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# LEGISLATIVE GUIDE

*Legal Services Division*



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## INVOLUNTARY HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS

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# Involuntary Hospitalization — Mental Illness



## I. Overview

This Legislative Guide discusses the historical, constitutional, and statutory basis for the involuntary hospitalization process<sup>1</sup> involved in the commitment of an adult person with mental illness for treatment in Iowa.<sup>2</sup> This Guide does not cover involuntary hospitalization issues relating to prison and jail inmates,<sup>3</sup> persons with substance-related disorders,<sup>4</sup> persons with intellectual or other developmental disabilities, or minors.

References, unless otherwise noted, are to the 2014 Iowa Code.

## II. Introduction

In December of 1999, the Surgeon General of the United States issued a groundbreaking report on mental illness. The report stressed the fundamental importance of mental health to overall health and well-being and further recognized that mental disorders affect nearly one in five Americans in any given year. The report characterized these mental disorders as real illnesses that can be just as serious and disabling as certain physical diseases. The report concluded that approximately 10 percent of children and adults receive mental health services from mental health specialists or general medical providers in a given year, and one in six adults receives mental health services either from health care providers, the clergy, social service agencies, or schools in a given year.<sup>5</sup>

**Mental Health Services in Iowa.** The state of Iowa operates four mental health institutes (MHIs), including facilities in Cherokee, Clarinda, Independence, and Mount Pleasant.<sup>6</sup> These MHIs provide psychiatric care to persons unable to receive the necessary evaluation and treatment services in the community.<sup>7</sup> At the local level, mental health services are provided by community mental health centers, hospitals, and various private providers and practitioners. Recipients of publicly funded mental health services in Iowa include persons with primary or secondary diagnoses of intellectual disability, chronic

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<sup>1</sup> The terms “involuntary hospitalization” and “civil commitment” are often used interchangeably. In theory, both terms signify the confinement of persons with mental illness for the purpose of treatment without their consent. Note, Contemporary Studies Project: Facts and Fallacies About Iowa Civil Commitment, 55 Iowa L. Rev. 895, 896-97 (1970) [hereinafter Contemporary Studies Project]. Under Iowa Code chapter 229, the term “commitment” refers to a court order which places a respondent in the custody and care of a public or private hospital, or of an alternative placement facility. Iowa Code §229.14(2)-(4). “Involuntary hospitalization” is used in this Guide to refer to the judicial process for ordering the involuntary treatment and placement of adult persons with mental illness in Iowa.

<sup>2</sup> While this Legislative Guide focuses on the judicial process for involuntary hospitalization, the policy debate in recent years has included a number of related issues. Nationwide, significant attention has focused on the availability and feasibility of both public and private funding sources for mental health treatment, including the growth of managed care and the effort to gain parity in insurance coverage of mental health with physical health, treatment options for individuals with a dual diagnosis of mental illness and chemical dependency, the expansion of involuntary outpatient treatment options, the creation of mental health diversion courts for persons with mental illness who commit crimes, and the enactment of sexually violent predator laws which allow the civil commitment of those persons considered sexually violent predators to mental treatment facilities after they have completed their prison sentences.

<sup>3</sup> For a detailed discussion of Iowa Code chapter 229A relating to the civil commitment process for a sexually violent predator, see Legislative Guide to Civil Commitment of Sexually Violent Predators, October 2012, *available at* [http://www.legis.iowa.gov/DOCS/LSA/Legis\\_Guide/2009/LGLSL053.PDF](http://www.legis.iowa.gov/DOCS/LSA/Legis_Guide/2009/LGLSL053.PDF) (last visited November 1, 2013).

<sup>4</sup> Iowa Code chapter 125 contains a judicial process for the involuntary commitment or treatment for a person with a substance-related disorder which is similar, but not identical, to the involuntary hospitalization process contained in Iowa Code chapter 229.

<sup>5</sup> U.S. Department of Health and Human Services, *Mental Health: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, National Institutes of Health, National Institute of Mental Health, 1999, at p. 19, *available at* <http://profiles.nlm.nih.gov/ps/retrieve/ResourceMetadata/NNBBHS> (last visited October 23, 2013).

