December 31, 2018

Charles Smithson
Secretary of Senate
State Capitol Building
LOCAL

Carmine Boal
Chief Clerk of the House
State Capitol Building
LOCAL

Dear Ms. Boal and Mr. Smithson:

Enclosed please find copies of reports to the General Assembly relative to the Commitment Process Review.

This report was prepared pursuant to the directive contained in Iowa Acts Chapter 1056.17.

Please feel free to contact me if you need additional information.

Sincerely,

Mikki Stier
Deputy Director

Enclosure

cc: Kim Reynolds, Governor
Senator Amanda Ragan
Senator Mark Costello
Representative David Heaton
Representative Lisa Heddens
Legislative Service Agency
Kris Bell, Senate Democrat Caucus
Josh Bronsink, Senate Republican Caucus
Natalie Ginty, House Republican Caucus
Kelsey Thien, House Democrat Caucus

Department of
HUMAN SERVICES

Commitment Process Review Workgroup Report

December 2018

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Commitment Process Review Workgroup Report

Introduction

Iowa Acts Chapter 1056, section 17 directed the Department of Human Services (DHS) and the Iowa Department of Public Health (IDPH) to convene a stakeholder workgroup to review the commitment processes under Iowa Code chapters 125 and 229 and report recommendations for improvements in the processes and any amendments to law to increase efficiencies and more appropriately utilize the current array of mental health and disability services to the Governor and the General Assembly by December 31, 2018. Workgroup participants can be found in Appendix A. The Workgroup conducted its work during four open public meetings on August 17, September 7, October 11, and November 9, 2018. Public comment was heard at each Workgroup meeting.

Recommendations

The workgroup makes the following recommendations to the Governor and the General Assembly for consideration:

IMMEDIATE CHANGES TO IOWA CODE:
The 2019 legislature should change Iowa Code 229 as detailed in Appendix B. These changes include:

- Amending Iowa Code 229.20 “Seriously mentally impaired” or “serious mental impairment” to include a reference to deterioration of mental illness.
- Amend Iowa Code 229.22 Hospitalization – emergency procedure so that the reason an individual may be placed on an “emergency hold” is consistent with the definition of “seriously mentally impaired” and expanding the time an individual may be placed in emergency hold from 48 to 72 hours. Requests for emergency holds shall be processed by the judicial officer 24 hours a day, 7 days a week, throughout the year.

EDUCATION
The 2019 Legislature should appropriate funding for and direct the Departments of Human Services and Public Health to contract to develop educational materials related to court commitment for treatment. In addition, funding should be provided for the Departments to contract for training related to the educational materials to be provided to interested key stakeholders regarding involuntary commitment as well as ongoing training regarding involuntary commitment. The curriculum of such training should include confidentiality of information pertaining to mental illness and substance use disorders and should be developed by an advisory committee organized by the single entity. The target audience of the training should include, but not be limited to: judicial

officers, clerks of courts, attorneys, mental health advocates, community mental health centers, law enforcement officers, psychiatric hospitals, access centers, hospital emergency departments, individuals with mental illness and/or substance use disorder and their families, substance use disorder treatment programs, and Mental Health and Disability Services (MHDS) Regions.

- The training should be available in different modalities.
- There should also be opportunities for cross-disciplinary training.
- In person training should be strategically located throughout the state and be provided in each MHDS Region.

The Supreme Court should be strongly encouraged to require this training for relevant judicial branch staff.

Suggestions for Future Changes to Iowa Code

The Commitment Process Review Workgroup identified four categories in the commitment process with recommendations for each commitment process that should be used in the drafting of proposed code changes.

<u>ONE COMMITMENT CODE</u>

The 2019 legislature should direct the Department of Human Services and the Department of Public Health to draft legislation for consideration by the 2020 legislature that merges the commitment requirements contained in Iowa Code 229 and Iowa Code 125 and makes other changes recommended by the Workgroup.

