

FILED MAR 24 1991

SENATE FILE **453**  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 305)

Passed Senate, Date 3/25/91 (p. 840) Passed House, Date 4/12/91 (p. 1266)  
Vote: Ayes 49 Nays 0 Vote: Ayes 97 Nays 5

Approved May 7, 1991 (p. 1704)

*Repassed Senate per S-3463 4/22/91 (p. 1401)  
ayes 49, Nays 2*

**A BILL FOR**

- 1 An Act relating to judicial officers having jurisdiction over
- 2 civil commitment proceedings and providing an effective date.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

**SENATE FILE 453**

**H-3639**

- 1 Amend Senate File 453, as passed by the Senate, as
- 2 follows:
- 3 1. Page 3, by inserting after line 35, the
- 4 following:
- 5 "Sec. \_\_\_\_ . Section 229.13, Code 1991, is amended
- 6 by adding the following new unnumbered paragraph:
- 7 NEW UNNUMBERED PARAGRAPH. If, after placement and
- 8 admission of a respondent in a hospital or other
- 9 suitable facility, the respondent departs from the
- 10 hospital or facility without prior proper
- 11 authorization from the chief medical officer, upon
- 12 receipt of notification of the respondent's departure
- 13 by the chief medical officer, a peace officer of the
- 14 state shall without further order of the court
- 15 exercise all due diligence to take the respondent into
- 16 protective custody and return the respondent to the
- 17 hospital or facility."
- 18 2. By renumbering as necessary.

By WISSING of Scott  
RAFFERTY of Scott

**H-3639 FILED APRIL 15, 1991**

*Filed with amendments - 4/16 (p. 1266)*

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1 Section 1. Section 125.77, Code 1991, is amended to read  
2 as follows:

3 125.77 SERVICE OF NOTICE.

4 Upon the filing of an application for involuntary  
5 commitment, the clerk shall docket the case and immediately  
6 notify a district court judge, a district associate judge, or  
7 magistrate who is admitted to the practice of law in this  
8 state, who shall review the application and accompanying  
9 documentation. The clerk shall send copies of the application  
10 and supporting documentation, together with the notice  
11 informing the respondent of the procedures required by this  
12 division, to the sheriff, for immediate service upon the  
13 respondent. If the respondent is taken into custody under  
14 section 125.81, service of the application, documentation, and  
15 notice upon the respondent shall be made at the time the  
16 respondent is taken into custody.

17 Sec. 2. Section 125.81, unnumbered paragraph 1, and  
18 subsection 1, Code 1991, are amended to read as follows:

19 If a person filing an application requests that a  
20 respondent be taken into immediate custody, and the judge  
21 court upon reviewing the application and accompanying  
22 documentation, finds probable cause to believe that the  
23 respondent is a chronic substance abuser who is likely to  
24 injure the person or other persons if allowed to remain at  
25 liberty, the judge court may enter a written order directing  
26 that the respondent be taken into immediate custody by the  
27 sheriff, and be detained until the commitment hearing, which  
28 shall be held no more than five days after the date of the  
29 order, except that if the fifth day after the date of the  
30 order is a Saturday, Sunday, or a holiday, the hearing may be  
31 held on the next business day. The judge court may order the  
32 respondent detained for the period of time until the hearing  
33 is held, and no longer except as provided in section 125.88,  
34 in accordance with subsection 1 if possible, and if not, then  
35 in accordance with subsection 2 or, only if neither of these

1 alternatives is available in accordance with subsection 3.

2 Detention may be:

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

10 Sec. 3. Section 125.82, subsections 1 through 3, Code  
11 1991, are amended to read as follows:

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

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

33 3. The person who filed the application and a physician or  
34 professional who has examined the respondent in connection  
35 with the commitment hearing shall be present at the hearing.

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

14 Sec. 4. Section 229.7, Code 1991, is amended to read as  
15 follows:

16 229.7 SERVICE OF NOTICE UPON RESPONDENT.

