

HSB 557

JUDICIARY

Succeeded By  
SF/HF 2-2

Kreiman, Chair

Raacher

Kettering

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON LARSON)

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

A BILL FOR

1 An Act establishing a procedure for ordering outpatient mental  
2 health treatment.

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

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1 Section 1. Section 228.6, subsection 1, Code 1999, is  
2 amended to read as follows:

3 1. A mental health professional or an employee of or agent  
4 for a mental health facility may disclose mental health  
5 information if and to the extent necessary, to meet the  
6 requirements of section 229.24, 229.25, 230.20, 230.21,  
7 230.25, 230.26, 230A.13, 232.74, or 232.147, 229B.4, 229B.6,  
8 229B.7, 229B.8, 229B.9, 229B.10, 229B.11, 229B.12, 229B.13,  
9 229B.14, 229B.15, 229B.16, 229B.17, 229B.18, or 229B.20, or to  
10 meet the compulsory reporting or disclosure requirements of  
11 other state or federal law relating to the protection of human  
12 health and safety.

13 Sec. 2. Section 228.6, subsection 3, Code 1999, is amended  
14 to read as follows:

15 3. Mental health information may be disclosed by a mental  
16 health professional if and to the extent necessary, to  
17 initiate or complete civil commitment proceedings under  
18 chapter 229, or in relation to proceedings for an order for  
19 outpatient treatment under chapter 229B.

20 Sec. 3. NEW SECTION. 229B.1 DEFINITIONS.

21 1. "Chemotherapy" means treatment of an individual by use  
22 of a drug or substance which cannot legally be delivered or  
23 administered to the ultimate user without a physician's  
24 prescription or medical order.

25 2. "Chief medical officer" means the medical director in  
26 charge of a public or private hospital, or treatment program,  
27 or that individual's physician-designee.

28 3. "Licensed physician" means an individual licensed under  
29 the provisions of chapter 148, 150, or 150A to practice  
30 medicine and surgery, osteopathy, or osteopathic medicine and  
31 surgery.

32 4. "Mental illness" means every type of mental disease or  
33 mental disorder, except that it does not refer to mental  
34 retardation as defined in section 222.2, or to insanity,  
35 diminished responsibility, or mental incompetency as the terms

1 are defined and used in the Iowa criminal code or in the rules  
2 of criminal procedure, Iowa court rules.

3 5. "Qualified mental health professional" means an  
4 individual experienced in the study and treatment of mental  
5 disorders in the capacity of any one of the following:

- 6 a. A psychologist licensed under chapter 154B.
- 7 b. A registered nurse licensed under chapter 152.
- 8 c. A social worker licensed under chapter 154C.

9 6. "Respondent" means any person about whom an application  
10 has been filed under section 229B.4, but who has not been  
11 finally ordered to obtain outpatient treatment.

12 7. "Single entry point process" means the same as defined  
13 in section 331.440.

14 Sec. 4. NEW SECTION. 229B.2 SINGLE ENTRY POINT PROCESS.

15 Notwithstanding any provision of this chapter to the  
16 contrary, any person whose treatment expenses are payable in  
17 whole or in part by a county shall be subject to all  
18 requirements of the single entry point process.

19 Sec. 5. NEW SECTION. 229B.3 CRITERIA FOR ORDER FOR  
20 OUTPATIENT TREATMENT.

21 1. For the purposes of this section, "rational treatment  
22 decision" means a decision based upon plausible or good  
23 reasons. An individual's treatment decision that is medically  
24 inadvisable or that conflicts with the individual's  
25 physician's recommendation may still be rational if it is  
26 based upon plausible or good reasons.

27 2. An individual is an appropriate candidate for an order  
28 for outpatient treatment under this chapter if all of the  
29 following are true:

- 30 a. The individual is at least eighteen years old.
- 31 b. The individual is suffering from a mental illness.
- 32 c. Without outpatient treatment, within the reasonably  
33 foreseeable future, at least one of the following is true:

34 (1) The individual is likely to cause physical injury to  
35 the individual or to others.

1 (2) The individual is likely to lack substantial capacity  
2 to take care of the individual's basic needs for nourishment,  
3 shelter, clothing, or health.

4 d. At least one of the following will be true if the  
5 individual undergoes outpatient treatment:

6 (1) The individual alone will likely be capable of taking  
7 care of the individual's basic needs for nourishment, shelter,  
8 clothing, and health.

9 (2) The individual will be capable of taking care of the  
10 individual's basic needs for nourishment, shelter, clothing,  
11 and health, with the help of family, friends, or others with  
12 responsibility for the individual's well-being.

13 e. The individual has previously failed to comply with  
14 reasonable treatment recommendations.

15 f. The individual has previously been determined to be  
16 seriously mentally impaired, as defined in section 229.1, and  
17 has been hospitalized for inpatient treatment pursuant to the  
18 procedures in chapter 229.

19 g. As a result of the individual's mental illness, the  
20 individual lacks the capacity to make rational treatment  
21 decisions.

22 h. It is likely that the individual will benefit from  
23 outpatient treatment.

24 Sec. 6. NEW SECTION. 229B.4 APPLICATION FOR OUTPATIENT  
25 TREATMENT ORDER.

26 1. An application for an outpatient treatment order may be  
27 commenced by any interested person by filing a verified  
28 application with the clerk of the district court of the county  
29 where the respondent is presently located, or which is the  
30 respondent's place of residence.

31 2. The clerk, or the clerk's designee, shall assist the  
32 applicant in completing the application.

33 3. The application shall include the following  
34 information:

35 a. The applicant's belief that the respondent meets the

1 criteria set forth in section 229B.3 as an appropriate  
2 candidate for an outpatient treatment order.

3 b. Any pertinent facts.

4 4. The application shall be accompanied by one of the  
5 following:

6 a. A written statement of a psychiatrist, licensed  
7 physician, or other qualified mental health professional  
8 supporting the application.

9 b. One or more affidavits corroborating the application.

10 c. Testimony supporting the application. The testimony  
11 may include oral testimony taken over the telephone and  
12 reduced to writing by the clerk or the clerk's designee.

13 Sec. 7. NEW SECTION. 229B.5 SERVICE OF NOTICE UPON  
14 RESPONDENT.

15 1. Upon the filing of an application for an outpatient  
16 treatment order, the clerk of the district court shall docket  
17 the case and immediately notify a district judge, a district  
18 associate judge, a magistrate, or a judicial hospitalization  
19 referee, who shall review the application and accompanying  
20 documentation.

21 2. If the application is adequate as to form and content,  
22 the court shall set a time and place for the hearing on the  
23 application. The hearing shall be held within five business  
24 days after notice to the respondent, but not less than forty-  
25 eight hours after notice to the respondent, unless the  
26 respondent waives the forty-eight-hour notice requirement.

27 3. The court shall direct the clerk to send copies of the  
28 application and supporting documentation, together with notice  
29 informing the respondent of the procedures required by this  
30 chapter, to a process server for immediate service upon the  
31 respondent. The process server shall serve the respondent in  
32 plain clothes via an unmarked car, if the judge, magistrate,  
33 or referee so requires.

34 Sec. 8. NEW SECTION. 229B.6 PROCEDURE AFTER APPLICATION  
35 IS FILED.

1 As soon as practicable after the filing of an application  
2 for an outpatient treatment order, the court shall do all of  
3 the following:

4 1. Determine whether the respondent has an attorney to  
5 represent the respondent in the proceeding on the outpatient  
6 treatment order. If the court determines that the respondent  
7 does not have an attorney, the court shall determine whether  
8 the respondent is financially able to employ an attorney and  
9 is capable of meaningfully assisting in selecting one.