The draft legislation should:

- Ensure Iowa code sections are used that allow Department of Human Services and Department of Public Health to jointly agree on proposed code changes;
- Ensure the merged code recognizes the different modalities of treatment for individuals with mental illness and for individuals with substance use related disorders;
- Identify the different settings in which treatment can be delivered, including outpatient treatment, residential treatment, and inpatient hospitalization;
- Include a section or sections that more specifically define outpatient commitment that is consistent with proven, effective outpatient commitment procedures; and
- Consider the recommendations made in this report.

The code should take into account services that currently exist, are being developed, or may exist in the future to ensure a broad range of treatment options that will serve the individual in the least restrictive setting possible.

The draft proposed legislation should be presented to the Governor and General Assembly by November 15, 2019. Prior to being presented to the Governor and General Assembly, the draft legislation should be reviewed with representatives of interested parties including, but not limited to: individuals that have experienced mental illness and their families, individuals that have experienced a substance use disorder and their families, the judiciary, mental health professionals, mental health advocates, hospitals with inpatient psychiatric units, hospital emergency departments, mental health and disability services (MHDS) regions, law enforcement officers, community mental health centers, nursing homes, county attorneys, Attorney General's Office, county supervisors and substance use disorder treatment programs. The DHS and IDPH should take into consideration recommendations made by these representatives when drafting the proposed change to the Iowa Code.

ACCESS TO SCREENING BY A TRAINED MENTAL HEALTH PROFESSIONAL AT ANY POINT IN THE COMMITMENT PROCESS

Screening, information, and referral should be available for individuals, family, friends, or other interested parties to assist in determining the need for involuntary commitment and for providing information and referral to other services that can meet the individual's needs. This service should be available at any point prior to or after the commitment process.

Screening, information, and referral should involve a trained mental health professional that is knowledgeable about both mental illness and substance use disorders that will:

- Screen the individual to determine, in the opinion of the mental health professional, if the individual needs inpatient psychiatric hospital care and treatment or the individual can be safely and effectively served with other immediately available services and supports.
- Provide the individual, family, friends, or interested parties with information and referral to immediately available services and supports that address the individual's mental health and/or substance use disorder needs.

The mental health professional should be able to go to where the individual is to conduct the screening if the individual is unable or unwilling to come to the mental health professional. The mental health professional must take into account safety of self and safety to the family and friends as well as the individual when conducting a screening.

In addition to the screening occurring by itself, the screening can occur:

- Through telehealth;
- As a component of other services; or

- In combination with other services.

Having the screening done through telehealth and/or as a component of or in combination with other services such as crisis services ensures adequate coverage and access to a trained mental health professional that is knowledgeable about both mental illness and substance use disorders.

The mental health professional could make the results of the screening and the services and supports referral information available to the county or MHDS Region when the county or MHDS Region is the payer. The county or MHDS Region could provide the information from the mental health professional's screening to the court if committal papers are filed. The court should consider the information from the mental health professional's screening when making the commitment decision if the court has the information by the time the commitment hearing is held.

Further analysis and research is necessary to ensure the most effective method to implement this service is utilized and that this service is viable in all MHDS Regions. Administrative rules should be written and adopted for the provision of this service.

Screening and information and referral related to inpatient psychiatric hospital commitment will be adequately funded to sustain the service and will be a:

- Required service to be developed and covered by MHDS Regions including revising and clarifying Iowa Code 331.397 to include the pre-screening as a MHDS Region core service.
- Covered Medicaid service through the Iowa Medical Assistance Program.

MHDS Region funding should be addressed to support this service so that:

- It is clear MHDS Region Fund 10 and 4150 can be used for this screening, referral, and information process even if it involves substance use related disorders and substance use related disorder treatment; and
- The cost of this service is considered when determining adequate, sustainable county and MHDS Region funding.

<u>COMMITMENT FILING AND HOSPITAL TRANSPORTATION:</u>
Currently the commitment process differs slightly depending on the involuntary commitment is due to mental illness or a substance use related disorder. Families looking to commit individuals are finding the process confusing. The commitment process also differs throughout the state.

When filing paperwork to involuntarily commit an individual, the individual goes to the clerk of court in their county. The clerk of court has brochures regarding the commitment process for people wanting to involuntarily commit a person. The commitment process brochure has not been updated with code changes.