17 Upon the filing of an application for involuntary  
18 hospitalization, the clerk shall docket the case and  
19 immediately notify a district court judge, district associate  
20 judge, or magistrate who is admitted to the practice of law in  
21 this state, who shall review the application and accompanying  
22 documentation. If the application is adequate as to form, the  
23 judge court may set a time and place for a hearing on the  
24 application, if feasible, but the hearing shall not be held  
25 less than forty-eight hours after notice to the respondent  
26 unless the respondent waives such minimum prior notice  
27 requirement. The judge court shall direct the clerk to send  
28 copies of the application and supporting documentation,  
29 together with a notice informing the respondent of the  
30 procedures required by this chapter, to the sheriff or the  
31 sheriff's deputy for immediate service upon the respondent.  
32 If the respondent is taken into custody under section 229.11,  
33 service of the application, documentation and notice upon the  
34 respondent shall be made at the time the respondent is taken  
35 into custody.

3439

1 Sec. 5. Section 229.21, Code 1991, is amended to read as  
2 follows:

3 229.21 JUDICIAL HOSPITALIZATION REFEREE.

4 1. ~~The judges in each judicial district shall meet and~~  
5 ~~determine, individually for each county in the district,~~  
6 ~~whether one or more district judges or magistrates will be~~  
7 ~~sufficiently accessible in that county to make it feasible for~~  
8 ~~them to perform at all times the duties prescribed by sections~~  
9 ~~229.7 to 229.19 and section 229.22 and by sections 125.75 to~~  
10 ~~125.94. If the judges find that accessibility of district~~  
11 ~~court judges or magistrates in any county is not sufficient~~  
12 ~~for this purpose, the~~ The chief judge of the each judicial  
13 ~~district shall~~ may ~~appoint in that county a~~ at least one  
14 judicial hospitalization referee for each county within the  
15 district. ~~The judges in any district may at any time review~~  
16 ~~their determination, previously made under this subsection~~  
17 ~~with respect to any county in the district, and pursuant to~~  
18 ~~that review may authorize appointment of a judicial~~  
19 ~~hospitalization referee, or abolish the office, in that~~  
20 ~~county.~~

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

33 3 2. When an application for involuntary hospitalization  
34 under this chapter or an application for involuntary  
35 commitment or treatment of chronic substance abusers under

1 sections 125.75 to 125.94 is filed with the clerk of the  
2 district court in any county for which a judicial  
3 hospitalization referee has been appointed, and no district  
4 judge, district associate judge, or magistrate who is admitted  
5 to the practice of law in this state is accessible in the  
6 county, the clerk shall immediately notify the referee in the  
7 manner required by section 229.7 or section 125.77. The  
8 referee shall discharge all of the duties imposed upon judges  
9 of the district court or magistrates by sections 229.7 to  
10 ~~229.19~~ 229.22 or sections 125.75 to 125.94 in the proceeding  
11 so initiated. ~~If an emergency hospitalization proceeding is~~  
12 ~~initiated under section 229.22 a judicial hospitalization~~  
13 ~~referee may perform the duties imposed upon a magistrate by~~  
14 ~~that section.~~ However, any commitment to a facility regulated  
15 and operated under chapter 135C, shall be in accordance with  
16 section 135C.23.

17 4 3. Any respondent with respect to whom the judicial  
18 hospitalization referee has found the contention that the  
19 respondent is seriously mentally impaired or a chronic  
20 substance abuser sustained by clear and convincing evidence  
21 presented at a hearing held under section 229.12 or section  
22 125.82, may appeal from the referee's finding to a judge of  
23 the district court by giving the clerk notice in writing,  
24 within seven days after the referee's finding is made, that an  
25 appeal therefrom is taken. The appeal may be signed by the  
26 respondent or by the respondent's next friend, guardian or  
27 attorney. When so appealed, the matter shall stand for trial  
28 de novo. Upon appeal, the court shall schedule a  
29 hospitalization or commitment hearing before a district judge  
30 at the earliest practicable time.