10 If the respondent is unable to obtain an attorney for lack  
11 of funds, or is unable to meaningfully choose and retain an  
12 attorney, the court shall assign an attorney to represent the  
13 respondent.

14 If the respondent is financially unable to pay an attorney,  
15 the attorney shall be compensated in substantially the manner  
16 provided by section 815.7, except that if the county has a  
17 public defender, the court may designate the public defender  
18 or an attorney on the public defender's staff to act as the  
19 respondent's attorney.

20 The respondent's attorney shall represent the respondent at  
21 all stages of the proceedings, and shall represent the  
22 respondent at hearing on the outpatient treatment order.

23 2. Determine whether the respondent has an assigned  
24 patient advocate. If not, the court shall attempt to  
25 determine if the respondent has a county of legal settlement.  
26 If the respondent has a county of legal settlement, the court  
27 shall assign the patient advocate from that county to the  
28 respondent. If the respondent is determined to be a state  
29 case, or if the court is unable to determine the county of  
30 legal settlement prior to the time of the hearing, or in any  
31 other circumstance, the court shall assign to the respondent  
32 the patient advocate in the county in which the court has  
33 venue.

34 3. Cause copies of the application and supporting  
35 documentation to be sent for review to the county attorney,

1 the respondent's attorney of record, and the patient advocate.  
 2 The application and supporting documentation shall be  
 3 personally delivered by a method that assures confidentiality.  
 4 4. Issue a written order that requires an examination of  
 5 the respondent, prior to the hearing, by one or more able and  
 6 willing psychiatrists, or, if none are available, by one or  
 7 more licensed physicians who shall submit a written report on  
 8 the examination to the court as required by section 229B.7.

9 Sec. 9. NEW SECTION. 229B.7 PHYSICIAN'S EXAMINATION --  
 10 REPORT.

11 1. An examination of the respondent shall be conducted by  
 12 one or more licensed physicians, as required by the court's  
 13 order, within two business days. The court shall make every  
 14 reasonable effort to assign the examination to a qualified  
 15 licensed psychiatrist.

16 2. If the respondent so desires, the respondent shall be  
 17 entitled to a separate examination by a licensed psychiatrist,  
 18 licensed physician, or qualified mental health professional of  
 19 the respondent's own choice. The reasonable cost of such  
 20 separate examination shall, if the respondent lacks sufficient  
 21 funds to pay the cost, be paid from county funds upon order of  
 22 the court.

23 3. A licensed physician conducting an examination pursuant  
 24 to this section may consult with or request the participation  
 25 in the examination of any qualified mental health  
 26 professional, and may include with or attach to the written  
 27 report of the examination any findings or observations of such  
 28 professional.

29 4. The psychiatrist or licensed physician or physicians  
 30 assigned to conduct the examination pursuant to section  
 31 229B.6, subsection 4, shall immediately inform the court if  
 32 the respondent declines to be examined. If the court is  
 33 informed that the respondent has declined to be examined by  
 34 the psychiatrist or licensed physician or physicians pursuant  
 35 to the court order, and if the court believes that it will

1 prove helpful, the court may order the assigned patient  
2 advocate to assist in encouraging the respondent to comply  
3 with the examination order. If necessary, the court may order  
4 such limited detention of the respondent as is required to  
5 facilitate the examination of the respondent by the  
6 psychiatrist or licensed physician or physicians who have been  
7 ordered pursuant to section 229B.6, subsection 4, to examine  
8 the respondent, but in no event shall the detention last  
9 longer than twenty-four hours.

10 5. The psychiatrist or physician shall file a written  
11 report of the examination as soon as possible. The court  
12 shall encourage the examining psychiatrist or physician to  
13 file the report at least twenty-four hours before the hearing  
14 to assist all parties in preparing for the hearing. A written  
15 report of any psychiatrist, physician, or qualified mental  
16 health professional chosen by the respondent may be similarly  
17 filed with the clerk of the district court. The clerk shall  
18 immediately cause any report to be shown to the judge who  
19 issued the order, to the respondent's attorney of record, and  
20 the county attorney.

21 Sec. 10. NEW SECTION. 229B.8 CLINICAL OR OBJECTIVELY  
22 OBSERVABLE EVIDENCE OF FORESEEABLE DANGEROUSNESS.

23 Unless the respondent refuses to cooperate with the  
24 psychiatrist or physician in the examination, the evidence for  
25 a determination that the requirements of section 229B.3 have  
26 been met must include evidence of objectively observable  
27 events such as contained in section 229B.17, subsection 1,  
28 paragraph "b", in addition to the clinical examination.

29 Sec. 11. NEW SECTION. 229B.9 ORDER FOR INPATIENT  
30 TREATMENT.

31 1. If in the opinion of the chief medical officer, or the  
32 chief medical officer's agent, a person ordered to that  
33 facility or program on an outpatient basis under this chapter  
34 is seriously mentally impaired as defined in section 229.1,  
35 subsection 15, and would be more appropriately placed in

1 inpatient status or in an alternative placement, or other more  
2 highly supervised setting than ordered outpatient treatment,  
3 the chief medical officer, or the chief medical officer's  
4 agent, shall initiate an application for an order of  
5 involuntary hospitalization pursuant to section 229.6.

6 2. If the court orders immediate custody pursuant to  
7 section 229.11, the respondent may be treated in accordance  
8 with the provisions of the outpatient treatment order, or any  
9 modifications thereof, in accordance with section 229B.12,  
10 while in custody awaiting the involuntary hospitalization  
11 hearing, notwithstanding the provisions of section 229.14,  
12 subsection 3; section 229.15, subsection 2; section 229.23,  
13 subsection 2; and the Iowa supreme court rules for involuntary  
14 hospitalization.

15 3. If the respondent is a physical danger to the  
16 respondent or others while in custody awaiting a hearing under  
17 section 229.6, the respondent may be treated in accordance  
18 with the provisions of section 229.23, subsection 2, to  
19 preserve the respondent's life or to avoid physical injury to  
20 the respondent or others.

21 4. If in the chief medical officer's opinion the  
22 respondent should be immediately detained before the hearing  
23 under section 229.6, but there are no means of immediate  
24 access to the district court, an emergency detention may be  
25 initiated in accordance with the procedures in section 229.22.

26 Sec. 12. NEW SECTION. 229B.10 OUTPATIENT TREATMENT  
27 HEARING PROCEDURE.

28 1. At the outpatient treatment order hearing, evidence in  
29 support of the contentions made in the application shall be  
30 presented by the county attorney.

31 2. During the hearing, the applicant and the respondent  
32 shall have an opportunity to testify.

33 3. The county attorney and the respondent may present and  
34 cross-examine witnesses, and the court may receive the  
35 testimony of family members of the respondent or of any other

1 interested person.

2 4. The respondent has the right to be present at the  
3 hearing. If the respondent exercises that right and has been  
4 medicated within twelve hours, or such longer period of time  
5 as the court may designate, prior to the beginning of the  
6 hearing or an adjourned session thereof, the judge shall be  
7 informed of that fact and of the probable effects of the  
8 medication upon convening of the hearing.

9 5. All persons not necessary for the conduct of the  
10 proceeding shall be excluded, except that the court may admit  
11 persons having a legitimate interest in the proceeding and  
12 shall permit the respondent's patient advocate to attend the  
13 hearing.

14 6. Upon the motion of the county attorney, the court may  
15 in exceptional circumstances exclude the respondent during a  
16 witness's testimony if the court determines that it would be  
17 so antitherapeutic for the respondent to be present during  
18 that testimony that it justifies overriding the respondent's  
19 right to be present at the hearing.

