 to read as follows:

26 If the applicant requests that the respondent be taken
27 into immediate custody and the judge, upon reviewing the
28 application and accompanying documentation, finds probable
29 cause to believe that the respondent is seriously mentally
30 impaired and is likely to injure himself or herself or other
31 persons if allowed to remain at liberty, the judge may enter
32 a written order directing that the respondent be taken into
33 immediate custody by the sheriff or his or her deputy and
34 be detained until the hospitalization hearing, which shall
35 be held no more than five days after the date of the order,

1 except that if the fifth day after the date of the order is
2 a Saturday, Sunday, or a holiday, the hearing may be held
3 on the next succeeding business day. The judge may order
4 the respondent detained for ~~that~~ the period of time until
5 the hearing is held, and no longer, in accordance with
6 subsection 1 if possible, and if not then in accordance with
7 subsection 2 or, only if neither of these alternatives are
8 available, in accordance with subsection 3. Detention may
9 be:

10 Sec. 4. Section two hundred twenty-nine point twelve
11 (229.12), Code 1977, is amended by adding the following new
12 unnumbered paragraph:

13 NEW UNNUMBERED PARAGRAPH. If the respondent is not taken
14 into custody under section two hundred twenty-nine point
15 eleven (229.11) of the Code, but the court subsequently finds
16 good cause to believe that the respondent is about to depart
17 from the jurisdiction of the court, the court may order such
18 limited detention of the respondent as is authorized by section
19 two hundred twenty-nine point eleven (229.11) of the Code
20 and is necessary to insure that the respondent will not depart
21 from the jurisdiction of the court without the court's approval
22 until the proceeding relative to the respondent has been
23 concluded.

24 Sec. 5. Section two hundred twenty-nine point twenty-two
25 (229.22), subsection two (2), Code 1977, is amended to read
26 as follows:

27 2. In the circumstances described in subsection 1, any
28 peace officer who has reasonable grounds to believe that a
29 person is mentally ill, and because of that illness is likely
30 to physically injure himself or herself or others if not
31 immediately detained, may without a warrant take or cause
32 that person to be taken to the nearest available facility
33 as defined in section 229.11, subsections 2 and 3. Immediately
34 upon taking the person into custody, the nearest available
35 magistrate, as defined in section 748.1, shall be notified

1 and shall immediately proceed to the facility. If a person
2 believed mentally ill, and therefore likely to injure himself
3 or herself or others if not immediately detained, is delivered
4 to a hospital by someone other than a peace officer, the chief
5 medical officer shall immediately notify the nearest available
6 magistrate. Until the arrival of the magistrate, treatment,
7 including chemotherapy, may be ordered only to the extent
8 necessary to preserve the person's life or to appropriately
9 control behavior by the person which is likely to result in
10 physical injury to that person or others if allowed to
11 continue. The magistrate shall in the manner prescribed by
12 section 229.8, subsection 1 insure that the person has or
13 is provided legal counsel at the earliest practicable time,
14 and shall arrange for the counsel to be present, if
15 practicable, before proceeding under this section. The peace
16 officer who took the person into custody, or other party who
17 brought the person to the hospital, shall remain until the
18 magistrate's arrival and shall describe the circumstances
19 of the detention matter to the magistrate. If the magistrate
20 finds that there is probable cause to believe that the person
21 is seriously mentally impaired, and because of that impairment
22 is likely to physically injure himself or herself or others
23 if not immediately detained, ~~ne-or-she~~ the magistrate shall
24 enter a written order for the person to be detained in custody
25 and, if the facility where the person is at that time is not
26 an appropriate hospital, transported to an appropriate
27 hospital. The magistrate's order shall state the circum-
28 stances under which the person was taken into custody or
29 otherwise brought to a hospital and the grounds supporting
30 the finding of probable cause to believe that he or she is
31 seriously mentally impaired and likely to physically injure
32 himself or herself or others if not immediately detained.
33 A The order shall be filed with the clerk of the district
34 court in the county where it is anticipated that an application
35 will be filed under section two hundred twenty-nine point

1 six (229.6) of the Code, and a certified copy of the order
2 shall be delivered to the chief medical officer of the hospital
3 where the person is detained, at the earliest practicable
4 time.

5 Sec. 6. Section two hundred twenty-nine point twenty-three
6 (229.23), subsection two (2), Code 1977, is amended to read
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8 2. The right to refuse treatment by shock therapy or
9 chemotherapy, unless the use of these treatments modalities
10 is specifically consented to by the patient's next-of-kin
11 or guardian. The patient's right to refuse treatment by
12 chemotherapy shall not apply during any period of custody
13 authorized by section two hundred twenty-nine point four
14 (229.4), subsection three (3), section two hundred twenty-
15 nine point eleven (229.11) or section two hundred twenty-nine
16 point twenty-two (229.22) of the Code, but this exception
17 shall extend only to chemotherapy treatment which is, in the
18 chief medical officer's judgment, necessary to preserve the
19 patient's life or to appropriately control behavior by the
20 person which is likely to result in physical injury to that
21 person or others if allowed to continue. The patient's right
22 to refuse treatment by chemotherapy shall also not apply
23 during any period of custody authorized by the court pursuant
24 to sections 229.13 or 229.14 of the Code. In any other
25 situation in which, in the chief medical officer's judgment,
26 chemotherapy is appropriate for the patient but the patient
27 refuses to consent thereto and there is no next-of-kin or
28 guardian to give consent, the chief medical officer may request
29 an order authorizing treatment of the patient by chemotherapy
30 from the district court which ordered the patient's
31 hospitalization.

32 Sec. 7. Section two hundred twenty-nine point twenty-five
33 (229.25), subsection four (4), Code 1977, is amended to read
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35 4. The person who is hospitalized or that person's guar-

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2 to do so, signs an ~~informal~~ informed consent to release infor-
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7 (229.42), unnumbered paragraph one (1), Code 1977, is amended
8 to read as follows:

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10 admission to a mental hospital established by chapter two
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12 costs of hospitalization or those responsible for such person
13 are unable to pay such costs, application for authorization
14 of voluntary admission must be made to any clerk of the ,
15 district court before application for admission is made to
16 the hospital. After determining the county of legal settlement
17 the said clerk shall, on forms provided by the state director,
18 authorize such person's admission to a mental health hospital
19 as a voluntary case. The clerk shall at once provide a
20 duplicate copy of the form to the county board of supervisors.
21 The costs of the hospitalization shall be paid by the county
22 of legal settlement to the state comptroller and credited
23 to the general fund of the state, providing the mental health
24 hospital rendering the services has certified to the county
25 auditor of the responsible county the amount chargeable thereto
26 and has sent a duplicate statement of such charges to the
27 state comptroller.

28 Sec. 9. Chapter two hundred twenty-nine (229), Code 1977,
29 is amended by adding the following new section:

30 NEW SECTION. STATUS OF PERSONS HOSPITALIZED UNDER FORMER
31 LAW.

32 1. Each person admitted or committed to a hospital for
33 treatment of mental illness on or before December 31, 1975
34 who remained so hospitalized, or was on convalescent leave
35 or was receiving care in another facility on transfer from

1 such hospitalization, on or after January 1, 1976 shall be
2 considered to have been hospitalized under this chapter, and
3 its provisions shall apply to each such person on and after
4 the effective date of this section, except as otherwise
5 provided by subsection three (3) of this section.

6 2. Hospitalization of any person for treatment of mental
7 illness, either voluntary or involuntary, on or before December
8 31, 1975 shall not be deemed to constitute a finding of or
9 to equate with nor raise a presumption of incompetency, or
10 to cause the person who was so hospitalized to be deemed a
11 lunatic, a person of unsound mind, or a person under legal
12 disability for any purpose, including but not limited to the
13 circumstances enumerated in section two hundred twenty-nine
14 point twenty-seven (229.27), subsection one (1) of the Code.
15 Nothing in this subsection shall be construed to invalidate
16 any specific declaration of incompetence of a person who was
17 so hospitalized if the declaration was made pursuant to a
18 separate procedure authorized by law for that purpose, and
19 did not result automatically from the person's hospitalization.

20 3. Where a person was hospitalized involuntarily for
21 treatment of mental illness on or before December 31, 1975
22 and remained so hospitalized, or was on convalescent leave
23 or was receiving care in another facility on transfer from
24 such hospitalization, on or after January 1, 1976, but was
25 subsequently discharged prior to the effective date of this
26 section, this section shall not be construed to require:

27 a. The filing after the effective date of this section
28 of any report relative to that person's status which would
29 have been required to be filed prior to the effective date
30 of this section if that person had initially been hospitalized
31 under this chapter as amended by Acts of the Sixty-sixth
32 General Assembly, 1975 Session, chapter one hundred thirty-
33 nine (139), sections one (1) through thirty (30).

34 b. That legal proceedings be taken under this chapter,
35 as so amended, to clarify the status of the person so

1 hospitalized, unless that person or the district court
2 considers such proceedings necessary in a particular case
3 to appropriately conclude the matter.

4 Sec. 10. Section two hundred twenty-six point twenty-three
5 (226.23), Code 1977, is amended to read as follows:

6 226.23 CONVALESCENT LEAVE OF PATIENTS. Upon the recom-
7 mendation of the superintendent and ~~the written consent of~~
8 ~~the district court which ordered hospitalization~~ in accordance
9 with section two hundred twenty-nine point fifteen (229.15),
10 subsection four (4), of the Code in the case of an involuntary
11 patient, the state director may place on convalescent leave
12 said patient for a period not to exceed one year, under such
13 conditions as are prescribed by said state director.

14 Sec. 11. Section two hundred twenty-seven point ten
15 (227.10), Code 1977, is amended by striking the section and
16 inserting in lieu thereof the following:

17 227.10 TRANSFERS FROM COUNTY OR PRIVATE INSTITUTIONS.
18 Patients who have been admitted at public expense to any
19 institution to which this chapter is applicable may be
20 involuntarily transferred to the proper state hospital for
21 the mentally ill in the manner prescribed by sections two
22 hundred twenty-nine point six (229.6) through two hundred
23 twenty-nine point thirteen (229.13) of the Code. The
24 application required by section two hundred twenty-nine point
25 six (229.6) may be filed by the state director or the
26 director's designee, or by the administrator of the institution
27 where the patient is then being maintained or treated. If
28 the patient was admitted to that institution involuntarily,
29 the state director may arrange and complete the transfer,
30 and shall report it as required of a chief medical officer
31 under section two hundred twenty-nine point fifteen (229.15),
32 subsection four (4) of the Code. The transfer shall be made
33 at county expense, and the expense recovered, as provided
34 in section two hundred twenty-seven point seven (227.7) of
35 the Code.

