FINAL REPORT

CIVIL COMMITMENT STUDY COMMITTEE

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NOTICE OF AVAILABILITY OF MINUTES AND SUMMARIES OF PUBLIC HEARINGS

Copies of the minutes of the two meetings and of the summaries of the twelve public hearings of the Civil Commitment Study Committee are available from the Legislative Service Bureau.

F I N A L R E P O R T

CIVIL COMMITMENT STUDY COMMITTEE

February, 1989

APPOINTMENT AND CHARGE

The Civil Commitment Study Committee was established by the Legislative Council to determine whether and how current civil commitment laws should be modified. The individual Committee members were required to conduct local public hearings to collect information on issues relating to civil commitment including independent living needs, county funding per individual, augmenting the Department of Human Services' pursuit of additional federal funding, and augmenting the state Mental Health Institutes' services to persons who have been civilly committed. The Committee was to compile the information collected at the local hearings, develop recommendations, and submit their findings and recommendations to the Legislative Council by January 1, 1988.

Members serving on the Study Committee were:

Senator Al Sturgeon, Co-chairperson
Representative Janet Adams, Co-chairperson
Senator Kenneth Scott
Senator John Peterson
Senator Calvin O. Hultman
Senator Jack Nystrom
Representative Patricia Harper
Representative Mike Peterson
Representative Kyle Hummel
Representative Don Shoning

MEETINGS

The Committee was originally authorized one meeting day. After meeting on August 22, 1988, however, the Committee sought and obtained authorization for an additional meeting day so that the members could have the opportunity to discuss the information obtained in their individual public hearings. The second meeting of the Committee was held on December 2, 1988. The minutes are attached in the appendix of this report.

PUBLIC HEARINGS

During the time between the two Committee meeting days in Des Moines, the individual legislators conducted public hearings in areas which generally coincided with their various legislative districts. There were twelve public hearings in all and they were held in the following cities on the following dates and chaired by the enumerated legislators:

September 12, 1988	Boone, Iowa Senator Jack Nystrom, Chair
September 15, 1988	Webster City, Iowa Representative Janet Adams, Chair
September 20, 1988	Waterloo, Iowa Representative Patricia Harper, Chair
September 22, 1988	Cresco, Iowa Senator Kenneth Scott, Chair
September 22, 1988	Charles City, Iowa Senator Kenneth Scott, Chair
September 30, 1988	Carroll, Iowa Representative Michael Peterson, Chair
October 3, 1988	Red Oak, Iowa Senator Calvin Hultman, Chair
October 3, 1988	Jefferson, Iowa Senator Jack Nystrom, Chair
October 13, 1988	Vinton, Iowa Representative Kyle Hummel, Chair
November 3, 1988	Chariton, Iowa Senator John Peterson, Chair
November 3, 1988	Indianola, Iowa Senator John Peterson, Chair
November 10, 1988	Sioux City, Iowa Senator Al Sturgeon, Co-chair Representative Don Shoning, Co-chair

Summaries of all public hearings were completed, including copies of any written testimony and lists of participants, and are available from the Legislative Service Bureau.

TESTIMONY PRESENTED

At the first meeting, testimony was heard from various interest groups and interested persons. Those persons were:

1. Ann Leahy, Assistant County Attorney, Johnson County Attorney's Office. Ms. Leahy discussed the implications of a recent Iowa Supreme Court opinion and made some suggestions for statutory changes to correct problems that she had encountered with current Code language during her tenure as an assistant county attorney.

2. Mary Whitman, Staff Counsel, Iowa State Association of Counties (ISAC). Ms. Whitman discussed the financial, correctional, and philosophical concerns that the various counties had under the current system and the implications for the counties of broadening the standards of commitment.

3. Judy Dierenfeld, Community Health Centers Association of Iowa, Incorporated. Ms. Dierenfeld discussed the need for a continuum of care and treatment options as well as current inpatient treatment inadequacies. She also noted duplication of procedures under the emergency commitment process and the procedural differences between adults and juveniles.