<sup>6</sup> Iowa Code §226.1.

<sup>7</sup> Iowa Department of Human Services, *Overview of the State Mental Health Institutes*, August 24, 2009, at p. 2, *available at* [http://www.dhs.iowa.gov/docs/HF811\\_Closure\\_Proposal\\_Briefing.pdf](http://www.dhs.iowa.gov/docs/HF811_Closure_Proposal_Briefing.pdf) [hereinafter DHS Report] (last visited October 15, 2013).



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mental illness, and developmental disability. Public funding for mental health services in Iowa is provided by federal, state, and county governments.<sup>8</sup>

## III. Historical Background

### A. Overview

From colonial times until the 1960s, civil commitment decisions regarding persons with mental illness were frequently made by physicians and mental health professionals, with little concern for the civil and legal rights of the mental health patients. Today, however, every state employs more rigorous legal standards and greater procedural control over the commitment process. The model for these reforms has been the criminal justice system, which grants the accused a number of rights, including the right to notice of the proceedings, the right to an attorney, and the right to be heard by an impartial decision maker.

Prior to 1976, a person could be involuntarily committed in Iowa by one of four means: the two-physician certification process,<sup>9</sup> the district court,<sup>10</sup> the juvenile court,<sup>11</sup> or a local county commission of hospitalization.<sup>12</sup> Under this statute, any person could file a sworn information alleging a person was “believed to be mentally ill, and a fit subject for custody and treatment” in a state hospital.<sup>13</sup> “Mental illness” was defined broadly to include “every type of mental disease or mental disorder.”<sup>14</sup>

### B. County Hospitalization Commissions

The agency most involved in the involuntary hospitalization of persons was the local county hospitalization commission, which was composed of an attorney, a licensed physician, and a clerk of the local district court. Once the county commission of hospitalization determined there was reasonable cause to believe the allegations of mental illness, a hearing was scheduled.<sup>15</sup> Prior to the hearing, the commission appointed a physician to examine the person and to certify whether the person was in good mental health or was mentally ill.<sup>16</sup> If the commission found from the evidence that it would be in the best interests of the person to be examined at a state mental health institute, it ordered the person to be observed and treated at the screening center at the hospital in the district

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<sup>8</sup> 2012 Iowa Acts, ch. 1120 (SF 2315) provides a regional structure for the redesign of publicly funded mental health and disability services to take effect by July 1, 2013. By that date, counties, unless exempted, are required to form mental health and disability service regions and must operate under an Iowa Code chapter 28E agreement that provides for a region’s organizational, administrative, and financial operations. This legislation also addresses the need for the Department of Human Services and regions to work together to coordinate the provision of Medicaid and non-Medicaid services. The state will fund Medicaid services and regions, or individual counties if exempted, will fund non-Medicaid services. For more information relating to overall expenditures and revenues and transition provisions for the mental health and disability services redesign, see Iowa Legislative Services Agency, Fiscal Facts 2012, June 2012, at pp. 21-22, available at: <https://www.legis.iowa.gov/DOCS/IsaReports/fiscalFacts/2012.pdf> (last visited October 15, 2013).

<sup>9</sup> 1975 Iowa Code §227.15.

<sup>10</sup> 1975 Iowa Code §225A.11 (Iowa’s Criminal Sexual Psychopath Statute).

<sup>11</sup> 1975 Iowa Code §232.34.

<sup>12</sup> 1975 Iowa Code §§228.1, 228.8.

<sup>13</sup> 1975 Iowa Code §229.1.

<sup>14</sup> 1975 Iowa Code §229.40.

<sup>15</sup> 1975 Iowa Code §229.2.

<sup>16</sup> 1975 Iowa Code §229.6.