31 5 4. If the appellant is in custody under the jurisdiction  
32 of the district court at the time of service of the notice of  
33 appeal, the appellant shall be discharged from custody unless  
34 an order that the appellant be taken into immediate custody  
35 has previously been issued under section 229.11 or section

1 125.81, in which case the appellant shall be detained as  
2 provided in that section until the hospitalization or  
3 commitment hearing before the district judge. If the  
4 appellant is in the custody of a hospital or facility at the  
5 time of service of the notice of appeal, the appellant shall  
6 be discharged from custody pending disposition of the appeal  
7 unless the chief medical officer, not later than the end of  
8 the next secular day on which the office of the clerk is open  
9 and which follows service of the notice of appeal, files with  
10 the clerk a certification that in the chief medical officer's  
11 opinion the appellant is seriously mentally ill or a substance  
12 abuser. In that case, the appellant shall remain in custody  
13 of the hospital or facility until the hospitalization or  
14 commitment hearing before the district court.

15 6 5. The hospitalization or commitment hearing before the  
16 district judge shall be held, and the judge's finding shall be  
17 made and an appropriate order entered, as prescribed by  
18 sections 229.12 and 229.13 or sections 125.82 and 125.83. If  
19 the judge orders the appellant hospitalized or committed for a  
20 complete psychiatric or substance abuse evaluation,  
21 jurisdiction of the matter shall revert to the judicial  
22 hospitalization referee.

23 Sec. 6. Section 602.6306, subsection 2, Code 1991, is  
24 amended to read as follows:

25 2. District associate judges also have jurisdiction in  
26 civil actions for money judgment where the amount in  
27 controversy does not exceed five thousand dollars,  
28 jurisdiction over involuntary commitment, treatment, or  
29 hospitalization proceedings under chapters 125 and 229,  
30 jurisdiction of indictable misdemeanors, and felony violations  
31 of section 321J.2, and the jurisdiction provided in section  
32 602.7101 when designated as a judge of the juvenile court.  
33 While presiding in these subject matters a district associate  
34 judge shall employ district judges' practice and procedure.

35 Sec. 7. Section 602.6405, subsection 1, Code 1991, is

1 amended to read as follows:

2 1. Magistrates have jurisdiction of simple misdemeanors,  
3 including traffic and ordinance violations, and preliminary  
4 hearings, search warrant proceedings, county and municipal  
5 infractions, and small claims. Magistrates have jurisdiction  
6 to exercise the powers specified in sections 644.2 and 644.12,  
7 and to hear complaints or preliminary informations, issue  
8 warrants, order arrests, make commitments, and take bail.  
9 Magistrates have jurisdiction over violations of section  
10 123.47 involving persons eighteen years of age, and section  
11 123.49, subsection 2, paragraph "h". Magistrates who are  
12 admitted to the practice of law in this state have  
13 jurisdiction over all proceedings for the involuntary  
14 commitment, treatment, or hospitalization of individuals under  
15 chapters 125 and 229, except as otherwise provided under  
16 section 229.6A; nonlawyer magistrates have jurisdiction over  
17 emergency detention and hospitalization proceedings under  
18 sections 125.91 and 229.22. Magistrates have jurisdiction to  
19 conduct hearings authorized under section 809.4 and section  
20 809.10, subsection 2.

21 Sec. 8. EFFECTIVE DATE. This Act, being deemed of  
22 immediate importance, takes effect upon enactment.

23 EXPLANATION

24 This bill expands the jurisdiction of magistrates and  
25 district associate court judges to include the authority to  
26 preside over involuntary hospitalization, detention, or  
27 treatment proceedings under the substance abuse and mental  
28 health procedures provisions of the Code. Nonlawyer  
29 magistrates' jurisdiction is limited to emergency situations.  
30 The bill also places the appointment and terms of service of  
31 judicial hospitalization referees at the discretion and  
32 pleasure of the chief judge of the judicial district with  
33 compensation rates to be set by the supreme court. The bill  
34 takes effect upon enactment.

35



HOUSE AMENDMENT TO  
SENATE FILE 453

S-3463

- 1 Amend Senate File 453, as passed by the Senate, as  
2 follows:  
3 1. Page 3, by inserting after line 35, the  
4 following:  
5 "Sec. \_\_\_\_ . Section 229.13, Code 1991, is amended  
6 by adding the following new unnumbered paragraph:  
7 NEW UNNUMBERED PARAGRAPH. If, after placement and  
8 admission of a respondent in a hospital or other  
9 suitable facility, the respondent departs from the  
10 hospital or facility without prior proper  
11 authorization from the chief medical officer, upon  
12 receipt of notification of the respondent's departure  
13 by the chief medical officer, a peace officer of the  
14 state shall without further order of the court  
15 exercise all due diligence to take the respondent into  
16 protective custody and return the respondent to the  
17 hospital or facility."  
18 2. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3463 FILED APRIL 18, 1991