20 7. The respondent's welfare shall be paramount and the  
21 hearing shall be conducted in as informal a manner as may be  
22 consistent with orderly procedure, but the issue shall be  
23 tried as a civil matter.

24 a. Discovery as is permitted under the Iowa rules of civil  
25 procedure shall be available to all parties.

26 b. The court shall receive all relevant and material  
27 evidence that may be offered and need not be bound by the  
28 rules of evidence.

29 c. There shall be a presumption in favor of the  
30 respondent, and the burden of evidence in support of the  
31 contentions made in the application shall be upon the  
32 applicant.

33 8. If upon completion of the hearing the court finds that  
34 the contention that the respondent should be ordered to  
35 outpatient treatment has not been sustained by clear and

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1 convincing evidence, the court shall deny the application and  
2 terminate the proceeding.

3 9. The clerk of the district court shall furnish copies of  
4 any orders to the respondent, and to the applicant if the  
5 applicant files a written waiver signed by the respondent.

6 Sec. 13. NEW SECTION. 229B.11 EVALUATION AND ORDER.

7 If the court finds that the evidence presented at the  
8 hearing demonstrates that the respondent meets the criteria  
9 set forth in section 229B.3 by clear and convincing evidence,  
10 the court shall immediately order the respondent to an  
11 outpatient treatment facility or program, subject to the  
12 requirements of section 229B.12.

13 Sec. 14. NEW SECTION. 229B.12 TREATMENT PLAN -- CHOICE  
14 OF PROVIDER -- ADVANCE DIRECTIVE.

15 1. The chief medical officer of the facility or program  
16 where the respondent is treated as an outpatient, or the chief  
17 medical officer's agent, shall submit to the clerk of the  
18 district court, as soon as practical, but no later than thirty  
19 days after the respondent has been ordered as an outpatient, a  
20 treatment plan, including any outpatient treatment  
21 recommendations that the respondent is required to follow.

22 2. The chief medical officer of the facility or program to  
23 which the respondent has been ordered as an outpatient shall  
24 submit a copy of the treatment plan to the clerk of the  
25 district court.

26 3. The clerk of the district court shall send a copy of  
27 the outpatient treatment recommendations that the respondent  
28 is required to follow to the court, to the respondent's  
29 patient advocate, and to the respondent's attorney of record,  
30 who may relay the respondent's objections to the treatment  
31 plan, if any, and provide alternative treatment  
32 recommendations.

33 4. The court may accept the chief medical officer's  
34 treatment plan or require a revised treatment plan.

35 5. If the respondent wishes to receive outpatient

1 treatment from a licensed physician, qualified mental health  
2 professional, or treatment facility that is willing to treat  
3 the respondent as a court-ordered outpatient, the court shall  
4 order the respondent to the care of that physician, qualified  
5 mental health professional, or facility upon the respondent's  
6 written request, provided that if the chosen provider is not a  
7 contract provider with the county of legal settlement, the  
8 county of legal settlement, state, or other government payor  
9 shall only be obligated to pay to the noncontract provider the  
10 average cost paid for ordered outpatient treatment to contract  
11 providers.

12 6. A respondent may execute an advance directive, or  
13 durable power of attorney for health care decisions, in  
14 accordance with chapter 144B. If validly executed, a durable  
15 power of attorney for health care decisions shall be binding  
16 on the court and on any treating mental health professional  
17 provided that the decisions made by the agent possessing the  
18 power of attorney, and the instructions, if any, to the agent  
19 in the executed power of attorney for health care decisions  
20 are within accepted medical standards and practices. If  
21 disputed, decisions regarding an advance directive or durable  
22 power of attorney for health care decisions shall be made by  
23 the judicial trier of fact under this section. This section  
24 does not require a physician or qualified mental health  
25 professional to accept as an outpatient an individual who has  
26 executed a durable power of attorney for health care decisions  
27 that provides for treatment, either by instructions or by the  
28 power of attorney's decision, that in the physician or  
29 qualified mental health professional's judgment would not be  
30 an appropriate treatment for the outpatient's condition.

31 Sec. 15. NEW SECTION. 229B.13 REVIEW HEARING.

32 1. For any respondent ordered to undergo outpatient  
33 treatment, a review hearing shall be conducted every twelve  
34 months to determine whether or not the respondent shall remain  
35 under order to receive outpatient treatment.

1 2. At any review hearing:

2 a. The case for continued outpatient treatment shall be  
3 presented by the county attorney.

4 b. The respondent shall have the right to an attorney,  
5 including at a rehearing for probable cause under section  
6 229B.18.

7 3. The court shall make the same determinations with  
8 regard to the respondent's legal representation at each review  
9 hearing in the same manner as required prior to an initial  
10 hearing pursuant to section 229B.6, subsection 1.

11 4. At any review hearing, if the respondent has  
12 substantially complied with the required treatment plan for  
13 the prior twelve months, a rebuttable presumption arises that  
14 the respondent has the capacity to make rational treatment  
15 decisions. In deciding whether that presumption is overcome,  
16 the court shall consider, among other factors, how frequently  
17 and how recently the respondent has failed to follow  
18 reasonable treatment recommendations, and whether such  
19 failures, if any exist, have led to the respondent's  
20 hospitalization, failure to be able to take care of the  
21 respondent's basic needs for nourishment, shelter, clothing,  
22 or health, or to the respondent's being dangerous to self or  
23 others.

24 5. Yearly review hearings shall be conducted in accordance  
25 with the procedures for initial hearings in section 229B.10,  
26 except as specifically modified by this section.

27 Sec. 16. NEW SECTION. 229B.14 PERIODIC REPORTS.

28 1. The chief medical officer of the facility or program  
29 where the respondent obtains treatment as an outpatient, or  
30 the chief medical officer's agent, shall furnish reports on  
31 the respondent's progress every six months to the court, to  
32 the respondent's patient advocate, and to the respondent.

33 2. If in the chief medical officer's opinion providing a  
34 copy of a report to the respondent would substantially hinder  
35 the respondent's progress, and the chief medical officer so

1 informs the court and the respondent's patient advocate, the  
2 chief medical officer need not provide a copy of the progress  
3 report to the respondent, unless the respondent makes an  
4 affirmative request for one.

5 3. Even if the chief medical officer informs the court  
6 that it would substantially hinder the respondent's progress  
7 to receive a copy of the report, the chief medical officer  
8 shall still provide a report to the court and to the  
9 respondent's patient advocate.

10 Sec. 17. NEW SECTION. 229B.15 FAILURE TO TIMELY FILE  
11 PROGRESS REPORTS.

12 1. If the progress reports required by section 229B.14 are  
13 not filed in a timely manner or if services to a respondent  
14 are not provided, the court shall so inform the single entry  
15 point process and direct the single entry point process not to  
16 compensate the outpatient treatment facility or program.

17 2. If the mental health facility or program where the  
18 respondent obtains outpatient treatment does not provide  
19 progress reports in a timely manner or if services to the  
20 respondent are not provided, but the mental health facility or  
21 program is compensated by federal, private, or other agency  
22 not state or local, the mental health facility or program  
23 where the respondent has obtained treatment may be penalized  
24 by the court in the amount of compensation to which the  
25 facility or program would otherwise be entitled. The amounts  
26 collected from such penalties shall be distributed in a fair  
27 manner to the counties as a surplusage or repayment for mental  
28 health service expenditures incurred.

29 3. Judicial hospitalization referees shall have the  
30 authority to assess penalties and issue orders under this  
31 section.