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nearest to the county.<sup>17</sup> Upon hearing, the court issued a commitment order based upon the recommendation of the superintendent of the hospital at which the screening center was located.<sup>18</sup> Under this statute, a district court did not have original jurisdiction unless the person to be committed had been adjudicated a criminal sexual psychopath; however, the district court was authorized to hear appeals by patients from an adjudication of mental illness by the commission.<sup>19</sup>

## C. 1975 Legislative Reform

The Iowa involuntary hospitalization statute of 1975 was enacted to correct a civil commitment process which had become viewed as “largely self-propelled and uncontrolled” due in part to “administrative overdiscretion,” “lack of expertise,” and lack of procedural structure.<sup>20</sup> The 1975 law attempted to balance competing legal and medical perspectives by designing “procedures to be implemented before commitment which [would], on the one hand, maximize the likelihood that the person committed in fact requires treatment, and [would], on the other hand, result in prompt and effective treatment of those who warrant it, with the minimum of legal impediments consistent with the objective of ensuring accuracy in the commitment decision.”<sup>21</sup> Under this legislation, the district court was given the sole responsibility for making the final decision in the commitment process, and with the authority to exercise discretion concerning the most suitable and least restrictive treatment programs for those persons found to have a serious mental impairment.<sup>22</sup>

This legislation also expanded the type of outpatient treatment the court could order.<sup>23</sup> This expansion was in response to the concern that the hospitalization commission had authority only to admit or commit an individual on a full-time basis or not at all, and no authority to utilize certain outpatient facilities.<sup>24</sup> The possibility of ordering outpatient treatment was also a response to a growing legal concern that the committing court utilize the least restrictive methods regarding a patient’s continued detention.<sup>25</sup>

## IV. Constitutional Due Process Limitations

### A. General Principles

#### 1. Overview

The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states from unfairly or arbitrarily depriving individuals of life, liberty, or property.<sup>26</sup> Procedural due process limits the exercise of power by state and federal governments by requiring that they follow certain procedures in criminal and

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<sup>17</sup> 1975 Iowa Code §229.9.

<sup>18</sup> 1975 Iowa Code §229.9.

<sup>19</sup> 1975 Iowa Code §229.17.

<sup>20</sup> Bezanson, *Involuntary Treatment of the Mentally Ill in Iowa: The 1975 Legislation*, 61 Iowa L. Rev. 261-264 (1975) citing Contemporary Studies Project at 980.

<sup>21</sup> Id. at 267.

<sup>22</sup> Id. at 265.

<sup>23</sup> 1977 Iowa Code §229.14.

<sup>24</sup> Contemporary Studies Project at 923-927.

<sup>25</sup> Bezanson, 61 Iowa L. Rev. at 345, 361-362.

<sup>26</sup> U.S. Const. amend. XIV.



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civil matters, such as proper notice and the opportunity for a fair and impartial hearing. In cases where an individual has claimed a violation of due process rights, the courts must determine whether the individual has been deprived of “life, liberty, or property,” and what procedural protections are “due” that individual. What process is due depends upon the facts and circumstances of a particular case.<sup>27</sup>

### 2. Dangerousness

Involuntary civil commitment of an individual with mental illness constitutes a significant deprivation of that individual’s liberty that requires due process protection.<sup>28</sup> In a 1975 case, *O’Connor v. Donaldson*, the United States Supreme Court directly addressed the limitations that due process places on a state’s power to civilly commit an individual for psychiatric care and treatment. In that landmark case, the Supreme Court held that a finding that an individual has a mental illness, by itself, cannot justify a state’s confinement of that individual, as long as that individual is not dangerous.<sup>29</sup> Both federal and state courts have interpreted this decision as requiring a finding that an individual pose a danger to self or others as a prerequisite for civil commitment and treatment.

### 3. Procedural Protections

Less than a year after *O’Connor* and after the Iowa hospitalization statute of 1975 was enacted, the United States District Court for the Southern District of Iowa held that Iowa’s pre-1975 involuntary hospitalization statute was unconstitutional. The court also held that certain due process protections are required in civil commitment proceedings, including a hearing, the presence of the person to be committed at the hearing, the right to counsel at all significant stages of the commitment process, and the right to findings based upon a clear and convincing evidence standard.<sup>30</sup>

### 4. Placement for Treatment

The U.S. Supreme Court later expanded the scope of this due process protection to postcommitment proceedings to require the state to provide minimally adequate or reasonable treatment to ensure a respondent’s safety and freedom from being unduly restrained.<sup>31</sup> This has been interpreted by the Eighth Circuit Court of Appeals to mean that an involuntarily committed person in Iowa has a protectable liberty interest in an adequate placement that will best meet that person’s needs, but not a particular or specific placement.<sup>32</sup> The Iowa Supreme Court has subsequently held that an appropriate placement is a placement dictated by “the right to care and treatment as indicated by sound medical practice,” even if that placement is only available outside

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<sup>27</sup> In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the United States Supreme Court defined the following three-pronged test to determine what process was due in civil commitment cases: (1) the private interest to be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and (3) the government’s interest, including the function involved and the fiscal and administrative burdens involved in the additional or substitute procedural requirements.