1 Sec. 12. Section two hundred twenty-seven point eleven
2 (227.11), Code 1977, is amended to read as follows:

3 227.11 TRANSFERS FROM STATE HOSPITALS. A county chargeable
4 with the expense of a patient in a state hospital for the
5 mentally ill shall remove such patient to a county or private
6 institution for the mentally ill which has complied with the
7 aforesaid rules when the state director or the director's
8 designee so orders on a finding that said patient is suffering
9 from chronic mental illness or from senility and will receive
10 equal benefit by being so transferred. A county shall remove
11 to its county care facility any patient in a state hospital
12 for the mentally ill upon ~~a finding by a commission, consisting~~
13 ~~request~~ of the superintendent of the state hospital in which
14 the patient is confined ~~and a physician or physicians chosen~~
15 ~~by the board of supervisors of the county of the patient's~~
16 ~~residence, said physician or physicians to be paid by the~~
17 ~~county of the patient's residence, that such patient can be~~
18 ~~properly cared for in the county care facility, and the finding~~
19 ~~of the commission, after its~~ pursuant to the superintendent's
20 authority under section two hundred twenty-nine point fifteen
21 (229.15), subsection four (4), of the Code, and approval by
22 the board of supervisors of the county of the patient's
23 residence, shall be complete authority for such removal.
24 In no case shall a patient be thus transferred except upon
25 compliance with section 229.14, subsection 4, or without the
26 written consent of a relative, friend, or guardian if such
27 relative, friend, or guardian pays the expense of the care
28 of such patient in a state hospital.

29 Patients transferred to a public or private facility under
30 this section may subsequently be placed on convalescent or
31 limited leave or transferred to a different facility for
32 continued full-time custody, care and treatment when, in the
33 opinion of the attending physician or the chief medical officer
34 of the hospital from which the patient was so transferred,
35 the best interest of the patient would be served by such leave

1 or transfer. However, if the patient was originally
2 hospitalized involuntarily, the leave or transfer shall be
3 made in compliance with section two hundred twenty-nine point
4 fifteen (229.15), subsection four (4) of the Code.

5 Sec. 13. Section two hundred twenty-seven point sixteen
6 (227.16), Code 1977, is amended to read as follows:

7 227.16 STATE AID. For each patient heretofore or hereafter
8 received on transfer from a state hospital for the mentally
9 ill under the provisions of section 227.11, or ~~committed to~~
10 placed in a county care facility by a ~~commission of hospitali-~~
11 zation the procedure prescribed in chapter two hundred twenty-
12 nine (229) of the Code, or any mentally retarded adult patient
13 discharged or removed from the state hospital-schools and
14 cared for and supported by the county in the county care
15 facility or elsewhere outside a state institution for the
16 mentally ill or mentally retarded the county shall be entitled
17 to receive the amount of five dollars per week for each patient
18 from the state mental aid fund hereinafter provided for.

19 Sec. 14. Section two hundred twenty-nine point forty-four
20 (229.44), Code 1977, is repealed.

21 EXPLANATION

22 This bill makes a number of amendments to the 1975 Act
23 which revised Iowa's law governing hospitalization of persons
24 for treatment of mental illness. Some of the amendments are
25 corrective or clarifying in nature. The rest of the
26 amendments--those made by sections 2, 3, 4, 5, 6, 9, 10, 11
27 and 12, and the definition of chemotherapy in section 1--are
28 addressed to various problems which have been encountered
29 in the implementation of the 1975 Act.

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House Amendment to Senate File 333

S-3619

1 Amend Senate File 333 as follows:

2 1. Page 2, by striking lines 11 through 23 and
3 inserting in lieu thereof the following: "two hundred
4 twenty-nine point twelve (229.12), Code 1977, is
5 amended to read as follows:

6 229.12 HEARING PROCEDURE.

7 1. At the hospitalization hearing, evidence in
8 support of the contentions made in the application
9 shall be presented by the county attorney. During
10 the hearing the applicant and the respondent shall
11 be afforded an opportunity to testify and to present
12 and cross-examine witnesses, and the court may receive
13 the testimony of any other interested person. The
14 respondent has the right to be present at the hearing.
15 If the respondent exercises that right and has been
16 medicated within twelve hours, or such longer period
17 of time as the court may designate, prior to the
18 beginning of the hearing or an adjourned session
19 thereof, the judge shall be informed of that fact
20 and of the probable effects of the medication upon
21 convening of the hearing.

22 2. All persons not necessary for the conduct of
23 the proceeding shall be excluded, except that the
24 court may admit persons having a legitimate interest
25 in the proceeding. Upon motion of the county attorney,
26 the judge may exclude the respondent from the hearing
27 during the testimony of any particular witness if
28 the judge determines that that witness' testimony
29 is likely to cause the respondent severe emotional
30 trauma.

31 3. The respondent's welfare shall be paramount
32 and the hearing shall be conducted in as informal
33 a manner as may be consistent with orderly procedure,
34 but consistent therewith the issue shall be tried
35 as a civil matter. Such discovery as is permitted
36 under the Iowa rules of civil procedure shall be
37 available to the respondent. The court shall re-
38 ceive all relevant and material evidence which may
39 be offered and need not be bound by the rules of
40 evidence. There shall be a presumption in favor of
41 the respondent, and the burden of evidence in support
42 of the contentions made in the application shall be
43 upon the applicant. If upon completion of the hearing
44 the court finds that the contention that the respondent
45 is seriously mentally impaired has not been sustained
46 by clear and convincing evidence, it shall deny the
47 application and terminate the proceeding.

48 4. If the respondent is not taken into custody
49 under section two hundred twenty-nine point eleven
50 (229.11) of the Code, but the court subsequently finds

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1 good cause to believe that the respondent is about
2 to depart from the jurisdiction of the court, the
3 court may order such limited detention of the
4 respondent as is authorized by section two hundred
5 twenty-nine point eleven (229.11) of the Code and
6 is necessary to insure that the respondent will not
7 depart from the jurisdiction of the court without
8 the court's approval until the proceeding relative
9 to the respondent has been concluded."

10 2. Page 2, by inserting after line 11 the
11 following:

12 "Sec. ____ . Section two hundred twenty-nine point
13 seven (229.7), Code 1977, is amended to read as
14 follows:

15 229.7 SERVICE OF NOTICE UPON RESPONDENT. Upon
16 the filing of an application for involuntary
17 hospitalization, the clerk shall docket the case and
18 immediately notify a district court judge who shall
19 review the application and accompanying documentation.
20 If the application is adequate as to form, the judge
21 may set a time and place for a hearing on the
22 application, if feasible, and but the hearing shall
23 not be held less than forty-eight hours after notice
24 to the respondent unless the respondent waives such
25 minimum prior notice requirement. The judge shall
26 direct the clerk to send copies of the application
27 and supporting documentation, together with a notice
28 informing the respondent of the procedures required
29 by this chapter, to the sheriff or his or her deputy
30 for immediate service upon the respondent. If the
31 respondent is taken into custody under section 229.11
32 service of the application, documentation and notice
33 upon the respondent shall be made at the time he or
34 she is taken into custody.

35 Sec. ____ . Section two hundred twenty-nine point
36 eight (229.8), subsection three (3), paragraph a,
37 Code 1977, is amended to read as follows:

38 a. If not previously done, set a time and place
39 for a hospitalization hearing, which shall be at the
40 earliest practicable time not less than forty-eight
41 hours after notice to the respondent, unless the
42 respondent waives such minimum prior notice
43 requirement; and".

44 3. Page 2, line 25, by striking the words and
45 numeral "subsection two (2)" and inserting in lieu
46 thereof the words and numerals "subsections two (2)
47 and three (3)".

48 4. Page 2, line 33, by striking the word
49 "Immediately" and inserting in lieu thereof the word
50 "Immediately".

¹⁹
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Page 3

- 1 5. Page 2, by striking lines 34 and 35 and insert-
2 ing in lieu thereof the words "~~upon-taking-the-person~~
3 ~~into-custody, the-nearest-available-magistrate, as~~
4 ~~defined-in-section-748.17, shall-be-notified~~".
- 5 6. Page 3, by striking lines 1 through 15 and
6 inserting in lieu thereof the following: "and shall
7 ~~immediately-proceed-to-the-facility,--The-magistrate~~
8 ~~shall-in-the-manner-prescribed-by-section-229.97~~
9 ~~subsection-1-insure-that-the-person-has-or-is-provided~~
10 ~~legal-counsel-at-the-earliest-practicable-time, and~~
11 ~~shall-arrange-for-the-counsel-to-be-present, if~~
12 ~~practicable, before-proceeding-under-this-section.~~
13 A person believed mentally ill, and therefore likely
14 to injure himself or herself or others if not
15 immediately detained, may be delivered to a hospital
16 by someone other than a peace officer. Upon delivery
17 of the person believed mentally ill to the hospital,
18 the chief medical officer may order treatment of that
19 person, including chemotherapy, but only to the extent
20 necessary to preserve the person's life or to
21 appropriately control behavior by the person which
22 is likely to result in physical injury to that person
23 or others if allowed to continue. The peace".
- 24 7. Page 3, lines 17 and 18, by striking the words
25 "remain until the magistrate's arrival and shall"
26 and inserting in lieu thereof the words "~~remain-until~~
27 ~~the-magistrate's-arrival-and-shall~~".
- 28 8. Page 3, line 19, by striking the words
29 "magistrate. If the magistrate" and inserting in
30 lieu thereof the words "~~magistrate~~ chief medical
31 officer. If the magistrate chief medical officer".
- 32 9. Page 3, line 20, by striking the words "probable
33 cause" and inserting in lieu thereof the words
34 "~~probable-cause~~ reason"
- 35 10. Page 3, line 23, by striking the word
36 "~~magistrate~~" and inserting in lieu thereof the words
37 "~~chief medical officer~~".
- 38 11. Page 3, line 24, by striking the word "enter"
39 and inserting in lieu thereof the words "~~enter~~
40 prepare".
- 41 12. Page 3, line 27, by striking the word
42 "magistrate's" and inserting in lieu thereof the words
43 "~~magistrate's~~ chief medical officer's".
- 44 13. Page 3, line 30, by striking the words
45 "probable cause" and inserting in lieu thereof the
46 words "~~probable-cause~~ reason"
- 47 14. Page 3, by striking lines 33, 34 and 35, and
48 inserting in lieu thereof the words "2. If it is
49 necessary to transport the person to an appropriate
50 hospital, a".

