

Reprint 3/19

MAR 5 1982

HOUSE FILE 2426

BY COMMITTEE ON HUMAN RESOURCES

(Formerly Study Bill 159)

Place On Calendar

Passed House, Date 3-17-82 Passed Senate, Date 4-7-82 (P.1081)  
Vote: Ayes 26 Nays 1 Vote: Ayes 42 Nays 0  
Approved 4/23 5/21/82

### A BILL FOR

1 An Act relating to the procedures for involuntary commitment  
2 or treatment of substance abusers.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
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1 Section 1. Section 125.2, Code 1981, is amended by adding  
2 the following new subsections:

3 NEW SUBSECTION. "Respondent" means a person against whom  
4 an application is filed under section 3 of this Act.

5 NEW SUBSECTION. "Clerk" means the clerk of the district  
6 court.

7 NEW SUBSECTION. "Chief medical officer" means the medical  
8 director in charge of a public or private hospital, or the  
9 director's physician-designee. This chapter does not negate  
10 the authority otherwise reposed by chapter 226 in the respec-  
11 tive superintendents of the state mental health institutes  
12 to make decisions regarding the appropriateness of admissions  
13 or discharges of patients of those institutes, however, it  
14 is the intent of this chapter that a superintendent who is  
15 not a licensed physician shall be guided in these decisions  
16 by the chief medical officer of the institute.

17 NEW SUBSECTION. "Interested person" means a person, who  
18 in the discretion of the court, is legitimately concerned  
19 that a respondent receive substance abuse treatment services.

20 Sec. 2. Chapter 125, Code 1981, is amended by adding  
21 sections 3 through 21 of this Act after section 125.57 as  
22 a new division.

23 Sec. 3. NEW SECTION. INVOLUNTARY COMMITMENT OR TREATMENT-  
24 -APPLICATION. Proceedings for the involuntary commitment  
25 or treatment of a substance abuser to a facility may be  
26 commenced by an interested person by filing a verified  
27 application with the clerk of the district court of the county  
28 where the respondent is presently located or which is the  
29 respondent's place of residence. The clerk or the clerk's  
30 designee shall assist the applicant in completing the  
31 application. The application shall:

- 32 1. State the applicant's belief that the respondent is
- 33 a substance abuser.
- 34 2. State any other pertinent facts.
- 35 3. Be accompanied by one or more of the following:

1 a. A written statement of a licensed physician in support  
2 of the application.

3 b. One or more supporting affidavits corroborating the  
4 application.

5 c. Corroborative information obtained and reduced to  
6 writing by the clerk or the clerk's designee, but only when  
7 circumstances make it infeasible to obtain, or when the clerk  
8 considers it appropriate to supplement, the information under  
9 either paragraph a or paragraph b.

10 Sec. 4. NEW SECTION. SERVICE OF NOTICE. Upon the filing  
11 of an application for involuntary commitment, the clerk shall  
12 docket the case and immediately notify a district court judge  
13 who shall review the application and accompanying documen-  
14 tation. The clerk shall send copies of the application and  
15 supporting documentation, together with the notice informing  
16 the respondent of the procedures required by this division,  
17 to the sheriff, for immediate service upon the respondent.  
18 If the respondent is taken into custody under section 8 of  
19 this Act, service of the application, documentation, and  
20 notice upon the respondent shall be made at the time the  
21 respondent is taken into custody.

22 Sec. 5. NEW SECTION. PROCEDURE AFTER APPLICATION. As  
23 soon as practical after the filing of an application for  
24 involuntary commitment for treatment, the court shall:

25 1. Determine whether the respondent has an attorney who  
26 is able and willing to represent the respondent in the  
27 commitment proceeding, and if not, whether the respondent  
28 is financially able to employ an attorney and capable of  
29 meaningfully assisting in selecting an attorney. In accordance  
30 with those determinations, the court shall allow the respondent  
31 to select an attorney or shall assign an attorney to the  
32 respondent. If the respondent is financially unable to pay  
33 an attorney, the attorney shall be compensated in substantially  
34 the same manner as provided by section 815.7, except that  
35 if the county has a public defender, the court may assign

1 the public defender or an attorney on the public defender's  
2 staff as the respondent's attorney.

3 2. Cause copies of the application and supporting  
4 documentattion to be sent to the county attorney for review.

5 3. Issue a written order:

6 a. Scheduling a tentative time and place for a hearing,  
7 subject to the findings of the report required under section  
8 7, subsections 3 and 4 of this Act, but not less than forty-  
9 eight hours after notice to the respondent, unless the  
10 respondent waives the forty-eight hour notice requirement.

11 b. Requiring an examination of the respondent, prior to  
12 the hearing, by one or more licensed physicians who shall  
13 submit a written report of the examination to the court as  
14 required by section 7 of this Act.

15 Sec. 6. NEW SECTION. RESPONDENT'S ATTORNEY INFORMED.

16 The court shall direct the clerk to furnish at once to the  
17 respondent's attorney, copies of the application for  
18 involuntary commitment of the respondent and the supporting  
19 documentation, and of the court's order issued pursuant to  
20 section 5, subsection 3 of this Act. If the respondent is  
21 taken into custody under section 8 of this Act, the attorney  
22 shall also be advised of that fact. The respondent's attorney  
23 shall represent the respondent at all stages of the proceedings  
24 and shall attend the commitment hearing.

25 Sec. 7. NEW SECTION. PHYSICIAN'S EXAMINATION--REPORT-  
26 -SCHEDULING OF HEARING.

27 1. An examination of the respondent shall be conducted  
28 within a reasonable time and prior to the commitment hearing  
29 by one or more licensed physicians as required by the court's  
30 order. If the respondent is taken into custody under section  
31 8 of this Act, the examination shall be conducted within  
32 twenty-four hours after the respondent is taken into custody.  
33 If the respondent desires, the respondent may have a separate  
34 examination by a licensed physician of the respondent's own  
35 choice. The court shall notify the respondent of the right

1 to choose a physician for a separate examination. The  
2 reasonable cost of the examinations shall be paid from county  
3 funds upon order of the court if the respondent lacks  
4 sufficient funds to pay the cost.

5 A licensed physician conducting an examination pursuant  
6 to this section may consult with or request the participation  
7 in the examination of facility personnel, and may include  
8 with or attach to the written report of the examination any  
9 findings or observations by facility personnel who have been  
10 consulted or have participated in the examination.

11 If the respondent is not taken into custody under section  
12 8 of this Act, but the court is subsequently informed that  
13 the respondent has declined to be examined by a licensed  
14 physician pursuant to the court order, the court may order  
15 limited detention of the respondent as necessary to facilitate  
16 the examination of the respondent by the licensed physician.

17 2. A written report of the examination by a court-designated  
18 physician shall be filed with the clerk prior to the  
19 hearing date. A written report of an examination by a  
20 physician chosen by the respondent may be similarly filed.  
21 The clerk shall immediately:

22 a. Cause a report to be shown to the judge who issued  
23 the order.

24 b. Cause the respondent's attorney to receive a copy of  
25 the report of a court-designated physician.

26 3. If the report of a court-designated physician is to  
27 the effect that the respondent is not a substance abuser,  
28 the court, without taking further action, may terminate the  
29 proceeding and dismiss the application on its own motion and  
30 without notice.

31 4. If the report of a court-designated physician is to  
32 the effect that the respondent is a substance abuser, the  
33 court shall schedule a commitment hearing as soon as possible.  
34 The hearing shall be held not more than forty-eight  
35 hours after the report is filed, excluding Saturdays, Sundays,

1 and holidays, unless an extension for good cause is requested  
2 by the respondent, or as soon thereafter as possible if the  
3 court considers that sufficient grounds exist for delaying  
4 the hearing.

5 Sec. 8. NEW SECTION. IMMEDIATE CUSTODY. If a person  
6 filing an application requests that a respondent be taken  
7 into immediate custody, and the judge upon reviewing the  
8 application and accompanying documentation, finds probable  
9 cause to believe that the respondent is a substance abuser  
10 who is likely to injure himself or herself or other persons  
11 if allowed to remain at liberty, the judge may enter a written  
12 order directing that the respondent be taken into immedi-  
13 ate custody by the sheriff, and be detained until the  
14 commitment hearing, which shall be held no more than five  
15 days after the date of the order, except that if the fifth  
16 day after the date of the order is a Saturday, Sunday, or  
17 a holiday, the hearing may be held on the next business day.  
18 The judge may order the respondent detained for the period  
19 of time until the hearing is held, and no longer except as  
20 provided in section 15 of this Act, in accordance with  
21 subsection 1 if possible, and if not, then in accordance with  
22 subsection 2 or, only if neither of these alternatives is  
23 available in accordance with subsection 3. Detention may  
24 be:

25 1. In the custody of a relative, friend, or other suitable  
26 person who is willing to accept responsibility for supervision  
27 of the respondent, with reasonable restrictions as the judge  
28 may order including but not limited to restrictions on or  
29 a prohibition of any expenditure, encumbrance, or disposition  
30 of the respondent's funds or property.

31 2. In a suitable hospital, the chief medical officer of  
32 which shall be informed of the reasons why immediate custody  
33 has been ordered. The hospital may provide treatment which  
34 is necessary to preserve the respondent's life, or to  
35 appropriately control the respondent's behavior which is

1 likely to result in physical injury to himself or herself  
2 or to others if allowed to continue, and other treatment as  
3 deemed appropriate by the chief medical officer.

4 3. In a facility in the community which is suitably  
5 equipped and staffed for the purpose, provided that detention  
6 in a jail or other facility intended for confinement of those  
7 accused or convicted of a crime shall not be ordered, except  
8 in cases of actual emergency if no other secure resource is  
9 accessible, and then only for a period of not more than twenty-  
10 four hours and under close supervision.

11 The respondent's attorney may be allowed by the court to  
12 present evidence and arguments before the court's determination  
13 under this section. If such an opportunity is not provided  
14 at that time, respondent's attorney shall be allowed to present  
15 evidence and arguments after the issuance of the court's order  
16 of confinement and while the respondent is confined.

17 Sec. 9. NEW SECTION. COMMITMENT HEARING.

18 1. At a commitment hearing, evidence in support of the  
19 contentions made in the application shall be presented by  
20 the county attorney. During the hearing the applicant and  
21 the respondent shall be afforded an opportunity to testify  
22 and to present and cross-examine witnesses, and the court  
23 may receive the testimony of other interested persons. If  
24 the respondent is present at the hearing, as provided in  
25 subsection 3, and has been medicated within twelve hours,  
26 or a longer period of time as the court may designate, prior  
27 to the beginning of the hearing or a session of the hearing,  
28 the judge shall be informed of that fact and of the probable  
29 effects of the medication upon convening of the hearing.

30 2. A person not necessary for the conduct of the hearing  
31 shall be excluded, except that the court may admit a person  
32 having a legitimate interest in the hearing. Upon motion  
33 of the county attorney, the judge may exclude the respondent  
34 from the hearing during the testimony of a witness if the  
35 judge determines that the witness' testimony is likely to

1 cause the respondent severe emotional trauma.

2 3. The person who filed the application and a physician  
3 or professional who has examined the respondent in connection  
4 with the commitment hearing shall be present at the hear-  
5 ing, unless prior to the hearing the judge for good cause  
6 finds that their presence is not necessary. The respondent  
7 shall be present at the hearing unless prior to the hearing  
8 the respondent's attorney stipulates in writing that the  
9 attorney has conversed with the respondent, and that in the  
10 attorney's judgment the respondent cannot make a meaningful  
11 contribution to the hearing, or that the respondent has waived  
12 the right to be present, and the basis for the attorney's  
13 conclusions. A stipulation to the respondent's absence shall  
14 be reviewed by the judge before the hearing, and may be  
15 rejected if it appears that insufficient grounds are stated  
16 or that the respondent's interests would not be served by  
17 the respondent's absence.

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

32 5. If the respondent is not taken into custody under  
33 section 8 of this Act, but the court finds good cause to  
34 believe that the respondent is about to depart from the  
35 jurisdiction of the court, the court may order limited

1 detention of the respondent as authorized in section 8 of  
2 this Act, and is necessary to ensure that the respondent will  
3 not depart from the jurisdiction of the court without the  
4 court's approval until the proceeding relative to the  
5 respondent has been concluded.

6 Sec. 10. NEW SECTION. PLACEMENT FOR EVALUATION. If upon  
7 completion of the commitment hearing, the court finds that  
8 the contention that the respondent is a substance abuser has  
9 been sustained by clear and convincing evidence, the court  
10 shall order the respondent placed at a facility as  
11 expeditiously as possible for a complete evaluation and  
12 appropriate treatment. The court shall furnish to the facility  
13 at the time of admission, a written statement of facts setting  
14 forth the evidence on which the finding is based. The  
15 administrator of the facility shall report to the court no  
16 more than fifteen days after the individual is admitted to  
17 the facility, making a recommendation concerning substance  
18 abuse treatment. An extension of time may be granted for  
19 a period not to exceed seven days upon a showing of good  
20 cause. A copy of the report shall be sent to the respondent's  
21 attorney who may contest the need for an extension of time  
22 if one is requested. If the request is contested, the court  
23 shall make an inquiry as it deems appropriate and may either  
24 order the respondent released from the facility or grant  
25 extension of time for further evaluation.

26 Sec. 11. NEW SECTION. EVALUATION REPORT. The facility  
27 administrator's report to the court on the substance abuse  
28 evaluation of the respondent shall be made no later than the  
29 expiration of the time specified in section 10 of this Act.  
30 At least two copies of the report shall be filed with the  
31 clerk, who shall distribute the copies in the manner described  
32 by section 7, subsection 2 of this Act. The report shall  
33 state one of the four following alternative findings:

34 1. That the respondent does not, as of the date of the  
35 report, require further treatment for substance abuse. If

1 the report so states, the court shall order the respondent's  
2 immediate release from involuntary commitment and terminate  
3 the proceedings.

4 2. That the respondent is a substance abuser who is in  
5 need of full-time custody, care, and treatment in a facility,  
6 and is considered likely to benefit from treatment. If the  
7 report so states, the court may order the respondent's  
8 continued placement and commitment to a facility for  
9 appropriate treatment.

10 3. That the respondent is a substance abuser who is in  
11 need of treatment, but does not require full-time placement  
12 in a facility. If the report so states, the report shall  
13 include the facility administrator's recommendation for  
14 treatment of the respondent on an outpatient or other  
15 appropriate basis, and the court may enter an order directing  
16 the respondent to submit to the recommended treatment. The  
17 order shall provide that if the respondent fails or refuses  
18 to submit to treatment, as directed by the court's order,  
19 the respondent shall be taken into custody and treated as  
20 a patient requiring full-time custody, care, and treatment  
21 in a facility as set forth in section 12 of this Act.

22 4. That the respondent is a substance abuser who is in  
23 need of treatment, but in the opinion of the facility  
24 administrator is not responding to the treatment provided.  
25 If the report so states, the report shall include the facility  
26 administrator's recommendation for alternative placement,  
27 and the court may order the respondent's transfer to the  
28 recommended placement or to another placement after  
29 consultation with respondent's attorney and the facility  
30 administrator who made the report under this subsection.

31 Sec. 12. NEW SECTION. CUSTODY, DISCHARGE, AND TERMINATION  
32 OF PROCEEDING.

33 1. A respondent committed under section 11, subsection  
34 2 of this Act, shall remain in the custody of a facility for  
35 treatment for a period of thirty days, unless sooner

1 discharged. The department is not required to pay the cost  
2 of any medication or procedure provided to the respondent  
3 during that period which is not necessary or appropriate to  
4 the specific objectives of detoxification and treatment of  
5 substance abuse. At the end of the thirty-day period, the  
6 respondent shall be discharged automatically unless the  
7 administrator of the facility, before expiration of the period,  
8 obtains a court order for the respondent's recommitment on  
9 the grounds set forth in section 3 of this Act, for a further  
10 period not to exceed ninety days.

11 2. A respondent recommitted under subsection 1 who has  
12 not been discharged by the facility before the end of the  
13 ninety-day period shall be discharged at the expiration of  
14 that period unless the administrator of the facility, before  
15 expiration of the period, obtains a court order for the  
16 respondent's recommitment on the grounds set forth in section  
17 3 of this Act, for a further period not to exceed ninety days.