<sup>28</sup> *O’Connor v. Donaldson*, 422 U.S. 563, 580 (1975).

<sup>29</sup> *Id.* at 575-576.

<sup>30</sup> *Stamus v. Leonhardt*, 414 F. Supp. 439, 447-449 (S.D. Iowa 1976).

<sup>31</sup> *Youngberg v. Romeo*, 457 U.S. 307, 319 (1982).

<sup>32</sup> *Hanson v. Clarke County, Iowa*, 867 F.2d 1115, 1120 (8th Cir. 1989).



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the state of Iowa.<sup>33</sup> The Court relied on statutory language rather than the federal Constitution in making this decision.<sup>34</sup>

## B. Placement Procedures Following Commitment Order

In *Salcido v. Woodbury County*,<sup>35</sup> the United States District Court for the Northern District of Iowa considered the issue of whether certain provisions in Iowa Code chapter 229, Iowa's involuntary hospitalization statute, provide adequate due process protections for a committed person's liberty interest in an appropriate placement and treatment after commitment. The case involved a situation where the committed person's county of legal settlement refused to pay for the treatment costs following a court order placing the person at a state mental health institute.<sup>36</sup> The court concluded that Iowa's statutory provisions failed to provide any notice, hearing, or impartial decision-making procedures that address a county's denial of an involuntarily committed person's liberty interest in an appropriate placement. In some circumstances, certain grievance procedures may overcome the lack of procedural due process safeguards in a statute; however, the court in this case further held that the state's grievance procedures were insufficient to overcome the procedural inadequacies of the statute.<sup>37</sup>

As a result of *Salcido*, the Iowa General Assembly enacted substantive changes to Iowa Code chapter 229 in the 2001 Legislative Session, focusing specifically on the procedural due process rights of involuntarily committed persons in regard to placement procedures following a commitment order.<sup>38</sup>

## V. Iowa Statutory Provisions

### A. Application for Involuntary Hospitalization

#### 1. Procedure Before Application Filed — Preapplication Screening Assessment Option

Prior to filing an application for involuntary hospitalization, the clerk of the district court in the county where the person who is the subject of the application resides or is presently located is required to inform the interested person who intends to file the application about the option of requesting a preapplication screening assessment through a preapplication screening assessment program, if available.<sup>39</sup>

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<sup>33</sup> *Jasper County v. McCall*, 420 N.W.2d 801, 803 (Iowa 1988).

<sup>34</sup> *Id.* at 803.

<sup>35</sup> *Salcido v. Woodbury County*, 119 F. Supp.2d 900 (N.D. Iowa 2000).

<sup>36</sup> Through June 30, 2013, if a respondent's expenses were assessed to the county, the court required that the respondent be committed to the care of an appropriate hospital or facility on an inpatient or outpatient basis designated through the "central point of coordination process" or "CPC process." (2013 Iowa Code §229.14(2)(a)). The "CPC process" was the method whereby counties managed services for persons with mental illness, an intellectual disability, or developmental disabilities that were paid for in whole or in part by county funds. The CPC was the administrative gatekeeper of services that required an expenditure of county funds for mental health services. See 2013 Iowa Code §229.1B. On July 1, 2013, the CPC approach was replaced with county MH/DS regions or individual counties exempted from the requirement to be part of a region. See Iowa Code §§331.388-331.398.

<sup>37</sup> *Salcido* at 925.

<sup>38</sup> 2001 Iowa Acts, ch. 155, §§23-40. See also Iowa Code §229.14A.

<sup>39</sup> Iowa Code §§229.5A, 229.6(3). The State Court Administrator is required to develop the procedures for implementation of the program.



