

**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 and shall permit the advocate from the respondent's county of residence to attend the hearing. 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 witness's testimony is likely to cause the respondent severe emotional trauma.

3. *a.* 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.

*b.* The licensed physician or mental health professional who examined the respondent shall be present at the hearing unless the court for good cause finds that the licensed physician's or mental health professional's presence or testimony is not necessary. The applicant, respondent, and the respondent's attorney may waive the presence or the telephonic appearance of the licensed physician or mental health professional who examined the respondent and agree to submit as evidence the written report of the licensed physician or mental health professional. 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 or mental health professional 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 or mental health professional is necessary, the court may allow the licensed physician or the mental health professional to testify by telephone.

*c.* 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 229.11, 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 229.11 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.

5. The clerk shall furnish copies of any orders to the respondent and to the applicant if the applicant files a written waiver signed by the respondent.

[R60, §1480; C73, §1400; C97, §2265; C24, 27, 31, 35, 39, §3547; C46, 50, 54, 58, 62, 66, 71, 73, 75, §229.4; C77, 79, 81, §229.12]

89 Acts, ch 275, §4; 94 Acts, ch 1027, §2; 2006 Acts, ch 1116, §3; 2006 Acts, ch 1159, §31; 2009 Acts, ch 41, §226; 2012 Acts, ch 1079, §12; 2012 Acts, ch 1120, §100, 130

Referred to in §218.92, 222.7, 222.55, 225.11, 226.31, 227.10, 227.15, 229.14, 229.19, 229.21, 229.22, 229.24, 229.26, 229.38, 331.756(46), 602.8103

[T] 2012 amendment to subsection 2, by 2012 Acts, ch 1120, §100, takes effect July 1, 2013; 2012 Acts, ch 1120, §130

[T] Subsection 2 amended