18 3. Upon the filing of an application for recommitment  
19 under subsection 1 or 2, the court shall schedule a  
20 recommitment hearing for no later than ten days after the  
21 date the application is filed. A copy of the application,  
22 the notice of hearing, and any reports shall be served or  
23 provided in the manner and to the persons as required by  
24 sections 4 through 7, 10, and 11 of this Act.

25 4. Following a respondent's discharge from a facility  
26 or from treatment, the administrator of the facility shall  
27 immediately report that fact to the court which ordered the  
28 respondent's commitment or treatment. The court shall issue  
29 an order confirming the respondent's discharge from the  
30 facility or from treatment, as the case may be, and shall  
31 terminate the proceedings pursuant to which the order was  
32 issued. Copies of the order shall be sent by certified mail  
33 to the facility and the respondent.

34 Sec. 13. NEW SECTION. PERIODIC REPORTS REQUIRED.

35 1. No more than thirty days after entry of a court order

1 for commitment to a facility under section 11, subsection  
2 2 of this Act, and thereafter at successive intervals not  
3 to exceed ninety days for as long as involuntary commitment  
4 of the respondent continues, the administrator of the facility  
5 shall report to the court which entered the order. The report  
6 shall be submitted in the manner required by section 11 of  
7 this Act, shall state whether the respondent's condition has  
8 improved, remains unchanged, or has deteriorated, and shall  
9 indicate the further length of time the respondent will be  
10 required to remain at the facility.

11 2. No more than sixty days after entry of a court order  
12 for treatment of a respondent under section 11, subsection  
13 3 of this Act, and thereafter at successive intervals not  
14 to exceed ninety days for as long as involuntary treatment  
15 continues, the administrator of the facility shall report  
16 to the court which entered the order. The report shall be  
17 submitted in the manner required by section 11 of this Act,  
18 shall state whether the respondent's condition has improved,  
19 remains unchanged, or has deteriorated, and shall indicate  
20 the further length of time the respondent will require  
21 treatment by the facility. If the respondent fails or refuses  
22 to submit to treatment as ordered by the court, the  
23 administrator of the facility shall at once notify the court,  
24 which shall order the respondent committed for treatment as  
25 provided by section 11, subsection 3 of this Act, unless the  
26 court finds that the failure or refusal was with good cause,  
27 and that the respondent is willing to receive treatment as  
28 provided in the court's order, or in a revised order if the  
29 court sees fit to enter one. If the administrator of the  
30 facility reports to the court that the respondent requires  
31 full-time custody, care, and treatment in a facility, the  
32 court may order the respondent's involuntary commitment for  
33 appropriate treatment upon consultation with the administrator  
34 of the facility in which the respondent is to be placed.

35 Sec. 14. NEW SECTION. STATUS DURING APPEAL. If a respon-

1 dent appeals to the supreme court from a lower court's finding  
2 that commitment is warranted, the respondent shall remain  
3 committed if already in custody, pursuant to an order of  
4 immediate custody under section 8 of this Act or pursuant  
5 to an order for evaluation and treatment under section 10  
6 of this Act, before notice of appeal was filed, unless the  
7 supreme court orders otherwise.

8 Sec. 15. NEW SECTION. STATUS IF COMMITMENT DELAYED.

9 If a court directs a respondent who was previously ordered  
10 taken into immediate custody under section 8 of this Act to  
11 be placed at a facility for evaluation and appropriate  
12 treatment under section 10 of this Act, and no suitable  
13 facility can immediately admit the respondent, the respondent  
14 shall remain in custody as previously ordered by the court,  
15 notwithstanding the time limits stated in section 8 of this  
16 Act, until a suitable facility can admit the respondent.  
17 The court shall take appropriate steps to expedite the admission  
18 of the respondent to a suitable facility at the earliest  
19 feasible time.

20 Sec. 16. NEW SECTION. RESPONDENTS CHARGED WITH OR CON-  
21 VICTED OF CRIME.

22 1. If a court orders a respondent placed at a facility  
23 for evaluation and treatment under section 10 of this Act  
24 at a time when the respondent has been convicted of a public  
25 offense, or when there is pending against the respondent an  
26 unresolved formal charge of a public offense, and the  
27 respondent's liberty has therefore been restricted in any  
28 manner, the findings of fact required by section 10 of this  
29 Act shall clearly so inform the administrator of the facility  
30 where the respondent is placed.

31 2. The commitment powers of the court under section  
32 204.409, subsection 2 supercede the procedures and requirements  
33 of this division.

34 Sec. 17. NEW SECTION. JUDICIAL HOSPITALIZATION REFEREE.

35 Judicial hospitalization referees shall be utilized as provided

1 in section 229.21 for performing the duties of the court  
2 prescribed by this division.

3 Sec. 18. NEW SECTION. EMERGENCY DETENTION.

4 1. The procedure prescribed by this section shall only  
5 be used for an intoxicated person who has threatened,  
6 attempted, or inflicted physical self-harm or harm on another,  
7 and is likely to inflict physical self-harm or harm on another  
8 unless immediately detained, or who is incapacitated by a  
9 chemical substance, if that person cannot be taken into  
10 immediate custody under sections 3 and 8 of this Act because  
11 immediate access to the court is not possible.

12 2. A peace officer who has reasonable grounds to believe  
13 that the circumstances described in subsection 1 are  
14 applicable, may, without a warrant, take or cause that person  
15 to be taken to the nearest available facility referred to  
16 in section 8, subsection 2 or 3 of this Act. Such an  
17 intoxicated or incapacitated person may also be delivered  
18 to a facility by someone other than a peace officer upon a  
19 showing of reasonable grounds. Upon delivery of the person  
20 to a facility under this section, the administrator of the  
21 facility may order treatment of the person, but only to the  
22 extent necessary to preserve the person's life or to  
23 appropriately control the person's behavior if the behavior  
24 is likely to result in physical injury to the person or others  
25 if allowed to continue. The peace officer or other person  
26 who delivered the person to the facility shall describe the  
27 circumstances of the matter to the administrator. If the  
28 administrator has reasonable grounds to believe that the  
29 circumstances in subsection 1 are applicable, the administrator  
30 shall at once communicate with the nearest available magistrate  
31 as defined in section 801.4, subsection 6. The magistrate  
32 shall immediately proceed to the facility where the person  
33 is detained, except that if the administrator's communication  
34 with the magistrate occurs between the hours of midnight and  
35 seven a.m. and the magistrate deems it appropriate under the

1 circumstances described by the administrator, the magistrate  
2 may delay going to the facility, and in that case, shall give  
3 the administrator verbal instructions either directing that  
4 the person be released forthwith, or authorizing the person's  
5 continued detention at the facility. In the latter case,  
6 the magistrate shall:

7 a. Arrive at the facility where the person is being  
8 detained no later than eight o'clock a.m. of the same day  
9 on which the administrator's communication occurred.

10 b. By the close of business on the next working day file  
11 with the clerk a written report stating the substance of the  
12 communication with the administrator on which the person's  
13 continued detention was ordered.

14 3. Upon arrival at the facility, the magistrate shall  
15 at once review the validity of the detention. Unless convinced  
16 upon initial inquiry that there are no grounds for further  
17 detention of the person, the magistrate shall ensure that  
18 the person has or is provided legal counsel at the earliest  
19 practical time in the manner prescribed by section 5,  
20 subsection 1 of this Act, and shall arrange for the counsel  
21 to be present, if practical, before proceeding further under  
22 this subsection. The magistrate shall immediately notify  
23 counsel of the respondent's emergency detention. Counsel  
24 shall be afforded an opportunity to visit the respondent and  
25 to make appropriate preparations before or after the  
26 magistrate's order is issued. If the magistrate finds, upon  
27 review of the information presented by the administrator under  
28 subsection 2 and of other information or evidence the  
29 magistrate deems relevant, that there is probable cause to  
30 believe that the circumstances described in subsection 1 are  
31 applicable, the magistrate shall enter a written order  
32 detaining the person at the facility, or, if the facility  
33 where the person is at the time is not an appropriate facility,  
34 detaining and transporting the person to an appropriate  
35 facility. The magistrate's order shall state the circumstances

1 under which the person was detained or otherwise delivered  
2 to a facility, and the grounds supporting the finding of  
3 probable cause to believe that person is a substance abuser  
4 likely to physically injure himself or herself or others if  
5 not detained. The order shall be filed with the clerk in  
6 the county where it is anticipated that an application will  
7 be filed under section 3 of this Act, and a certified copy  
8 of the order shall be delivered to the administrator of the  
9 facility where the person is detained, at the earliest  
10 practical time.

11 4. The chief medical officer of the facility shall examine  
12 and may detain the person pursuant to the magistrate's order  
13 for a period not to exceed forty-eight hours from the time  
14 the order is dated, excluding Saturdays, Sundays, and holidays,  
15 unless the order is dismissed by a magistrate. The facility  
16 may provide treatment which is necessary to preserve the  
17 person's life or to appropriately control the person's behavior  
18 if the behavior is likely to result in physical injury to  
19 the person or others if allowed to continue, but shall not  
20 otherwise provide treatment to the person without the person's  
21 consent. The person shall be discharged from the facility  
22 and released from detention no later than the expiration of  
23 the forty-eight hour period, unless an application for  
24 involuntary commitment is filed with the clerk pursuant to  
25 section 3 of this Act. The detention of a person by the  
26 procedure in this section, and not in excess of the period  
27 of time prescribed by this section, shall not render the peace  
28 officer, physician, or facility detaining the person liable  
29 in a criminal or civil action for false arrest or false  
30 imprisonment if the peace officer, physician, or facility  
31 had reasonable grounds to believe that the circumstances  
32 described in subsection 1 were applicable.

33 5. The cost of detention in a facility under the procedure  
34 prescribed in this section shall be paid in the same way as  
35 if the person had been committed to the facility pursuant

1 to an application filed under section 3 of this Act.

2     Sec. 19. NEW SECTION. RIGHTS AND PRIVILEGES OF COMMITTED  
3 PERSONS. A person who is detained, taken into immediate  
4 custody, or committed under this division has the right to:

5     1. Prompt evaluation, emergency services, and care and  
6 treatment as indicated by sound clinical practice.

7     2. Render informed consent, unless the person is  
8 incompetent in which case treatment may be consented to by  
9 the person's next of kin or guardian notwithstanding the  
10 person's refusal. If the person is competent to render  
11 informed consent but refuses treatment or if the person is  
12 incompetent and the next of kin or guardian refuses treatment  
13 which, in the chief medical officer's judgment is necessary  
14 to preserve the person's life or to appropriately control  
15 the person's behavior if the behavior is likely to result  
16 in physical injury to the person or others if allowed to  
17 continue, the facility may petition a court of appropriate  
18 jurisdiction for approval to treat the person. If the person  
19 is incompetent to consent or refuses to give consent and no  
20 next of kin or guardian is available, the facility may also  
21 petition the court for permission to treat the person.

22     3. The protection of the person's constitutional rights.

23     4. Enjoy all legal, medical, religious, social, political,  
24 personal, and working rights and privileges, which the person  
25 would enjoy if not detained, taken into immediate custody,  
26 or committed, consistent with the effective treatment of the  
27 person and of the other persons in the facility. If the  
28 person's rights are restricted, the physician's direction  
29 to that effect shall be noted in the person's record. The  
30 person or the person's next of kin or guardian shall be advised  
31 of the person's rights and be provided a written copy upon  
32 the person's admission to or arrival at the facility.

33     Sec. 20. NEW SECTION. COMMITMENT RECORDS--CONFIDENTIALITY.  
34 Records of the identity, diagnosis, prognosis, or treatment  
35 of a person which are maintained in connection with the

1 provision of substance abuse treatment services are  
2 confidential, consistent with the requirements of section  
3 125.37, and with the federal confidentiality regulations  
4 authorized by the Drug Abuse Office and Treatment Act, 21  
5 U.S.C. sec. 1175 (1976) and the Comprehensive Alcohol Abuse  
6 and Alcoholism Prevention, Treatment and Rehabilitation Act,  
7 42 U.S.C. sec. 4582 (1976).

8 Sec. 21. NEW SECTION. SUPREME COURT RULES. The supreme  
9 court may prescribe rules of pleading, practice, and procedure  
10 and the forms of process, writs, and notices, for all  
11 commitment proceedings in a court of this state under this  
12 chapter. Any rules so prescribed shall be drawn for the  
13 purpose of simplifying and expediting the proceedings, so  
14 far as is consistent with the rights of the parties involved.  
15 The rules shall not abridge, enlarge, or modify the substantive  
16 rights of a party to a commitment proceeding under this  
17 chapter.

18 Sec. 22. Section 125.12, subsection 3, Code 1981, is  
19 amended to read as follows:

20 3. The director shall provide for adequate and appropriate  
21 treatment for substance abusers and intoxicated persons  
22 admitted under sections 125.33 ~~to 125.35 and 125.53~~ and 125.34,  
23 or under section 3, 8, or 18 of this Act. Treatment shall  
24 not be provided at a correctional institution except for  
25 inmates.

26 Sec. 23. Section 125.34, Code 1981, is amended to read  
27 as follows:

28 125.34 TREATMENT AND SERVICES FOR INTOXICATED PERSONS  
29 AND PERSONS INCAPACITATED BY ALCOHOL.

30 1. An intoxicated person may come voluntarily to a facility  
31 for emergency treatment. A person who appears to be  
32 intoxicated or incapacitated by a chemical substance in a  
33 public place and in need of help ~~shall~~ may be taken to a  
34 facility by a peace officer under section 18 of this Act.  
35 If the person refuses the proffered help, the person may be

1 arrested and charged with intoxication.

2 2. If no facility is readily available the person may  
3 be taken to an emergency medical service customarily used  
4 for incapacitated persons. The peace officer in detaining  
5 the person and in taking the person to a facility, ~~is taking~~  
6 ~~the person into protective custody and~~ shall make every  
7 reasonable effort to protect the person's health and safety.  
8 In ~~taking~~ detaining the person ~~into protective custody,~~ the  
9 detaining officer may take reasonable steps for self-  
10 protection. ~~A taking into protective custody~~ Detaining a  
11 person under ~~this~~ section 18 of this Act is not an arrest  
12 and no entry or other record shall be made to indicate that  
13 the person who is ~~taken into protective custody~~ detained has  
14 been arrested or charged with a crime.

15 3. A person who comes voluntarily ~~or is brought~~ to a  
16 facility shall be examined by a licensed physician as soon  
17 as possible, but not later than twelve hours after the person  
18 comes voluntarily ~~or is brought~~ to the facility. He The  
19 person may then be admitted as a patient or referred to another  
20 health facility. The referring facility shall arrange for  
21 his transportation.

22 ~~4--A person who is found to be intoxicated or incapacitated~~  
23 ~~by a chemical substance after examination by a qualified~~  
24 ~~health professional shall be required to remain at the facility~~  
25 ~~until the qualified health professional determines that the~~  
26 ~~person is not likely to inflict physical self-harm or inflict~~  
27 ~~physical harm on others--If the person is detained longer~~  
28 ~~than twenty-four hours the qualified health professional shall~~  
29 ~~examine him or her at least once every twelve hours to~~  
30 ~~determine if further detention is necessary--The qualified~~  
31 ~~health professional shall enter a written order for the person~~  
32 ~~to be detained in custody--Such order shall state the~~  
33 ~~circumstances under which the person was taken into custody~~  
34 ~~and the grounds supporting the finding or probable cause to~~  
35 ~~believe that he or she is sufficiently impaired or~~

1 incapacitated-by-a-chemical-substance-to-cause-physical-injury  
2 to-himself-or-herself-or-others-if-released---The-order-shall  
3 be-filed-in-the-district-court-of-the-area-in-which-the-person  
4 is-detained.

5 5 4. If a patient person is voluntarily admitted to a  
6 facility, ~~his~~ the person's family or next of kin shall be  
7 notified as promptly as possible. If an adult patient who  
8 is not incapacitated requests that there be no notification,  
9 ~~his~~ the request shall be respected.

10 6 5. A peace officer who acts in compliance with this  
11 section is acting in the course of ~~his~~ the officer's official  
12 duty and is not criminally or civilly liable therefor, unless  
13 such acts constitute willful malice or abuse.

14 7 6. If the physician in charge of the facility determines  
15 it is for the patient's benefit, the patient shall be  
16 encouraged to agree to further diagnosis and appropriate  
17 voluntary treatment.