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### 2. Filing of Application

An application for involuntary hospitalization of an individual may be filed by any “interested person,” who thereby becomes the “applicant.” The application must be filed with the clerk of court in the county where the person who is the subject of the application resides or is presently located. The clerk is required to assist the applicant in completing the application.<sup>40</sup>

The application must state the applicant’s belief that the respondent is a person who presents a danger to self or others and that the person lacks judgmental capacity due to either a serious mental impairment or a substance-related disorder.<sup>41</sup>

The term “seriously mentally impaired” means the condition of a person who because of a mental illness lacks sufficient judgment to make responsible decisions with respect to the person’s hospitalization or treatment, and who because of that illness is likely to injure the person’s self or others, is likely to inflict serious emotional injury on the person’s family members or others, or who is unable to satisfy the person’s basic physical needs with the likelihood that the person will suffer physical injury or debilitation, or death.<sup>42</sup> “Substance-related disorder” means a diagnosable substance abuse disorder of sufficient duration to meet certain diagnostic criteria.<sup>43</sup>

The application must also state any other pertinent facts and must be accompanied by a physician’s written statement, one or more supporting affidavits corroborating the application, or other corroborative information.<sup>44</sup>

### 3. Procedure After Application Filed

If the court<sup>45</sup> determines that the application for involuntary hospitalization is adequate as to form, the court will set a date for a hospitalization hearing, but the hearing cannot be held less than 48 hours after the person, who now becomes the “respondent,” receives notice, unless the respondent waives this notice requirement.<sup>46</sup> The court must also order the respondent to be examined by a licensed physician who must submit a report to the court prior to the time set for the hospitalization hearing. If the physician’s report concludes the respondent is not seriously mentally impaired, the court may dismiss the application and terminate the proceeding. If the physician’s report concludes the respondent is seriously mentally impaired, a hearing shall be scheduled as soon as possible and shall be held not more than 48 hours after the report is filed, unless good cause exists to delay the hearing.<sup>47</sup> The law also provides for the selection or appointment of counsel to represent the respondent,<sup>48</sup> and that notice of the application for involuntary hospitalization also be sent to the county

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<sup>40</sup> Iowa Code §229.6(1).

<sup>41</sup> Iowa Code §229.6(2).

<sup>42</sup> Iowa Code §229.1(17).

<sup>43</sup> Iowa Code §125.2(14).

<sup>44</sup> Iowa Code §229.6(2)(b), (c).

<sup>45</sup> Iowa Code §229.7. The chief judge of each judicial district is authorized to appoint judicial hospitalization referees to relieve the workload of magistrates and district court judges. Iowa Code §229.21.

<sup>46</sup> Iowa Code §229.7.

<sup>47</sup> Iowa Code §229.10.

<sup>48</sup> Iowa Code §229.8.

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attorney,<sup>49</sup> the respondent's attorney,<sup>50</sup> and the mental health advocate appointed from the respondent's county of residence to protect the interests of the respondent.<sup>51</sup>

## B. Immediate Custody and Emergency Hospitalization Prior to Hearing

### 1. Immediate Custody

Iowa Code chapter 229 contains an immediate custody provision. The law directs the sheriff or the sheriff's deputy to take the individual against whom an application has been filed into immediate custody and that the individual be detained until the hospitalization hearing if the judge finds probable cause to believe, based upon the application and accompanying documentation, that the respondent has a serious mental impairment and is likely to injure the respondent or other persons if allowed to remain at liberty. The hospitalization hearing in this case is required to be held no more than five business days after the court's order.<sup>52</sup> The court is required to consider the least restrictive alternatives to hospitalization in detaining the respondent under this law, including whether the respondent should be detained in the custody of a relative, friend, or other suitable person willing to accept the responsibility, in a suitable hospital, or in a community mental health facility.<sup>53</sup>