*Senate Journal 4/22/91 (p. 1401)*

VARN. CH.  
SLIFE  
HORN

SSB 305  
JUDICIARY

SENATE FILE 453  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY CHAIR-  
PERSON STURGEON)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to judicial officers having jurisdiction over  
2 civil commitment proceedings and providing an effective date.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 125.77, Code 1991, is amended to read  
2 as follows:

3 125.77 SERVICE OF NOTICE.

4 Upon the filing of an application for involuntary  
5 commitment, the clerk shall docket the case and immediately  
6 notify a district court judge, a district associate judge, or  
7 magistrate who is admitted to the practice of law in this  
8 state, who shall review the application and accompanying  
9 documentation. The clerk shall send copies of the application  
10 and supporting documentation, together with the notice  
11 informing the respondent of the procedures required by this  
12 division, to the sheriff, for immediate service upon the  
13 respondent. If the respondent is taken into custody under  
14 section 125.81, service of the application, documentation, and  
15 notice upon the respondent shall be made at the time the  
16 respondent is taken into custody.

17 Sec. 2. Section 125.81, unnumbered paragraph 1, and  
18 subsection 1, Code 1991, are amended to read as follows:

19 If a person filing an application requests that a  
20 respondent be taken into immediate custody, and the judge  
21 court upon reviewing the application and accompanying  
22 documentation, finds probable cause to believe that the  
23 respondent is a chronic substance abuser who is likely to  
24 injure the person or other persons if allowed to remain at  
25 liberty, the judge court may enter a written order directing  
26 that the respondent be taken into immediate custody by the  
27 sheriff, and be detained until the commitment hearing, which  
28 shall be held no more than five days after the date of the  
29 order, except that if the fifth day after the date of the  
30 order is a Saturday, Sunday, or a holiday, the hearing may be  
31 held on the next business day. The judge court may order the  
32 respondent detained for the period of time until the hearing  
33 is held, and no longer except as provided in section 125.88,  
34 in accordance with subsection 1 if possible, and if not, then  
35 in accordance with subsection 2 or, only if neither of these

1 alternatives is available in accordance with subsection 3.

2 Detention may be:

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

10 Sec. 3. Section 125.82, subsections 1 through 3, Code  
11 1991, are amended to read as follows:

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

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

33 3. The person who filed the application and a physician or  
34 professional who has examined the respondent in connection  
35 with the commitment hearing shall be present at the hearing,

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

14 Sec. 4. Section 229.7, Code 1991, is amended to read as  
15 follows:

16 229.7 SERVICE OF NOTICE UPON RESPONDENT.

17 Upon the filing of an application for involuntary  
18 hospitalization, the clerk shall docket the case and  
19 immediately notify a district court judge, district associate  
20 judge, or magistrate who is admitted to the practice of law in  
21 this state, who shall review the application and accompanying  
22 documentation. If the application is adequate as to form, the  
23 judge court may set a time and place for a hearing on the  
24 application, if feasible, but the hearing shall not be held  
25 less than forty-eight hours after notice to the respondent  
26 unless the respondent waives such minimum prior notice  
27 requirement. The judge court shall direct the clerk to send  
28 copies of the application and supporting documentation,  
29 together with a notice informing the respondent of the  
30 procedures required by this chapter, to the sheriff or the  
31 sheriff's deputy for immediate service upon the respondent.  
32 If the respondent is taken into custody under section 229.11,  
33 service of the application, documentation and notice upon the  
34 respondent shall be made at the time the respondent is taken  
35 into custody.

1     Sec. 5. Section 229.21, Code 1991, is amended to read as  
2 follows:

3     229.21 JUDICIAL HOSPITALIZATION REFEREE.