- Prior to any code merging, DHS will in consultation with IDPH and Mental Health Advocates update the commitment process brochure.
- Subsequent to any code changes, DHS and IDPH, in consultation with the Mental Health Advocates will update the commitment process brochure.

Mental Health Advocates represent the interests of patients identified as seriously mentally impaired. Currently Mental Health Advocates are notified after the person is committed. The Iowa Code related to involuntary commitment should ensure:

- The Mental Health Advocate shall be informed by the clerk of court immediately when an emergency hold or commitment proceedings are filed and immediately once a date is scheduled for the committal hearing.
- Mental Health Advocates should be notified immediately of every mental health court commitment.
- In the merging of the codes, the Mental Health Advocates' responsibilities shall not expand to substance use related disorder commitments.

A person may be transferred from the emergency department to an inpatient psychiatric hospital. Transportation for individuals who are involuntarily committed for treatment should have access to transportation that is:

- Well defined guidelines should be developed for commitment orders including orders for transportation that includes:
    - Guidelines from the most recent legislation (Iowa Acts Chapter 1056);
    - MHDS Regions options for transportation; and
    - Guidelines regarding transportation responsibility when the individual is currently far from the court of jurisdiction for hospitalization hearings.
- Available for individuals that are no longer hospitalized and live far from the location in which they were involuntarily committed. Non-emergency medical transportation and Medicaid transportation should be explored and offered if possible.

If a person is unable to be transferred to an inpatient psychiatric hospital, the issue of safety and security in the emergency department is paramount.

Effective alternatives that do not rely on law enforcement officers should be developed to provide safety and security for the individual and staff at an inpatient psychiatric hospital or be required to transport non-dangerous individuals.

HEARING PROCESS:

The hearing process could be streamlined to allow providers to be more efficient and for the process to be more standardized.

- Recommend to the court that the court update the forms promulgated with the Judicial Hospitalization Rules. The Workgroup recommends efficiencies be found where possible.
- Training should be provided for individuals completing the committal order form.
- The respondent should be assessed by a mental health professional who is knowledgeable about both mental illness and substance use disorders, using a standardized form, and who has been trained in completing the form. If the evaluation is completed by telehealth, that information should be noted on the form.
- The standardized form should be provided to the Judge to determine if the individual meets involuntary commitment criteria.
- The judge may consider having the commitment hearing being made available through videoconferencing if the providing entity recommends continued treatment to reduce the potential negative effects of transportation on the individual. If the providing entity recommends discharge, the judge may consider having the hearing occur in person to ensure the person is rapidly returned home.
- When the providing entity is not part of the hearing, the information regarding the hearing outcome should to be immediately communicated to the providing entity.
- It is recommended that the code expressly allows the district court retains continuing jurisdiction during an appeal to review periodic reports and order discharge where appropriate.

POST-DISCHARGE PROCESS:

The court is notified by the physician or mental health professional when a person no longer meets commitment criteria. When discharge is recommended, the discharge information sent to the court by the providing entity needs to be expanded:

- A standard discharge report form should be utilized by all providers.
- The standardized discharge report form should include the following:
    - All upcoming appointments
    - Discharge address and phone number of the individual
    - Follow-up that should be completed and by whom prior to the person's discharge appointment.

OUTPATIENT COMMITMENT:

A separate section of Iowa Code should be drafted that describes and defines effective outpatient commitment procedures. The following outpatient commitment criteria shall be considered:

A person may be ordered to participate in assisted outpatient treatment if the court determines:

a) A program or community-based or outpatient service is available in the community in which the person resides or is otherwise made available to the person;
b) The person is 18 years or older;
c) The person has a history of noncompliance with treatment and the lack of compliance has resulted in, or attempted to, seriously physical injure the person's self or others, or the person is currently unwilling to participate in treatment.
d) The person is capable of living safely in the community in which he or she resides;
e) The court determines that, based on the person's history of treatment for mental illness, the person needs to be admitted to a program of community-based or outpatient services to prevent further disability or deterioration of the person which is likely to result in harm to self or others;
f) The current mental status of the person or the nature of the person's mental illness limits or negates the person's ability to make an informed decision to seek treatment for mental illness voluntarily or to comply with recommended treatment for mental illness; and
g) The program of community-based or outpatient services is the least restrictive treatment which is in the best interest of the person.