### 2. Emergency Hospitalization

The statute also provides an emergency hospitalization procedure for a person with mental illness. This provision is only utilized when it appears that a person should be immediately detained due to a serious mental impairment but an application for involuntary hospitalization has not been filed naming the person as a respondent and the person cannot be ordered into immediate custody and detained.<sup>54</sup> Under this statutory provision, a peace officer who has reasonable grounds to believe a person is mentally ill, and because of that illness is likely to physically injure the person's self or others if not immediately detained, may, without a warrant, take or cause the person to be taken to the nearest available facility or hospital.<sup>55</sup>

If a peace officer delivers a person to a facility or hospital for emergency hospitalization for a serious mental impairment and an arrest warrant has been issued for or charges are pending against the person, the peace officer may request that any oral or written court order require a facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge of the person from the facility or hospital. The facility or hospital is also required to notify the law enforcement

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<sup>49</sup> Iowa Code §229.8.

<sup>50</sup> Iowa Code §229.9.

<sup>51</sup> Iowa Code §229.9A. The advocate's role is to protect the interests of patients involuntarily hospitalized by the court and to act as a liaison between the patient, hospital, and court. The advocate is a person who must have an "informed concern for the welfare and rehabilitation of persons with mental illness" and who is not an officer or employee of the Department of Human Services nor of any agency providing care or treatment to persons with mental illness. The advocate's duties include reviewing and filing reports, visiting the patient, and communicating with medical personnel treating the patient. Except for Polk County, the advocate is appointed by the chief judge of the judicial district. An advocate may also be appointed for an individual who has been diagnosed with a co-occurring mental illness and a substance-related disorder. Iowa Code §229.19.

<sup>52</sup> Iowa Code §229.11(1).

<sup>53</sup> Iowa Code §229.11(1)(a)-(c). See *Leonard v. State*, 491 N.W.2d 508, 512 (Iowa 1992).

<sup>54</sup> Iowa Code §229.22(1).

<sup>55</sup> Iowa Code §229.22(2)(a)(1).





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agency about the discharge of the person prior to such discharge if any order from a magistrate requires such notification.<sup>56</sup>

If an arrest warrant has been issued for or charges are pending against a person who has been detained by a peace officer for emergency hospitalization but no court order exists requiring notification to a law enforcement agency, the peace officer may provide the facility or hospital written notification, on a form prescribed by the Department of Public Safety, that the law enforcement agency employing the peace officer desires notification of the release of the person prior to any discharge of the person from the facility or hospital.<sup>57</sup> Once the law enforcement agency is notified that the person is to be discharged prior to the end of the period of time prescribed for detention, the law enforcement agency has up to six hours to retrieve the person but the person cannot be detained for a period of time exceeding the period of time prescribed for detention.<sup>58</sup> If a facility or hospital fails to notify a law enforcement agency prior to discharge of a person when the prescribed form has been provided to the facility or hospital, the facility or hospital is subject to a civil penalty.<sup>59</sup>

### C. Hospitalization Hearing

At the hospitalization hearing, the county attorney presents evidence in support of the application for hospitalization.<sup>60</sup> During the hearing, the applicant and the respondent have the opportunity to testify and present and cross-examine witnesses, and the court may receive the testimony of any other “interested person.”<sup>61</sup> The welfare of the respondent is of primary concern and the hearing is conducted in an informal manner, with all relevant and material evidence admissible. There is a presumption in favor of the respondent, and the applicant has the burden of proof.<sup>62</sup> The licensed physician or mental health professional who examined the respondent is required to be present at the hearing unless the court for good cause waives the licensed physician’s or professional’s presence or allows telephonic testimony.<sup>63</sup>

If upon completion of the hearing the court makes a finding the respondent suffers from a serious mental impairment by clear and convincing evidence, the court is required to order the respondent committed and placed in a hospital or alternative facility for a complete psychiatric evaluation and appropriate treatment on either an inpatient or outpatient basis.<sup>64</sup> A respondent has the right to appeal this finding to the district court and to the Iowa Supreme Court.<sup>65</sup> If the court finds the application has not been sustained by

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<sup>56</sup> Iowa Code §229.22(2)(b).

<sup>57</sup> Iowa Code §229.22(2)(c).

<sup>58</sup> Iowa Code §229.22(3).

<sup>59</sup> Iowa Code §§229.22(6) and 805.8C(8).

<sup>60</sup> Iowa Code §229.12(1).