¹⁹
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Page 4

1 15. Page 4, by striking line 1 and inserting in
2 lieu thereof the words "certified copy of the order".
3 16. Page 4, by striking line 4 and inserting in
4 lieu thereof the following: "time. The chief medical
5 officer shall notify the nearest available magistrate,
6 as defined in section seven hundred forty-eight point
7 one (748.1) of the Code, of the order at once if the
8 order is prepared between the hours of eight o'clock
9 a.m. and eight o'clock p.m.; if the order is prepared
10 between the hours of eight o'clock p.m. of one day
11 and eight o'clock a.m. of the following day, such
12 magistrate shall be notified by the chief medical
13 officer not later than eight o'clock a.m. of the
14 latter day. Upon being so notified the magistrate
15 shall immediately proceed to the hospital where the
16 person is detained, review the matter, and either
17 affirm or dismiss the chief medical officer's order.
18 Unless convinced upon initial inquiry that there are
19 no grounds for affirming the chief medical officer's
20 order, the magistrate shall in the manner prescribed
21 by section two hundred twenty-nine point eight (229.8),
22 subsection one (1) of the Code insure that the person
23 has or is provided legal counsel at the earliest
24 practicable time, and shall arrange for the counsel
25 to be present, if practicable, before proceeding
26 further under this section. If the chief medical
27 officer's order is affirmed by the magistrate, a copy
28 of the order shall be filed as early as reasonably
29 possible on the next business day with the clerk of
30 the district court in the county where it is
31 anticipated that an order will be filed under section
32 two hundred twenty-nine point six (229.6) of the Code.
33 3. The chief medical officer of the hospital shall
34 examine and may detain and care for the person taken
35 into custody and detained under an order prepared
36 pursuant to subsection two (2) of this section for
37 a period not to exceed forty-eight hours from the
38 time such order is dated, excluding Saturdays, Sundays
39 and holidays, unless the order is sooner dismissed
40 by a magistrate. The hospital may provide treatment
41 which is necessary to preserve the person's life,
42 or to appropriately control behavior by the person
43 which is likely to result in physical injury to himself
44 or herself or others if allowed to continue, but may
45 not otherwise provide treatment to the person without
46 his or her consent. The person shall be discharged
47 from the hospital and released from custody not later
48 than the expiration of that period, unless an
49 application for his or her involuntary hospitalization
50 is sooner filed with the clerk pursuant to section

¹⁹
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1 229.6. The detention of any person by the procedure
2 and not in excess of the period of time prescribed
3 by this section shall not render the peace officer,
4 physician or hospital so detaining that person liable
5 in a criminal or civil action for false arrest or
6 false imprisonment if the peace officer, physician
7 or hospital had reasonable grounds to believe the
8 person so detained was mentally ill and likely to
9 physically injure himself or herself or others if
10 not immediately detained."

11 17. Page 9, by striking lines 19 and 20 and
12 inserting in lieu thereof the following:

13 "Sec. 14. Sections two hundred twenty-six point
14 six (226.6), subsection five (5), and two hundred
15 twenty-nine point forty-four (229.44), Code 1977,
16 are repealed."

¹⁹
S-3620 FILED
MAY 16, 1977

RECEIVED FROM THE HOUSE

Senate amended. Concurred 5/17 (p. 1646)

SENATE FILE 333

S-3621

1 Amend the House amendment, S-3619, to Senate
2 File 333 as follows:
3 1. Page 3, by striking lines 1 through 47.
4 2. Page 4, by striking line 3 through page 5,
5 line 10.

S-3621 FILED & ADOPTED (p 1645) BY GENE W. GLENN
MAY 17, 1977

SENATE FILE 333

S-3624

1 Amend the Glenn amendment, S-3621, to the House
2 amendment, S-3619 to Senate File 333 as follows:
3 1. Page 1, line 3, by striking the figure "47"
4 and inserting in lieu thereof the figure "46".

S-3624 FILED & ADOPTED (p 1645) BY GENE W. GLENN
MAY 17, 1977

H-4143

1 Amend Senate File 333, as amended, passed and re-
2 printed by the Senate, as follows:

3 1. Page 2, line 25, by striking the words and
4 numeral "subsection two (2)" and inserting in lieu
5 thereof the words and numerals "subsections two (2)
6 and three (3)".

7 2. Page 2, line 33, by striking the word
8 "Immediately" and inserting in lieu thereof the word
9 "Immediately".

10 3. Page 2, by striking lines 34 and 35 and insert-
11 ing in lieu thereof the words "~~upon-taking-the-person~~
12 ~~into-custody, the-nearest-available-magistrate, as~~
13 ~~defined-in-section-746.4, shall-be-notified~~".

14 4. Page 3, by striking lines 1 through 15 and
15 inserting in lieu thereof the following: "~~and-shall~~
16 ~~immediately-proceed-to-the-facility. The-magistrate~~
17 ~~shall-in-the-manner-prescribed-by-section-229.6~~
18 ~~subsection-4-insure-that-the-person-has-or-is-provided~~
19 ~~legal-counsel-at-the-earliest-practicable-time, and~~
20 ~~shall-arrange-for-the-counsel-to-be-present, if~~
21 ~~practicable, before-proceeding-under-this-section.~~

22 A person believed mentally ill, and therefore likely
23 to injure himself or herself or others if not
24 immediately detained, may be delivered to a hospital
25 by someone other than a peace officer. Upon delivery
26 of the person believed mentally ill to the hospital,
27 the chief medical officer may order treatment of that
28 person, including chemotherapy, but only to the extent
29 necessary to preserve the person's life or to
30 appropriately control behavior by the person which
31 is likely to result in physical injury to that person
32 or others if allowed to continue. The peace".

33 5. Page 3, lines 17 and 18, by striking the words
34 "remain until the magistrate's arrival and shall"
35 and inserting in lieu thereof the words "~~remain-until~~
36 ~~the-magistrate's-arrival-and-shall~~".

37 6. Page 3, line 19, by striking the words
38 "magistrate. If the magistrate" and inserting in
39 lieu thereof the words "~~magistrate~~ chief medical
40 officer. If the ~~magistrate~~ chief medical officer".

41 7. Page 3, line 20, by striking the words "probable
42 cause" and inserting in lieu thereof the words
43 "~~probable-cause~~ reason".

44 8. Page 3, line 23, by striking the word
45 "magistrate" and inserting in lieu thereof the words
46 "~~magistrate~~ chief medical officer".

47 9. Page 3, line 24, by striking the word "enter"
48 and inserting in lieu thereof the words "~~enter~~
49 prepare".

50 10. Page 3, line 27, by striking the word

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1 "magistrate's" and inserting in lieu thereof the words
2 "~~magistrate's~~ chief medical officer's".

3 11. Page 3, line 30, by striking the words
4 "probable cause" and inserting in lieu thereof the
5 words "~~probable-cause~~ reason".

6 12. Page 3, by striking lines 33, 34 and 35, and
7 inserting in lieu thereof the words "A If it is
8 necessary to transport the person to an appropriate
9 hospital, a".

10 13. Page 4, by striking line 1 and inserting in
11 lieu thereof the words "~~certified~~ copy of the order".

12 14. Page 4, by striking line 4 and inserting in
13 lieu thereof the following:

14 "time. The chief medical officer's order shall
15 be filed as early as reasonably possible on the next
16 business day with the clerk of the district court
17 in the county where an application for hospitalization
18 of the person, if deemed necessary, would be filed
19 under section two hundred twenty-nine point six (229.6)
20 of the Code. The clerk shall at once notify the
21 nearest available magistrate, as defined in section
22 seven hundred forty-eight point one (748.1) of the
23 Code, who shall immediately proceed to the hospital
24 where the person is detained, review the matter, and
25 either affirm or dismiss the chief medical officer's
26 order. Unless convinced upon initial inquiry that
27 there are no grounds for affirming the chief medical
28 officer's order, the magistrate shall in the manner
29 prescribed by section two hundred twenty-nine point
30 eight (229.8), subsection one (1) of the Code insure
31 that the person has or is provided legal counsel at
32 the earliest practicable time, and shall arrange for
33 the counsel to be present, if practicable, before
34 proceeding further under this section.

35 3. The chief medical officer of the hospital shall
36 examine and may detain and care for the person taken
37 into custody and detained under an order prepared
38 pursuant to subsection two (2) of this section for
39 a period not to exceed forty-eight hours from the
40 time such order is dated, excluding Saturdays, Sundays
41 and holidays, unless the order is sooner dismissed
42 by a magistrate. The hospital may provide treatment
43 which is necessary to preserve the person's life,
44 or to appropriately control behavior by the person
45 which is likely to result in physical injury to himself
46 or herself or others if allowed to continue, but may
47 not otherwise provide treatment to the person without
48 his or her consent. The person shall be discharged
49 from the hospital and released from custody not later
50 than the expiration of that period, unless an

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1 application for his or her involuntary hospitalization
 2 is sooner filed with the clerk pursuant to section
 3 229.6. The detention of any person by the procedure
 4 and not in excess of the period of time prescribed
 5 by this section shall not render the peace officer,
 6 physician or hospital so detaining that person liable
 7 in a criminal or civil action for false arrest or
 8 false imprisonment if the peace officer, physician
 9 or hospital had reasonable grounds to believe the
 10 person so detained was mentally ill and likely to
 11 physically injure himself or herself or others if
 12 not immediately detained."