32 Sec. 18. NEW SECTION. 229B.16 NOTIFICATION OF OUTPATIENT  
33 NONCOMPLIANCE -- RESPONSE.

34 1. If the respondent does not comply with the court's  
35 order for outpatient treatment, the chief medical officer

1 shall promptly notify the court upon becoming aware of any  
2 such noncompliance.

3 2. The court may take reasonable steps to ensure  
4 compliance with the court's outpatient treatment order,  
5 including, but not limited to, any or all of the following:

6 a. Directing that the respondent's patient advocate remind  
7 the respondent of the respondent's treatment obligations and  
8 attempt to persuade the noncompliant respondent to comply with  
9 any required chemotherapy.

10 b. Presenting the respondent to the treatment facility or  
11 program for treatment.

12 3. The court may order the respondent to appear before the  
13 court. If necessary, the court may order the sheriff to bring  
14 the respondent before the court.

15 4. Unless the court has good reason based upon past  
16 experience with the respondent or the respondent's patient  
17 advocate that the above methods will not be effective in  
18 ensuring compliance with the court's outpatient treatment  
19 order, or immediate treatment is necessary, the court shall  
20 attempt to secure compliance by one or more of the above  
21 reasonable steps before ordering the sheriff to bring the  
22 noncompliant respondent to treatment. If necessary, the court  
23 shall order the sheriff to bring the respondent to the  
24 treatment facility or program for treatment.

25 Sec. 19. NEW SECTION. 229B.17 EVIDENCE -- OUTPATIENT  
26 TREATMENT ORDER.

27 1. In determining whether the criteria of section 229B.3  
28 are met by clear and convincing evidence and therefore that  
29 the respondent should be ordered to a treatment facility or  
30 program, the court shall take into account, both as presently  
31 experienced, and as likely to be the case in the reasonably  
32 foreseeable future, at least the following evidence:

33 a. The subjective distress experienced by the respondent.

34 b. Any objectively observable functional impairment of the  
35 respondent at work, in school, or in social interactions.

1 2. The same factors should be taken into account in  
2 rehearings and writs under sections 229B.18 and 229B.19.

3 Sec. 20. NEW SECTION. 229B.18 REHEARING FOR PROBABLE  
4 CAUSE.

5 1. A respondent, a family member, the respondent's  
6 advocate, or an individual who can demonstrate that the person  
7 has a substantial interest in the welfare of the respondent  
8 may petition for a rehearing on the grounds that the  
9 respondent no longer meets the criteria for ordered outpatient  
10 treatment.

11 2. Upon probable cause that one or more of the required  
12 criterion for an outpatient treatment order can no longer be  
13 proven by clear and convincing evidence, the court shall grant  
14 the petition and assign a rehearing no sooner than three  
15 business days after notification to the respondent per section  
16 229B.5, but within ten business days of the date of service of  
17 the petition upon the respondent.

18 3. Probable cause may be demonstrated by affidavit,  
19 medical report, or any other means deemed appropriate by the  
20 court.

21 4. The procedure set out in this section shall not be  
22 available:

23 a. Until the respondent has been subject to an outpatient  
24 treatment order for six months.

25 b. More than once every six months regarding the same  
26 respondent.

27 5. At any such hearing the respondent shall have the right  
28 to an attorney. If the respondent cannot afford an attorney,  
29 the court shall assign one in accordance with the procedures  
30 in section 229B.6.

31 6. At any probable cause hearing, evidence in support of a  
32 continued outpatient treatment order shall be presented by the  
33 county attorney.

34 7. Review hearings shall be conducted in accordance with  
35 the procedures set for initial hearings in section 229B.10.

1     Sec. 21. NEW SECTION. 229B.19 CHALLENGE TO ORDER FOR  
2 OUTPATIENT TREATMENT.

3     1. All respondents ordered to outpatient treatment shall  
4 be entitled to the benefit of a writ of unconstitutional  
5 deprivation of liberty, which is analogous to a writ of habeas  
6 corpus.

7     2. The question of the constitutionality of the order to  
8 outpatient treatment shall be decided at a hearing on the  
9 writ. The hearing shall be before the district court,  
10 pursuant to this section and chapter 663.

11    3. If the judge decides that the respondent should be  
12 ordered to outpatient treatment, such decision shall be no bar  
13 to the issuing of the writ a second time, whenever it shall be  
14 alleged that such respondent no longer meets constitutional  
15 requirements for being ordered to outpatient treatment.

16    4. The respondent shall have the right to be represented  
17 by an attorney at the hearing. If the respondent cannot  
18 afford an attorney, the court shall appoint one for the  
19 respondent.

20    5. The attorney shall be compensated by the county of  
21 legal settlement of the respondent, or, if no county of legal  
22 settlement exists, then by the state. The attorney shall be  
23 compensated with a maximum fee of three hundred dollars, at an  
24 hourly rate consistent with section 815.7, to be exceeded only  
25 upon motion to the court for good cause shown.

26    Sec. 22. NEW SECTION. 229B.20 DISCHARGE.

27    1. When, in the opinion of the chief medical officer of  
28 the treatment facility or program where the respondent has  
29 obtained treatment, the respondent no longer requires  
30 outpatient treatment, the chief medical officer shall  
31 immediately notify the court, and explain in detail why the  
32 respondent no longer needs outpatient treatment and why the  
33 respondent no longer meets the criteria for an order of  
34 outpatient treatment.

35    2. The court shall issue an order approving the

1 respondent's discharge from the outpatient treatment facility  
2 or program, or in its discretion, may require a hearing be  
3 held to determine whether the respondent still meets the  
4 criteria for an outpatient treatment order.

5 3. To justify termination of an outpatient treatment  
6 order, the chief medical officer's report must explain in  
7 detail, including reasons and evidence, why one or more of the  
8 legal criterion for an outpatient treatment order is no longer  
9 satisfied. A report by the chief medical officer asserting  
10 only that the respondent no longer requires outpatient  
11 treatment is insufficient to justify termination of an  
12 outpatient treatment order.

13 4. The clerk of the district court shall send a copy of  
14 the chief medical officer's recommendation and the court's  
15 order to the respondent's patient advocate, and to the  
16 respondent.

17 Sec. 23. NEW SECTION. 229B.21 TREATMENT PENDING APPEAL.

18 When a respondent appeals to the supreme court the decision  
19 that the respondent should be ordered to outpatient treatment,  
20 and the respondent was ordered to a treatment facility or  
21 program before the court is informed of the respondent's  
22 intent to appeal its finding, the respondent shall follow any  
23 treatment plan prescribed by the chief medical officer of the  
24 facility or program, or the officer's agent, and approved by  
25 the court, even if the treatment plan or approval thereof  
26 postdates the appeal, unless the supreme court orders  
27 otherwise.

28 Sec. 24. NEW SECTION. 229B.22 CONFIDENTIALITY.

29 1. The medical records of any examining licensed physician  
30 or treatment facility or program that treats any respondent  
31 under this chapter shall be confidential in accordance with  
32 the provisions in section 229.25 and chapter 228.

33 2. The records of proceedings for outpatient treatment  
34 pursuant to this chapter shall be confidential in accordance  
35 with the terms in section 229.24, chapter 228, and federal

1 law.

2 Sec. 25. NEW SECTION. 229B.23 PROVISION OF SUMMARY OF  
3 PROCEDURES TO APPLICANT IN OUTPATIENT TREATMENT ORDER  
4 APPLICATIONS.

5 1. The department of human services, in consultation with  
6 the office of attorney general, shall develop a summary of the  
7 procedures involved in outpatient treatment orders under this  
8 chapter, and applications for information concerning the  
9 participation of an applicant in the proceedings.