18 Sec. 24. Section 125.44, unnumbered paragraph 6, Code  
19 1981, is amended to read as follows:

20 The department is liable for the cost of care, treatment,  
21 and maintenance of a substance abuser admitted to the facility  
22 voluntarily or pursuant to section ~~125.347-125.357~~ 3, 8, or  
23 18 of this Act or section 321.281, 321.283, subsection 3,  
24 or 204.409, subsection 2 ~~or-229-52~~ only to those facilities  
25 that have a contract with the department under this section,  
26 only for the amount computed according to and within the  
27 limits of liability prescribed by this section, and only when  
28 the substance abuser is unable to pay ~~such~~ the costs and there  
29 is no other person, firm, corporation or insurance company  
30 bound to pay ~~such~~ the costs.

31 Sec. 25. Section 125.45, subsection 1, Code 1981  
32 Supplement, is amended to read as follows:

33 1. Except as provided in section 125.43, each county shall  
34 pay for the remaining twenty-five percent of the cost of the  
35 care, maintenance, and treatment under this chapter of

1 residents of that county from the levy authorized by section  
2 331.421, subsection 13. The commission shall establish  
3 guidelines for use by the counties in estimating the amount  
4 of expense which the county will incur each year. The facility  
5 shall certify to the county of residence once each month  
6 twenty-five percent of the unpaid cost of the care,  
7 maintenance, and treatment of a substance abuser. However,  
8 the approval of the board of supervisors is required before  
9 payment is made by a county for costs incurred which exceed  
10 a total of five hundred dollars for one year for treatment  
11 provided to any one substance abuser, except that approval  
12 is not required for the cost of treatment provided to a  
13 substance abuser who is ~~committed~~ detained pursuant to section  
14 ~~229-35~~ 18 of this Act. A facility may, upon approval of the  
15 board of supervisors, submit to a county a billing for the  
16 aggregate amount of all care, maintenance, and treatment of  
17 substance abusers who are residents of that county for each  
18 month. The board of supervisors may demand an itemization  
19 of billings at any time or may audit them.

20 Sec. 26. Section 229.21, Code 1981, is amended to read  
21 as follows:

22 229.21 JUDICIAL HOSPITALIZATION REFEREE.

23 1. The judges in each judicial district shall meet and  
24 ~~shall~~ determine, individually for each county in the district,  
25 ~~whether it appears that~~ one or more district judges will be  
26 sufficiently accessible in that county to make it feasible  
27 for them to perform at all times the duties prescribed by  
28 sections 229.7 to 229.20 and by sections ~~229-51 to 229-53~~  
29 3 through 21 of this Act. If the judges find that  
30 accessibility of district court judges in any county is not  
31 sufficient for this purpose, the chief judge of the district  
32 shall appoint in that county a judicial hospitalization  
33 referee. The judges in any district may at any time review  
34 their determination, previously made under this subsection  
35 with respect to any county in the district, and pursuant to

1 that review may authorize appointment of a judicial  
2 hospitalization referee, or abolish the office, in that county.

3 2. The judicial hospitalization referee shall be an  
4 attorney, licensed to practice law in this state, who shall  
5 be chosen with consideration to any training, experience,  
6 interest, or combination of those factors, which are pertinent  
7 to the duties of the office. The referee shall hold office  
8 at the pleasure of and receive compensation at a rate fixed  
9 by the chief judge of the district. If the referee expects  
10 to be absent from the county for any significant length of  
11 time, the referee shall inform the chief judge who may appoint  
12 a temporary substitute judicial hospitalization referee having  
13 the qualifications set forth in this subsection.

14 3. When an application for involuntary hospitalization  
15 under this chapter or an application for involuntary commitment  
16 or treatment of substance abusers under sections 3 through  
17 21 of this Act is filed with the clerk of the district court  
18 in any county for which a judicial hospitalization referee  
19 has been appointed, and no district judge is accessible in  
20 the county, the clerk shall immediately notify the referee  
21 in the manner required by section 229.7 or section 4 of this  
22 Act. The referee shall thereupon discharge all of the duties  
23 imposed upon judges of the district court by sections 229.7  
24 to 229.20 or sections 3 through 21 of this Act in the  
25 proceeding so initiated. Upon termination of the proceeding  
26 or issuance of an order under section 229.13 or section 10  
27 of this Act, the referee shall transmit either to the chief  
28 judge, or another judge of the district court designated by  
29 the chief judge, a statement of the reasons for the referee's  
30 action and a copy of any order issued.

31 4. Any respondent with respect to whom the judicial  
32 hospitalization referee has found the contention that ~~he~~  
33 she the respondent is seriously mentally impaired or a  
34 substance abuser sustained by clear and convincing evidence  
35 presented at a hearing held under section 229.12 or section

1 9 of this Act, may appeal from the referee's finding to a  
2 judge of the district court by giving the clerk notice in  
3 writing, within seven days after the referee's finding is  
4 made, that an appeal therefrom is taken. The appeal may be  
5 signed by the respondent or by the respondent's next friend,  
6 guardian or attorney. When so appealed, the matter shall  
7 stand for trial de novo. Upon appeal, the court shall schedule  
8 a hospitalization or commitment hearing before a district  
9 judge at the earliest practicable time.

10 5. If the appellant is in custody under the jurisdiction  
11 of the district court at the time of service of the notice  
12 of appeal, ~~he-er-she~~ the appellant shall be discharged from  
13 custody unless an order that the appellant be taken into  
14 immediate custody has previously been issued under section  
15 229.11 or section 8 of this Act, in which case the appellant  
16 shall be detained as provided in that section until the  
17 hospitalization or commitment hearing before the district  
18 judge. If the appellant is in the custody of a hospital or  
19 facility at the time of service of the notice of appeal, ~~he~~  
20 ~~er-she~~ the appellant shall be discharged from custody pending  
21 disposition of the appeal unless the chief medical officer,  
22 not later than the end of the next secular day on which the  
23 office of the clerk is open and which follows service of the  
24 notice of appeal, files with the clerk a certification that  
25 in the chief medical officer's opinion the appellant is  
26 seriously mentally ill or a substance abuser. In that case,  
27 the appellant shall remain in custody of the hospital or  
28 facility until the hospitalization or commitment hearing  
29 before the district court.

30 6. The hospitalization or commitment hearing before the  
31 district judge shall be held, and the judge's finding shall  
32 be made and an appropriate order entered, as prescribed by  
33 sections 229.12 and 229.13 or sections 9 and 10 of this Act.  
34 If the judge orders the appellant hospitalized or committed  
35 for a complete psychiatric or substance abuse evaluation,

1 jurisdiction of the matter shall revert to the judicial  
2 hospitalization referee.

3 Sec. 27. Section 125.35 and sections 229.50 through 229.53,  
4 Code 1981, are repealed.

5 EXPLANATION

6 This bill repeals section 125.35 and sections 229.50 through  
7 229.53 which are the current Code provision for involuntary  
8 commitment and treatment of substance abusers. The repealed  
9 sections are replaced by sections 3 through 21 of this bill,  
10 which are similar to the involuntary hospitalization procedures  
11 for persons seriously mentally impaired.

12 The new provisions allow three types of involuntary com-  
13 mitment or treatment. Section 3 provides for the commence-  
14 ment of procedures for the nonemergency commitment of alleged  
15 substance abusers, as defined in section 125.2, subsection  
16 5, upon application of an interested person. Notice must  
17 be given to the alleged substance abuser and an attorney pro-  
18 vided. The court requires the alleged substance abuser to  
19 submit to a physician's examination, the report from which  
20 is immediately shown to the court. The court may then either  
21 dismiss the application or schedule a commitment hearing.

22 The applicant may also request under section 8 that the  
23 alleged substance abuser be taken into immediate custody,  
24 for a maximum of five days, if likely to injure himself or  
25 herself or other persons if allowed to remain at liberty.

26 Under section 3 or section 8 procedures, a full evidentiary  
27 commitment hearing is held and tried as a civil matter. If  
28 the court finds by clear and convincing evidence that the  
29 person is a substance abuser, the court must order the  
30 substance abuser placed at a licensed substance abuse facility  
31 for a complete evaluation and appropriate treatment. The  
32 report of the complete evaluation must generally be made  
33 within fifteen days. The court, upon receipt of the report,  
34 may release the person who is not found to require substance  
35 abuse treatment or is not found to benefit from treatment,

1 or the court may commit the substance abuser to a facility  
2 or for outpatient treatment. Periodic reports are required  
3 to be provided to the court.

4 Section 18 provides the third type of involuntary commit-  
5 ment or treatment procedure, namely, emergency detention for  
6 intoxicated or incapacitated persons, as defined in section  
7 125.2, subsections 8 and 10, who have threatened, attempted,  
8 or inflicted physical self-harm or harm on others and who  
9 are likely to inflict physical self-harm or harm on others  
10 if not immediately detained. The procedure involves delivery  
11 of such a person to a facility, immediate communication by  
12 the administrator of the facility with a magistrate, and a  
13 visit and order by the magistrate as soon as possible. The  
14 person may be detained for forty-eight hours but no longer  
15 unless an application is filed for involuntary commitment  
16 under section 3.

17 Other sections of the bill deal with the status of an  
18 alleged substance abuser during appeal of a commitment order  
19 to the supreme court, delayed commitment due to a lack of  
20 a suitable treatment facility, criminal substance abusers  
21 or those charged with crimes, use of judicial hospitalization  
22 referees, rights of persons detained, taken into immediate  
23 custody, or committed under the bill, confidentiality of  
24 commitment records, supreme court rules, and conforming  
25 amendments.

26 Major changes in the commitment procedures are as follows:  
27 (1) Involuntary commitment can be obtained if a person is  
28 shown to be a substance abuser, without either a showing of  
29 a threat or an infliction of physical self-harm or harm to  
30 others or incapacitation by a chemical substance; (2)  
31 Expansion of the provisions for immediate custody where it  
32 is alleged that the person is likely to injure himself or  
33 herself or others if allowed to remain at liberty; (3)  
34 Expansion of the provisions for emergency detention to provide  
35 for magistrate review of the detention and detention for no

1 more than forty-eight hours without application to the court  
2 for involuntary commitment.

3 The bill would become law July 1 following enactment.

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HOUSE FILE 2426

H-5408

- 1 Amend House File 2426 as follows:
- 2 1. Page 18, line 1, by inserting after the word
- 3 "intoxication" the words and figure "under section
- 4 123.46, if applicable".

H-5408 FILED MARCH 12, 1982

BY SPEAR of Lee

*Adopted 3/17 (p. 854)*

HOUSE FILE 2426

H-5442

- 1 Amend House File 2426 as follows:
- 2 1. Page 1, line 17, by striking the words
- 3 "person, who" and inserting in lieu thereof the
- 4 words "person who,".
- 5 2. Page 3, line 4, by striking the word
- 6 "documentattion" and inserting in lieu thereof
- 7 the word "documentation".
- 8 3. Page 8, line 2, by striking the word "and"
- 9 and inserting in lieu thereof the word "as".

H-5442 FILED MARCH 16, 1982

BY RITSEMA of Sioux

*Adopted 3/17 (p. 852)*

HOUSE FILE 2426

H-5443

- 1 Amend House File 2426 as follows:
- 2 1. Page 14, by striking line 8 and inserting
- 3 in lieu thereof the following: "detained as soon as
- 4 possible and no later than twelve o'clock noon of
- 5 the same day".

H-5443 FILED MARCH 16, 1982

BY WELSH of Dubuque

*Adopted 3/17 (p. 854)*

HOUSE FILE 2426

H-5447

- A 1 Amend House File 2426 as follows:
- 2 1. Page 5, line 26, by inserting after the
- 3 word "willing" the words "and able".
- B 4 2. Page 5, line 33, by striking the word
- 5 "may" and inserting in lieu thereof the word "shall".

H-5447 FILED MARCH 16, 1982

BY RITSEMA of Sioux

*Adopted 3/17 (p. 853)*

H-5358

1 Amend House File 2426 as follows:

- 2 1. Page 9, by striking lines 19 through 21 and  
 3 inserting in lieu thereof the words "the court may  
 4 order that the respondent be taken into immediate  
 5 custody as provided by section 8 of this Act and,  
 6 following notice and hearing held in accordance with  
 7 the procedures of sections 4 and 9 of this Act, may  
 8 order the respondent treated as a patient requiring  
 9 full-time custody, care, and treatment as provided  
 10 in subsection 2, and may order the respondent  
 11 involuntarily committed to a facility."  
 12 2. Page 10, lines 8 and 9, by striking the words  
 13 "on the grounds set forth in" and inserting in lieu  
 14 thereof the words "pursuant to an application under".  
 15 3. Page 10, line 16, by striking the words "on  
 16 the grounds set forth in" and inserting in lieu thereof  
 17 the words "pursuant to an application under".  
 18 4. Page 11, by striking lines 31 through 34, and  
 19 inserting in lieu thereof the words "full-time custody,  
 20 care, and treatment in a facility, and the respondent  
 21 is willing to be admitted voluntarily to the facility  
 22 for these purposes, the court may enter an order  
 23 approving the placement upon consultation with the  
 24 administrator of the facility in which the respondent  
 25 is to be placed. If the respondent is unwilling to  
 26 be admitted voluntarily to the facility, the procedure  
 27 for determining involuntary commitment, as provided  
 28 in section 11, subsection 3 of this Act, shall be  
 29 followed."

H-5358 FILED MARCH 9, 1982

BY POFFENBERGER of Dallas

*Adopted 3/11 (p. 853)*

HOUSE FILE 2426

H-5372

1 Amend House File 2426 as follows:

- 2 1. Page 18, by striking lines 15 and 16, and  
 3 inserting in lieu thereof the following:  
 4 "3. A person who ~~comes voluntarily or is brought~~  
 5 ~~to~~ arrives at a facility and voluntarily submits to  
 6 examination shall be examined by a licensed physician  
 7 as soon".  
 8 2. Page 18, by striking lines 18 and inserting  
 9 in lieu thereof the words "~~comes voluntarily or is~~  
 10 ~~brought to~~ arrives at the facility. He The".

H-5372 FILED MARCH 10, 1982

BY SPEAR of Lee

*Adopted 3/11 (p. 854)*

See Human Resources 2/22  
HOUSE FILE 2426 *Do Pass 3/29 (p. 944)*

Human Resources  
Gentleman, Chair  
Vande Hoef  
C. Miller

HOUSE FILE 2426

BY COMMITTEE ON HUMAN RESOURCES

(As Amended and Passed by the House)

Passed House, Date 4-22-82 (p. 1677) Passed Senate, Date 4-7-82 (p. 1081)

Vote: Ayes 92 Nays 0 Vote: Ayes 42 Nays 0

Approved May 21, 1982  
*Motion to reconsider 4/8 (p. 1121) Adopted 4/21 (1330)  
Repassed Senate 4-21-82 (p. 1335)*

# A BILL FOR

49-0

1 An Act relating to the procedures for involuntary commitment  
2 or treatment of substance abusers.

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

*Repassed Senate as further amended  
by House  
4-23-82 (p. 1396)*  
43-0

2426

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House Amendments \_\_\_\_\_

1 Section 1. Section 125.2, Code 1981, is amended by adding  
2 the following new subsections:

3 NEW SUBSECTION. "Respondent" means a person against whom  
4 an application is filed under section 3 of this Act.

5 NEW SUBSECTION. "Clerk" means the clerk of the district  
6 court.

7 NEW SUBSECTION. "Chief medical officer" means the medical  
8 director in charge of a public or private hospital, or the  
9 director's physician-designee. This chapter does not negate  
10 the authority otherwise reposed by chapter 226 in the respec-  
11 tive superintendents of the state mental health institutes  
12 to make decisions regarding the appropriateness of admissions  
13 or discharges of patients of those institutes, however, it  
14 is the intent of this chapter that a superintendent who is  
15 not a licensed physician shall be guided in these decisions  
16 by the chief medical officer of the institute.

17 NEW SUBSECTION. "Interested person" means a person who,  
18 in the discretion of the court, is legitimately concerned  
19 that a respondent receive substance abuse treatment services.

20 Sec. 2. Chapter 125, Code 1981, is amended by adding  
21 sections 3 through 21 of this Act after section 125.57 as  
22 a new division.