H-4143 FILED, ADOPTED (2/27) BY NIELSEN of Polk
 MOVED TO RECONSIDER (2/30) DOYLE of Woodbury
Reconsidered, amended by 4/50 and adopted 5/13 (p. 2175)
 MAY 12, 1977

SENATE FILE 333

H-4150

1 Amend the Neilsen-Doyle amendment H-4143 to Senate
 2 File 333, as amended, passed and reprinted by the
 3 Senate as follows:
 4 1. Page 2, by striking lines 14 through 23 and
 5 inserting in lieu thereof the following: "time.
 6 The chief medical officer shall notify the nearest
 7 available magistrate, as defined in section seven
 8 hundred forty-eight point one (748.1) of the Code,
 9 of the order at once if the order is prepared between
 10 the hours of eight o'clock a.m. and eight o'clock
 11 p.m.; if the order is prepared between the hours of
 12 eight o'clock p.m. of one day and eight o'clock a.m.
 13 of the following day, such magistrate shall be no-
 14 tified by the chief medical officer not later than
 15 eight o'clock a.m. of the latter day. Upon being
 16 so notified the magistrate shall immediately pro-
 17 ceed to the hospital".
 18 2. Page 2, line 34, by inserting after the word
 19 "section." the words "If the chief medical officer's
 20 order is affirmed by the magistrate, a copy of the
 21 order shall be filed as early as reasonably possible
 22 on the next business day with the clerk of the district
 23 court in the county where it is anticipated that an
 24 order will be filed under section two hundred twenty-
 25 nine point six (229.6) of the Code."

H-4150 FILED - *Adopted 5/13* BY NIELSEN of Polk
 MAY 12, 1977 (*p. 2175*) NEWHARD of Jones
 GENTLEMAN of Polk

1 Amend Senate File 333 as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 2, by striking lines 11 through 23 and
4 inserting in lieu thereof the following: "two hundred
5 twenty-nine point twelve (229.12), Code 1977, is
6 amended to read as follows:

7 229.12 HEARING PROCEDURE.

8 1. At the hospitalization hearing, evidence in
9 support of the contentions made in the application
10 shall be presented by the county attorney. During
11 the hearing the applicant and the respondent shall
12 be afforded an opportunity to testify and to present
13 and cross-examine witnesses, and the court may receive
14 the testimony of any other interested person. The
15 respondent has the right to be present at the hearing.
16 If the respondent exercises that right and has been
17 medicated within twelve hours, or such longer period
18 of time as the court may designate, prior to the
19 beginning of the hearing or an adjourned session
20 thereof, the judge shall be informed of that fact
21 and of the probable effects of the medication upon
22 convening of the hearing.

23 2. All persons not necessary for the conduct of
24 the proceeding shall be excluded, except that the
25 court may admit persons having a legitimate interest
26 in the proceeding. Upon motion of the county attorney,
27 the judge may exclude the respondent from the hearing
28 during the testimony of any particular witness if
29 the judge determines that that witness' testimony
30 is likely to cause the respondent severe emotional
31 trauma.

32 3. The respondent's welfare shall be paramount
33 and the hearing shall be conducted in as informal
34 a manner as may be consistent with orderly procedure,
35 but consistent therewith the issue shall be tried
36 as a civil matter. Such discovery as is permitted
37 under the Iowa rules of civil procedure shall be
38 available to the respondent. The court shall re-
39 ceive all relevant and material evidence which may
40 be offered and need not be bound by the rules of
41 evidence. There shall be a presumption in favor of
42 the respondent, and the burden of evidence in support
43 of the contentions made in the application shall be
44 upon the applicant. If upon completion of the hearing
45 the court finds that the contention that the respondent
46 is seriously mentally impaired has not been sustained
47 by clear and convincing evidence, it shall deny the
48 application and terminate the proceeding.

49 4. If the respondent is not taken into custody
50 under section two hundred twenty-nine point eleven

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1 (229.11) of the Code, but the court subsequently finds
 2 good cause to believe that the respondent is about
 3 to depart from the jurisdiction of the court, the
 4 court may order such limited detention of the
 5 respondent as is authorized by section two hundred
 6 twenty-nine point eleven (229.11) of the Code and
 7 is necessary to insure that the respondent will not
 8 depart from the jurisdiction of the court without
 9 the court's approval until the proceeding relative
 10 to the respondent has been concluded."

H-4142 FILED, ADOPTED BY MILLER of Buchanan
 MAY 12, 1977 (p. 2126) MONROE of Des Moines

SENATE FILE 333

H-4144

1 Amend Senate File 333, as amended, passed and
 2 reprinted by the Senate, as follows:
 3 1. Page 1, by inserting after line 11 the
 4 following:
 5 "Sec. ____ Section two hundred twenty-nine point
 6 seven (229.7), Code 1977, is amended to read as
 7 follows:
 8 229.7 SERVICE OF NOTICE UPON RESPONDENT. Upon
 9 the filing of an application for involuntary
 10 hospitalization, the clerk shall docket the case and
 11 immediately notify a district court judge who shall
 12 review the application and accompanying documentation.
 13 If the application is adequate as to form, the judge
 14 may set a time and place for a hearing on the
 15 application, if feasible, and but the hearing shall
 16 not be held less than forty-eight hours after notice
 17 to the respondent unless the respondent waives such
 18 minimum prior notice requirement. The judge shall
 19 direct the clerk to send copies of the application
 20 and supporting documentation, together with a notice
 21 informing the respondent of the procedures required
 22 by this chapter, to the sheriff or his or her deputy
 23 for immediate service upon the respondent. If the
 24 respondent is taken into custody under section 229.11,
 25 service of the application, documentation and notice
 26 upon the respondent shall be made at the time he or
 27 she is taken into custody.
 28 Sec. ____ Section two hundred twenty-nine point
 29 eight (229.8), subsection three (3), paragraph a,
 30 Code 1977, is amended to read as follows:
 31 a. If not previously done, set a time and place
 32 for a hospitalization hearing, which shall be at the
 33 earliest practicable time not less than forty-eight
 34 hours after notice to the respondent, unless the
 35 respondent waives such minimum prior notice
 36 requirement; and "

H-4144 FILED - Adopted 5/13 BY BRANDT of Black Hawk
 MAY 12, 1977 - (p. 2176)

SENATE FILE 333

H-4113

- 1 Amend Senate File 333, as passed by the
- 2 Senate and reprinted, as follows:
- 3 1. Page 9, by striking lines 19 and 20 and
- 4 inserting in lieu thereof the following:
- 5 "Sec. 14. Sections two hundred twenty-six
- 6 point six (226.6), subsection five (5), and two
- 7 hundred twenty-nine point forty-four (229.44),
- 8 Code 1977, are repealed."

H-4113 FILED - *Adopted 5/12* BY COMMITTEE ON HUMAN RESOURCES
MAY 11, 1977 - *(p. 2124)* HIGGINS of Scott, Chair

SENATE AMENDMENT TO
HOUSE AMENDMENT TO
SENATE FILE 333

H-4240

- 1 Amend the House amendment S-3619 to Senate
- 2 File 333 as follows:
- 3 1. Page 3, by striking lines 1 through 46.
- 4 2. Page 4, by striking line 3 through page 5,
- 5 line 10.

H-4240 FILED
RECEIVED FROM SENATE
MAY 17, 1977

House referred to committee 5/18 (p. 2391)
Senate insisted 5/19 (p. 1719)

REPORT OF THE CONFERENCE COMMITTEE
ON SENATE FILE 333

To the President of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the conference committee appointed to consider the differences between the Senate and the House of Representatives on Senate File 333, a bill for an Act to make certain clarifying and corrective revisions in and additions to chapter two hundred twenty-nine (229) of the Code, and certain related statutes, relating to hospitalization of the mentally ill, respectfully make the following report:

1. That the Senate recede from its amendment H-4240 to the House amendment S-3619 to Senate File 333 as amended, passed and reprinted by the Senate.

2. That the House amendment S-3619 be amended as follows:

1. Page 2 of the amendment, lines 46 and 47, by striking the words and numerals "two (2) and three (3)" and inserting in lieu thereof the words and numerals "two (2), three (3) and four (4)".

2. Page 3 of the amendment, by striking lines 38 through 40 and inserting in lieu thereof the following:

"___. Page 3, by striking line 24 and inserting in lieu thereof the words "~~enter-a-written-order-for~~ direct that the person to be detained in custody the hospital".

___. Page 3, line 25, by striking the word "and" and inserting in lieu thereof the words "and or".

___. Page 3, line 27, by striking the words "magistrate's order shall state" and inserting in lieu thereof the words "~~magistrate's-order~~ chief medical officer shall prepare a report which shall state, in as much detail as reasonably possible,"."

3. Page 4 of the amendment, line 2, by striking the word "order" and inserting in lieu thereof the words "~~order~~ chief medical officer's report".

4. Page 4 of the amendment, by striking lines 3 through 40 and inserting in lieu thereof the following:

"___. Page 4, by inserting after line 4 the following:

"3. A chief medical officer who directs that a person be detained in a hospital under subsection two (2) of this section shall at once notify the nearest available magistrate as defined in section seven hundred forty-eight point one (748.1) of the Code, except that if the directive is made after midnight and before seven o'clock a.m. the magistrate shall be so notified not later than seven o'clock a.m. of the same day. Upon being so notified the magistrate shall immediately proceed to the hospital where the person is detained and inquire into the matter. Unless convinced upon initial inquiry that there are no grounds for further detention of the person, the magistrate shall in the manner prescribed by section two hundred twenty-nine point eight (229.8),

subsection one (1) of the Code insure that the person has or is provided legal counsel at the earliest practicable time, and shall arrange for the counsel to be present, if practicable, before proceeding further under this section. If the magistrate finds upon review of the report prepared by the chief medical officer under subsection two (2) of this section, and of such other information or evidence as the magistrate deems pertinent, that there is probable cause to believe that the person is seriously mentally impaired and because of that impairment is likely to physically injure himself or herself or others if not detained, the magistrate shall enter a written order for the person to be detained in custody at the hospital. The magistrate's order shall have attached to it a copy of the chief medical officer's report prepared under subsection two (2) of this section, and may state other information supporting the finding of probable cause to believe the person detained is seriously mentally impaired and likely to physically injure himself or herself or others if not detained. The order shall be filed with the clerk of the district court in the county where it is anticipated that an application will be filed under section two hundred twenty-nine point six (229.6) of the Code.