10 2. The summary shall be provided by the department, at the  
11 department's expense, to the clerks of the district court who  
12 shall make the summary available to all applicants prior to  
13 the filing of a verified application under section 229B.4, or  
14 to any other person upon request, and who shall attach a copy  
15 of the summary to the notice of hearing which is served upon  
16 the respondent under section 229B.5.

17 3. The summary may include, but is not limited to, the  
18 following:

19 a. The criteria under section 229B.3 for ordering a person  
20 to outpatient treatment.

21 b. A description of the hearing process.

22 c. An explanation of the applicant's right to testify and  
23 examples of the kinds of relevant information which may be  
24 introduced at the hearing.

25 d. An explanation of the duties of the county attorney in  
26 outpatient treatment proceedings.

27 4. The summary required under this section may be combined  
28 in the summary required under section 229.45, or may be  
29 separately provided.

30 Sec. 26. NEW SECTION. 229B.24 APPLICATION FILED WITHOUT  
31 PROBABLE CAUSE OR GOOD FAITH BELIEF.

32 1. If the court determines that the respondent does not  
33 meet the criteria for outpatient treatment set forth in  
34 section 229B.3, and that the application was filed without  
35 probable cause, the court may order a hearing to determine if

1 the applicant shall pay the costs of the hearing and medical  
2 examination.

3 2. The applicant shall pay the costs of the hearing and  
4 medical examination under this chapter if the court concludes  
5 that the application was filed without probable cause.

6 Sec. 27. NEW SECTION. 229B.25 APPEAL TO DISTRICT COURT.

7 If the hearing is before a judicial hospitalization  
8 referee, and the respondent is ordered to outpatient  
9 treatment, the respondent may appeal to the district court  
10 within ten business days of the judicial hospitalization  
11 referee's order. If appealed to the district court, the trial  
12 shall be de novo.

13 Sec. 28. Section 331.756, subsection 46, Code Supplement  
14 1999, is amended to read as follows:

15 46. Carry out duties relating to the hospitalization and  
16 outpatient treatment of persons for with mental illness as  
17 provided in ~~section-229-12~~ chapters 229 and 229B.

18 Sec. 29. SUPREME COURT FORM. The supreme court is  
19 directed to develop and implement new forms necessary to  
20 implement this chapter.

21 Sec. 30. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
22 3, shall not apply to this Act.

23 EXPLANATION

24 This bill creates new Code chapter 229B that establishes a  
25 procedure for outpatient mental health treatment.

26 The bill sets forth definitions, and a section regarding  
27 the applicability of the single entry point process.

28 New Code section 229B.3 sets forth the criteria for  
29 obtaining an outpatient treatment order, and new Code section  
30 229B.4 addresses the application process.

31 New Code section 229B.5 addresses service of process, and  
32 new Code section 229B.6 sets forth prehearing requirements for  
33 the court.

34 New Code section 229B.7 addresses the prehearing medical  
35 examination of the respondent.

S.F. \_\_\_\_\_ H.F. \_\_\_\_\_

1 New Code section 229B.10 sets forth the procedures related  
2 to the hearing on the outpatient treatment order. New Code  
3 sections 229B.8, 229B.9, 229B.11, and 229B.17 address  
4 evidentiary standards and issues relating to the hearing and  
5 order.

6 New Code section 229B.12 addresses the posthearing  
7 treatment plan, while new Code section 229B.13 addresses the  
8 procedure for periodic review hearings. New Code section  
9 229B.14 sets forth the requirements for progress reports on  
10 the respondent's treatment, and new Code section 229B.15 sets  
11 forth penalties for untimely filings of such progress reports.

12 New Code section 229B.16 addresses the procedures for  
13 dealing with a respondent who does not comply with the  
14 treatment order.

15 New Code section 229B.19 addresses the applicable  
16 procedures for challenging the constitutionality of an order  
17 to outpatient treatment, and new Code section 229.18 addresses  
18 rehearings for probable cause.

19 New Code section 229B.20 addresses the procedure for  
20 discharge from treatment, and new Code section 229B.21  
21 addresses treatment pending appeal.

22 New Code section 229B.22 addresses confidentiality issues,  
23 and new Code section 229B.23 requires the department of human  
24 services to develop a summary of the procedures under this  
25 chapter for applicants and respondents, similar to the summary  
26 required for involuntary hospitalizations.

27 New Code section 229B.24 addresses payment of costs for  
28 applications filed without probably cause or a good faith  
29 belief. New Code section 229B.25 addresses appeals to  
30 district court from hearings before judicial hospitalization  
31 referees.

32 Corresponding amendments are made to Code section 331.756,  
33 regarding duties of the county attorney, and Code section  
34 228.6, regarding disclosure of mental health information.

35 The bill also contains a direction to the courts regarding

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1 development of new forms to encompass the procedures  
2 implemented by the new Code chapter.

3 This bill may include a state mandate as defined in Code  
4 section 25B.3. This bill makes inapplicable Code section  
5 25B.2, subsection 3, which would relieve a political  
6 subdivision from complying with a state mandate if funding for  
7 the cost of the state mandate is not provided or specified.  
8 Therefore, political subdivisions are required to comply with  
9 any state mandate included in this bill.

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FEB 22 2000

Place On Calendar

HOUSE FILE 2366  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 557)

*Failed*

*(p. 753)*

Passed House, Date 3-14-00

Passed Senate, Date \_\_\_\_\_

Vote: Ayes 42 Nays 54

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act establishing a procedure for ordering outpatient mental  
2 health treatment.

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

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1 Section 1. Section 228.6, subsection 1, Code 1999, is  
2 amended to read as follows:

3 1. A mental health professional or an employee of or agent  
4 for a mental health facility may disclose mental health  
5 information if and to the extent necessary, to meet the  
6 requirements of section 229.24, 229.25, 230.20, 230.21,  
7 230.25, 230.26, 230A.13, 232.74, or 232.147, 229B.4, 229B.6,  
8 229B.7, 229B.8, 229B.9, 229B.10, 229B.11, 229B.12, 229B.13,  
9 229B.14, 229B.15, 229B.16, 229B.17, 229B.18, or 229B.20, or to  
10 meet the compulsory reporting or disclosure requirements of  
11 other state or federal law relating to the protection of human  
12 health and safety.

13 Sec. 2. Section 228.6, subsection 3, Code 1999, is amended  
14 to read as follows:

15 3. Mental health information may be disclosed by a mental  
16 health professional if and to the extent necessary, to  
17 initiate or complete civil commitment proceedings under  
18 chapter 229, or in relation to proceedings for an order for  
19 outpatient treatment under chapter 229B.

20 Sec. 3. NEW SECTION. 229B.1 DEFINITIONS.

21 1. "Chemotherapy" means treatment of an individual by use  
22 of a drug or substance which cannot legally be delivered or  
23 administered to the ultimate user without a physician's  
24 prescription or medical order.

25 2. "Chief medical officer" means the medical director in  
26 charge of a public or private hospital, or treatment program,  
27 or that individual's physician-designee.

28 3. "Licensed physician" means an individual licensed under  
29 the provisions of chapter 148, 150, or 150A to practice  
30 medicine and surgery, osteopathy, or osteopathic medicine and  
31 surgery.

32 4. "Mental illness" means every type of mental disease or  
33 mental disorder, except that it does not refer to mental  
34 retardation as defined in section 222.2, or to insanity,  
35 diminished responsibility, or mental incompetency as the terms

1 are defined and used in the Iowa criminal code or in the rules  
2 of criminal procedure, Iowa court rules.