23 Sec. 3. NEW SECTION. INVOLUNTARY COMMITMENT OR TREATMENT-  
24 -APPLICATION. Proceedings for the involuntary commitment  
25 or treatment of a substance abuser to a facility may be  
26 commenced by an interested person by filing a verified  
27 application with the clerk of the district court of the county  
28 where the respondent is presently located or which is the  
29 respondent's place of residence. The clerk or the clerk's  
30 designee shall assist the applicant in completing the  
31 application. The application shall:

- 32 1. State the applicant's belief that the respondent is  
33 a substance abuser.
- 34 2. State any other pertinent facts.
- 35 3. Be accompanied by one or more of the following:

1 a. A written statement of a licensed physician in support  
2 of the application.

3 b. One or more supporting affidavits corroborating the  
4 application.

5 c. Corroborative information obtained and reduced to  
6 writing by the clerk or the clerk's designee, but only when  
7 circumstances make it infeasible to obtain, or when the clerk  
8 considers it appropriate to supplement, the information under  
9 either paragraph a or paragraph b.

10 Sec. 4. NEW SECTION. SERVICE OF NOTICE. Upon the filing  
11 of an application for involuntary commitment, the clerk shall  
12 docket the case and immediately notify a district court judge  
13 who shall review the application and accompanying documen-  
14 tation. The clerk shall send copies of the application and  
15 supporting documentation, together with the notice informing  
16 the respondent of the procedures required by this division,  
17 to the sheriff, for immediate service upon the respondent.  
18 If the respondent is taken into custody under section 8 of  
19 this Act, service of the application, documentation, and  
20 notice upon the respondent shall be made at the time the  
21 respondent is taken into custody.

22 Sec. 5. NEW SECTION. PROCEDURE AFTER APPLICATION. As  
23 soon as practical after the filing of an application for  
24 involuntary commitment for treatment, the court shall:

25 1. Determine whether the respondent has an attorney who  
26 is able and willing to represent the respondent in the  
27 commitment proceeding, and if not, whether the respondent  
28 is financially able to employ an attorney and capable of  
29 meaningfully assisting in selecting an attorney. In accordance  
30 with those determinations, the court shall allow the respondent  
31 to select an attorney or shall assign an attorney to the  
32 respondent. If the respondent is financially unable to pay  
33 an attorney, the attorney shall be compensated in substantially  
34 the same manner as provided by section 815.7, except that  
35 if the county has a public defender, the court may assign

1 the public defender or an attorney on the public defender's  
2 staff as the respondent's attorney.

3 2. Cause copies of the application and supporting  
4 documentation to be sent to the county attorney for review.

5 3. Issue a written order:

6 a. Scheduling a tentative time and place for a hearing,  
7 subject to the findings of the report required under section  
8 7, subsections 3 and 4 of this Act, but not less than forty-  
9 eight hours after notice to the respondent, unless the  
10 respondent waives the forty-eight hour notice requirement.

11 b. Requiring an examination of the respondent, prior to  
12 the hearing, by one or more licensed physicians who shall  
13 submit a written report of the examination to the court as  
14 required by section 7 of this Act.

15 Sec. 6. NEW SECTION. RESPONDENT'S ATTORNEY INFORMED.

16 The court shall direct the clerk to furnish at once to the  
17 respondent's attorney, copies of the application for  
18 involuntary commitment of the respondent and the supporting  
19 documentation, and of the court's order issued pursuant to  
20 section 5, subsection 3 of this Act. If the respondent is  
21 taken into custody under section 8 of this Act, the attorney  
22 shall also be advised of that fact. The respondent's attorney  
23 shall represent the respondent at all stages of the proceedings  
24 and shall attend the commitment hearing.

25 Sec. 7. NEW SECTION. PHYSICIAN'S EXAMINATION--REPORT-  
26 -SCHEDULING OF HEARING.

27 1. An examination of the respondent shall be conducted  
28 within a reasonable time and prior to the commitment hearing  
29 by one or more licensed physicians as required by the court's  
30 order. If the respondent is taken into custody under section  
31 8 of this Act, the examination shall be conducted within  
32 twenty-four hours after the respondent is taken into custody.  
33 If the respondent desires, the respondent may have a separate  
34 examination by a licensed physician of the respondent's own  
35 choice. The court shall notify the respondent of the right

1 to choose a physician for a separate examination. The  
2 reasonable cost of the examinations shall be paid from county  
3 funds upon order of the court if the respondent lacks  
4 sufficient funds to pay the cost.

5 A licensed physician conducting an examination pursuant  
6 to this section may consult with or request the participation  
7 in the examination of facility personnel, and may include  
8 with or attach to the written report of the examination any  
9 findings or observations by facility personnel who have been  
10 consulted or have participated in the examination.

11 If the respondent is not taken into custody under section  
12 8 of this Act, but the court is subsequently informed that  
13 the respondent has declined to be examined by a licensed  
14 physician pursuant to the court order, the court may order  
15 limited detention of the respondent as necessary to facilitate  
16 the examination of the respondent by the licensed physician.

17 2. A written report of the examination by a court-designated  
18 physician shall be filed with the clerk prior to the  
19 hearing date. A written report of an examination by a  
20 physician chosen by the respondent may be similarly filed.  
21 The clerk shall immediately:

22 a. Cause a report to be shown to the judge who issued  
23 the order.

24 b. Cause the respondent's attorney to receive a copy of  
25 the report of a court-designated physician.

26 3. If the report of a court-designated physician is to  
27 the effect that the respondent is not a substance abuser,  
28 the court, without taking further action, may terminate the  
29 proceeding and dismiss the application on its own motion and  
30 without notice.

31 4. If the report of a court-designated physician is to  
32 the effect that the respondent is a substance abuser, the  
33 court shall schedule a commitment hearing as soon as possible.  
34 The hearing shall be held not more than forty-eight  
35 hours after the report is filed, excluding Saturdays, Sundays,

1 and holidays, unless an extension for good cause is requested  
2 by the respondent, or as soon thereafter as possible if the  
3 court considers that sufficient grounds exist for delaying  
4 the hearing.

5 Sec. 8. NEW SECTION. IMMEDIATE CUSTODY. If a person  
6 filing an application requests that a respondent be taken  
7 into immediate custody, and the judge upon reviewing the  
8 application and accompanying documentation, finds probable  
9 cause to believe that the respondent is a substance abuser  
10 who is likely to injure himself or herself or other persons  
11 if allowed to remain at liberty, the judge may enter a written  
12 order directing that the respondent be taken into immedi-  
13 ate custody by the sheriff, and be detained until the  
14 commitment hearing, which shall be held no more than five  
15 days after the date of the order, except that if the fifth  
16 day after the date of the order is a Saturday, Sunday, or  
17 a holiday, the hearing may be held on the next business day.  
18 The judge may order the respondent detained for the period  
19 of time until the hearing is held, and no longer except as  
20 provided in section 15 of this Act, in accordance with  
21 subsection 1 if possible, and if not, then in accordance with  
22 subsection 2 or, only if neither of these alternatives is  
23 available in accordance with subsection 3. Detention may  
24 be:

25 1. In the custody of a relative, friend, or other suitable  
26 person who is willing and able to accept responsibility for  
27 supervision of the respondent, with reasonable restrictions  
28 as the judge may order including but not limited to  
29 restrictions on or a prohibition of any expenditure,  
30 encumbrance, or disposition of the respondent's funds or  
31 property.

32 2. In a suitable hospital, the chief medical officer of  
33 which shall be informed of the reasons why immediate custody  
34 has been ordered. The hospital shall provide treatment which  
35 is necessary to preserve the respondent's life, or to

1 appropriately control the respondent's behavior which is  
2 likely to result in physical injury to himself or herself  
3 or to others if allowed to continue, and other treatment as  
4 deemed appropriate by the chief medical officer.

5 3. In a facility in the community which is suitably  
6 equipped and staffed for the purpose, provided that detention  
7 in a jail or other facility intended for confinement of those  
8 accused or convicted of a crime shall not be ordered, except  
9 in cases of actual emergency if no other secure resource is  
10 accessible, and then only for a period of not more than twenty-  
11 four hours and under close supervision.

12 The respondent's attorney may be allowed by the court to  
13 present evidence and arguments before the court's determination  
14 under this section. If such an opportunity is not provided  
15 at that time, respondent's attorney shall be allowed to present  
16 evidence and arguments after the issuance of the court's order  
17 of confinement and while the respondent is confined.

555 18 Sec. 9. NEW SECTION. COMMITMENT HEARING.

19 1. At a commitment hearing, evidence in support of the  
20 contentions made in the application shall be presented by  
21 the county attorney. During the hearing the applicant and  
22 the respondent shall be afforded an opportunity to testify  
23 and to present and cross-examine witnesses, and the court  
24 may receive the testimony of other interested persons. If  
25 the respondent is present at the hearing, as provided in  
26 subsection 3, and has been medicated within twelve hours,  
27 or a longer period of time as the court may designate, prior  
28 to the beginning of the hearing or a session of the hearing,  
29 the judge shall be informed of that fact and of the probable  
30 effects of the medication upon convening of the hearing.

31 2. A person not necessary for the conduct of the hearing  
32 shall be excluded, except that the court may admit a person  
33 having a legitimate interest in the hearing. Upon motion  
34 of the county attorney, the judge may exclude the respondent  
35 from the hearing during the testimony of a witness if the

1 judge determines that the witness' testimony is likely to  
2 cause the respondent severe emotional trauma.

3 3. The person who filed the application and a physician  
4 or professional who has examined the respondent in connection  
5 with the commitment hearing shall be present at the hear-  
6 ing, unless prior to the hearing the judge for good cause  
7 finds that their presence is not necessary. The respondent  
8 shall be present at the hearing unless prior to the hearing  
9 the respondent's attorney stipulates in writing that the  
10 attorney has conversed with the respondent, and that in the  
11 attorney's judgment the respondent cannot make a meaningful  
12 contribution to the hearing, or that the respondent has waived  
13 the right to be present, and the basis for the attorney's  
14 conclusions. A stipulation to the respondent's absence shall  
15 be reviewed by the judge before the hearing, and may be  
16 rejected if it appears that insufficient grounds are stated  
17 or that the respondent's interests would not be served by  
18 the respondent's absence.

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

33 5. If the respondent is not taken into custody under  
34 section 8 of this Act, but the court finds good cause to  
35 believe that the respondent is about to depart from the

1 jurisdiction of the court, the court may order limited  
2 detention of the respondent as authorized in section 8 of  
3 this Act, as is necessary to ensure that the respondent will  
4 not depart from the jurisdiction of the court without the  
5 court's approval until the proceeding relative to the  
6 respondent has been concluded.

7 Sec. 10. NEW SECTION. PLACEMENT FOR EVALUATION. If upon  
8 completion of the commitment hearing, the court finds that  
9 the contention that the respondent is a substance abuser has  
10 been sustained by clear and convincing evidence, the court  
11 shall order the respondent placed at a facility as  
12 expeditiously as possible for a complete evaluation and  
13 appropriate treatment. The court shall furnish to the facility  
14 at the time of admission, a written statement of facts setting  
15 forth the evidence on which the finding is based. The  
16 administrator of the facility shall report to the court no  
17 more than fifteen days after the individual is admitted to  
18 the facility, making a recommendation concerning substance  
19 abuse treatment. An extension of time may be granted for  
20 a period not to exceed seven days upon a showing of good  
21 cause. A copy of the report shall be sent to the respondent's  
22 attorney who may contest the need for an extension of time  
23 if one is requested. If the request is contested, the court  
24 shall make an inquiry as it deems appropriate and may either  
25 order the respondent released from the facility or grant  
26 extension of time for further evaluation.

27 Sec. 11. NEW SECTION. EVALUATION REPORT. The facility  
28 administrator's report to the court on the substance abuse  
29 evaluation of the respondent shall be made no later than the  
30 expiration of the time specified in section 10 of this Act.  
31 At least two copies of the report shall be filed with the  
32 clerk, who shall distribute the copies in the manner described  
33 by section 7, subsection 2 of this Act. The report shall  
34 state one of the four following alternative findings:

- 35 1. That the respondent does not, as of the date of the

1 report, require further treatment for substance abuse. If  
2 the report so states, the court shall order the respondent's  
3 immediate release from involuntary commitment and terminate  
4 the proceedings.

5 2. That the respondent is a substance abuser who is in  
6 need of full-time custody, care, and treatment in a facility,  
7 and is considered likely to benefit from treatment. If the  
8 report so states, the court may order the respondent's  
9 continued placement and commitment to a facility for  
10 appropriate treatment.

11 3. That the respondent is a substance abuser who is in  
12 need of treatment, but does not require full-time placement  
13 in a facility. If the report so states, the report shall  
14 include the facility administrator's recommendation for  
15 treatment of the respondent on an outpatient or other  
16 appropriate basis, and the court may enter an order directing  
17 the respondent to submit to the recommended treatment. The  
18 order shall provide that if the respondent fails or refuses  
19 to submit to treatment, as directed by the court's order,  
20 the court may order that the respondent be taken into immediate  
21 custody as provided by section 8 of this Act and, following  
22 notice and hearing held in accordance with the procedures  
23 of sections 4 and 9 of this Act, may order the respondent  
24 treated as a patient requiring full-time custody, care, and  
25 treatment as provided in subsection 2, and may order the  
26 respondent involuntarily committed to a facility.

27 4. That the respondent is a substance abuser who is in  
28 need of treatment, but in the opinion of the facility  
29 administrator is not responding to the treatment provided.  
30 If the report so states, the report shall include the facility  
31 administrator's recommendation for alternative placement,  
32 and the court may order the respondent's transfer to the  
33 recommended placement or to another placement after  
34 consultation with respondent's attorney and the facility  
35 administrator who made the report under this subsection.

1     Sec. 12. NEW SECTION.   CUSTODY, DISCHARGE, AND TERMINATION  
2 OF PROCEEDING.

3     1. A respondent committed under section 11, subsection  
4 2 of this Act, shall remain in the custody of a facility for  
5 treatment for a period of thirty days, unless sooner  
6 discharged. The department is not required to pay the cost  
7 of any medication or procedure provided to the respondent  
8 during that period which is not necessary or appropriate to  
9 the specific objectives of detoxification and treatment of  
10 substance abuse. At the end of the thirty-day period, the  
11 respondent shall be discharged automatically unless the  
12 administrator of the facility, before expiration of the period,  
13 obtains a court order for the respondent's recommitment  
14 pursuant to an application under section 3 of this Act, for  
15 a further period not to exceed ninety days.

16    2. A respondent recommitment under subsection 1 who has  
17 not been discharged by the facility before the end of the  
18 ninety-day period shall be discharged at the expiration of  
19 that period unless the administrator of the facility, before  
20 expiration of the period, obtains a court order for the  
21 respondent's recommitment pursuant to an application under  
22 section 3 of this Act, for a further period not to exceed  
23 ninety days.

24    3. Upon the filing of an application for recommitment  
25 under subsection 1 or 2, the court shall schedule a  
26 recommitment hearing for no later than ten days after the  
27 date the application is filed. A copy of the application,  
28 the notice of hearing, and any reports shall be served or  
29 provided in the manner and to the persons as required by  
30 sections 4 through 7, 10, and 11 of this Act.

31    4. Following a respondent's discharge from a facility  
32 or from treatment, the administrator of the facility shall  
33 immediately report that fact to the court which ordered the  
34 respondent's commitment or treatment. The court shall issue  
35 an order confirming the respondent's discharge from the

1 facility or from treatment, as the case may be, and shall  
2 terminate the proceedings pursuant to which the order was  
3 issued. Copies of the order shall be sent by certified mail  
4 to the facility and the respondent.

5707 5 Sec. 13. NEW SECTION. PERIODIC REPORTS REQUIRED.

6 1. No more than thirty days after entry of a court order  
7 for commitment to a facility under section 11, subsection  
8 2 of this Act, and thereafter at successive intervals not  
9 to exceed ninety days for as long as involuntary commitment  
10 of the respondent continues, the administrator of the facility  
11 shall report to the court which entered the order. The report  
12 shall be submitted in the manner required by section 11 of  
13 this Act, shall state whether the respondent's condition has  
14 improved, remains unchanged, or has deteriorated, and shall  
15 indicate the further length of time the respondent will be  
16 required to remain at the facility.