3 4. The chief medical officer of the hospital shall examine and may detain and care for the person ~~taken into~~ detained in custody under the magistrate's order for a period not to exceed forty-eight hours from the time the person was brought to the hospital as described in subsection two (2) of this section, excluding Saturdays, Sundays and holidays. The hospital may provide treatment".

5. Page 5 of the amendment, by striking line 10 and inserting in lieu thereof the words "not immediately detained.

4 5. The cost of hospitalization at a public hospital of a person detained temporarily by the procedure prescribed in this section shall be paid in the same way as if the person had been admitted to the hospital by the procedure prescribed in sections 229.6 to 229.13."

REPORT OF THE CONFERENCE COMMITTEE
PAGE 4

ON THE PART OF THE SENATE: ON THE PART OF THE HOUSE:

JOHN S. MURRAY, CHAIRPERSON
DAVID M. READINGER
BOB RUSH
EARL M. WILLITS

SCOTT D. NEWHARD, CHAIRPERSON
JULIA B. GENTLEMAN
THOMAS J. HIGGINS
JOAN LIPSKY
CARL V. NIELSEN

FILED
MAY 20, 1977

Senate refused to adopt 5/20 (p. 1795)

REPORT OF THE SECOND CONFERENCE COMMITTEE
ON SENATE FILE 333

To the President of the Senate and the Speaker of the House of Representatives:

We, the undersigned members of the second conference committee appointed to consider the differences between the Senate and the House of Representatives on Senate File 333, a bill for an Act to make certain clarifying and corrective revisions in and additions to chapter two hundred twenty-nine (229) of the Code, and certain related statutes, relating to hospitalization of the mentally ill, respectfully make the following report:

1. That the Senate recede from its amendment H-4240 to the House amendment S-3619 to Senate File 333 as amended, passed and reprinted by the Senate.

2. That the House recede from its amendment S-3619 to Senate File 333 as amended, passed and reprinted by the Senate.

3. That Senate File 333, as amended, passed and reprinted by the Senate, be amended as follows:

1. Page 1, by inserting after line 11 the following new sections:

"Sec. ____ . Section two hundred twenty-nine point seven (229.7), Code 1977, 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 who shall review the application and accompanying documentation. If the application is adequate as to form, the judge may set a time and place for a hearing on the application, if feasible, and 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 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 his or her 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 he or she is taken into custody.

Sec. ____ . Section two hundred twenty-nine point eight (229.8), subsection three (3), paragraph a, Code 1977, is amended to read as follows:

a. If not previously done, set a time and place for a hospitalization hearing, which shall be at the earliest practicable time not less than forty-eight hours after notice to the respondent, unless the respondent waives such minimum prior notice requirement; and".

2. Page 2, by striking lines 11 through 23 and inserting in lieu thereof the following: "two hundred twenty-nine point twelve (229.12), Code 1977, is amended to read as follows:

229.12 HEARING PROCEDURE.

1. At the hospitalization hearing, evidence in support of the contentions made in the application shall be presented by the county attorney. 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 any other interested person. The respondent has the right to be present at the hearing. If the respondent exercises that right and has been medicated within twelve hours, or such longer period of time as the court may designate, prior to the beginning of the hearing or an adjourned session thereof, the judge shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

2. All persons not necessary for the conduct of the proceeding shall be excluded, except that the court may admit persons having a legitimate interest in the proceeding.

Upon motion of the county attorney, the judge may exclude the respondent from the hearing during the testimony of any particular witness if the judge determines that that witness' testimony is likely to cause the respondent severe emotional trauma.

3. The respondent's welfare shall be paramount and the hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, but consistent therewith the issue shall be tried as a civil matter. Such discovery as is permitted under the Iowa rules of civil procedure shall be available to the respondent. The court shall receive all relevant and material evidence which may be offered and need not be bound by the rules of evidence. There shall be a presumption in favor of the respondent, and the burden of evidence in support of the contentions made in the application shall be upon the applicant. If upon completion of the hearing the court finds that the contention that the respondent is seriously mentally impaired has not been sustained by clear and convincing evidence, it shall deny the application and terminate the proceeding.

4. If the respondent is not taken into custody under section two hundred twenty-nine point eleven (229.11) of the Code, but the court subsequently finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order such limited detention of the respondent as is authorized by section two hundred twenty-nine point eleven (229.11) of the Code and is necessary to insure 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.

3. Page 2, line 25, by striking the words and numeral "subsection two (2)" and inserting in lieu thereof the words and numerals "subsections two (2), three (3) and four (4)".

4. Page 2, line 33, by striking the word "Immediately" and inserting in lieu thereof the word "~~Immediately~~".

5. Page 2, by striking lines 34 and 35 and inserting in lieu thereof the words "~~upon-taking-the-person-into-custody,~~ ~~the-nearest-available-magistrate,~~ ~~as-defined-in-section-748-4,~~ ~~shall-be-notified~~".

6. Page 3, by striking lines 1 through 15 and inserting in lieu thereof the following: "~~and-shall-immediately-proceed~~ ~~to-the-facility,~~ ~~the-magistrate-shall-in-the-manner-prescribed~~ ~~by-section-229-3,~~ ~~subsection-1-insure-that-the-person-has~~ ~~or-is-provided-legal-counsel-at-the-earliest-practicable-time,~~ ~~and-shall-arrange-for-the-counsel-to-be-present,~~ ~~if~~ ~~practicable,~~ ~~before-proceeding-under-this-section.~~ A person

believed mentally ill, and likely to injure himself or herself or others if not immediately detained, may be delivered to a hospital by someone other than a peace officer.

Upon delivery of the person believed mentally ill to the hospital, the chief medical officer may order treatment of that person, including chemotherapy, but only to the extent necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The peace".

7. Page 3, lines 17 and 18, by striking the words "remain until the magistrate's arrival and shall" and inserting in lieu thereof the words "~~remain-until-the-magistrate's-arrival~~ ~~and-shall~~".

8. Page 3, line 19, by striking the words "magistrate. If the magistrate" and inserting in lieu thereof the words "magistrate chief medical officer. If the magistrate chief medical officer".

9. Page 3, line 20, by striking the words "probable cause" and inserting in lieu thereof the words "probable-cause reason".

10. Page 3, line 23, by striking the word "magistrate" and inserting in lieu thereof the words "chief medical of- ficer".

11. Page 3, by inserting after line 24 the following:
"at once communicate with the nearest available magistrate as defined in section eight hundred one point four (801.4), subsection six (6) of the Code Supplement. The magistrate shall immediately proceed to the facility where the person is detained, except that if the chief medical officer's communication with the magistrate occurs between the hours of midnight and the next succeeding seven o'clock a.m. and the magistrate deems it appropriate under the circumstances described by the chief medical officer, the magistrate may delay going to the facility and in that case shall give the chief medical officer verbal instructions either directing that the person be released forthwith or authorizing the person's continued detention at that facility. In the latter case, the magistrate shall:

a. By the close of business on the next working day, file with the clerk a written report stating the substance of the information on the basis of which the person's continued detention was ordered; and

b. Arrive at the facility where the person is being detained not later than eight o'clock a.m. of the same day on which the chief medical officer's notification occurs.

3. Upon arrival at the hospital, the magistrate shall at once review the matter. Unless convinced upon initial inquiry that there are no grounds for further detention of the person, the magistrate shall in the manner prescribed by section two hundred twenty-nine point eight (229.8), subsection one (1) of the Code insure that the person has or is provided legal counsel at the earliest practicable time, and shall arrange for the counsel to be present, if practicable, before proceeding further under this section. If the magistrate finds upon review of the report prepared by the chief medical officer under subsection two (2) of this section, and of such other information or evidence as the magistrate deems pertinent, that there is probable cause to

believe that the person is seriously mentally impaired and because of that impairment is likely to physically injure himself or herself or others if not detained, the magistrate".

12. Page 4, by inserting after line 4 the following:

"3 4. The chief medical officer of the hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours from the time such order is dated, excluding Saturdays, Sundays and holidays, unless the order is sooner dismissed by a magistrate. The hospital may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is likely to result in physical injury to himself or herself or others if allowed to continue, but may not otherwise provide treatment to the person without his or her consent. The person shall be discharged from the hospital and released from custody not later than the expiration of that period, unless an application for his or her involuntary hospitalization is sooner filed with the clerk pursuant to section 229.6. The detention of any person by the procedure and not in excess of the period of time prescribed by this section shall not render the peace officer, physician or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure himself or herself or others if not immediately detained.

4 5. The cost of hospitalization at a public hospital of a person detained temporarily by the procedure prescribed in this section shall be paid in the same way as if the person had been admitted to the hospital by the procedure prescribed in sections 229.6 to 229.13."

13. Page 7, by inserting after line 3 the following new sections:

"Sec. 11. Chapter two hundred twenty-nine (229), Code 1977, is amended by adding the following new section:

NEW SECTION. RULES FOR PROCEEDINGS.

1. The supreme court may prescribe rules of pleading, practice and procedure, and the forms of process, writs and notices, for all proceedings in any court of this state arising 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 nor modify the substantive rights of any party to a proceeding arising under this chapter.

2. Rules prescribed pursuant to this section shall be subject to section six hundred eighty-four point nineteen (684.19) of the Code.

Sec. 12. Chapter two hundred twenty-nine (229), Code 1977, is amended by adding sections thirteen (13) through sixteen (16) of this Act, which shall be codified as a separate division of the chapter.

Sec. 13. NEW SECTION. DEFINITIONS. As used in this division:

1. "Respondent" means a person against whom a petition has been filed under this division.

2. "Department" means the Iowa department of substance abuse established by chapter one hundred twenty-five (125) of the Code.

3. "Director", "facility" and "substance abuser" have the respective meanings assigned those terms by section one hundred twenty-five point two (125.2) of the Code.

Sec. 14. NEW SECTION. INVOLUNTARY COMMITMENT OF SUBSTANCE ABUSERS--PETITION.