4. Sheila Navis, Mental Health Association of Iowa, Incorporated. Ms. Navis discussed the need for additional training for referees, inclusion of the patient advocate in the court proceedings, rules for interjurisdictional transfer of patients, and definition of the role and training of law enforcement personnel. She also expressed concern over the placement of juveniles within the adult system because of inadequate juvenile facilities.

5. Deb Westvold, Polk County Health Services. Ms. Westvold discussed the tension between the concerns of protecting the rights of the patient versus the need for early intervention when a patient is beginning to deteriorate. She also noted the need for a clear policy direction in the situation where a mentally ill or retarded person has committed a crime.

6. Dr. Richard Preston, Iowa Medical Society and Iowa Psychiatric Society. Dr. Preston related his experiences as a member of the Hospitalization Commission when the Code was changed several years ago and described both the benefits and problems which resulted from the change. He related his personal knowledge and experiences as a psychiatrist in the implementation of the current civil commitment law.

7. Margaret Stout, Dr. Milton Allison, June Judge, Herbert Ramsey, Neoma Thompson, Alliance for the Mentally Ill. These individuals related their personal experiences with the current civil commitment process. They expressed a concern over unevenness in application of current standards, the lack of mental health services in many communities, and the need for a broadening of the current standards of commitment to allow early intervention and treatment.

8. Cynthia Applegate, Iowa Protection and Advocacy Services, Incorporated. Ms. Applegate focused on the lack of uniformity in the application of current procedures, the need for training for referees and patient advocates, concerns over the legality and usage of the outpatient procedures, payment of patient advocates, use of law enforcement personnel in the current system, and the need for improved case management for delivery of services.

9. Melanie Eiseman, Department of Human Services Division of Mental Health-Mental Retardation and Developmental Disabilities. Ms. Eiseman discussed the financial implications of any changes in the current standard, given the staffing and available bed space at the various state mental health institutes.

10. Linda Ruble, Broadlawns Medical Center. Ms. Ruble discussed substance abuse and emergency commitment procedures. She also expressed concern over current standards which restrict physician's assistants from conducting patient histories and physical examinations.

11. Mark Lambert, Iowa Civil Liberties Union. Mr. Lambert commented on the potential for abuse that a redefinition of the current standards for commitment could cause. He stated that the current standard is very successful in providing procedural safeguards for the individual who is the subject of a commitment proceeding.

12. Christine Rawlings, Mental Health Advocate. Ms. Rawlings discussed the roles and problems faced by the patient advocate, law enforcement, and the patient in the civil commitment process. She also discussed several problems with the emergency commitment procedures and potential solutions that had been tried in her home county.

In addition to the oral testimony, written information was received by many of the presenters and written testimony was received from Gary Huff, M.S.C.C., Speech Pathologist, who could not remain for the meeting.

The Committee requested and received technical assistance from the National Conference of State Legislatures (NCSL). At the second Committee meeting, the Committee heard testimony from two NCSL consultants as well as from an NCSL staff person. Those speakers were:

13. Rebecca T. Craig, Manager, Mental Health Project, National Conference of State Legislatures. Ms. Craig discussed the function of NCSL and the Mental Health Project. She also highlighted some of the concerns that had been dealt with in other states in the area of mental health.

14. The Honorable Judge Lindsey Arthur, Senior Trial Judge, Hennepin County, Minnesota. Judge Arthur discussed the role of a judge in the civil commitment process, the problems frequently encountered by judges in construction of standards, some of the problems faced and solutions reached for problems in his jurisdiction after changing its civil commitment system, and suggestions for improvement of the Iowa standard.

15. David Edwards, Oregon Department of Mental Health. Mr. Edwards discussed the financial aspects of civil commitment and possible ways to draw down federal moneys to assist in the bolstering of community care and housing for the mentally ill. He noted that there does not appear to be any more that Iowa can do to attract federal funding for the state inpatient facilities.

NCSL and Judge Arthur also provided the Committee with various publications, including NCSL summaries of state and federal law, a book from the American Bar Association, and a pamphlet from the National Council of Juvenile and Family Court Judges.