17 2. No more than sixty days after entry of a court order  
18 for treatment of a respondent under section 11, subsection  
19 3 of this Act, and thereafter at successive intervals not  
20 to exceed ninety days for as long as involuntary treatment  
21 continues, the administrator of the facility shall report  
22 to the court which entered the order. The report shall be  
23 submitted in the manner required by section 11 of this Act,  
24 shall state whether the respondent's condition has improved,  
25 remains unchanged, or has deteriorated, and shall indicate  
26 the further length of time the respondent will require  
27 treatment by the facility. If the respondent fails or refuses  
28 to submit to treatment as ordered by the court, the  
29 administrator of the facility shall at once notify the court,  
30 which shall order the respondent committed for treatment as  
31 provided by section 11, subsection 3 of this Act, unless the  
32 court finds that the failure or refusal was with good cause,  
33 and that the respondent is willing to receive treatment as  
34 provided in the court's order, or in a revised order if the  
35 court sees fit to enter one. If the administrator of the

1 facility reports to the court that the respondent requires  
2 full-time custody, care, and treatment in a facility, and  
3 the respondent is willing to be admitted voluntarily to the  
4 facility for these purposes, the court may enter an order  
5 approving the placement upon consultation with the  
6 administrator of the facility in which the respondent is to  
7 be placed. If the respondent is unwilling to be admitted  
8 voluntarily to the facility, the procedure for determining  
9 involuntary commitment, as provided in section 11, subsection  
10 3 of this Act, shall be followed.

11 Sec. 14. NEW SECTION. STATUS DURING APPEAL. If a respon-  
12 dent appeals to the supreme court from a lower court's finding  
13 that commitment is warranted, the respondent shall remain  
14 committed if already in custody, pursuant to an order of  
15 immediate custody under section 8 of this Act or pursuant  
16 to an order for evaluation and treatment under section 10  
17 of this Act, before notice of appeal was filed, unless the  
18 supreme court orders otherwise.

19 Sec. 15. NEW SECTION. STATUS IF COMMITMENT DELAYED.  
20 If a court directs a respondent who was previously ordered  
21 taken into immediate custody under section 8 of this Act to  
22 be placed at a facility for evaluation and appropriate  
23 treatment under section 10 of this Act, and no suitable  
24 facility can immediately admit the respondent, the respondent  
25 shall remain in custody as previously ordered by the court,  
26 notwithstanding the time limits stated in section 8 of this  
27 Act, until a suitable facility can admit the respondent.  
28 The court shall take appropriate steps to expedite the admission  
29 of the respondent to a suitable facility at the earliest  
30 feasible time.

31 Sec. 16. NEW SECTION. RESPONDENTS CHARGED WITH OR CON-  
32 VICTED OF CRIME.

33 1. If a court orders a respondent placed at a facility  
34 for evaluation and treatment under section 10 of this Act  
35 at a time when the respondent has been convicted of a public

1 offense, or when there is pending against the respondent an  
2 unresolved formal charge of a public offense, and the  
3 respondent's liberty has therefore been restricted in any  
4 manner, the findings of fact required by section 10 of this  
5 Act shall clearly so inform the administrator of the facility  
6 where the respondent is placed.

7 2. The commitment powers of the court under section  
8 204.409, subsection 2 supercede the procedures and requirements  
9 of this division.

10 Sec. 17. NEW SECTION. JUDICIAL HOSPITALIZATION REFEREE.  
11 Judicial hospitalization referees shall be utilized as provided  
12 in section 229.21 for performing the duties of the court  
13 prescribed by this division.

14 Sec. 18. NEW SECTION. EMERGENCY DETENTION.

15 1. The procedure prescribed by this section shall only  
16 be used for an intoxicated person who has threatened,  
17 attempted, or inflicted physical self-harm or harm on another,  
18 and is likely to inflict physical self-harm or harm on another  
19 unless immediately detained, or who is incapacitated by a  
20 chemical substance, if that person cannot be taken into  
21 immediate custody under sections 3 and 8 of this Act because  
22 immediate access to the court is not possible.

5757 23 2. A peace officer who has reasonable grounds to believe  
24 that the circumstances described in subsection 1 are  
25 applicable, may, without a warrant, take or cause that person  
26 to be taken to the nearest available facility referred to  
27 in section 8, subsection 2 or 3 of this Act. Such an  
28 intoxicated or incapacitated person may also be delivered  
29 to a facility by someone other than a peace officer upon a  
30 showing of reasonable grounds. Upon delivery of the person  
31 to a facility under this section, the administrator of the  
32 facility may order treatment of the person, but only to the  
33 extent necessary to preserve the person's life or to  
34 appropriately control the person's behavior if the behavior  
35 is likely to result in physical injury to the person or others

1 if allowed to continue. The peace officer or other person  
2 who delivered the person to the facility shall describe the  
3 circumstances of the matter to the administrator. If the  
4 administrator has reasonable grounds to believe that the  
5 circumstances in subsection 1 are applicable, the administrator  
6 shall at once communicate with the nearest available magistrate  
7 as defined in section 801.4, subsection 6. The magistrate  
8 shall immediately proceed to the facility where the person  
9 is detained, except that if the administrator's communication  
10 with the magistrate occurs between the hours of midnight and  
11 seven a.m. and the magistrate deems it appropriate under the  
12 circumstances described by the administrator, the magistrate  
13 may delay going to the facility, and in that case, shall give  
14 the administrator verbal instructions either directing that  
15 the person be released forthwith, or authorizing the person's  
16 continued detention at the facility. In the latter case,  
17 the magistrate shall:

18 a. Arrive at the facility where the person is being  
19 detained as soon as possible and no later than twelve o'clock  
20 noon of the same day on which the administrator's communication  
21 occurred.

22 b. By the close of business on the next working day file  
23 with the clerk a written report stating the substance of the  
24 communication with the administrator on which the person's  
25 continued detention was ordered.

26 3. Upon arrival at the facility, the magistrate shall  
27 at once review the validity of the detention. Unless convinced  
28 upon initial inquiry that there are no grounds for further  
29 detention of the person, the magistrate shall ensure that  
30 the person has or is provided legal counsel at the earliest  
31 practical time in the manner prescribed by section 5,  
32 subsection 1 of this Act, and shall arrange for the counsel  
33 to be present, if practical, before proceeding further under  
34 this subsection. The magistrate shall immediately notify  
35 counsel of the respondent's emergency detention. Counsel

1 shall be afforded an opportunity to visit the respondent and  
2 to make appropriate preparations before or after the  
3 magistrate's order is issued. If the magistrate finds, upon  
4 review of the information presented by the administrator under  
5 subsection 2 and of other information or evidence the  
6 magistrate deems relevant, that there is probable cause to  
7 believe that the circumstances described in subsection 1 are  
8 applicable, the magistrate shall enter a written order  
9 detaining the person at the facility, or, if the facility  
10 where the person is at the time is not an appropriate facility,  
11 detaining and transporting the person to an appropriate  
12 facility. The magistrate's order shall state the circumstances  
13 under which the person was detained or otherwise delivered  
14 to a facility, and the grounds supporting the finding of  
15 probable cause to believe that person is a substance abuser  
16 likely to physically injure himself or herself or others if  
17 not detained. The order shall be filed with the clerk in  
18 the county where it is anticipated that an application will  
19 be filed under section 3 of this Act, and a certified copy  
20 of the order shall be delivered to the administrator of the  
21 facility where the person is detained, at the earliest  
22 practical time.

23 4. The chief medical officer of the facility shall examine  
24 and may detain the person pursuant to the magistrate's order  
25 for a period not to exceed forty-eight hours from the time  
26 the order is dated, excluding Saturdays, Sundays, and holidays,  
27 unless the order is dismissed by a magistrate. The facility  
28 may provide treatment which is necessary to preserve the  
29 person's life or to appropriately control the person's behavior  
30 if the behavior is likely to result in physical injury to  
31 the person or others if allowed to continue, but shall not  
32 otherwise provide treatment to the person without the person's  
33 consent. The person shall be discharged from the facility  
34 and released from detention no later than the expiration of  
35 the forty-eight hour period, unless an application for

1 involuntary commitment is filed with the clerk pursuant to  
2 section 3 of this Act. The detention of a person by the  
3 procedure in this section, and not in excess of the period  
4 of time prescribed by this section, shall not render the peace  
5 officer, physician, or facility detaining the person liable  
6 in a criminal or civil action for false arrest or false  
7 imprisonment if the peace officer, physician, or facility  
8 had reasonable grounds to believe that the circumstances  
9 described in subsection 1 were applicable.

10 5. The cost of detention in a facility under the procedure  
11 prescribed in this section shall be paid in the same way as  
12 if the person had been committed to the facility pursuant  
13 to an application filed under section 3 of this Act.

14 Sec. 19. NEW SECTION. RIGHTS AND PRIVILEGES OF COMMITTED  
15 PERSONS. A person who is detained, taken into immediate  
16 custody, or committed under this division has the right to:

17 1. Prompt evaluation, emergency services, and care and  
18 treatment as indicated by sound clinical practice.

19 2. Render informed consent, unless the person is  
20 incompetent in which case treatment may be consented to by  
21 the person's next of kin or guardian notwithstanding the  
22 person's refusal. If the person is competent to render  
23 informed consent but refuses treatment or if the person is  
24 incompetent and the next of kin or guardian refuses treatment  
25 which, in the chief medical officer's judgment is necessary  
26 to preserve the person's life or to appropriately control  
27 the person's behavior if the behavior is likely to result  
28 in physical injury to the person or others if allowed to  
29 continue, the facility may petition a court of appropriate  
30 jurisdiction for approval to treat the person. If the person  
31 is incompetent to consent or refuses to give consent and no  
32 next of kin or guardian is available, the facility may also  
33 petition the court for permission to treat the person.

34 3. The protection of the person's constitutional rights.

35 4. Enjoy all legal, medical, religious, social, political,

1 personal, and working rights and privileges, which the person  
2 would enjoy if not detained, taken into immediate custody,  
3 or committed, consistent with the effective treatment of the  
4 person and of the other persons in the facility. If the  
5 person's rights are restricted, the physician's direction  
6 to that effect shall be noted in the person's record. The  
7 person or the person's next of kin or guardian shall be advised  
8 of the person's rights and be provided a written copy upon  
9 the person's admission to or arrival at the facility.

10 Sec. 20. NEW SECTION. COMMITMENT RECORDS--CONFIDENTIALITY.

11 Records of the identity, diagnosis, prognosis, or treatment  
12 of a person which are maintained in connection with the  
13 provision of substance abuse treatment services are  
14 confidential, consistent with the requirements of section  
15 125.37, and with the federal confidentiality regulations  
16 authorized by the Drug Abuse Office and Treatment Act, 21  
17 U.S.C. sec. 1175 (1976) and the Comprehensive Alcohol Abuse  
18 and Alcoholism Prevention, Treatment and Rehabilitation Act,  
19 42 U.S.C. sec. 4582 (1976).

20 Sec. 21. NEW SECTION. SUPREME COURT RULES. The supreme  
21 court may prescribe rules of pleading, practice, and procedure  
22 and the forms of process, writs, and notices, for all  
23 commitment proceedings in a court of this state under this  
24 chapter. Any rules so prescribed shall be drawn for the  
25 purpose of simplifying and expediting the proceedings, so  
26 far as is consistent with the rights of the parties involved.  
27 The rules shall not abridge, enlarge, or modify the substantive  
28 rights of a party to a commitment proceeding under this  
29 chapter.

30 Sec. 22. Section 125.12, subsection 3, Code 1981, is  
31 amended to read as follows:

32 3. The director shall provide for adequate and appropriate  
33 treatment for substance abusers and intoxicated persons  
34 admitted under sections 125.33 ~~to 125.35 and 125.53~~ and 125.34,  
35 or under section 3, 8, or 18 of this Act. Treatment shall

1 not be provided at a correctional institution except for  
2 inmates.

3 Sec. 23. Section 125.34, Code 1981, is amended to read  
4 as follows:

5 125.34 TREATMENT AND SERVICES FOR INTOXICATED PERSONS  
6 AND PERSONS INCAPACITATED BY ALCOHOL.

7 1. An intoxicated person may come voluntarily to a facility  
8 for emergency treatment. A person who appears to be  
9 intoxicated or incapacitated by a chemical substance in a  
10 public place and in need of help ~~shall~~ may be taken to a  
11 facility by a peace officer under section 18 of this Act.  
12 If the person refuses the proffered help, the person may be  
13 arrested and charged with intoxication under section 123.46,  
14 if applicable.

15 2. If no facility is readily available the person may  
16 be taken to an emergency medical service customarily used  
17 for incapacitated persons. The peace officer in detaining  
18 the person and in taking the person to a facility, ~~is taking~~  
19 ~~the person into protective custody and~~ shall make every  
20 reasonable effort to protect the person's health and safety.  
21 In ~~taking~~ detaining the person ~~into protective custody,~~ the  
22 detaining officer may take reasonable steps for self-  
23 protection. ~~A taking into protective custody~~ Detaining a  
24 person under ~~this~~ section 18 of this Act is not an arrest  
25 and no entry or other record shall be made to indicate that  
26 the person who is ~~taken into protective custody~~ detained has  
27 been arrested or charged with a crime.

28 3. ~~A person who comes voluntarily or is brought to~~ arrives  
29 at a facility and voluntarily submits to examination shall  
30 be examined by a licensed physician as soon as possible, but  
31 not later than twelve hours after the person comes voluntarily  
32 or is brought to arrives at the facility. He The person  
33 may then be admitted as a patient or referred to another  
34 health facility. The referring facility shall arrange for  
35 ~~his~~ transportation.

1 4--A person who is found to be intoxicated or incapacitated  
2 by a chemical substance after examination by a qualified  
3 health professional shall be required to remain at the facility  
4 until the qualified health professional determines that the  
5 person is not likely to inflict physical self-harm or inflict  
6 physical harm on others.--If the person is detained longer  
7 than twenty-four hours the qualified health professional shall  
8 examine him or her at least once every twelve hours to  
9 determine if further detention is necessary.--The qualified  
10 health professional shall enter a written order for the person  
11 to be detained in custody.--Such order shall state the  
12 circumstances under which the person was taken into custody  
13 and the grounds supporting the finding or probable cause to  
14 believe that he or she is sufficiently impaired or  
15 incapacitated by a chemical substance to cause physical injury  
16 to himself or herself or others if released.--The order shall  
17 be filed in the district court of the area in which the person  
18 is detained.

19 5 4. If a patient person is voluntarily admitted to a  
20 facility, ~~his~~ the person's family or next of kin shall be  
21 notified as promptly as possible. If an adult patient who  
22 is not incapacitated requests that there be no notification,  
23 ~~his~~ the request shall be respected.

24 6 5. A peace officer who acts in compliance with this  
25 section is acting in the course of ~~his~~ the officer's official  
26 duty and is not criminally or civilly liable therefor, unless  
27 such acts constitute willful malice or abuse.

28 7 6. If the physician in charge of the facility determines  
29 it is for the patient's benefit, the patient shall be  
30 encouraged to agree to further diagnosis and appropriate  
31 voluntary treatment.

32 Sec. 24. Section 125.44, unnumbered paragraph 6, Code  
33 1981, is amended to read as follows:

34 The department is liable for the cost of care, treatment,  
35 and maintenance of a substance abuser admitted to the facility

1 voluntarily or pursuant to section ~~125-347-125-357~~ 3, 8, or  
2 18 of this Act or section 321.281, 321.283, subsection 3,  
3 or 204.409, subsection 2 ~~or~~-229-52 only to those facilities  
4 that have a contract with the department under this section,  
5 only for the amount computed according to and within the  
6 limits of liability prescribed by this section, and only when  
7 the substance abuser is unable to pay ~~such~~ the costs and there  
8 is no other person, firm, corporation or insurance company  
9 bound to pay ~~such~~ the costs.

10 Sec. 25. Section 125.45, subsection 1, Code 1981  
11 Supplement, is amended to read as follows:

12 1. Except as provided in section 125.43, each county shall  
13 pay for the remaining twenty-five percent of the cost of the  
14 care, maintenance, and treatment under this chapter of  
15 residents of that county from the levy authorized by section  
16 331.421, subsection 13. The commission shall establish  
17 guidelines for use by the counties in estimating the amount  
18 of expense which the county will incur each year. The facility  
19 shall certify to the county of residence once each month  
20 twenty-five percent of the unpaid cost of the care,  
21 maintenance, and treatment of a substance abuser. However,  
22 the approval of the board of supervisors is required before  
23 payment is made by a county for costs incurred which exceed  
24 a total of five hundred dollars for one year for treatment  
25 provided to any one substance abuser, except that approval  
26 is not required for the cost of treatment provided to a  
27 substance abuser who is ~~committed~~ detained pursuant to section  
28 ~~125-35~~ 18 of this Act. A facility may, upon approval of the  
29 board of supervisors, submit to a county a billing for the  
30 aggregate amount of all care, maintenance, and treatment of  
31 substance abusers who are residents of that county for each  
32 month. The board of supervisors may demand an itemization  
33 of billings at any time or may audit them.