3 5. "Qualified mental health professional" means an  
4 individual experienced in the study and treatment of mental  
5 disorders in the capacity of any one of the following:

6 a. A psychologist licensed under chapter 154B.

7 b. A registered nurse licensed under chapter 152.

8 c. A social worker licensed under chapter 154C.

9 6. "Respondent" means any person about whom an application  
10 has been filed under section 229B.4, but who has not been  
11 finally ordered to obtain outpatient treatment.

12 7. "Single entry point process" means the same as defined  
13 in section 331.440.

14 Sec. 4. NEW SECTION. 229B.2 SINGLE ENTRY POINT PROCESS.

15 Notwithstanding any provision of this chapter to the  
16 contrary, any person whose treatment expenses are payable in  
17 whole or in part by a county shall be subject to all  
18 requirements of the single entry point process.

19 Sec. 5. NEW SECTION. 229B.3 CRITERIA FOR ORDER FOR  
20 OUTPATIENT TREATMENT.

21 1. For the purposes of this section, "rational treatment  
22 decision" means a decision based upon plausible or good  
23 reasons. An individual's treatment decision that is medically  
24 inadvisable or that conflicts with the individual's  
25 physician's recommendation may still be rational if it is  
26 based upon plausible or good reasons. A refusal to follow a  
27 physician's reasonable treatment plan does not fail to be  
28 rational if it reflects a good faith attempt to follow a  
29 reasonable alternative treatment plan or if it is protected by  
30 a constitutional right to refuse treatment.

31 2. An individual is an appropriate candidate for an order  
32 for outpatient treatment under this chapter if all of the  
33 following are true:

34 a. The individual is at least eighteen years old.

35 b. The individual is suffering from a mental illness.

1 c. Without outpatient treatment, within the reasonably  
2 foreseeable future, at least one of the following is true:

3 (1) The individual is more likely than not to cause  
4 physical injury to the individual or to others.

5 (2) The individual is more likely than not to lack  
6 substantial capacity to take care of the individual's basic  
7 needs for nourishment, shelter, clothing, or health.

8 d. At least one of the following will be true if the  
9 individual undergoes outpatient treatment:

10 (1) The individual alone will more likely than not be  
11 capable of taking care of the individual's basic needs for  
12 nourishment, shelter, clothing, and health.

13 (2) The individual will be capable of taking care of the  
14 individual's basic needs for nourishment, shelter, clothing,  
15 and health, with the help of family, friends, or others with  
16 responsibility for the individual's well-being.

17 e. For at least one temporally extended prior period, the  
18 respondent has failed to follow any reasonable treatment plan  
19 at all without reasons or without adequate justification.

20 f. The individual has previously been determined to be  
21 seriously mentally impaired, as defined in section 229.1, and  
22 has been hospitalized for inpatient treatment pursuant to the  
23 procedures in chapter 229.

24 g. As a result of the individual's mental illness, the  
25 individual lacks the capacity to make rational treatment  
26 decisions.

27 h. It is more likely than not that the individual will  
28 benefit from outpatient treatment.

29 Sec. 6. NEW SECTION. 229B.4 APPLICATION FOR OUTPATIENT  
30 TREATMENT ORDER.

31 1. An application for an outpatient treatment order may be  
32 commenced by any interested person by filing a verified  
33 application with the clerk of the district court of the county  
34 where the respondent is presently located, or which is the  
35 respondent's place of residence.

1 2. The clerk, or the clerk's designee, shall assist the  
2 applicant in completing the application.

3 3. The application shall include the following  
4 information:

5 a. The applicant's belief that the respondent meets the  
6 criteria set forth in section 229B.3 as an appropriate  
7 candidate for an outpatient treatment order.

8 b. Any pertinent facts.

9 4. The application shall be accompanied by one of the  
10 following:

11 a. A written statement of a psychiatrist, licensed  
12 physician, or other qualified mental health professional  
13 supporting the application.

14 b. One or more affidavits corroborating the application.

15 c. Testimony supporting the application. The testimony  
16 may include oral testimony taken over the telephone and  
17 reduced to writing by the clerk or the clerk's designee.

18 Sec. 7. NEW SECTION. 229B.5 SERVICE OF NOTICE UPON  
19 RESPONDENT.

20 1. Upon the filing of an application for an outpatient  
21 treatment order, the clerk of the district court shall docket  
22 the case and immediately notify a district judge, a district  
23 associate judge, a magistrate, or a judicial hospitalization  
24 referee, who shall review the application and accompanying  
25 documentation.

26 2. If the application is adequate as to form and content,  
27 the court shall set a time and place for the hearing on the  
28 application. The hearing shall be held within five business  
29 days after notice to the respondent, but not less than forty-  
30 eight hours after notice to the respondent, unless the  
31 respondent waives the forty-eight-hour notice requirement.

32 3. The court shall direct the clerk to send copies of the  
33 application and supporting documentation, together with notice  
34 informing the respondent of the procedures required by this  
35 chapter, to a process server for immediate service upon the

1 respondent. The process server shall serve the respondent in  
2 plain clothes via an unmarked car, if the judge, magistrate,  
3 or referee so requires.

4 Sec. 8. NEW SECTION. 229B.6 PROCEDURE AFTER APPLICATION  
5 IS FILED.

6 As soon as practicable after the filing of an application  
7 for an outpatient treatment order, the court shall do all of  
8 the following:

9 1. Determine whether the respondent has an attorney to  
10 represent the respondent in the proceeding on the outpatient  
11 treatment order. If the court determines that the respondent  
12 does not have an attorney, the court shall determine whether  
13 the respondent is financially able to employ an attorney and  
14 is capable of meaningfully assisting in selecting one.

15 If the respondent is unable to obtain an attorney for lack  
16 of funds, or is unable to meaningfully choose and retain an  
17 attorney, the court shall assign an attorney to represent the  
18 respondent.

19 If the respondent is financially unable to pay an attorney,  
20 the attorney shall be compensated in substantially the manner  
21 provided by section 815.7, except that if the county has a  
22 public defender, the court may designate the public defender  
23 or an attorney on the public defender's staff to act as the  
24 respondent's attorney.

25 The respondent's attorney shall represent the respondent at  
26 all stages of the proceedings, and shall represent the  
27 respondent at hearing on the outpatient treatment order.

28 2. Determine whether the respondent has an assigned  
29 patient advocate. If not, the court shall attempt to  
30 determine if the respondent has a county of legal settlement.  
31 If the respondent has a county of legal settlement, the court  
32 shall assign the patient advocate from that county to the  
33 respondent. If the respondent is determined to be a state  
34 case, or if the court is unable to determine the county of  
35 legal settlement prior to the time of the hearing, or in any

1 other circumstance, the court shall assign to the respondent  
2 the patient advocate in the county in which the court has  
3 venue.

4 3. Cause copies of the application and supporting  
5 documentation to be sent for review to the county attorney,  
6 the respondent's attorney of record, and the patient advocate.  
7 The application and supporting documentation shall be  
8 personally delivered by a method that assures confidentiality.

9 4. Issue a written order that requires an examination of  
10 the respondent, prior to the hearing, by one or more able and  
11 willing psychiatrists, or, if none are available, by one or  
12 more licensed physicians who shall submit a written report on  
13 the examination to the court as required by section 229B.7.

14 Sec. 9. NEW SECTION. 229B.7 PHYSICIAN'S EXAMINATION --  
15 REPORT.

16 1. An examination of the respondent shall be conducted by  
17 one or more licensed physicians, as required by the court's  
18 order, within two business days. The court shall make every  
19 reasonable effort to assign the examination to a qualified  
20 licensed psychiatrist.

