

**125.82 Commitment hearing.**

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

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

3. The person who filed the application and a licensed physician, mental health professional as defined in section 228.1, or certified alcohol and drug counselor certified by the nongovernmental Iowa board of substance abuse certification who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless the court for good cause finds that their presence or testimony is not necessary. The applicant, respondent, and the respondent's attorney may waive the presence or telephonic appearance of the licensed physician, mental health professional, or certified alcohol and drug counselor who examined the respondent and agree to submit as evidence the written report of the licensed physician, mental health professional, or certified alcohol and drug counselor. The respondent's attorney shall inform the court if the respondent's attorney reasonably believes that the respondent, due to diminished capacity, cannot make an adequately considered waiver decision. "Good cause" for finding that the testimony of the licensed physician, mental health professional, or certified alcohol and drug counselor who examined the respondent is not necessary may include, but is not limited to, such a waiver. If the court determines that the testimony of the licensed physician, mental health professional, or certified alcohol and drug counselor is necessary, the court may allow the licensed physician, mental health professional, or certified alcohol and drug counselor to testify by telephone. The respondent shall be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing that the attorney has conversed with the respondent, and that in the attorney's judgment the respondent cannot make a meaningful contribution to the hearing, or that the respondent has waived the right to be present, and the basis for the attorney's conclusions. A stipulation to the respondent's absence shall be reviewed by the court before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by the respondent's absence.

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

5. If the respondent is not taken into custody under section 125.81, but the court finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order limited detention of the respondent as authorized in section 125.81, as is necessary to ensure that the respondent will not depart from the jurisdiction of the

court without the court's approval until the proceeding relative to the respondent has been concluded.

[C75, 77, §125.19(3-7, 10, 13); C79, 81, §229.52(1); 82 Acts, ch 1212, §10]

90 Acts, ch 1085, §16; 91 Acts, ch 108, §3; 2006 Acts, ch 1115, §1; 2006 Acts, ch 1116, §1; 2006 Acts, ch 1159, §30

[SP] For future amendment to subsection 4, effective July 1, 2012, see 2011 Acts, ch 121, §46, 62

[T] Section not amended; footnote added