34 Sec. 26. Section 229.21, Code 1981, is amended to read  
35 as follows:

1 229.21 JUDICIAL HOSPITALIZATION REFEREE.

5421 2 1. The judges in each judicial district shall meet and  
3 shall determine, individually for each county in the district,  
4 whether ~~it appears that~~ one or more district judges will be  
5 sufficiently accessible in that county to make it feasible  
6 for them to perform at all times the duties prescribed by  
7 sections 229.7 to 229.20 and by sections ~~229.51 to 229.53~~  
8 3 through 21 of this Act. If the judges find that  
9 accessibility of district court judges in any county is not  
10 sufficient for this purpose, the chief judge of the district  
11 shall appoint in that county a judicial hospitalization  
12 referee. The judges in any district may at any time review  
13 their determination, previously made under this subsection  
14 with respect to any county in the district, and pursuant to  
15 that review may authorize appointment of a judicial  
16 hospitalization referee, or abolish the office, in that county.

17 2. The judicial hospitalization referee shall be an  
18 attorney, licensed to practice law in this state, who shall  
19 be chosen with consideration to any training, experience,  
20 interest, or combination of those factors, which are pertinent  
21 to the duties of the office. The referee shall hold office  
22 at the pleasure of and receive compensation at a rate fixed  
23 by the chief judge of the district. If the referee expects  
24 to be absent from the county for any significant length of  
25 time, the referee shall inform the chief judge who may appoint  
26 a temporary substitute judicial hospitalization referee having  
27 the qualifications set forth in this subsection.

5421 28 3. When an application for involuntary hospitalization  
29 under this chapter or an application for involuntary commitment  
30 or treatment of substance abusers under sections 3 through  
31 21 of this Act is filed with the clerk of the district court  
32 in any county for which a judicial hospitalization referee  
33 has been appointed, and no district judge is accessible in  
34 the county, the clerk shall immediately notify the referee  
35 in the manner required by section 229.7 or section 4 of this

1 Act. The referee shall thereupon discharge all of the duties  
2 imposed upon judges of the district court by sections 229.7  
3 to 229.20 or sections 3 through 21 of this Act in the  
4 proceeding so initiated. Upon termination of the proceeding  
5 or issuance of an order under section 229.13 or section 10  
6 of this Act, the referee shall transmit either to the chief  
7 judge, or another judge of the district court designated by  
8 the chief judge, a statement of the reasons for the referee's  
9 action and a copy of any order issued.

10 4. Any respondent with respect to whom the judicial  
11 hospitalization referee has found the contention that ~~he-or~~  
12 she the respondent is seriously mentally impaired or a  
13 substance abuser sustained by clear and convincing evidence  
14 presented at a hearing held under section 229.12 or section  
15 9 of this Act, may appeal from the referee's finding to a  
16 judge of the district court by giving the clerk notice in  
17 writing, within seven days after the referee's finding is  
18 made, that an appeal therefrom is taken. The appeal may be  
19 signed by the respondent or by the respondent's next friend,  
20 guardian or attorney. When so appealed, the matter shall  
21 stand for trial de novo. Upon appeal, the court shall schedule  
22 a hospitalization or commitment hearing before a district  
23 judge at the earliest practicable time.

24 5. If the appellant is in custody under the jurisdiction  
25 of the district court at the time of service of the notice  
26 of appeal, ~~he-or-she~~ the appellant shall be discharged from  
27 custody unless an order that the appellant be taken into  
28 immediate custody has previously been issued under section  
29 229.11 or section 8 of this Act, in which case the appellant  
30 shall be detained as provided in that section until the  
31 hospitalization or commitment hearing before the district  
32 judge. If the appellant is in the custody of a hospital or  
33 facility at the time of service of the notice of appeal, ~~he~~  
34 ~~or-she~~ the appellant shall be discharged from custody pending  
35 disposition of the appeal unless the chief medical officer,

1 not later than the end of the next secular day on which the  
2 office of the clerk is open and which follows service of the  
3 notice of appeal, files with the clerk a certification that  
4 in the chief medical officer's opinion the appellant is  
5 seriously mentally ill or a substance abuser. In that case,  
6 the appellant shall remain in custody of the hospital or  
7 facility until the hospitalization or commitment hearing  
8 before the district court.

9 6. The hospitalization or commitment hearing before the  
10 district judge shall be held, and the judge's finding shall  
11 be made and an appropriate order entered, as prescribed by  
12 sections 229.12 and 229.13 or sections 9 and 10 of this Act.  
13 If the judge orders the appellant hospitalized or committed  
14 for a complete psychiatric or substance abuse evaluation,  
15 jurisdiction of the matter shall revert to the judicial  
16 hospitalization referee.

17 Sec. 27. Section 125.35 and sections 229.50 through 229.53,  
18 Code 1981, are repealed.

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SIXTY-NINTH GENERAL ASSEMBLY  
1982 REGULAR SESSION

DAILY  
SENATE CLIP SHEET

SATURDAY, APRIL 24, 1982

HOUSE AMENDMENT TO SENATE AMENDMENT TO HOUSE FILE 2426

S-5762

1 Amend H-5925, the Senate amendment to House File  
2 2426, as follows:

3 1. Page 1, by inserting after line 4, the  
4 following:

5 "\_\_\_\_\_. Page 2, by inserting after line 9, the  
6 following:

7 "Sec. \_\_\_\_\_. The applicant, if not the county  
8 attorney, may apply for the appointment of counsel  
9 if financially unable to employ an attorney to assist  
10 the applicant in presenting evidence in support of  
11 the application for commitment. If the applicant  
12 applies for the appointment of counsel, the application  
13 shall include a financial statement as defined in  
14 section 336B.1."

15 \_\_\_\_\_. Page 3, by striking lines 3 and 4 and  
16 inserting in lieu thereof the following:

17 "2. If the application includes a request for  
18 a court-appointed attorney for the applicant and the  
19 court is satisfied that a court-appointed attorney  
20 is necessary to assist the applicant in a meaningful  
21 presentation of the evidence, and that the applicant  
22 is financially unable to employ an attorney, the court  
23 shall appoint an attorney to represent the applicant.  
24 The attorney shall be compensated in substantially  
25 the same manner as provided by section 815.7.""

26 2. Page 1, by inserting after line 6, the  
27 following:

28 "\_\_\_\_\_. Page 6, line 20, by inserting after the  
29 word "by" the words "the applicant, or by an attorney  
30 for the applicant, or by the county attorney if the  
31 county attorney is the applicant."

32 \_\_\_\_\_. Page 6, line 21, by striking the words "the  
33 county attorney."

34 3. Page 1, by striking lines 7 through 11.

S-5762 FILED  
APRIL 23, 1982

RECEIVED FROM THE HOUSE  
*Senate concurred 4/23 (p. 1276)*

1 Amend H-5925, the Senate amendment to House File  
2 2426, as follows:

3 1. Page 1, by inserting after line 4, the following:  
4 "\_\_\_\_. Page 2, by inserting after line 9, the  
5 following:

6 "Sec. \_\_\_\_\_. The applicant, if not the county attorney,  
7 may apply for the appointment of counsel if financially  
8 unable to employ an attorney to assist the applicant in  
9 presenting evidence in support of the application for  
10 commitment. If the applicant applies for the appointment  
11 of counsel, the application shall include a financial  
12 statement as defined in section 336B.1."

13 \_\_\_\_\_. Page 3, by striking lines 3 and 4 and inserting  
14 in lieu thereof the following:

15 "2. If the application includes a request for a  
16 court-appointed attorney for the applicant and the  
17 court is satisfied that a court-appointed attorney is  
18 necessary to assist the applicant in a meaningful  
19 presentation of the evidence, and that the applicant  
20 is financially unable to employ an attorney, the court  
21 shall appoint an attorney to represent the applicant.  
22 The attorney shall be compensated in substantially the  
23 same manner as provided by section 815.7."

24 2. Page 1, by inserting after line 6, the following:

25 "\_\_\_\_. Page 6, line 20, by inserting after the word  
26 "by" the words "the applicant, or by an attorney for  
27 the applicant, or by the county attorney if the county  
28 attorney is the applicant."

29 \_\_\_\_\_. Page 6, line 21, by striking the words "the  
30 county attorney."

31 3. Page 1, by striking lines 7 through 11."

H-5943 FILED APRIL 22, 1982 BY POFFENBERGER of Dallas

ADOPTED (p. 1677)

SENATE AMENDMENT TO HOUSE FILE 2426

5925

1 Amend House File 2426 as amended, passed and  
2 reprinted by the House as follows:

3 1. Page 1, line 26, by inserting after the words  
4 "commenced by" the words "the county attorney or".

5 2. Page 5, line 34, by striking the word "shall"  
6 and inserting in lieu thereof the word "may".

7 3. Page 6, by striking line 21 and inserting in  
8 lieu thereof the words "the applicant. If the county  
9 attorney is the applicant, the county attorney shall  
10 present the evidence in support of the application.  
11 During the hearing the applicant and".

12 4. Page 6, line 34, by striking the words "county  
13 attorney" and inserting in lieu thereof the word  
14 "applicant".

15 5. Page 8, line 18, by striking the words "making  
16 a" and inserting in lieu thereof the words "which  
17 shall include the chief medical officer's".

18 6. Page 8, line 28, by striking the words "on  
19 the" and inserting in lieu thereof the words "of the  
20 chief medical officer's".

21 7. Page 9, line 14, by striking the words "facility  
22 administrator's" and inserting in lieu thereof the  
23 words "chief medical officer's".

24 8. Page 9, lines 28 and 29, by striking the words  
25 "facility administrator" and inserting in lieu thereof  
26 the words "chief medical officer".

27 9. Page 11, line 13, by inserting after the word  
28 "whether" the words "in the opinion of the chief  
29 medical officer".

30 10. Page 11, line 24, by inserting after the word  
31 "whether" the words "in the opinion of the chief  
32 medical officer".

33 11. Page 13, lines 31 and 32, by striking the  
34 words "administrator of the facility" and inserting  
35 in lieu thereof the words "chief medical officer".

36 12. Page 14, line 4, by inserting after the word  
37 "administrator" the words "in consultation with the  
38 chief medical officer".

39 13. Page 15, line 31, by inserting after the word  
40 "continue" the words "or is otherwise deemed medically  
41 necessary by the chief medical officer".

42 14. Page 16, line 19, by striking the word "unless"  
43 and inserting in lieu thereof the words "except for  
44 treatment provided pursuant to sections 8 and 18 of  
45 this Act. If".

46 15. Page 16, line 20, by striking the words "in  
47 which case".

48 16. Page 16, by striking lines 22 through 33 and  
49 inserting in lieu thereof the following: "person's  
50 refusal. If the person refuses treatment which in

1 the opinion of the chief medical officer is necessary  
2 or if the person is incompetent and the next of kin  
3 or guardian refuses to consent to the treatment or  
4 no next of kin or guardian is available the facility  
5 may petition a court of appropriate jurisdiction for  
6 approval to treat the person."

7 17. Page 19, by inserting after line 31 the  
8 following:

9 "7. A licensed physician and surgeon or osteopathic  
10 physician and surgeon, facility administrator, or  
11 an employee or a person acting as or on behalf of  
12 the facility administrator, is not criminally or  
13 civily liable for acts in conformity with this  
14 chapter, unless the acts constitute willful malice  
15 or abuse."

16 18. Page 21, line 4, by inserting after the word  
17 "judges" the words "or magistrates".

18 19. Page 21, line 7, by inserting after the figure  
19 "229.20" the words and figure "and section 229.22".

20 20. Page 21, line 9, by inserting after the word  
21 "judges" the words "or magistrates".

22 21. Page 22, line 2, by inserting after the word  
23 "court" the words "or magistrates".

24 22. Page 22, line 4, by inserting after the word  
25 "initiated." the words and figure "If an emergency  
26 hospitalization proceeding is initiated under section  
27 229.22 a judicial hospitalization referee may perform  
28 the duties imposed upon a magistrate by that section."

HOUSE FILE 2426

S-5707

- 1 Amend House File 2426 as amended, passed and  
2 reprinted by the House, as follows:
- 3 1. Page 5, line 34, by striking the word "shall"  
4 and inserting in lieu thereof the word "may".
- 5 2. Page 8, line 18, by striking the words "making  
6 a" and inserting in lieu thereof the words "which shall  
7 include the chief medical officer's".
- 8 3. Page 8, line 28, by striking the words "on the"  
9 and inserting in lieu thereof the words "of the chief  
10 medical officer's".
- 11 4. Page 9, line 14, by striking the words "facility  
12 administrator's" and inserting in lieu thereof the words  
13 "chief medical officer's".
- 14 5. Page 9, lines 28 and 29, by striking the words  
15 "facility administrator" and inserting in lieu thereof  
16 the words "chief medical officer".
- 17 6. Page 11, line 13, by inserting after the word  
18 "whether" the words "in the opinion of the chief medical  
19 officer".
- 20 7. Page 11, line 24, by inserting after the word  
21 "whether" the words "in the opinion of the chief  
22 medical officer".
- 23 8. Page 13, lines 31 and 32, by striking the words  
24 "administrator of the facility" and inserting in lieu  
25 thereof the words "chief medical officer".
- 26 9. Page 14, line 4, by inserting after the word  
27 "administrator" the words "in consultation with the  
28 chief medical officer".
- 29 10. Page 15, line 31, by inserting after the word  
30 "continue" the words "or is otherwise deemed medically  
31 necessary by the chief medical officer".
- 32 11. Page 16, line 19, by striking the word "unless"  
33 and inserting in lieu thereof the words "except for  
34 treatment provided pursuant to sections 8 and 18 of  
35 this Act. If".
- 36 12. Page 16, line 20, by striking the words "in  
37 which case".
- 38 13. Page 16, by striking lines 22 through 33 and  
39 inserting in lieu thereof the following: "person's  
40 refusal. If the person refuses treatment which in the  
41 opinion of the chief medical officer is necessary or  
42 if the person is incompetent and the next of kin or  
43 guardian refuses to consent to the treatment or no  
44 next of kin or guardian is available the facility may  
45 petition a court of appropriate jurisdiction for  
46 approval to treat the person."

S-5707 FILED  
APRIL 20, 1982

BY JULIA GENTLEMAN

*Adopted 4/21 (p. 1334)*

## HOUSE FILE 2426

S-5313

1 Amend House File 2426, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 19, by inserting after line 31 the  
4 following:

5 "7. A licensed physician and surgeon or osteopathic  
6 physician and surgeon, facility administrator, or  
7 an employee or a person acting as or on behalf of  
8 the facility administrator, is not criminally or  
9 civilly liable for acts in conformity with this  
10 chapter, unless the acts constitute willful malice  
11 or abuse."

S-5313 FILED  
MARCH 19, 1982

BY DONALD W. DOYLE

*Adopted 4/7 (p. 1050)*

## HOUSE FILE 2426

S-5431

1 Amend House File 2426, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 21, line 4, by inserting after the word  
4 "judges" the words "or magistrates".

5 2. Page 21, line 7, by inserting after the figure  
6 "229.20" the words and figure "and section 229.22".

7 3. Page 21, line 9, by inserting after the word  
8 "judges" the words "or magistrates".

9 4. Page 22, line 2, by inserting after the word  
10 "court" the words "or magistrates".

11 5. Page 22, line 4, by inserting after the word  
12 "initiated." the words and figure "If an emergency  
13 hospitalization proceeding is initiated under section  
14 229.22 a judicial hospitalization referee may perform  
15 the duties imposed upon a magistrate by that section."

S-5431 FILED

BY BOB RUSH

MARCH 31, 1982

*Adopted 4/7 (p. 1080)*

## HOUSE FILE 2426

S-5559

1 Amend House File 2426 as amended, passed and  
2 reprinted by the House, as follows:

3 1. Page 1, line 26, by inserting after the words  
4 "commenced by" the words "the county attorney or".

5 2. Page 6, by striking line 21 and inserting in  
6 lieu thereof the words "the applicant. If the county  
7 attorney is the applicant, the county attorney shall  
8 present the evidence in support of the application.  
9 During the hearing the applicant and".