<sup>61</sup> Iowa Code §229.12(1). Although the respondent has the right to be present at the hospitalization hearing, the court may determine that the respondent’s presence is not in the respondent’s best interests. Iowa Code §229.12(2).

<sup>62</sup> Iowa Code §229.12(3)(a).

<sup>63</sup> Iowa Code §229.12(3)(b).

<sup>64</sup> Iowa Code §229.13. A finding that a person suffers from a serious mental impairment under Iowa Code chapter 229 does not constitute a finding that the person is incompetent or is under a legal disability. Iowa Code §229.27.

<sup>65</sup> Iowa Code §§229.21(3)(a) and 229.17.

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clear and convincing evidence, the court is required to deny the application and terminate the proceeding.<sup>66</sup>

## D. Psychiatric Evaluation Report — Periodic Reports

Within 15 days of placement after the hospitalization hearing, the chief medical officer of the treatment facility or program must send a psychiatric evaluation report<sup>67</sup> concerning the respondent to the court stating one of the following alternative findings:<sup>68</sup>

1. The respondent no longer requires further treatment for serious mental impairment. In that case, the court releases the respondent from involuntary hospitalization and terminates the proceeding.
2. The respondent continues to be seriously mentally impaired and requires full-time inpatient treatment.
3. The respondent continues to be seriously mentally impaired and needs treatment, but does not require full-time hospitalization. In this case, the chief medical officer must recommend treatment on an outpatient or other appropriate basis.
4. The respondent continues to be seriously mentally impaired and in need of full-time custody and care, but is unlikely to benefit from further inpatient treatment and continued hospitalization. In this case, the chief medical officer must recommend an appropriate alternative placement for the respondent.

Upon receipt of the chief medical officer's report indicating the respondent is in need of further treatment, the court is required to issue an order for appropriate treatment.<sup>69</sup> The chief medical officer or one of the medical officer's designees is then required to file periodic reports on the respondent's condition as long as the respondent continues to be involuntarily hospitalized.<sup>70</sup> In addition, the medical director of the facility or the psychiatrist or psychiatric advanced registered nurse practitioner treating the respondent on an outpatient basis is required to file periodic reports as well.<sup>71</sup>

## E. Placement Order and Hearing

Following receipt of the chief medical officer's report indicating the respondent continues to be seriously mentally impaired and in need of some form of treatment, the court must issue a placement order for appropriate treatment.<sup>72</sup> The court is required to provide notice to the respondent and the respondent's attorney or the patient advocate concerning the placement order. The court must also advise the respondent and the respondent's attorney that the respondent has a right to request a placement hearing to determine if the order for placement is appropriate. The respondent's request for a placement hearing must be in writing and signed by the respondent or the respondent's

<sup>66</sup> Iowa Code §229.12(3)(c). The respondent always has the right to challenge the respondent's continued involuntary hospitalization by a habeas corpus petition. Iowa Code §229.37.

<sup>67</sup> Iowa Code §229.13(5). A chief medical officer who fails to timely file this report is subject to contempt of court proceedings.

<sup>68</sup> Iowa Code §229.14(1)(a)-(d).

<sup>69</sup> Iowa Code §229.14(2).

<sup>70</sup> Iowa Code §229.15(1).

<sup>71</sup> Iowa Code §229.15(2), (3).

<sup>72</sup> Iowa Code §229.14A.



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designee, and must be filed with the district court clerk within seven days of issuance of the placement order. The court may, on its own motion, order that a placement hearing be held. The respondent has a right to be represented by an attorney during the placement hearing.<sup>73</sup> A respondent also has the right to appeal a placement order but must remain in placement unless the Supreme Court orders otherwise.<sup>74</sup> If a respondent who appeals a placement order is in custody under the jurisdiction of the district court or in the custody of a hospital or facility, the respondent must be discharged from custody pending the disposition of the appeal unless an immediate custody order is already in place or the chief medical officer files a certification with the clerk or the appropriate district court that the respondent is seriously mentally ill. In either case, the respondent shall remain in custody until the hearing.<sup>75</sup>