1. A person may be committed to the custody of a facility by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the administrator in charge of a facility. The petition shall

allege that the respondent is a substance abuser who habitually lacks self-control as to the use of chemical substances, and shall further allege either:

a. That the respondent has threatened, attempted or inflicted physical harm on another person, and is likely to inflict physical harm on himself or herself or on another person unless committed; or

b. That the respondent is incapacitated by a chemical substance.

A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

2. The petition shall be accompanied by a certificate of a licensed physician who has examined the respondent within two days before the submission of the petition, unless the respondent has refused to submit to a medical examination or was unavailable for examination, in which case the fact of refusal or unavailability shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

3. Upon the filing of the petition, the court shall fix a date for a hearing, which shall be no later than ten days after the date the petition was filed. If a judicial hospitalization referee has been appointed under section two hundred twenty-nine point twenty-one (229.21) of the Code for the county in which the petition is filed, the clerk of the district court shall immediately notify the referee of the filing of the petition and the referee shall thereupon discharge all of the duties imposed upon judges of the district court by this division, except the duty to hear appeals filed under subsection two (2) of section fifteen (15) of this Act. A copy of the petition and the notice of hearing shall be served in the manner of an original notice on the respondent and upon a parent or legal guardian if the respondent is a

minor. A copy of the petition and the notice of hearing shall be mailed or delivered in the manner provided for motions in civil cases to the petitioner, the next of kin of the respondent other than the petitioner, the administrator of the facility to which the respondent has been committed for emergency care, and any other person the court believes should receive copies. A petition shall have attached a copy of the certificate specified in this section.

Sec. 15. NEW SECTION. HEARING--COMMITMENT--RECOMMITMENT.

1. At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the respondent. The respondent shall be present unless the court believes that his or her presence is likely to be injurious to the respondent; in this event the court shall appoint a guardian ad litem to represent the respondent throughout the proceeding. The court shall examine the respondent in open court, or if advisable, shall examine the respondent out of court. If the respondent has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court-appointed licensed physician. If the respondent refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the respondent for a period of not more than five days for purposes of a diagnostic examination.

2. If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that the allegations of the petition have been established by clear and convincing proof, it shall make an order of commitment to a facility. It may not order commitment of a respondent unless it determines that the facility is able to provide adequate and appropriate treatment for the respondent and

the treatment is likely to be beneficial. If the order is made by a judicial hospitalization referee to whom the matter has been referred pursuant to subsection three (3) of section fourteen (14) of this Act, the respondent may appeal 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 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 hearing before a district judge at the earliest practicable time.

3. A respondent committed under this section shall remain in the custody of a facility for treatment for a period of thirty days unless sooner discharged. This division shall not be construed to require the department to pay the cost of any medication or procedure provided the person 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 petitions the court for an order for the respondent's recommitment upon the grounds set forth in subsection one (1) of section fourteen (14) of this Act for a further period not to exceed ninety days.

4. A respondent recommitted under subsection three (3) of this section 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 on the grounds set forth in subsection one (1) of section fourteen (14) of this Act for recommitment for a further period not to exceed ninety days.

5. Upon the filing of a petition for recommitment under

subsections three (3) and four (4) of this section, the court shall fix a date for hearing no later than ten days after the date the petition was filed. A copy of the petition and the notice of hearing shall be served in the same manner as an original notice on the same persons as required by subsection three (3) of section fourteen (14) of this Act. A petition shall have attached a copy of the certificate specified in this section. At the hearing the court shall proceed as provided in subsection one (1) of section fourteen (14) of this Act.

6. The court shall inform the respondent of his or her right to contest the application, to be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and to have counsel appointed by the court or provided by the court, if the respondent wants the assistance of counsel and is unable to obtain counsel. If the court believes that the respondent needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for the respondent regardless of his or her wishes. The respondent shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the respondent is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

7. The venue for proceedings under this division is the place in which a respondent resides or is present.

Sec. 16. NEW SECTION. TREATMENT--TRANSFER--DISCHARGE.

1. The director shall insure that a facility provides adequate and appropriate treatment of any respondent committed to the custody of that facility. The director may recommend to the appropriate district court the transfer of any respondent committed to the custody of a facility from that facility to another if transfer is medically advisable, and if notice is provided to the counselor advocate, and the spouse or next of kin of the respondent.

2. If the administrator of a private treatment facility consents to the request of a competent respondent who has been committed to a public facility or that respondent's parent, sibling, adult child, or guardian to accept the respondent for treatment, the administrator of the public treatment facility may transfer the respondent to the private treatment facility.

3. A respondent committed to the custody of a facility for treatment shall be discharged at any time before the end of the period for which he or she has been committed if either of the following conditions is met:

a. In case of a substance abuser committed under section fourteen (14), subsection one (1), paragraph a, of this Act that the respondent is no longer a substance abuser or the likelihood no longer exists.

b. In case of a substance abuser committed under section fourteen (14), subsection one (1), paragraph b, of this Act, that the incapacity no longer exists, that further treatment will not be likely to bring about significant improvement in the respondent's condition, or that treatment is no longer adequate or appropriate.

4. A respondent committed under this division may at any time seek to be discharged from commitment by writ of habeas corpus.

Sec. 17. Section one hundred twenty-five point eighteen (125.18), subsection five (5), Code 1977, is amended to read as follows:

5. When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he or she shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than five days. If a petition for involuntary commitment under ~~section 425-49~~ sections fourteen (14) through sixteen (16) of this Act has been filed within the five days and the administrator in

charge of a facility finds that grounds for emergency commitment still exist, he or she may detain the person until the petition has been heard and determined, but no longer than ten days after filing the petition."

14. By renumbering succeeding sections in accordance with the foregoing amendments.

15. Page 9, by striking lines 19 and 20 and inserting in lieu thereof the following:

"Sec. 22. Section two hundred thirty point two (230.2), subsection one (1), Code 1977, is amended to read as follows:

1. In the county ~~of the residence of said commissioners~~ from which the person was placed in the hospital;

Sec. 23. Section one hundred twenty-five point nineteen (125.19), as amended by Acts of the Sixty-seventh General Assembly, 1977 Session, chapter seventy-four (74), section thirty (30), and sections two hundred twenty-six point six (226.6), subsection five (5), and two hundred twenty-nine point forty-four (229.44), Code 1977, are repealed."

16. Title, line 4, by inserting after the word "ill" the words ", and to the procedure for involuntary commitment of persons found to be substance abusers".

ON THE PART OF THE SENATE:

EUGENE M. HILL, CHAIRPERSON
BOB CARR
LUCAS J. DE KOSTER
JAMES M. REDMOND

ON THE PART OF THE HOUSE:

JOHN BRUNOW, CHAIRPERSON
REID W. CRAWFORD
DONALD V. DOYLE
INGWER HANSEN
CRAIG D. WALTER

FILED:

MAY 5, 1978

House adopted 5/9 (p. 2364)

SENATE FILE 333

AN ACT

TO MAKE CERTAIN CLARIFYING AND CORRECTIVE REVISIONS IN AND ADDITIONS TO CHAPTER TWO HUNDRED TWENTY-NINE (229) OF THE CODE, AND CERTAIN RELATED STATUTES, RELATING TO HOSPITALIZATION OF THE MENTALLY ILL, AND TO THE PROCEDURE FOR INVOLUNTARY COMMITMENT OF PERSONS FOUND TO BE SUBSTANCE ABUSERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section two hundred twenty-nine point one (229.1), Code 1977, is amended by adding the following new subsections:

NEW SUBSECTION. "Director" or "state director" means the director of that division of the department of social services having jurisdiction of the state mental health institutes, or that director's designee.

NEW SUBSECTION. "Chemotherapy" means treatment of an individual by use of a drug or substance which cannot legally be delivered or administered to the ultimate user without a physician's prescription or medical order.

Sec. 2. Section two hundred twenty-nine point seven (229.7), Code 1977, 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 who shall review the application and accompanying documentation. If the application is adequate as to form, the judge may set a time and place for a hearing on the application, if feasible, and 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 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 his or her 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 he or she is taken into custody.

Sec. 3. Section two hundred twenty-nine point eight (229.8), subsection three (3), paragraph a, Code 1977, is amended to read as follows:

a. If not previously done, set a time and place for a hospitalization hearing, which shall be at the earliest practicable time not less than forty-eight hours after notice to the respondent, unless the respondent waives such minimum prior notice requirement; and

Sec. 4. Section two hundred twenty-nine point ten (229.10), subsection one (1), Code 1977, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If the respondent is not taken into custody under section two hundred twenty-nine point eleven (229.11) of the Code, but the court is subsequently informed that the respondent has declined to be examined by the licensed physician or physicians pursuant to the court order, the court may order such limited detention of the respondent as is necessary to facilitate the examination of the respondent by the licensed physician or physicians.

Sec. 5. Section two hundred twenty-nine point eleven (229.11), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

If the applicant requests that the 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 seriously mentally impaired and 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 or his or her deputy and

be detained until the hospitalization 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 succeeding business day. The judge may order the respondent detained for ~~that~~ the period of time until the hearing is held, and no longer, in accordance with subsection 1 if possible, and if not then in accordance with subsection 2 or, only if neither of these alternatives are available, in accordance with subsection 3. Detention may be:

Sec. 6. Section two hundred twenty-nine point twelve (229.12), Code 1977, is amended to read as follows:

229.12 HEARING PROCEDURE.

1. At the hospitalization hearing, evidence in support of the contentions made in the application shall be presented by the county attorney. 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 any other interested person. The respondent has the right to be present at the hearing. If the respondent exercises that right and has been medicated within twelve hours, or such longer period of time as the court may designate, prior to the beginning of the hearing or an adjourned session thereof, the judge shall be informed of that fact and of the probable effects of the medication upon convening of the hearing.

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

3. The respondent's welfare shall be paramount and the

hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, but consistent therewith the issue shall be tried as a civil matter. Such discovery as is permitted under the Iowa rules of civil procedure shall be available to the respondent. The court shall receive all relevant and material evidence which may be offered and need not be bound by the rules of evidence. There shall be a presumption in favor of the respondent, and the burden of evidence in support of the contentions made in the application shall be upon the applicant. If upon completion of the hearing the court finds that the contention that the respondent is seriously mentally impaired has not been sustained by clear and convincing evidence, it shall deny the application and terminate the proceeding.