4     1. ~~The judges in each judicial district shall meet and~~  
5 ~~determine, individually for each county in the district,~~  
6 ~~whether one or more district judges or magistrates will be~~  
7 ~~sufficiently accessible in that county to make it feasible for~~  
8 ~~them to perform at all times the duties prescribed by sections~~  
9 ~~229.7 to 229.19 and section 229.22 and by sections 25.75 to~~  
10 ~~25.94. If the judges find that accessibility of district~~  
11 ~~court judges or magistrates in any county is not sufficient~~  
12 ~~for this purpose, the~~ The chief judge of the each judicial  
13 ~~district shall~~ may appoint in that county a at least one  
14 judicial hospitalization referee for each county within the  
15 district. ~~The judges in any district may at any time review~~  
16 ~~their determination, previously made under this subsection~~  
17 ~~with respect to any county in the district, and pursuant to~~  
18 ~~that review may authorize appointment of a judicial~~  
19 ~~hospitalization referee, or abolish the office, in that~~  
20 ~~county.~~

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

33     3 2. When an application for involuntary hospitalization  
34 under this chapter or an application for involuntary  
35 commitment or treatment of chronic substance abusers under

1 sections 125.75 to 125.94 is filed with the clerk of the  
2 district court in any county for which a judicial  
3 hospitalization referee has been appointed, and no district  
4 judge, district associate judge, or magistrate which is  
5 admitted to the practice of law in this state is accessible in  
6 ~~the-county,~~ the clerk shall immediately notify the referee in  
7 the manner required by section 229.7 or section 125.77. The  
8 referee shall discharge all of the duties imposed upon judges  
9 of the district court ~~or-magistrates~~ by sections 229.7 to  
10 ~~229.19~~ 229.22 or sections 125.75 to 125.94 in the proceeding  
11 so initiated. ~~if-an-emergency-hospitalization-proceeding-is~~  
12 ~~initiated-under-section-229.22-a-judicial-hospitalization~~  
13 ~~referee-may-perform-the-duties-imposed-upon-a-magistrate-by~~  
14 ~~that-section.~~ However, any commitment to a facility regulated  
15 and operated under chapter 135C, shall be in accordance with  
16 section 135C.23.

17 4 3. Any respondent with respect to whom the judicial  
18 hospitalization referee has found the contention that the  
19 respondent is seriously mentally impaired or a chronic  
20 substance abuser sustained by clear and convincing evidence  
21 presented at a hearing held under section 229.12 or section  
22 125.82, may appeal from the referee's finding to a judge of  
23 the district court by giving the clerk notice in writing,  
24 within seven days after the referee's finding is made, that an  
25 appeal therefrom is taken. The appeal may be signed by the  
26 respondent or by the respondent's next friend, guardian or  
27 attorney. When so appealed, the matter shall stand for trial  
28 de novo. Upon appeal, the court shall schedule a  
29 hospitalization or commitment hearing before a district judge  
30 at the earliest practicable time.

31 5 4. If the appellant is in custody under the jurisdiction  
32 of the district court at the time of service of the notice of  
33 appeal, the appellant shall be discharged from custody unless  
34 an order that the appellant be taken into immediate custody  
35 has previously been issued under section 229.11 or section

1 125.81, in which case the appellant shall be detained as  
2 provided in that section until the hospitalization or  
3 commitment hearing before the district judge. If the  
4 appellant is in the custody of a hospital or facility at the  
5 time of service of the notice of appeal, the appellant shall  
6 be discharged from custody pending disposition of the appeal  
7 unless the chief medical officer, not later than the end of  
8 the next secular day on which the office of the clerk is open  
9 and which follows service of the notice of appeal, files with  
10 the clerk a certification that in the chief medical officer's  
11 opinion the appellant is seriously mentally ill or a substance  
12 abuser. In that case, the appellant shall remain in custody  
13 of the hospital or facility until the hospitalization or  
14 commitment hearing before the district court.

15 6 5. The hospitalization or commitment hearing before the  
16 district judge shall be held, and the judge's finding shall be  
17 made and an appropriate order entered, as prescribed by  
18 sections 229.12 and 229.13 or sections 125.82 and 125.83. If  
19 the judge orders the appellant hospitalized or committed for a  
20 complete psychiatric or substance abuse evaluation,  
21 jurisdiction of the matter shall revert to the judicial  
22 hospitalization referee.