Iowa Code shall require the court to notify the outpatient provider when an individual is to receive court ordered services from that provider. The provider shall be required to complete periodic reports and notify the court when an individual does not attend appointments, refuses medication, or otherwise is noncompliant with the court order as related to the services to be provided by the providing entity

Appendix A: Commitment Process Review Workgroup [alpha order]

Name	Agency
Rick Shults: Co-chair	Department of Human Services
Kathy Stone: Co-chair	Iowa Department of Public Health
Heidi Baker	Judicial Branch
Ron Berg	Iowa Behavioral Health Association - Prelude Behavioral Services
Lacey Harlan-Ralls	Iowa Hospital Association - Henry County Health Center
Peggy Huppert	National Alliance on Mental Illness-Iowa
Steve Johnson	Iowa Hospital Association – Broadlawns Medical Center
Anna Killpack	Family member of individual with mental health experience
Gretchen Kraemer	Attorney General
Sangil Lee	Iowa Medical Society - University of Iowa
Mary O'Neill	Family member of individual with substance use experience; Heartland Family Service
Libby Reekers	Mental Health Advocate
Jared Schneider	Iowa State Sheriffs' and Deputies' Association - Washington County
Douglas Steenblock	Iowa Medical Society – Iowa Veterans Home
Deanna Triplett	Iowa Department of Public Health
Ashley Vaala	Individual with lived mental health experience
Jennifer Vitko	MHDS Regions - South Central Behavioral Region

Appendix B

The following is proposed legislative changes that the Workgroup recommends that the General Assembly consider in the 2019 legislative session.

229.1 Definitions.
"Seriously mentally impaired" or *"serious mental impairment"* describes the condition of a person with mental illness, including a person who is experiencing a deterioration in mental illness[1], and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness meets any of the following criteria:
a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.
b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.
c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.
d. Has a history of lack of compliance with treatment and any of the following apply:
(1) Lack of compliance has been a significant factor in the need for emergency hospitalization.
(2) Lack of compliance has resulted in one or more acts of serious physical injury to the person's self or others or an attempt to physically injure the person's self or others.

229.22 Hospitalization — emergency procedure.
1. The procedure prescribed by this section shall be used when it appears that a person should be immediately detained due to serious mental impairment, but an application has not been filed naming the person as the respondent pursuant to section 229.6, and the person cannot be ordered into immediate custody and detained pursuant to section 229.11. The procedure described in this section shall be available at all times, including during normal business hours and when the clerk's office is closed.
2. a. (1) 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

[1] The United States Supreme Court ruled in O'Conner v. Donaldson, 422 U.S. 563 (1975) that proof of dangerousness is required to involuntarily hospitalize a person for the purpose of receiving mental health treatment. Proof of a recent overt act is required; the dangerousness to be considered is prospective. It is unclear whether the proposed change in law would be determined to satisfy the requirements of the U.S. Constitution.

illness is likely to be seriously mentally impaired ~~to physically injure the person's self or others if not immediately detained~~, may without a warrant take or cause that person to be taken to the nearest available facility or hospital as defined in section 229.11, subsection 1, paragraphs "b" and "c". A person believed to be seriously mentally impaired ~~mentally ill, and likely to injure the person's self or others if not immediately detained~~, may be delivered to a facility or hospital by someone other than a peace officer.

(2) Upon delivery of the person believed mentally impaired ~~ill~~ to the facility or hospital, the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner 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.

(3) The peace officer who took the person into custody, or other party who brought the person to the facility or hospital, shall describe the circumstances of the matter to the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner. If the person is a peace officer, the peace officer may do so either in person or by written report.