10 3. Page 6, line 34, by striking the words "county  
11 attorney" and inserting in lieu thereof the word  
12 "applicant".

S-5559 FILED

BY DICK RAMSEY

APRIL 13, 1982

*Adopted 4/21 (p. 1334)*

STATE OF IOWA  
F I S C A L N O T E

Request No. 82-306

In compliance with a written request received March 12, 19 82, there is hereby submitted a Fiscal Note for House File 2426 pursuant to Joint Rule 16. Background information used in developing this Fiscal Note is available from the Legislative Fiscal Bureau, to members of the Legislature upon request.

H.F. 2426 is An Act relating to the procedures for involuntary commitment or treatment of substance abusers.

This bill repeals section 125.35 and sections 229.53 which are the current code provision for involuntary commitment and treatment of substance abusers. The repealed sections are replaced with sections similar to the involuntary hospitalization procedures for persons seriously mentally impaired.

The estimated fiscal effect cannot be determined from the records that are maintained at the state level. There would be an increase in county expenditures. These costs would be determined by the number of applications that are processed and the distribution of the cases.

Source: Court Administrator

FILED MARCH 18, 1982

BY GERRY RANKIN, Fiscal Director

HOUSE FILE 2426

AN ACT  
RELATING TO THE PROCEDURES FOR INVOLUNTARY COMMITMENT OR  
TREATMENT OF SUBSTANCE ABUSERS.

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

Section 1. Section 125.2, Code 1981, is amended by adding the following new subsections:

NEW SUBSECTION. "Respondent" means a person against whom an application is filed under section 3 of this Act.

NEW SUBSECTION. "Clerk" means the clerk of the district court.

NEW SUBSECTION. "Chief medical officer" means the medical director in charge of a public or private hospital, or the director's physician-designee. This chapter does not negate the authority otherwise reposed by chapter 226 in the respective superintendents of the state mental health institutes to make decisions regarding the appropriateness of admissions or discharges of patients of those institutes, however, it is the intent of this chapter that a superintendent who is not a licensed physician shall be guided in these decisions by the chief medical officer of the institute.

NEW SUBSECTION. "Interested person" means a person who, in the discretion of the court, is legitimately concerned that a respondent receive substance abuse treatment services.

Sec. 2. Chapter 125, Code 1981, is amended by adding sections 3 through 22 of this Act after section 125.57 as a new division.

Sec. 3. NEW SECTION. INVOLUNTARY COMMITMENT OR TREATMENT-APPLICATION. Proceedings for the involuntary commitment or treatment of a substance abuser to a facility may be commenced by the county attorney or an interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located or which is the respondent's place of residence. The clerk or the clerk's designee shall assist the applicant in completing the application. The application shall:

1. State the applicant's belief that the respondent is a substance abuser.
2. State any other pertinent facts.
3. Be accompanied by one or more of the following:
  - a. A written statement of a licensed physician in support of the application.
  - b. One or more supporting affidavits corroborating the application.
  - c. Corroborative information obtained and reduced to writing by the clerk or the clerk's designee, but only when circumstances make it infeasible to obtain, or when the clerk considers it appropriate to supplement, the information under either paragraph a or paragraph b.

Sec. 4. NEW SECTION. The applicant, if not the county attorney, may apply for the appointment of counsel if financially unable to employ an attorney to assist the applicant in presenting evidence in support of the application for commitment. If the applicant applies for the appointment of counsel, the application shall include a financial statement as defined in section 336B.1.

Sec. 5. NEW SECTION. SERVICE OF NOTICE. Upon the filing of an application for involuntary commitment, the clerk shall docket the case and immediately notify a district court judge who shall review the application and accompanying documentation. The clerk shall send copies of the application and

supporting documentation, together with the notice informing the respondent of the procedures required by this division, to the sheriff, for immediate service upon the respondent. If the respondent is taken into custody under section 9 of this Act, service of the application, documentation, and notice upon the respondent shall be made at the time the respondent is taken into custody.

Sec. 6. NEW SECTION. PROCEDURE AFTER APPLICATION. As soon as practical after the filing of an application for involuntary commitment for treatment, the court shall:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the commitment proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting an attorney. In accordance with those determinations, the court shall allow the respondent to select an attorney or shall assign an attorney to the respondent. If the respondent is financially unable to pay an attorney, the attorney shall be compensated in substantially the same manner as provided by section 815.7, except that if the county has a public defender, the court may assign the public defender or an attorney on the public defender's staff as the respondent's attorney.

2. If the application includes a request for a court-appointed attorney for the applicant and the court is satisfied that a court-appointed attorney is necessary to assist the applicant in a meaningful presentation of the evidence, and that the applicant is financially unable to employ an attorney, the court shall appoint an attorney to represent the applicant. The attorney shall be compensated in substantially the same manner as provided by section 815.7.

3. Issue a written order:

a. Scheduling a tentative time and place for a hearing, subject to the findings of the report required under section

8, subsections 3 and 4 of this Act, but not less than forty-eight hours after notice to the respondent, unless the respondent waives the forty-eight hour notice requirement.

b. Requiring an examination of the respondent, prior to the hearing, by one or more licensed physicians who shall submit a written report of the examination to the court as required by section 8 of this Act.

Sec. 7. NEW SECTION. RESPONDENT'S ATTORNEY INFORMED. The court shall direct the clerk to furnish at once to the respondent's attorney, copies of the application for involuntary commitment of the respondent and the supporting documentation, and of the court's order issued pursuant to section 6, subsection 3 of this Act. If the respondent is taken into custody under section 9 of this Act, the attorney shall also be advised of that fact. The respondent's attorney shall represent the respondent at all stages of the proceedings and shall attend the commitment hearing.

Sec. 8. NEW SECTION. PHYSICIAN'S EXAMINATION--REPORT--SCHEDULING OF HEARING.

1. An examination of the respondent shall be conducted within a reasonable time and prior to the commitment hearing by one or more licensed physicians as required by the court's order. If the respondent is taken into custody under section 9 of this Act, the examination shall be conducted within twenty-four hours after the respondent is taken into custody. If the respondent desires, the respondent may have a separate examination by a licensed physician of the respondent's own choice. The court shall notify the respondent of the right to choose a physician for a separate examination. The reasonable cost of the examinations shall be paid from county funds upon order of the court if the respondent lacks sufficient funds to pay the cost.

A licensed physician conducting an examination pursuant to this section may consult with or request the participation

in the examination of facility personnel, and may include with or attach to the written report of the examination any findings or observations by facility personnel who have been consulted or have participated in the examination.

If the respondent is not taken into custody under section 9 of this Act, but the court is subsequently informed that the respondent has declined to be examined by a licensed physician pursuant to the court order, the court may order limited detention of the respondent as necessary to facilitate the examination of the respondent by the licensed physician.

2. A written report of the examination by a court-designated physician shall be filed with the clerk prior to the hearing date. A written report of an examination by a physician chosen by the respondent may be similarly filed. The clerk shall immediately:

a. Cause a report to be shown to the judge who issued the order.

b. Cause the respondent's attorney to receive a copy of the report of a court-designated physician.

3. If the report of a court-designated physician is to the effect that the respondent is not a substance abuser, the court, without taking further action, may terminate the proceeding and dismiss the application on its own motion and without notice.

4. If the report of a court-designated physician is to the effect that the respondent is a substance abuser, the court shall schedule a commitment hearing as soon as possible. The hearing shall be held not more than forty-eight hours after the report is filed, excluding Saturdays, Sundays, and holidays, unless an extension for good cause is requested by the respondent, or as soon thereafter as possible if the court considers that sufficient grounds exist for delaying the hearing.

Sec. 9. NEW SECTION. IMMEDIATE CUSTODY. If a person filing an application requests that a respondent be taken into immediate custody, and the judge upon reviewing the application and accompanying documentation, finds probable cause to believe that the respondent is a substance abuser who is likely to injure himself or herself or other persons if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody by the sheriff, and be detained until the commitment hearing, which shall be held no more than five days after the date of the order, except that if the fifth day after the date of the order is a Saturday, Sunday, or a holiday, the hearing may be held on the next business day. The judge may order the respondent detained for the period of time until the hearing is held, and no longer except as provided in section 16 of this Act, in accordance with subsection 1 if possible, and if not, then in accordance with subsection 2 or, only if neither of these alternatives is available in accordance with subsection 3. Detention may be:

1. In the custody of a relative, friend, or other suitable person who is willing and able to accept responsibility for supervision of the respondent, with reasonable restrictions as the judge may order including but not limited to restrictions on or a prohibition of any expenditure, encumbrance, or disposition of the respondent's funds or property.

2. In a suitable hospital, the chief medical officer of which shall be informed of the reasons why immediate custody has been ordered. The hospital may provide treatment which is necessary to preserve the respondent's life, or to appropriately control the respondent's behavior which is likely to result in physical injury to himself or herself or to others if allowed to continue, and other treatment as deemed appropriate by the chief medical officer.

3. In a facility in the community which is suitably equipped and staffed for the purpose, provided that detention in a jail or other facility intended for confinement of those accused or convicted of a crime shall not be ordered, except in cases of actual emergency if no other secure resource is accessible, and then only for a period of not more than twenty-four hours and under close supervision.

The respondent's attorney may be allowed by the court to present evidence and arguments before the court's determination under this section. If such an opportunity is not provided at that time, respondent's attorney shall be allowed to present evidence and arguments after the issuance of the court's order of confinement and while the respondent is confined.

Sec. 10. NEW SECTION. COMMITMENT HEARING.

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

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

3. The person who filed the application and a physician or professional who has examined the respondent in connection with the commitment hearing shall be present at the hearing, unless prior to the hearing the judge for good cause finds that their presence is not necessary. The respondent shall be present at the hearing unless prior to the hearing the respondent's attorney stipulates in writing that the attorney has conversed with the respondent, and that in the attorney's judgment the respondent cannot make a meaningful contribution to the hearing, or that the respondent has waived the right to be present, and the basis for the attorney's conclusions. A stipulation to the respondent's absence shall be reviewed by the judge before the hearing, and may be rejected if it appears that insufficient grounds are stated or that the respondent's interests would not be served by the respondent's absence.

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

5. If the respondent is not taken into custody under section 9 of this Act, but the court finds good cause to believe that the respondent is about to depart from the jurisdiction of the court, the court may order limited

detention of the respondent as authorized in section 9 of this Act, as is necessary to ensure that the respondent will not depart from the jurisdiction of the court without the court's approval until the proceeding relative to the respondent has been concluded.

Sec. 11. NEW SECTION. PLACEMENT FOR EVALUATION. If upon completion of the commitment hearing, the court finds that the contention that the respondent is a substance abuser has been sustained by clear and convincing evidence, the court shall order the respondent placed at a facility as expeditiously as possible for a complete evaluation and appropriate treatment. The court shall furnish to the facility at the time of admission, a written statement of facts setting forth the evidence on which the finding is based. The administrator of the facility shall report to the court no more than fifteen days after the individual is admitted to the facility, which shall include the chief medical officer's recommendation concerning substance abuse treatment. An extension of time may be granted for a period not to exceed seven days upon a showing of good cause. A copy of the report shall be sent to the respondent's attorney who may contest the need for an extension of time if one is requested. If the request is contested, the court shall make an inquiry as it deems appropriate and may either order the respondent released from the facility or grant extension of time for further evaluation.

Sec. 12. NEW SECTION. EVALUATION REPORT. The facility administrator's report to the court of the chief medical officer's substance abuse evaluation of the respondent shall be made no later than the expiration of the time specified in section 11 of this Act. At least two copies of the report shall be filed with the clerk, who shall distribute the copies in the manner described by section 8, subsection 2 of this Act. The report shall state one of the four following alternative findings:

1. That the respondent does not, as of the date of the report, require further treatment for substance abuse. If the report so states, the court shall order the respondent's immediate release from involuntary commitment and terminate the proceedings.

2. That the respondent is a substance abuser who is in need of full-time custody, care, and treatment in a facility, and is considered likely to benefit from treatment. If the report so states, the court may order the respondent's continued placement and commitment to a facility for appropriate treatment.

3. That the respondent is a substance abuser who is in need of treatment, but does not require full-time placement in a facility. If the report so states, the report shall include the chief medical officer's recommendation for treatment of the respondent on an outpatient or other appropriate basis, and the court may enter an order directing the respondent to submit to the recommended treatment. The order shall provide that if the respondent fails or refuses to submit to treatment, as directed by the court's order, the court may order that the respondent be taken into immediate custody as provided by section 9 of this Act and, following notice and hearing held in accordance with the procedures of sections 5 and 10 of this Act, may order the respondent treated as a patient requiring full-time custody, care, and treatment as provided in subsection 2, and may order the respondent involuntarily committed to a facility.

4. That the respondent is a substance abuser who is in need of treatment, but in the opinion of the chief medical officer is not responding to the treatment provided. If the report so states, the report shall include the facility administrator's recommendation for alternative placement, and the court may order the respondent's transfer to the recommended placement or to another placement after

consultation with respondent's attorney and the facility administrator who made the report under this subsection.

Sec. 13. NEW SECTION. CUSTODY, DISCHARGE, AND TERMINATION OF PROCEEDING.

1. A respondent committed under section 12, subsection 2 of this Act, shall remain in the custody of a facility for treatment for a period of thirty days, unless sooner discharged. The department is not required to pay the cost of any medication or procedure provided to the respondent during that period which is not necessary or appropriate to the specific objectives of detoxification and treatment of substance abuse. At the end of the thirty-day period, the respondent shall be discharged automatically unless the administrator of the facility, before expiration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 3 of this Act, for a further period not to exceed ninety days.

2. A respondent recommitment under subsection 1 who has not been discharged by the facility before the end of the ninety-day period shall be discharged at the expiration of that period unless the administrator of the facility, before expiration of the period, obtains a court order for the respondent's recommitment pursuant to an application under section 3 of this Act, for a further period not to exceed ninety days.

3. Upon the filing of an application for recommitment under subsection 1 or 2, the court shall schedule a recommitment hearing for no later than ten days after the date the application is filed. A copy of the application, the notice of hearing, and any reports shall be served or provided in the manner and to the persons as required by sections 5 through 8, 11, and 12 of this Act.

4. Following a respondent's discharge from a facility or from treatment, the administrator of the facility shall

immediately report that fact to the court which ordered the respondent's commitment or treatment. The court shall issue an order confirming the respondent's discharge from the facility or from treatment, 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 facility and the respondent.

Sec. 14. NEW SECTION. PERIODIC REPORTS REQUIRED.

1. No more than thirty days after entry of a court order for commitment to a facility under section 12, subsection 2 of this Act, and thereafter at successive intervals not to exceed ninety days for as long as involuntary commitment of the respondent continues, the administrator of the facility shall report to the court which entered the order. The report shall be submitted in the manner required by section 12 of this Act, shall state whether in the opinion of the chief medical officer the respondent's condition has improved, remains unchanged, or has deteriorated, and shall indicate the further length of time the respondent will be required to remain at the facility.

2. No more than sixty days after entry of a court order for treatment of a respondent under section 12, subsection 3 of this Act, and thereafter at successive intervals not to exceed ninety days for as long as involuntary treatment continues, the administrator of the facility shall report to the court which entered the order. The report shall be submitted in the manner required by section 12 of this Act, shall state whether in the opinion of the chief medical officer the respondent's condition has improved, remains unchanged, or has deteriorated, and shall indicate the further length of time the respondent will require treatment by the facility. If the respondent fails or refuses to submit to treatment as ordered by the court, the administrator of the facility shall at once notify the court, which shall order the

showing of reasonable grounds. Upon delivery of the person to a facility under this section, the chief medical officer may order treatment of the person, but only to the extent necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue. The peace officer or other person who delivered the person to the facility shall describe the circumstances of the matter to the administrator. If the administrator in consultation with the chief medical officer has reasonable grounds to believe that the circumstances in subsection 1 are applicable, the administrator shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 6. The magistrate shall immediately proceed to the facility where the person is detained, except that if the administrator's communication with the magistrate occurs between the hours of midnight and seven a.m. and the magistrate deems it appropriate under the circumstances described by the administrator, the magistrate may delay going to the facility, and in that case, shall give the administrator verbal instructions either directing that the person be released forthwith, or authorizing the person's continued detention at the facility. In the latter case, the magistrate shall:

a. Arrive at the facility where the person is being detained as soon as possible and no later than twelve o'clock noon of the same day on which the administrator's communication occurred.

b. By the close of business on the next working day file with the clerk a written report stating the substance of the communication with the administrator on which the person's continued detention was ordered.