21 2. If the respondent so desires, the respondent shall be  
22 entitled to a separate examination by a licensed psychiatrist,  
23 licensed physician, or qualified mental health professional of  
24 the respondent's own choice. The reasonable cost of such  
25 separate examination shall, if the respondent lacks sufficient  
26 funds to pay the cost, be paid from county funds upon order of  
27 the court.

28 3. A licensed physician conducting an examination pursuant  
29 to this section may consult with or request the participation  
30 in the examination of any qualified mental health  
31 professional, and may include with or attach to the written  
32 report of the examination any findings or observations of such  
33 professional.

34 4. The psychiatrist or licensed physician or physicians  
35 assigned to conduct the examination pursuant to section

1 229B.6, subsection 4, shall immediately inform the court if  
2 the respondent declines to be examined. If the court is  
3 informed that the respondent has declined to be examined by  
4 the psychiatrist or licensed physician or physicians pursuant  
5 to the court order, and if the court believes that it will  
6 prove helpful, the court may order the assigned patient  
7 advocate to assist in encouraging the respondent to comply  
8 with the examination order. If necessary, the court may order  
9 such limited detention of the respondent as is required to  
10 facilitate the examination of the respondent by the  
11 psychiatrist or licensed physician or physicians who have been  
12 ordered pursuant to section 229B.6, subsection 4, to examine  
13 the respondent, but in no event shall the detention last  
14 longer than twenty-four hours.

15 5. The psychiatrist or physician shall file a written  
16 report of the examination as soon as possible. The court  
17 shall encourage the examining psychiatrist or physician to  
18 file the report at least twenty-four hours before the hearing  
19 to assist all parties in preparing for the hearing. A written  
20 report of any psychiatrist, physician, or qualified mental  
21 health professional chosen by the respondent may be similarly  
22 filed with the clerk of the district court. The clerk shall  
23 immediately cause any report to be shown to the judge who  
24 issued the order, to the respondent's attorney of record, and  
25 the county attorney.

26 Sec. 10. NEW SECTION. 229B.8 CLINICAL OR OBJECTIVELY  
27 OBSERVABLE EVIDENCE OF FORESEEABLE DANGEROUSNESS.

28 Unless the respondent refuses to cooperate with the  
29 psychiatrist or physician assigned to examine the respondent,  
30 the evidence for a determination that the requirements of  
31 section 229B.3 have been met must include evidence of a  
32 clinical examination by a psychiatrist or physician, in  
33 addition to the evidence of objectively observable events  
34 required by section 229B.17, subsection 1, paragraph "b".  
35 This requirement shall also apply at any rehearing pursuant to

1 section 229B.13, 229B.18, or 229B.19.

2 Sec. 11. NEW SECTION. 229B.9 ORDER FOR INPATIENT  
3 TREATMENT.

4 1. If in the opinion of the chief medical officer, or the  
5 chief medical officer's agent, a person ordered to that  
6 facility or program on an outpatient basis under this chapter  
7 is seriously mentally impaired as defined in section 229.1,  
8 subsection 15, and would be more appropriately placed in  
9 inpatient status or in an alternative placement, or other more  
10 highly supervised setting than ordered outpatient treatment,  
11 the chief medical officer, or the chief medical officer's  
12 agent, shall initiate an application for an order of  
13 involuntary hospitalization pursuant to section 229.6.

14 2. If the court orders immediate custody pursuant to  
15 section 229.11, the respondent may be treated in accordance  
16 with the provisions of the outpatient treatment order, or any  
17 modifications thereof, in accordance with section 229B.12,  
18 while in custody awaiting the involuntary hospitalization  
19 hearing, notwithstanding the provisions of section 229.14,  
20 subsection 3; section 229.15, subsection 2; section 229.23,  
21 subsection 2; and the Iowa supreme court rules for involuntary  
22 hospitalization.

23 3. If the respondent is a physical danger to the  
24 respondent or others while in custody awaiting a hearing under  
25 section 229.6, the respondent may be treated in accordance  
26 with the provisions of section 229.23, subsection 2, to  
27 preserve the respondent's life or to avoid physical injury to  
28 the respondent or others.

29 4. If in the chief medical officer's opinion the  
30 respondent should be immediately detained before the hearing  
31 under section 229.6, but there are no means of immediate  
32 access to the district court, an emergency detention may be  
33 initiated in accordance with the procedures in section 229.22.

34 Sec. 12. NEW SECTION. 229B.10 OUTPATIENT TREATMENT  
35 HEARING PROCEDURE.

1 1. At the outpatient treatment order hearing, evidence in  
2 support of the contentions made in the application shall be  
3 presented by the county attorney.

4 2. During the hearing, the applicant and the respondent  
5 shall have an opportunity to testify.

6 3. The county attorney and the respondent may present and  
7 cross-examine witnesses, and the court may receive the  
8 testimony of family members of the respondent or of any other  
9 interested person.

10 4. The respondent has the right to be present at the  
11 hearing. If the respondent exercises that right and has been  
12 medicated within twelve hours, or such longer period of time  
13 as the court may designate, prior to the beginning of the  
14 hearing or an adjourned session thereof, the judge shall be  
15 informed of that fact and of the probable effects of the  
16 medication upon convening of the hearing.

17 5. All persons not necessary for the conduct of the  
18 proceeding shall be excluded, except that the court may admit  
19 persons having a legitimate interest in the proceeding and  
20 shall permit the respondent's patient advocate to attend the  
21 hearing.

22 6. Upon the motion of the county attorney, the court may  
23 in exceptional circumstances exclude the respondent during a  
24 witness's testimony if the court determines that it would be  
25 likely to harm the respondent's mental health to be present  
26 during that testimony that it justifies overriding the  
27 respondent's right to be present at the hearing.

28 7. The respondent's welfare shall be paramount and the  
29 hearing shall be conducted in as informal a manner as may be  
30 consistent with orderly procedure, but the issue shall be  
31 tried as a civil matter.

32 a. Discovery as is permitted under the Iowa rules of civil  
33 procedure shall be available to all parties.

34 b. The court shall receive all relevant and material  
35 evidence that may be offered and need not be bound by the

1 rules of evidence.

2 c. There shall be a presumption in favor of the  
3 respondent, and the burden of evidence in support of the  
4 contentions made in the application shall be upon the  
5 applicant.

6 d. If the respondent has substantially complied for the  
7 prior twelve months with any current treatment plans or  
8 recommendations made as a result of proceedings previously  
9 initiated under chapter 229 or this chapter, or current  
10 treatment recommendations of any other physician of the  
11 respondent, a rebuttable presumption arises that the  
12 respondent has the capacity to make rational treatment  
13 decisions. In deciding whether that presumption is overcome,  
14 the court shall consider, among other factors, how frequently  
15 and how recently the respondent has failed to follow  
16 reasonable treatment recommendations, and whether such  
17 failures, if any exist, have led to the respondent's  
18 hospitalization, failure to be able to take care of the  
19 respondent's basic needs for nourishment, shelter, clothing,  
20 or health, or to the respondent's being dangerous to self or  
21 others.

22 8. If upon completion of the hearing the court finds that  
23 the contention that the respondent should be ordered to  
24 outpatient treatment has not been sustained by clear and  
25 convincing evidence, the court shall deny the application and  
26 terminate the proceeding.

27 9. The clerk of the district court shall furnish copies of  
28 any orders to the respondent, and to the applicant if the  
29 applicant files a written waiver signed by the respondent.