### F. Termination of Commitment

When the chief medical officer determines that a patient who is receiving treatment and care for serious mental impairment under the provisions of Iowa Code chapter 229 no longer requires such treatment or care, the chief medical officer is required to tentatively discharge the respondent and submit a report to the district court which ordered the patient's hospitalization or care and custody. Upon receipt of the report, the court is required to issue an order discharging the patient from the hospital or from the appropriate care and custody and to terminate all further proceedings.<sup>76</sup>

### G. Rights of Detained or Hospitalized Persons

A person who is hospitalized or detained under Iowa Code chapter 229 has the right to a prompt evaluation, necessary psychiatric services, and additional care and treatment. A comprehensive, individualized treatment plan must be developed in a timely manner following a court order requiring involuntary hospitalization consistent with currently accepted standards for psychiatric treatment of the patient's condition, including chemotherapy, psychotherapy, and counseling. The patient has the right to refuse treatment by shock therapy or chemotherapy under certain circumstances. The person also has the right to the protection of the person's constitutional rights and other legal, medical, religious, social, political, personal, and working rights and privileges if consistent with the effective treatment of that person and of the other patients of the hospital.<sup>77</sup>

### H. Records

As a general rule, the release of medical information and records is subject to the restrictions contained in the federal Health Insurance Portability and Accountability Act of 1996 (HIPPA) and other applicable federal laws as well as state confidentiality laws not inconsistent with federal law.<sup>78</sup> Iowa Code chapter 229 provides that all papers and records

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<sup>73</sup> Iowa Code §229.14A(5)(c).

<sup>74</sup> Iowa Code §§229.21(3)(d) and 229.17.

<sup>75</sup> Iowa Code §229.21(4).

<sup>76</sup> Iowa Code §229.16.

<sup>77</sup> Iowa Code §229.23.

<sup>78</sup> Pub. L. No. 104-191, 110 Stat. 1936; Iowa Code §22.7(2); See also Iowa Code §228.1(5) ("Mental health information" means oral, written, or recorded information which indicates the identity of an individual receiving professional services and which relates to the diagnosis, course, or treatment of the individual's mental or emotional condition.) See generally Iowa Code chapter 228 (Disclosure of Mental Health and Psychological Information).

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pertaining to involuntary hospitalization proceedings of a person with mental illness are confidential and may be released only upon a court order for good cause shown or with the written consent of the person who is the subject of the hospitalization.<sup>79</sup> Limited information including administrative information relating to costs associated with the hospitalization may also be released.<sup>80</sup> Similarly, medical records maintained by a hospital or other facility relating to the examination, custody, care, and treatment of any person in that hospital or facility are confidential, except that the chief medical officer is authorized to release appropriate information to a licensed physician, attorney, or patient advocate who provides the chief medical officer with a written waiver signed by the person about whom the information is sought, the information is sought under a court order, or the person who is hospitalized or that person's guardian signs an informed consent to release the information.<sup>81</sup> In addition, such records may be released by the chief medical officer when requested for the purpose of research into the causes, incidence, nature, and treatment of mental illness. However, such records cannot be provided in a way that discloses patients' names or which otherwise discloses any patient's identity.<sup>82</sup>

## VI. Summary

Iowa Code chapter 229, the current statutory framework for the involuntary hospitalization of an adult person with mental illness in Iowa, is based upon historical and constitutional considerations and the development of both federal and state case law. The state's exercise of the authority to civilly commit an adult person with mental illness for care and treatment has progressed from what were often ad hoc decisions by individual physicians and local county commissions of hospitalization to a more formalized process, with the courts employing a balance of both medical and legal perspectives to order needed treatment and custody while protecting a person's liberty interest under constitutional and state law. The United States Supreme Court and federal and state courts in Iowa have extended the due process protections of this liberty interest beyond the initial commitment procedure to continued mental health treatment and posttreatment procedures.

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<sup>79</sup> Iowa Code §229.24(1), (2).

<sup>80</sup> Iowa Code §229.24(3). See also generally Iowa Code chapter 228 (Disclosure of Mental Health and Psychological Information).

<sup>81</sup> Iowa Code §229.25(1)(a).

<sup>82</sup> Iowa Code §229.25(1)(b).