(4) If the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner finds that there is reason to believe that the person is seriously mentally impaired, ~~and because of that impairment is likely to physically injure the person's self or others if not immediately detained~~, the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. (5) The magistrate shall, based upon the circumstances described by the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner, give the examining physician, examining physician assistant, examining mental health professional, or examining psychiatric advanced registered nurse practitioner oral instructions either directing that the person be released forthwith or authorizing the person's detention in an appropriate facility. A peace officer from the law enforcement agency that took the person into custody, if available, during the communication with the magistrate, may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any oral or written order issued under this subsection require the facility or hospital to notify the law enforcement agency about

the discharge of the person prior to discharge. The magistrate may also give oral instructions and order that the detained person be transported to an appropriate facility.

b. If the magistrate orders that the person be detained, the magistrate shall, by the close of business on the next working day, file a written order with the clerk in the county where it is anticipated that an application may be filed under section 229.6. The order may be filed by facsimile if necessary. A peace officer from the law enforcement agency that took the person into custody, if no request was made under paragraph "a", may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any written order issued under this paragraph require the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The order shall state the circumstances under which the person was taken into custody or otherwise brought to a facility or hospital, and the grounds supporting the finding of probable cause to believe that the person is seriously mentally impaired ~~and likely to injure the person's self or others if not immediately detained~~. The order shall also include any law enforcement agency notification requirements if applicable. The order shall confirm the oral order authorizing the person's detention including any order given to transport the person to an appropriate facility or hospital. A peace officer from the law enforcement agency that took the person into custody may also request an order, separate from the written order, requiring the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The clerk shall provide a copy of the written order or any separate order to the chief medical officer of the facility or hospital to which the person was originally taken, to any subsequent facility to which the person was transported, and to any law enforcement department or ambulance service that transported the person pursuant to the magistrate's order.

c. If an arrest warrant has been issued for or charges are pending against the person, but no court order exists requiring notification to a law enforcement agency under paragraph "a" or "b", and if the peace officer delivers the person to a facility or hospital and the peace officer notifies the facility or hospital in writing on a form prescribed by the department of public safety that the facility or hospital notify the law enforcement agency about the discharge of the person prior to discharge, the facility or hospital shall do all of the following:

(1) Notify the dispatch of the law enforcement agency that employs the peace officer by telephone prior to the discharge of the person from the facility or hospital.

(2) Notify the law enforcement agency that employs the peace officer by electronic mail prior to the discharge of the person from the facility or hospital.

3. The chief medical officer of the facility or 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 <u>seventy-two</u> ~~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 facility or 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 the person's self or others if allowed to continue, but may not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility or hospital and released from custody not later than the expiration of that period, unless an application is sooner filed with the clerk pursuant to section 229.6. Prior to such discharge the facility or hospital shall, if required by this section, notify the law enforcement agency requesting such notification about the discharge of the person. The law enforcement agency shall retrieve the person no later than six hours after notification from the facility or hospital but in no circumstances shall the detention of the person exceed the period of time prescribed for detention by this subsection. 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, mental health professional, facility, or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, mental health professional, facility, or hospital had reasonable grounds to believe the person so detained was seriously mentally impaired ~~mentally ill and likely to physically injure the person's self or others if not immediately detained~~, or if the facility or hospital was required to notify a law enforcement agency by this section, and the law enforcement agency requesting notification prior to discharge retrieved the person no later than six hours after the notification, and the detention prior to the retrieval of the person did not exceed the period of time prescribed for detention by this subsection.

4. 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.

5. The department of public safety shall prescribe the form to be used when a law enforcement agency desires notification under this section from a facility or hospital prior to discharge of a person admitted to the facility or hospital and for whom an arrest warrant has been issued or against whom charges are pending. The form shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and regulations promulgated in accordance with that Act and published in 45 C.F.R. pts. 160 – 164.

6. A facility or hospital, which has been notified by a peace officer or a law enforcement agency by delivery of a form as prescribed by the department of public safety indicating that an arrest warrant has been issued for or charges are pending against a person admitted to the facility or hospital, that does not notify the law

enforcement agency about the discharge of the person as required by subsection 2, paragraph “c”, shall pay a civil penalty as provided in section 805.8C, subsection 9.