23 Sec. 6. Section 602.6306, subsection 2, Code 1991, is  
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25 2. District associate judges also have jurisdiction in  
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27 controversy does not exceed five thousand dollars,  
28 jurisdiction over involuntary commitment, treatment, or  
29 hospitalization proceedings under chapters 125 and 229,  
30 jurisdiction of indictable misdemeanors, and felony violations  
31 of section 321J.2, and the jurisdiction provided in section  
32 602.7101 when designated as a judge of the juvenile court.  
33 While presiding in these subject matters a district associate  
34 judge shall employ district judges' practice and procedure.

35 Sec. 7. Section 602.6405, subsection 1, Code 1991, is



1 amended to read as follows:

2 1. Magistrates have jurisdiction of simple misdemeanors,  
3 including traffic and ordinance violations, and preliminary  
4 hearings, search warrant proceedings, county and municipal  
5 infractions, and small claims. Magistrates have jurisdiction  
6 to exercise the powers specified in sections 644.2 and 644.12,  
7 and to hear complaints or preliminary informations, issue  
8 warrants, order arrests, make commitments, and take bail.  
9 Magistrates have jurisdiction over violations of section  
10 123.47 involving persons eighteen years of age, and section  
11 123.49, subsection 2, paragraph "h". Magistrates who are  
12 admitted to the practice of law in this state have  
13 jurisdiction over all proceedings for the involuntary  
14 commitment, treatment, or hospitalization of individuals under  
15 chapters 125 and 229, except as otherwise provided under  
16 section 229.6A; nonlawyer magistrates have jurisdiction over  
17 emergency detention and hospitalization proceedings under  
18 sections 125.91 and 229.22. Magistrates have jurisdiction to  
19 conduct hearings authorized under section 809.4 and section  
20 809.10, subsection 2.

21 Sec. 8. EFFECTIVE DATE. This Act, being deemed of  
22 immediate importance, takes effect upon enactment.

23 EXPLANATION

24 This bill expands the jurisdiction of magistrates and  
25 district associate court judges to include the authority to  
26 preside over involuntary hospitalization, detention, or  
27 treatment proceedings under the substance abuse and mental  
28 health procedures provisions of the Code. Nonlawyer  
29 magistrates' jurisdiction is limited to emergency situations.  
30 The bill also places the appointment and terms of service of  
31 judicial hospitalization referees at the discretion and  
32 pleasure of the chief judge of the judicial district with  
33 compensation rates to be set by the supreme court. The bill  
34 takes effect upon enactment.

35

SENATE FILE 453

AN ACT

RELATING TO JUDICIAL OFFICERS HAVING JURISDICTION OVER CIVIL  
COMMITMENT PROCEEDINGS AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 125.77, Code 1991, is amended to read  
as follows:

125.77 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, a district associate judge, or  
magistrate who is admitted to the practice of law in this  
state, 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 125.81, service of the application, documentation, and  
notice upon the respondent shall be made at the time the  
respondent is taken into custody.

Sec. 2. Section 125.81, unnumbered paragraph 1, and  
subsection 1, Code 1991, are amended to read as follows:

If a person filing an application requests that a  
respondent be taken into immediate custody, and the judge  
court upon reviewing the application and accompanying  
documentation, finds probable cause to believe that the  
respondent is a chronic substance abuser who is likely to  
injure the person or other persons if allowed to remain at  
liberty, the judge court 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 court may order the  
respondent detained for the period of time until the hearing  
is held, and no longer except as provided in section 125.88,  
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 court 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.

Sec. 3. Section 125.82, subsections 1 through 3, Code  
1991, are amended to read as follows:

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 court 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 court may exclude the respondent from the hearing during the testimony of a witness if the judge court 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 court 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 court 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.

Sec. 4. Section 229.7, Code 1991, is amended to read as follows:

229.7 SERVICE OF NOTICE UPON RESPONDENT.

Upon the filing of an application for involuntary hospitalization, the clerk shall docket the case and immediately notify a district court judge, district associate judge, or magistrate who is admitted to the practice of law in this state, who shall review the application and accompanying documentation. If the application is adequate as to form, the judge court may set a time and place for a hearing on the application, if feasible, but the hearing shall not be held less than forty-eight hours after notice to the respondent unless the respondent waives such minimum prior notice requirement. The judge court shall direct the clerk to send

copies of the application and supporting documentation, together with a notice informing the respondent of the procedures required by this chapter, to the sheriff or the sheriff's deputy for immediate service upon the respondent. If the respondent is taken into custody under section 229.11, service of the application, documentation and notice upon the respondent shall be made at the time the respondent is taken into custody.