4. If the respondent is not taken into custody under section two hundred twenty-nine point eleven (229.11) of the Code, but the court subsequently finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order such limited detention of the respondent as is authorized by section two hundred twenty-nine point eleven (229.11) of the Code and is necessary to insure 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. 7. Section two hundred twenty-nine point twenty-two (229.22), subsections two (2), three (3) and four (4), Code 1977, is amended to read as follows:

2. In the circumstances described in subsection 1, any peace officer who has reasonable grounds to believe that a person is mentally ill, and because of that illness is likely to physically injure himself or herself or others if not immediately detained, may without a warrant take or cause that person to be taken to the nearest available facility as defined in section 229.11, subsections 2 and 3. ~~Immediately upon taking the person into custody, the nearest available magistrate, as defined in section 748.47, shall be notified~~

~~and shall immediately proceed to the facility. The magistrate shall in the manner prescribed by section 229.8, subsection 4 insure that the person has or is provided legal counsel at the earliest practicable time, and shall arrange for the counsel to be present, if practicable, before proceeding under this section.~~ A person believed mentally ill, and likely to injure himself or herself or others if not immediately detained, may be delivered to a hospital by someone other than a peace officer. Upon delivery of the person believed mentally ill to the hospital, the chief medical officer may order treatment of that person, including chemotherapy, but only to the extent necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The peace officer who took the person into custody, or other party who brought the person to the hospital, shall ~~remain until the magistrate's arrival and shall~~ describe the circumstances of the detention matter to the magistrate chief medical officer. If the magistrate chief medical officer finds that there is ~~probable cause~~ reason to believe that the person is seriously mentally impaired, and because of that impairment is likely to physically injure himself or herself or others if not immediately detained, ~~he or she~~ the chief medical officer shall enter a written order for the person to be detained in custody at once communicate with the nearest available magistrate as defined in section eight hundred one point four (801.4), subsection six (6) of the Code Supplement. The magistrate shall immediately proceed to the facility where the person is detained, except that if the chief medical officer's communication with the magistrate occurs between the hours of midnight and the next succeeding seven o'clock a.m. and the magistrate deems it appropriate under the circumstances described by the chief medical officer, the magistrate may delay going to the facility and in that case shall give the chief medical officer verbal instructions either directing

that the person be released forthwith or authorizing the person's continued detention at that facility. In the latter case, the magistrate shall:

a. By the close of business on the next working day, file with the clerk a written report stating the substance of the information on the basis of which the person's continued detention was ordered; and

b. Arrive at the facility where the person is being detained not later than eight o'clock a.m. of the same day on which the chief medical officer's notification occurs.

3. Upon arrival at the hospital, the magistrate shall at once review the matter. Unless convinced upon initial inquiry that there are no grounds for further detention of the person, the magistrate shall in the manner prescribed by section two hundred twenty-nine point eight (229.8), subsection one (1) of the Code insure that the person has or is provided legal counsel at the earliest practicable time, and shall arrange for the counsel to be present, if practicable, before proceeding further under this section. If the magistrate finds upon review of the report prepared by the chief medical officer under subsection two (2) of this section, and of such other information or evidence as the magistrate deems pertinent, that there is probable cause to believe that the person is seriously mentally impaired and because of that impairment is likely to physically injure himself or herself or others if not detained, the magistrate and, if the facility where the person is at that time is not an appropriate hospital, transported to an appropriate hospital. The magistrate's order shall state the circumstances under which the person was taken into custody or otherwise brought to a hospital and the grounds supporting the finding of probable cause to believe that he or she is seriously mentally impaired and likely to physically injure himself or herself or others if not immediately detained. A The order shall be filed with the clerk of the district court in the county where it is anticipated that an application will be

filed under section two hundred twenty-nine point six (229.6) of the Code, and a certified copy of the order shall be delivered to the chief medical officer of the hospital where the person is detained, at the earliest practicable time.

3 4. The chief medical officer of the hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours from the time such order is dated, excluding Saturdays, Sundays and holidays, unless the order is sooner dismissed by a magistrate. The hospital may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is likely to result in physical injury to himself or herself or others if allowed to continue, but may not otherwise provide treatment to the person without his or her consent. The person shall be discharged from the hospital and released from custody not later than the expiration of that period, unless an application for his or her involuntary hospitalization is sooner filed with the clerk pursuant to section 229.6. The detention of any person by the procedure and not in excess of the period of time prescribed by this section shall not render the peace officer, physician or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure himself or herself or others if not immediately detained.

4 5. The cost of hospitalization at a public hospital of a person detained temporarily by the procedure prescribed in this section shall be paid in the same way as if the person had been admitted to the hospital by the procedure prescribed in sections 229.6 to 229.13.

Sec. 8. Section two hundred twenty-nine point twenty-three (229.23), subsection two (2), Code 1977, is amended to read as follows:

2. The right to refuse treatment by shock therapy or chemotherapy, unless the use of these treatment modalities is specifically consented to by the patient's next-of-kin or guardian. The patient's right to refuse treatment by chemotherapy shall not apply during any period of custody authorized by section two hundred twenty-nine point four (229.4), subsection three (3), section two hundred twenty-nine point eleven (229.11) or section two hundred twenty-nine point twenty-two (229.22) of the Code, but this exception shall extend only to chemotherapy treatment which is, in the chief medical officer's judgment, necessary to preserve the patient's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The patient's right to refuse treatment by chemotherapy shall also not apply during any period of custody authorized by the court pursuant to sections 229.13 or 229.14 of the Code. In any other situation in which, in the chief medical officer's judgment, chemotherapy is appropriate for the patient but the patient refuses to consent thereto and there is no next-of-kin or guardian to give consent, the chief medical officer may request an order authorizing treatment of the patient by chemotherapy from the district court which ordered the patient's hospitalization.

Sec. 9. Section two hundred twenty-nine point twenty-five (229.25), subsection four (4), Code 1977, is amended to read as follows:

4. The person who is hospitalized or that person's guardian, if the person is a minor or is not legally competent to do so, signs an ~~informal~~ informed consent to release information. Each signed consent shall designate specifically the person or agency to whom the information is to be sent, and the information may be sent only to that person or agency.

Sec. 10. Section two hundred twenty-nine point forty-two (229.42), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

If a person wishing to make application for voluntary admission to a mental hospital established by chapter two hundred twenty-six (226) of the Code is unable to pay the costs of hospitalization or those responsible for such person are unable to pay such costs, application for authorization of voluntary admission must be made to any clerk of the district court before application for admission is made to the hospital. After determining the county of legal settlement the said clerk shall, on forms provided by the state director, authorize such person's admission to a mental health hospital as a voluntary case. The clerk shall at once provide a duplicate copy of the form to the county board of supervisors. The costs of the hospitalization shall be paid by the county of legal settlement to the state comptroller and credited to the general fund of the state, providing the mental health hospital rendering the services has certified to the county auditor of the responsible county the amount chargeable thereto and has sent a duplicate statement of such charges to the state comptroller.

Sec. 11. Chapter two hundred twenty-nine (229), Code 1977, is amended by adding the following new section:

NEW SECTION. STATUS OF PERSONS HOSPITALIZED UNDER FORMER LAW.

1. Each person admitted or committed to a hospital for treatment of mental illness on or before December 31, 1975 who remained so hospitalized, or was on convalescent leave or was receiving care in another facility on transfer from such hospitalization, on or after January 1, 1976 shall be considered to have been hospitalized under this chapter, and its provisions shall apply to each such person on and after the effective date of this section, except as otherwise provided by subsection three (3) of this section.

2. Hospitalization of any person for treatment of mental illness, either voluntary or involuntary, on or before December 31, 1975 shall not be deemed to constitute a finding of or to equate with nor raise a presumption of incompetency, or

to cause the person who was so hospitalized to be deemed a lunatic, a person of unsound mind, or a person under legal disability for any purpose, including but not limited to the circumstances enumerated in section two hundred twenty-nine point twenty-seven (229.27), subsection one (1) of the Code. Nothing in this subsection shall be construed to invalidate any specific declaration of incompetence of a person who was so hospitalized if the declaration was made pursuant to a separate procedure authorized by law for that purpose, and did not result automatically from the person's hospitalization.

3. Where a person was hospitalized involuntarily for treatment of mental illness on or before December 31, 1975 and remained so hospitalized, or was on convalescent leave or was receiving care in another facility on transfer from such hospitalization, on or after January 1, 1976, but was subsequently discharged prior to the effective date of this section, this section shall not be construed to require:

a. The filing after the effective date of this section of any report relative to that person's status which would have been required to be filed prior to the effective date of this section if that person had initially been hospitalized under this chapter as amended by Acts of the Sixty-sixth General Assembly, 1975 Session, chapter one hundred thirty-nine (139), sections one (1) through thirty (30).

b. That legal proceedings be taken under this chapter, as so amended, to clarify the status of the person so hospitalized, unless that person or the district court considers such proceedings necessary in a particular case to appropriately conclude the matter.

Sec. 12. Chapter two hundred twenty-nine (229), Code 1977, is amended by adding the following new section:

NEW SECTION. RULES FOR PROCEEDINGS.

1. The supreme court may prescribe rules of pleading, practice and procedure, and the forms of process, writs and notices, for all proceedings in any court of this state arising 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 nor modify the substantive rights of any party to a proceeding arising under this chapter.

2. Rules prescribed pursuant to this section shall be subject to section six hundred eighty-four point nineteen (684.19) of the Code.

Sec. 13. Chapter two hundred twenty-nine (229), Code 1977, is amended by adding sections fourteen (14) through seventeen (17) of this Act, which shall be codified as a separate division of the chapter.

Sec. 14. NEW SECTION. DEFINITIONS. As used in this division:

1. "Respondent" means a person against whom a petition has been filed under this division.

2. "Department" means the Iowa department of substance abuse established by chapter one hundred twenty-five (125) of the Code.

3. "Director", "facility" and "substance abuser" have the respective meanings assigned those terms by section one hundred twenty-five point two (125.2) of the Code.

Sec. 15. NEW SECTION. INVOLUNTARY COMMITMENT OF SUBSTANCE ABUSERS--PETITION.