ISSUES/QUESTIONS/SUGGESTIONS

A number of issues, questions, and suggestions were raised at the Committee meetings and public hearings. Those items were compiled and delivered to the members by staff prior to the second meeting and are listed below:

STATUTORY QUESTIONS

1. "Dangerous to self or others" vs. "gravely disabled" or "unable to care for self" standard.

2. Appeal rights lacking for applicants in mental health proceeding if commitment denied.

3. No authority to make appointment of an other patient advocate if there is a conflict.

4. Possibility of adding presumption in favor of commitment if there is a history of mental illness.

5. Ability of referee to place a patient immediately on outpatient treatment on involuntary basis.

6. Ability of referee to order sheriff in another county to pick up and hold or pick up and transport a patient.

7. Need for change of venue procedures after inpatient treatment so that follow-up orders can be in home county.

8. Ability to modify standard 30-day substance abuse treatment order where patient suffers from substance abuse related psychosis.

9. Effect of request for presence of psychiatrist at hearing and use of telephonic testimony or other medical personnel input.

10. Use of hearsay testimony at commitment hearing.

11. Ability of patient advocate to be present for and give input in the commitment hearing.

12. "Right to treatment" concept.

13. Enforcement and monitoring of outpatient orders.

14. Lack of definition for the terms "mental illness", "dangerousness", "injury", "emotional injury".

15. Appointment of advocate in juvenile commitment proceedings.

16. Present mandatory language so that county attorney must pursue each commitment even if it is frivolous.

17. Question of consequences of withdrawal of application.

18. Limited right of refusal of medications.

19. Efficacy of court order in another county.

20. Confidentiality of patient records and doctor's ability to communicate with family and patient advocate.

LAW ENFORCEMENT QUESTIONS

1. Training and equipment for law enforcement personnel.

2. Use of sheriff in transportation and cost of the transportation.

3. Cost of alternative transportation and power of medical personnel to restrain a patient.

4. Preview team concept and nonpenal holding facility.

5. Ability of sheriff to use force if patient becomes violent and liability concerns.

6. Practice of holding patients in jail pending transfer to mental health institute and lack of designated holding facilities in emergency cases.

PATIENT ADVOCATE QUESTIONS

1. Lack of access to patient's records, medical or court; problem is when advocate must:

a. Fill out quarterly report to court.

b. Meet with patient for which the advocate has no papers.

2. Need to more clearly spell out the role of patient advocate.

3. Need for notification of patient advocate when a person is picked up.

4. Training and qualifications of patient advocate.

5. Payment of expenses for advocates, especially transportation and collect phone calls.

6. Question of to whom the patient advocate is responsible.

REFEREE QUESTIONS

1. Need for more treatment options in commitment process.

2. Need for informational interchange for mental health referees.

3. Problem of availability of referee in emergency situation and the usage of magistrates.

4. Failure of some persons to follow due process check-points in current Code.

5. Training of referees.

6. Uniformity of application of Code by referees.

FACILITIES QUESTIONS

1. Need for half-way houses or supervised apartment complexes.

2. Qualifications of persons staffing group homes with mentally ill persons.

3. Qualifications of staff and facilities of mental health units i.e. accreditation.

4. Work and/or activities programs for the mentally ill.

5. Insufficient bed space on juvenile wards (inpatient).

6. The 120 treatment days limitation on the ability of counties to seek reimbursement for moneys expended on a hospitalization.

7. Problem of hearing site being located a great distance from hospital site.

SYSTEMIC AND MISCELLANEOUS QUESTIONS

1. Medical insurance coverage - insurance companies won't insure.

2. Mental health information being "leaked" through the mental health lien on property.

3. Amount of time spent with the patient by psychiatrist and their attorney prior to the commitment hearing.

4. Problem when patient doesn't have enough money to buy their medication.

5. Question of who is responsible for payment of civil commitment court costs and the precommitment evaluation.

6. Potential duplication of "evaluation" services due to D.H.S. rules and Title XIX case management program.

7. Problem of medication adjustment under established commitment order absent full hearing or revocation of outpatient order.