3. Upon arrival at the facility, the magistrate shall at once review the validity of the detention. Unless convinced

upon initial inquiry that there are no grounds for further detention of the person, the magistrate shall ensure that the person has or is provided legal counsel at the earliest practical time in the manner prescribed by section 6, subsection 1 of this Act, and shall arrange for the counsel to be present, if practical, before proceeding further under this subsection. The magistrate shall immediately notify counsel of the respondent's emergency detention. Counsel shall be afforded an opportunity to visit the respondent and to make appropriate preparations before or after the magistrate's order is issued. If the magistrate finds, upon review of the information presented by the administrator under subsection 2 and of other information or evidence the magistrate deems relevant, that there is probable cause to believe that the circumstances described in subsection 1 are applicable, the magistrate shall enter a written order detaining the person at the facility, or, if the facility where the person is at the time is not an appropriate facility, detaining and transporting the person to an appropriate facility. The magistrate's order shall state the circumstances under which the person was detained or otherwise delivered to a facility, and the grounds supporting the finding of probable cause to believe that person is a substance abuser likely to physically injure himself or herself or others if not detained. The order shall be filed with the clerk in the county where it is anticipated that an application will be filed under section 3 of this Act, and a certified copy of the order shall be delivered to the administrator of the facility where the person is detained, at the earliest practical time.

4. The chief medical officer of the facility shall examine and may detain the person pursuant to the magistrate's order for a period not to exceed forty-eight hours from the time the order is dated, excluding Saturdays, Sundays, and holidays.

respondent committed for treatment as provided by section 12, subsection 3 of this Act, unless the court finds that the failure or refusal was with good cause, and that the respondent is willing to receive treatment as provided in the court's order, or in a revised order if the court sees fit to enter one. If the administrator of the facility reports to the court that the respondent requires full-time custody, care, and treatment in a facility, and the respondent is willing to be admitted voluntarily to the facility for these purposes, the court may enter an order approving the placement upon consultation with the administrator of the facility in which the respondent is to be placed. If the respondent is unwilling to be admitted voluntarily to the facility, the procedure for determining involuntary commitment, as provided in section 12, subsection 3 of this Act, shall be followed.

Sec. 15. NEW SECTION. STATUS DURING APPEAL. If a respondent appeals to the supreme court from a lower court's finding that commitment is warranted, the respondent shall remain committed if already in custody, pursuant to an order of immediate custody under section 9 of this Act or pursuant to an order for evaluation and treatment under section 11 of this Act, before notice of appeal was filed, unless the supreme court orders otherwise.

Sec. 16. NEW SECTION. STATUS IF COMMITMENT DELAYED. If a court directs a respondent who was previously ordered taken into immediate custody under section 9 of this Act to be placed at a facility for evaluation and appropriate treatment under section 11 of this Act, and no suitable facility can immediately admit the respondent, the respondent shall remain in custody as previously ordered by the court, notwithstanding the time limits stated in section 9 of this Act, until a suitable facility can admit the respondent. The court shall take appropriate steps to expedite the admission of the respondent to a suitable facility at the earliest feasible time.

Sec. 17. NEW SECTION. RESPONDENTS CHARGED WITH OR CONVICTED OF CRIME.

1. If a court orders a respondent placed at a facility for evaluation and treatment under section 11 of this Act at a time when the respondent has been convicted of a public offense, or when there is pending against the respondent an unresolved formal charge of a public offense, and the respondent's liberty has therefore been restricted in any manner, the findings of fact required by section 11 of this Act shall clearly so inform the administrator of the facility where the respondent is placed.

2. The commitment powers of the court under section 204.409, subsection 2 supersede the procedures and requirements of this division.

Sec. 18. NEW SECTION. JUDICIAL HOSPITALIZATION REFEREE. Judicial hospitalization referees shall be utilized as provided in section 229.21 for performing the duties of the court prescribed by this division.

Sec. 19. NEW SECTION. EMERGENCY DETENTION.

1. The procedure prescribed by this section shall only be used for an intoxicated person who has threatened, attempted, or inflicted physical self-harm or harm on another, and is likely to inflict physical self-harm or harm on another unless immediately detained, or who is incapacitated by a chemical substance, if that person cannot be taken into immediate custody under sections 3 and 9 of this Act because immediate access to the court is not possible.

2. A peace officer who has reasonable grounds to believe that the circumstances described in subsection 1 are applicable, may, without a warrant, take or cause that person to be taken to the nearest available facility referred to in section 3, subsection 2 or 3 of this Act. Such an intoxicated or incapacitated person may also be delivered to a facility by someone other than a peace officer upon a

unless the order is dismissed by a magistrate. The facility may provide treatment which is necessary to preserve the person's life or to appropriately control the person's behavior if the behavior is likely to result in physical injury to the person or others if allowed to continue or is otherwise deemed medically necessary by the chief medical officer, but shall not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility and released from detention no later than the expiration of the forty-eight hour period, unless an application for involuntary commitment is filed with the clerk pursuant to section 3 of this Act. The detention of a person by the procedure in this section, and not in excess of the period of time prescribed by this section, shall not render the peace officer, physician, or facility detaining the person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, or facility had reasonable grounds to believe that the circumstances described in subsection 1 were applicable.

5. The cost of detention in a facility under the procedure prescribed in this section shall be paid in the same way as if the person had been committed to the facility pursuant to an application filed under section 3 of this Act.

Sec. 20. NEW SECTION. RIGHTS AND PRIVILEGES OF COMMITTED PERSONS. A person who is detained, taken into immediate custody, or committed under this division has the right to:

1. Prompt evaluation, emergency services, and care and treatment as indicated by sound clinical practice.
2. Render informed consent, except for treatment provided pursuant to sections 9 and 19 of this Act. If the person is incompetent treatment may be consented to by the person's next of kin or guardian notwithstanding the person's refusal. If the person refuses treatment which in the opinion of the chief medical officer is necessary or if the person is

incompetent and the next of kin or guardian refuses to consent to the treatment or no next of kin or guardian is available the facility may petition a court of appropriate jurisdiction for approval to treat the person.

3. The protection of the person's constitutional rights.

4. Enjoy all legal, medical, religious, social, political, personal, and working rights and privileges, which the person would enjoy if not detained, taken into immediate custody, or committed, consistent with the effective treatment of the person and of the other persons in the facility. If the person's rights are restricted, the physician's direction to that effect shall be noted in the person's record. The person or the person's next of kin or guardian shall be advised of the person's rights and be provided a written copy upon the person's admission to or arrival at the facility.

Sec. 21. NEW SECTION. COMMITMENT RECORDS--CONFIDENTIALITY. Records of the identity, diagnosis, prognosis, or treatment of a person which are maintained in connection with the provision of substance abuse treatment services are confidential, consistent with the requirements of section 125.37, and with the federal confidentiality regulations authorized by the Drug Abuse Office and Treatment Act, 21 U.S.C. sec. 1175 (1976) and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, 42 U.S.C. sec. 4582 (1976).

Sec. 22. NEW SECTION. SUPREME COURT RULES. The supreme court may prescribe rules of pleading, practice, and procedure and the forms of process, writs, and notices, for all commitment proceedings in a court of this state under this chapter. Any rules so prescribed shall be drawn for the purpose of simplifying and expediting the proceedings, so far as is consistent with the rights of the parties involved. The rules shall not abridge, enlarge, or modify the substantive rights of a party to a commitment proceeding under this chapter.

Sec. 23. Section 125.12, subsection 3, Code 1981, is amended to read as follows:

3. The director shall provide for adequate and appropriate treatment for substance abusers and intoxicated persons admitted under sections 125.33 ~~to 125.35 and 125.53~~ and 125.34, or under section 3, 9, or 19 of this Act. Treatment shall not be provided at a correctional institution except for inmates.

Sec. 24. Section 125.34, Code 1981, is amended to read as follows:

125.34 TREATMENT AND SERVICES FOR INTOXICATED PERSONS AND PERSONS INCAPACITATED BY ALCOHOL.

1. An intoxicated person may come voluntarily to a facility for emergency treatment. A person who appears to be intoxicated or incapacitated by a chemical substance in a public place and in need of help ~~shall~~ may be taken to a facility by a peace officer under section 19 of this Act. If the person refuses the proffered help, the person may be arrested and charged with intoxication under section 123.46, if applicable.

2. If no facility is readily available the person may be taken to an emergency medical service customarily used for incapacitated persons. The peace officer in detaining the person and in taking the person to a facility ~~is taking the person into protective custody and~~ shall make every reasonable effort to protect the person's health and safety. ~~In taking detaining the person into protective custody,~~ the detaining officer may take reasonable steps for self-protection. ~~A taking into protective custody~~ Detaining a person under ~~this~~ this section 19 of this Act is not an arrest and no entry or other record shall be made to indicate that the person who is ~~taken into protective custody~~ detained has been arrested or charged with a crime.

3. A person who ~~comes voluntarily or is brought to~~ arrives at a facility and voluntarily submits to examination shall be examined by a licensed physician as soon as possible, but not later than twelve hours after the person ~~comes voluntarily or is brought to~~ arrives at the facility. ~~He~~ The person may then be admitted as a patient or referred to another health facility. The referring facility shall arrange for ~~his~~ transportation.

~~4. -- A person who is found to be intoxicated or incapacitated by a chemical substance after examination by a qualified health professional shall be required to remain at the facility until the qualified health professional determines that the person is not likely to inflict physical self-harm or inflict physical harm on others. -- If the person is detained longer than twenty-four hours the qualified health professional shall examine him or her at least once every twelve hours to determine if further detention is necessary. -- The qualified health professional shall enter a written order for the person to be detained in custody. -- Such order shall state the circumstances under which the person was taken into custody and the grounds supporting the finding or probable cause to believe that he or she is sufficiently impaired or incapacitated by a chemical substance to cause physical injury to himself or herself or others if released. -- The order shall be filed in the district court of the area in which the person is detained.~~

5 4. If a patient person is voluntarily admitted to a facility, ~~his~~ the person's family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, ~~his~~ the request shall be respected.

6 5. A peace officer who acts in compliance with this section is acting in the course of ~~his~~ the officer's official duty and is not criminally or civilly liable therefor, unless such acts constitute willful malice or abuse.

6. If the physician in charge of the facility determines it is for the patient's benefit, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

7. A licensed physician and surgeon or osteopathic physician and surgeon, facility administrator, or an employee or a person acting as or on behalf of the facility administrator, is not criminally or civilly liable for acts in conformity with this chapter, unless the acts constitute willful malice or abuse.

Sec. 25. Section 125.44, unnumbered paragraph 5, Code 1981, is amended to read as follows:

The department is liable for the cost of care, treatment, and maintenance of a substance abuser admitted to the facility voluntarily or pursuant to section ~~125.44-125.45~~ 3, 9, or 19 of this Act or section 321.281, 321.283, subsection 3, or 204.409, subsection 2 or 229-52 only to those facilities that have a contract with the department under this section, only for the amount computed according to and within the limits of liability prescribed by this section, and only when the substance abuser is unable to pay ~~such~~ the costs and there is no other person, firm, corporation or insurance company bound to pay ~~such~~ the costs.

Sec. 26. Section 125.45, subsection 1, Code 1981 Supplement, is amended to read as follows:

1. Except as provided in section 125.43, each county shall pay for the remaining twenty-five percent of the cost of the care, maintenance, and treatment under this chapter of residents of that county from the levy authorized by section 331.421, subsection 13. The commission shall establish guidelines for use by the counties in estimating the amount of expense which the county will incur each year. The facility shall certify to the county of residence once each month twenty-five percent of the unpaid cost of the care,

maintenance, and treatment of a substance abuser. However, the approval of the board of supervisors is required before payment is made by a county for costs incurred which exceed a total of five hundred dollars for one year for treatment provided to any one substance abuser, except that approval is not required for the cost of treatment provided to a substance abuser who is ~~committed~~ detained pursuant to section ~~125-35~~ 19 of this Act. A facility may, upon approval of the board of supervisors, submit to a county a billing for the aggregate amount of all care, maintenance, and treatment of substance abusers who are residents of that county for each month. The board of supervisors may demand an itemization of billings at any time or may audit them.

Sec. 27. Section 229.21, Code 1981, is amended to read as follows:

229.21 JUDICIAL HOSPITALIZATION REFEREE.

1. The judges in each judicial district shall meet and ~~shall~~ determine, individually for each county in the district, whether ~~it appears that~~ one or more district judges or magistrates will be sufficiently accessible in that county to make it feasible for them to perform at all times the duties prescribed by sections 229.7 to 229.20 and section ~~229.22~~ and by sections ~~229-51 to 229-53~~ 3 through 22 of this Act. If the judges find that accessibility of district court judges or magistrates in any county is not sufficient for this purpose, the chief judge of the district shall appoint in that county a judicial hospitalization referee. The judges in any district may at any time review their determination, previously made under this subsection with respect to any county in the district, and pursuant to that review may authorize appointment of a judicial hospitalization referee, or abolish the office, in that county.

2. The judicial hospitalization referee shall be an attorney, licensed to practice law in this state, who shall

be chosen with consideration to any training, experience, interest, or combination of those factors, which are pertinent to the duties of the office. The referee shall hold office at the pleasure of and receive compensation at a rate fixed by the chief judge of the district. If the referee expects to be absent from the county for any significant length of time, the referee shall inform the chief judge who may appoint a temporary substitute judicial hospitalization referee having the qualifications set forth in this subsection.

3. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of substance abusers under sections 3 through 22 of this Act is filed with the clerk of the district court in any county for which a judicial hospitalization referee has been appointed, and no district judge is accessible in the county, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 5 of this Act. The referee shall thereupon discharge all of the duties imposed upon judges of the district court or magistrates by sections 229.7 to 229.20 or sections 3 through 22 of this Act in the proceeding so initiated. If an emergency hospitalization proceeding is initiated under section 229.22 a judicial hospitalization referee may perform the duties imposed upon a magistrate by that section. Upon termination of the proceeding or issuance of an order under section 229.13 or section 11 of this Act, the referee shall transmit either to the chief judge, or another judge of the district court designated by the chief judge, a statement of the reasons for the referee's action and a copy of any order issued.

4. Any respondent with respect to whom the judicial hospitalization referee has found the contention that ~~he-she~~ the respondent is seriously mentally impaired or a substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section

10 of this Act, may appeal from the referee's finding to a judge of the district court by giving the clerk notice in writing, within seven days after the referee's finding is made, that an appeal therefrom is taken. The appeal may be signed by the respondent or by the respondent's next friend, guardian or attorney. When so appealed, the matter shall stand for trial de novo. Upon appeal, the court shall schedule a hospitalization or commitment hearing before a district judge at the earliest practicable time.

5. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, ~~he-she~~ the appellant shall be discharged from custody unless an order that the appellant be taken into immediate custody has previously been issued under section 229.11 or section 9 of this Act, in which case the appellant shall be detained as provided in that section until the hospitalization or commitment hearing before the district judge. If the appellant is in the custody of a hospital or facility at the time of service of the notice of appeal, ~~he-she~~ the appellant shall be discharged from custody pending disposition of the appeal unless the chief medical officer, not later than the end of the next secular day on which the office of the clerk is open and which follows service of the notice of appeal, files with the clerk a certification that in the chief medical officer's opinion the appellant is seriously mentally ill or a substance abuser. In that case, the appellant shall remain in custody of the hospital or facility until the hospitalization or commitment hearing before the district court.

6. The hospitalization or commitment hearing before the district judge shall be held, and the judge's finding shall be made and an appropriate order entered, as prescribed by sections 229.12 and 229.13 or sections 10 and 11 of this Act. If the judge orders the appellant hospitalized or committed

for a complete psychiatric or substance abuse evaluation,  
jurisdiction of the matter shall revert to the judicial  
hospitalization referee.

Sec. 28. Section 125.35 and sections 229.50 through 229.53,  
Code 1981, are repealed.

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DELWYN STROMER  
Speaker of the House

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TERRY E. BRANSTAD  
President of the Senate

I hereby certify that this bill originated in the House and  
is known as House File 2426, Sixty-ninth General Assembly.

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ELIZABETH A. ISAACSON  
Chief Clerk of the House

Approved 5/21, 1982

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ROBERT D. RAY  
Governor