Sec. 5. Section 229.13, Code 1991, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If, after placement and admission of a respondent in a hospital or other suitable facility, the respondent departs from the hospital or facility without prior proper authorization from the chief medical officer, upon receipt of notification of the respondent's departure by the chief medical officer, a peace officer of the state shall without further order of the court exercise all due diligence to take the respondent into protective custody and return the respondent to the hospital or facility.

Sec. 6. Section 229.21, Code 1991, is amended to read as follows:

229.21 JUDICIAL HOSPITALIZATION REFEREE.

1. ~~The judges in each judicial district shall meet and determine, individually for each county in the district, whether 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 229.19 and section 229.22 and by sections 125.75 to 125.94. -- If the judges find that accessibility of district court judges or magistrates in any county is not sufficient for this purpose, the~~ The chief judge of the each judicial district shall may appoint in that county a at least one judicial hospitalization referee for each county within the district. ~~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 the chief judge of the judicial district and receive compensation at a rate fixed by the chief judge of the district supreme court. 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 2. When an application for involuntary hospitalization under this chapter or an application for involuntary commitment or treatment of chronic substance abusers under sections 125.75 to 125.94 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, district associate judge, or magistrate who is admitted to the practice of law in this state is accessible in the county, the clerk shall immediately notify the referee in the manner required by section 229.7 or section 125.77. The referee shall discharge all of the duties imposed upon judges of the district court or magistrates by sections 229.7 to ~~229.19~~ 229.22 or sections 125.75 to 125.94 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.~~ However, any commitment to a facility regulated and operated under chapter 135C, shall be in accordance with section 135C.23.

4 3. Any respondent with respect to whom the judicial hospitalization referee has found the contention that the respondent is seriously mentally impaired or a chronic substance abuser sustained by clear and convincing evidence presented at a hearing held under section 229.12 or section 125.82, 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 4. If the appellant is in custody under the jurisdiction of the district court at the time of service of the notice of appeal, 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 125.81, 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, 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 5. 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 125.82 and 125.83. 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. 7. Section 602.6306, subsection 2, Code 1991, is amended to read as follows:

2. District associate judges also have jurisdiction in civil actions for money judgment where the amount in controversy does not exceed five thousand dollars, jurisdiction over involuntary commitment, treatment, or hospitalization proceedings under chapters 125 and 229, jurisdiction of indictable misdemeanors, and felony violations of section 321J.2, and the jurisdiction provided in section 602.7101 when designated as a judge of the juvenile court. While presiding in these subject matters a district associate judge shall employ district judges' practice and procedure.

Sec. 8. Section 602.6405, subsection 1, Code 1991, is amended to read as follows:

1. Magistrates have jurisdiction of simple misdemeanors, including traffic and ordinance violations, and preliminary hearings, search warrant proceedings, county and municipal infractions, and small claims. Magistrates have jurisdiction to exercise the powers specified in sections 644.2 and 644.12, and to hear complaints or preliminary informations, issue warrants, order arrests, make commitments, and take bail. Magistrates have jurisdiction over violations of section 123.47 involving persons eighteen years of age, and section 123.49, subsection 2, paragraph "h". Magistrates who are admitted to the practice of law in this state have jurisdiction over all proceedings for the involuntary commitment, treatment, or hospitalization of individuals under chapters 125 and 229, except as otherwise provided under section 229.6A; nonlawyer magistrates have jurisdiction over

emergency detention and hospitalization proceedings under sections 125.91 and 229.22. Magistrates have jurisdiction to conduct hearings authorized under section 809.4 and section 809.10, subsection 2.

Sec. 9. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

.....  
JOE J. WELSH  
President of the Senate

.....  
ROBERT C. ARNOULD  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 453, Seventy-fourth General Assembly.

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JOHN F. DWYER  
Secretary of the Senate

Approved May 7, 1991

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TERRY E. BRANSTAD  
Governor