8. Back payment requests by D.H.S. of counties for inpatient treatment which occurred years ago.

9. Concern with using clerk of court to help person fill out commitment papers.

10. Policing of system - where should grievances against referee be lodged?

11. Need for assurance that the children of the mentally ill are being cared for.

12. Problem where neither patient/respondent, applicant, nor patient advocate get copies of court orders or doctor's report.

In addition to the enumerated issues and questions, the Committee also discussed the inconsistencies between chapters 125 and 229 and the constitutionality of the commitment standard as defined under section 125.2.

RECOMMENDATIONS

The Committee, at the close of its second meeting, approved the following recommendations to be drafted for submission to the General Assembly meeting in 1989:

1. That the General Assembly establish a committee to conduct a study of current mental health commitment laws contained in chapters 229, 125, and 232. The Committee shall be directed and administered by the Supreme Court. Members of the Committee shall include, but not be limited to:

a. Judicial hospitalization referees.

b. Members of the Bar.

c. Members of the medical community.

d. Members of the General Assembly.

e. Citizen members who are advocates for the mentally ill.

The Committee is to seek ways to minimize the confrontational aspects of the commitment process. The Committee shall prepare recommendations to be submitted in a report to the Legislative Council by December 1, 1989.

The Supreme Court is to promulgate rules imposing continuing education requirements for referees and patient advocates before December 1, 1989.

2. That the term "gravely disabled" be added to definitional section of section 229.1, subsection 2, as an alternative to the current "dangerous to oneself or others" standard of proof for commitment.

3. That the Supreme Court be directed to conduct and administer pilot projects, including but not limited to:

a. Monitoring of medications of committed mentally ill persons.

b. Prepetition screening processes.

4. That the bill of rights of persons with mental retardation, developmental disabilities, or chronic mental illness under sections 225C.25-28, Code 1989, be fully funded.

5. That court records regarding disposition of a patient be made available to the patient who is the subject of the commitment hearing, family members, and the applicant in the civil commitment proceeding.

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A P P E N D I X

- Legislative Proposals

An Act relating to involuntary hospitalization procedures applicable to the mentally ill and substance abusers.

A Concurrent Resolution relating to the full funding of the bill of rights of persons with mental retardation, developmental disabilities, or chronic mental illness.

SENATE FILE _____
BY (PROPOSED CIVIL COMMITMENT STUDY COMMITTEE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

An Act relating to involuntary hospitalization procedures applicable to the mentally ill and substance abusers.

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

TLSB 1737SI 73
lw/cf/24

S.F. _____ H.F. _____

Section 1. Section 229.1, subsection 2, Code 1989, is amended to read as follows:

2. "Seriously mentally impaired" or "serious mental impairment" describes the condition of a person who is afflicted with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who 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; ~~or~~.

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 afflicted person if the afflicted person is allowed to remain at liberty without treatment.

c. Is gravely disabled.

Sec. 2. Section 229.1, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 15. "Gravely disabled" means the condition of a person who is afflicted with mental illness, and because of that illness is unable to provide for the person's basic needs for food, clothing, shelter, or medical care so that it is probable that serious physical harm will occur to the person in the reasonably foreseeable future.

Sec. 3. Section 229.11, Code 1989, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The clerk shall furnish copies of any orders to the respondent, to the applicant, and to the respondent's immediate family, if the family's residence is known.

Sec. 4. Section 229.12, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 5. The clerk shall furnish copies of any orders to the respondent, to the applicant, and to the respondent's immediate family, if the family's residence is

known.