1. A person may be committed to the custody of a facility by the district court upon the petition of the person's spouse or guardian, a relative, the certifying physician, or the administrator in charge of a facility. The petition shall allege that the respondent is a substance abuser who habitually lacks self-control as to the use of chemical substances, and shall further allege either:

a. That the respondent has threatened, attempted or inflicted physical harm on another person, and is likely to inflict physical harm on himself or herself or on another person unless committed; or

b. That the respondent is incapacitated by a chemical

substance.

A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

2. The petition shall be accompanied by a certificate of a licensed physician who has examined the respondent within two days before the submission of the petition, unless the respondent has refused to submit to a medical examination or was unavailable for examination, in which case the fact of refusal or unavailability shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

3. Upon the filing of the petition, the court shall fix a date for a hearing, which shall be no later than ten days after the date the petition was filed. If a judicial hospitalization referee has been appointed under section two hundred twenty-nine point twenty-one (229.21) of the Code for the county in which the petition is filed, the clerk of the district court shall immediately notify the referee of the filing of the petition and the referee shall thereupon discharge all of the duties imposed upon judges of the district court by this division, except the duty to hear appeals filed under subsection two (2) of section sixteen (16) of this Act. A copy of the petition and the notice of hearing shall be served in the manner of an original notice on the respondent and upon a parent or legal guardian if the respondent is a minor. A copy of the petition and the notice of hearing shall be mailed or delivered in the manner provided for motions in civil cases to the petitioner, the next of kin of the respondent other than the petitioner, the administrator of the facility to which the respondent has been committed for emergency care, and any other person the court believes should receive copies. A petition shall have attached a copy of the certificate specified in this section.

Sec. 16. NEW SECTION. HEARING--COMMITMENT--RECOMMITMENT.

1. At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the respondent. The respondent shall be present unless the court believes that his or her presence is likely to be injurious to the respondent; in this event the court shall appoint a guardian ad litem to represent the respondent throughout the proceeding. The court shall examine the respondent in open court, or if advisable, shall examine the respondent out of court. If the respondent has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court-appointed licensed physician. If the respondent refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing the respondent for a period of not more than five days for purposes of a diagnostic examination.

2. If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that the allegations of the petition have been established by clear and convincing proof, it shall make an order of commitment to a facility. It may not order commitment of a respondent unless it determines that the facility is able to provide adequate and appropriate treatment for the respondent and the treatment is likely to be beneficial. If the order is made by a judicial hospitalization referee to whom the matter has been referred pursuant to subsection three (3) of section fifteen (15) of this Act, the respondent may appeal 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 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 hearing before a district judge at the

earliest practicable time.

3. A respondent committed under this section shall remain in the custody of a facility for treatment for a period of thirty days unless sooner discharged. This division shall not be construed to require the department to pay the cost of any medication or procedure provided the person 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 petitions the court for an order for the respondent's recommitment upon the grounds set forth in subsection one (1) of section fifteen (15) of this Act for a further period not to exceed ninety days.

4. A respondent recommitted under subsection three (3) of this section 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 on the grounds set forth in subsection one (1) of section fifteen (15) of this Act for recommitment for a further period not to exceed ninety days.

5. Upon the filing of a petition for recommitment under subsections three (3) and four (4) of this section, the court shall fix a date for hearing no later than ten days after the date the petition was filed. A copy of the petition and the notice of hearing shall be served in the same manner as an original notice on the same persons as required by subsection three (3) of section fifteen (15) of this Act. A petition shall have attached a copy of the certificate specified in this section. At the hearing the court shall proceed as provided in subsection one (1) of section fifteen (15) of this Act.

6. The court shall inform the respondent of his or her right to contest the application, to be represented by counsel

at every stage of any proceedings relating to his or her commitment and recommitment, and to have counsel appointed by the court or provided by the court, if the respondent wants the assistance of counsel and is unable to obtain counsel. If the court believes that the respondent needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for the respondent regardless of his or her wishes. The respondent shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the respondent is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

7. The venue for proceedings under this division is the place in which a respondent resides or is present.

Sec. 17. NEW SECTION. TREATMENT--TRANSFER--DISCHARGE.

1. The director shall insure that a facility provides adequate and appropriate treatment of any respondent committed to the custody of that facility. The director may recommend to the appropriate district court the transfer of any respondent committed to the custody of a facility from that facility to another if transfer is medically advisable, and if notice is provided to the counselor advocate, and the spouse or next of kin of the respondent.

2. If the administrator of a private treatment facility consents to the request of a competent respondent who has been committed to a public facility or that respondent's parent, sibling, adult child, or guardian to accept the respondent for treatment, the administrator of the public treatment facility may transfer the respondent to the private treatment facility.

3. A respondent committed to the custody of a facility for treatment shall be discharged at any time before the end of the period for which he or she has been committed if either of the following conditions is met:

a. In case of a substance abuser committed under section fifteen (15), subsection one (1), paragraph a, of this Act

that the respondent is no longer a substance abuser or the likelihood no longer exists.

b. In case of a substance abuser committed under section fifteen (15), subsection one (1), paragraph b, of this Act, that the incapacity no longer exists, that further treatment will not be likely to bring about significant improvement in the respondent's condition, or that treatment is no longer adequate or appropriate.

4. A respondent committed under this division may at any time seek to be discharged from commitment by writ of habeas corpus.

Sec. 18. Section one hundred twenty-five point eighteen (125.18), subsection five (5), Code 1977, is amended to read as follows:

5. When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he or she shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than five days. If a petition for involuntary commitment under ~~section~~ +25-49 sections fifteen (15) through seventeen (17) of this Act has been filed within the five days and the administrator in charge of a facility finds that grounds for emergency commitment still exist, he or she may detain the person until the petition has been heard and determined, but no longer than ten days after filing the petition.

Sec. 19. Section two hundred twenty-six point twenty-three (226.23), Code 1977, is amended to read as follows:

226.23 CONVALESCENT LEAVE OF PATIENTS. Upon the recommendation of the superintendent and ~~the written consent of the district court which ordered hospitalization in accordance with section two hundred twenty-nine point fifteen~~ (229.15), subsection four (4), of the Code in the case of an involuntary patient, the state director may place on convalescent leave said patient for a period not to exceed one year, under such conditions as are prescribed by said

state director.

Sec. 20. Section two hundred twenty-seven point ten (227.10), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

227.10 TRANSFERS FROM COUNTY OR PRIVATE INSTITUTIONS.

Patients who have been admitted at public expense to any institution to which this chapter is applicable may be involuntarily transferred to the proper state hospital for the mentally ill in the manner prescribed by sections two hundred twenty-nine point six (229.6) through two hundred twenty-nine point thirteen (229.13) of the Code. The application required by section two hundred twenty-nine point six (229.6) may be filed by the state director or the director's designee, or by the administrator of the institution where the patient is then being maintained or treated. If the patient was admitted to that institution involuntarily, the state director may arrange and complete the transfer, and shall report it as required of a chief medical officer under section two hundred twenty-nine point fifteen (229.15), subsection four (4) of the Code. The transfer shall be made at county expense, and the expense recovered, as provided in section two hundred twenty-seven point seven (227.7) of the Code.

Sec. 21. Section two hundred twenty-seven point eleven (227.11), Code 1977, is amended to read as follows:

227.11 TRANSFERS FROM STATE HOSPITALS. A county chargeable with the expense of a patient in a state hospital for the mentally ill shall remove such patient to a county or private institution for the mentally ill which has complied with the aforesaid rules when the state director or the director's designee so orders on a finding that said patient is suffering from chronic mental illness or from senility and will receive equal benefit by being so transferred. A county shall remove to its county care facility any patient in a state hospital for the mentally ill upon ~~a finding by a commission, consisting~~ request of the superintendent of the state hospital in which

~~the patient is confined and a physician or physicians chosen by the board of supervisors of the county of the patient's residence, said physician or physicians to be paid by the county of the patient's residence, that such patient can be properly cared for in the county care facility, and the finding of the commission, after its~~ pursuant to the superintendent's authority under section two hundred twenty-nine point fifteen (229.15), subsection four (4), of the Code, and approval by the board of supervisors of the county of the patient's residence, ~~shall be complete authority for such removal.~~ In no case shall a patient be thus transferred except upon compliance with section 229.14, subsection 4, or without the written consent of a relative, friend, or guardian if such relative, friend, or guardian pays the expense of the care of such patient in a state hospital.

Patients transferred to a public or private facility under this section may subsequently be placed on convalescent or limited leave or transferred to a different facility for continued full-time custody, care and treatment when, in the opinion of the attending physician or the chief medical officer of the hospital from which the patient was so transferred, the best interest of the patient would be served by such leave or transfer. However, if the patient was originally hospitalized involuntarily, the leave or transfer shall be made in compliance with section two hundred twenty-nine point fifteen (229.15), subsection four (4) of the Code.

Sec. 22. Section two hundred twenty-seven point sixteen (227.16), Code 1977, is amended to read as follows:

227.16 STATE AID. For each patient heretofore or hereafter received on transfer from a state hospital for the mentally ill under the provisions of section 227.11, or ~~committed to~~ placed in a county care facility by ~~a commission of hospitalization~~ the procedure prescribed in chapter two hundred twenty-nine (229) of the Code, or any mentally retarded adult patient discharged or removed from the state hospital-schools and cared for and supported by the county in the

county care facility or elsewhere outside a state institution for the mentally ill or mentally retarded the county shall be entitled to receive the amount of five dollars per week for each patient from the state mental aid fund hereinafter provided for.

Sec. 23. Section two hundred thirty point two (230.2), subsection one (1), Code 1977, is amended to read as follows:

1. In the county ~~of the residence of said commissioners~~ from which the person was placed in the hospital;

Sec. 24. Section one hundred twenty-five point nineteen (125.19), as amended by Acts of the Sixty-seventh General Assembly, 1977 Session, chapter seventy-four (74), section thirty (30), and sections two hundred twenty-six point six (226.6), subsection five (5), and two hundred twenty-nine point forty-four (229.44), Code 1977, are repealed.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 333, Sixty-seventh General Assembly.

KEVIN P. LIGHT
Acting Secretary of the Senate

Approved 6/30, 1978

ROBERT D. RAY
Governor