Sec. 5. Section 229.16, Code 1989, is amended to read as follows:

229.16 DISCHARGE AND TERMINATION OF PROCEEDING.

When in the opinion of the chief medical officer a patient, who is hospitalized under section 229.14, subsection 2, or is receiving treatment under section 229.14, subsection 3, or is in full-time care and custody under section 229.14, subsection 4, ~~of section 229.14~~ no longer requires treatment or care for serious mental impairment, the chief medical officer shall tentatively discharge the patient and immediately report that fact to the court which ordered the patient's hospitalization or care and custody. The court shall thereupon issue an order confirming the patient's discharge from the hospital or from care and custody, as the case may be, and shall terminate the proceedings pursuant to which the order was issued. Copies of the order shall be sent by certified mail to the hospital, the applicant, the patient's immediate family if the family's address is known, and the patient.

Sec. 6. JUDICIAL STUDY. The judicial department is requested to establish a committee to study current commitment laws contained in chapters 125, 229, and 232. The committee shall meet and deliberate under the direction and administration of the supreme court. Members of the committee shall include, but are not limited to:

1. Judicial hospitalization referees.
2. Members of the bar.
3. Members of the medical community.
4. Members of the general assembly.
5. Citizen members who are advocates for the mentally ill.

The committee shall seek ways to minimize the confrontational aspects of the commitment process. The committee shall prepare recommendations to be submitted in a report to the legislative council by December 1, 1989.

Sec. 7. CONTINUING EDUCATION RULES. The supreme court

shall prescribe rules relating to continuing education requirements for judicial hospitalization referees and patient advocates by December 1, 1989.

Sec. 8. PILOT PROGRAMS RELATING TO COMMITMENT PROCEDURES. The supreme court shall implement pilot programs including, but not limited to, the development of appropriate court orders or supervision relating to the monitoring of medication of persons who have been involuntarily hospitalized and the development of a prehearing screening process to encourage resolution of disagreements between the applicant and the respondent in a potential civil commitment hearing. The pilot programs shall be established in a district court for which the appropriate judicial officers have agreed that the district and juvenile courts will serve as the pilot program site for a period of two years, beginning July 1, 1989, and ending June 30, 1991. The supreme court shall make periodic reports to the general assembly containing summaries of the progress of the pilot programs and any recommendations for proposed amendments to the civil commitment statutes.

EXPLANATION

This bill authorizes the involuntary hospitalization of mentally ill persons who are gravely disabled. Gravely disabled is defined as the inability of a person to provide for the person's basic needs which will probably result in serious physical harm to the person in the reasonably foreseeable future.

The bill also provides for delivery of court orders relating to a hospitalization proceeding to patients who are the subject of the order, the applicant in a commitment proceeding, and the immediate family of a patient.

The supreme court is requested to conduct a study of current civil commitment laws and to conduct pilot programs relating to various issues in current civil commitment Code provisions. The supreme court is also required to prescribe rules relating to continuing education requirements for

judicial hospitalization referees and patient advocates.

HOUSE CONCURRENT RESOLUTION NO. ___

BY (PROPOSED CIVIL COMMITMENT STUDY COMMITTEE RESOLUTION)

A Concurrent Resolution relating to the full funding of the bill of rights of persons with mental retardation, developmental disabilities, or chronic mental illness.

WHEREAS, the state had been ranked sixth nationally in terms of the quality of state funded medical care provided to its mentally ill citizens; and

WHEREAS, in 1988, the state's ranking dropped to twenty-first in overall care provided for the mentally ill and to forty-second in per capita spending for mental health; and

WHEREAS, staff cutbacks and the closing of wards in the state's mental health institutes have reduced the availability and quality of mental health services at the state level; and

WHEREAS, inadequate state funding and federal funding reductions have resulted in inadequacies in municipal and county care facilities, outpatient services, and supervised housing; and

WHEREAS, provision of a continuum of quality care facilities and services will ensure more humane conditions for the mentally ill of this state; and

WHEREAS, funding of local treatment options will serve to attract increased federal revenues to the state and help to reduce the need for and use of inpatient treatment services and facilities; NOW THEREFORE,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES, THE SENATE CONCURRING, That the provisions of the Iowa Code known as the bill of rights of persons with mental retardation, developmental disabilities, or chronic mental illness, sections 225C.25 through 225C.28, be implemented through the provision of adequate funding to fulfill the requirements of those sections.