30 Sec. 13. NEW SECTION. 229B.11 EVALUATION AND ORDER.

31 If the court finds that the evidence presented at the  
32 hearing demonstrates that the respondent meets the criteria  
33 set forth in section 229B.3 by clear and convincing evidence,  
34 the court shall immediately order the respondent to an  
35 outpatient treatment facility or program, subject to the

1 requirements of section 229B.12.

2 Sec. 14. NEW SECTION. 229B.12 TREATMENT PLAN -- CHOICE  
3 OF PROVIDER -- ADVANCE DIRECTIVE.

4 1. The chief medical officer of the facility or program  
5 where the respondent is treated as an outpatient, or the chief  
6 medical officer's agent, shall submit to the clerk of the  
7 district court, as soon as practical, but no later than thirty  
8 days after the respondent has been ordered as an outpatient, a  
9 treatment plan, including any outpatient treatment  
10 recommendations that the respondent is required to follow.

11 2. The chief medical officer of the facility or program to  
12 which the respondent has been ordered as an outpatient shall  
13 submit a copy of the treatment plan to the clerk of the  
14 district court.

15 3. The clerk of the district court shall send a copy of  
16 the outpatient treatment recommendations that the respondent  
17 is required to follow to the court, to the respondent's  
18 patient advocate, and to the respondent's attorney of record,  
19 who may relay the respondent's objections to the treatment  
20 plan, if any, and provide alternative treatment  
21 recommendations.

22 4. The court may accept the chief medical officer's  
23 treatment plan or require a revised treatment plan.

24 5. If the respondent wishes to receive outpatient  
25 treatment from a licensed physician or treatment facility that  
26 is willing to treat the respondent as a court-ordered  
27 outpatient, the court shall order the respondent to the care  
28 of that physician, qualified mental health professional, or  
29 facility upon the respondent's written request, provided that  
30 if the chosen provider is not a contract provider with the  
31 county of legal settlement, the county of legal settlement,  
32 state, or other government payor shall only be obligated to  
33 pay to the noncontract provider the average cost paid for  
34 ordered outpatient treatment to contract providers.

35 6. A respondent may execute an advance directive, or

1 durable power of attorney for health care decisions, in  
2 accordance with chapter 144B. If validly executed, a durable  
3 power of attorney for health care decisions shall be binding  
4 on the court and on any treating mental health professional  
5 provided that the decisions made by the agent possessing the  
6 power of attorney, and the instructions, if any, to the agent  
7 in the executed power of attorney for health care decisions  
8 are within accepted medical standards and practices. If  
9 disputed, decisions regarding an advance directive or durable  
10 power of attorney for health care decisions shall be made by  
11 the judicial trier of fact under this section. This section  
12 does not require a physician or qualified mental health  
13 professional to accept as an outpatient an individual who has  
14 executed a durable power of attorney for health care decisions  
15 that provides for treatment, either by instructions or by the  
16 power of attorney's decision, that in the physician or  
17 qualified mental health professional's judgment would not be  
18 an appropriate treatment for the outpatient's condition.

19 Sec. 15. NEW SECTION. 229B.13 REVIEW HEARING.

20 1. For any respondent ordered to undergo outpatient  
21 treatment, a review hearing shall be conducted every twelve  
22 months to determine whether or not the respondent shall remain  
23 under order to receive outpatient treatment.

24 2. At any review hearing:

25 a. The case for continued outpatient treatment shall be  
26 presented by the county attorney.

27 b. The respondent shall have the right to an attorney,  
28 including at a rehearing for probable cause under section  
29 229B.18.

30 3. The court shall make the same determinations with  
31 regard to the respondent's legal representation at each review  
32 hearing in the same manner as required prior to an initial  
33 hearing pursuant to section 229B.6, subsection 1.

34 4. At any review hearing, if the respondent has  
35 substantially complied with the required treatment plan for

1 the prior twelve months, a rebuttable presumption arises that  
2 the respondent has the capacity to make rational treatment  
3 decisions. In deciding whether that presumption is overcome,  
4 the court shall consider, among other factors, how frequently  
5 and how recently the respondent has failed to follow  
6 reasonable treatment recommendations, and whether such  
7 failures, if any exist, have led to the respondent's  
8 hospitalization, failure to be able to take care of the  
9 respondent's basic needs for nourishment, shelter, clothing,  
10 or health, or to the respondent's being dangerous to self or  
11 others.

12 5. Yearly review hearings shall be conducted in accordance  
13 with the procedures for initial hearings in section 229B.10,  
14 except as specifically modified by this section.

15 Sec. 16. NEW SECTION. 229B.14 PERIODIC REPORTS.

16 1. The chief medical officer of the facility or program  
17 where the respondent obtains treatment as an outpatient, or  
18 the chief medical officer's agent, shall furnish reports on  
19 the respondent's progress every six months to the court, to  
20 the respondent's patient advocate, and to the respondent.

21 2. If in the chief medical officer's opinion providing a  
22 copy of a report to the respondent would substantially hinder  
23 the respondent's progress, and the chief medical officer so  
24 informs the court and the respondent's patient advocate, the  
25 chief medical officer need not provide a copy of the progress  
26 report to the respondent, unless the respondent makes an  
27 affirmative request for one.

28 3. Even if the chief medical officer informs the court  
29 that it would substantially hinder the respondent's progress  
30 to receive a copy of the report, the chief medical officer  
31 shall still provide a report to the court and to the  
32 respondent's patient advocate.

33 Sec. 17. NEW SECTION. 229B.15 FAILURE TO TIMELY FILE  
34 PROGRESS REPORTS.

35 1. If the progress reports required by section 229B.14 are

1 not filed in a timely manner or if services to a respondent  
2 are not provided, the court shall so inform the single entry  
3 point process and direct the single entry point process not to  
4 compensate the outpatient treatment facility or program.

5 2. If the mental health facility or program where the  
6 respondent obtains outpatient treatment does not provide  
7 progress reports in a timely manner or if services to the  
8 respondent are not provided, but the mental health facility or  
9 program is compensated by federal, private, or other agency  
10 not state or local, the mental health facility or program  
11 where the respondent has obtained treatment may be penalized  
12 by the court in the amount of compensation to which the  
13 facility or program would otherwise be entitled. The amounts  
14 collected from such penalties shall be distributed in a fair  
15 manner to the counties as a surplusage or repayment for mental  
16 health service expenditures incurred.

17 3. Judicial hospitalization referees shall have the  
18 authority to assess penalties and issue orders under this  
19 section.

20 Sec. 18. NEW SECTION. 229B.16 NOTIFICATION OF OUTPATIENT  
21 NONCOMPLIANCE -- RESPONSE.

22 1. If the respondent does not comply with the court's  
23 order for outpatient treatment, the chief medical officer  
24 shall promptly notify the court upon becoming aware of any  
25 such noncompliance.

26 2. The court may take reasonable steps to ensure  
27 compliance with the court's outpatient treatment order,  
28 including, but not limited to, any or all of the following:

29 a. Directing that the respondent's patient advocate remind  
30 the respondent of the respondent's treatment obligations and  
31 attempt to persuade the noncompliant respondent to comply with  
32 any required chemotherapy.

33 b. Presenting the respondent to the treatment facility or  
34 program for treatment.

35 3. The court may order the respondent to appear before the

1 court. If necessary, the court may order the sheriff to bring  
2 the respondent before the court.

3 4. Unless the court has good reason based upon past  
4 experience with the respondent or the respondent's patient  
5 advocate that the above methods will not be effective in  
6 ensuring compliance with the court's outpatient treatment  
7 order, or immediate treatment is necessary, the court shall  
8 attempt to secure compliance by one or more of the above  
9 reasonable steps before ordering the sheriff to bring the  
10 noncompliant respondent to treatment. If necessary, the court  
11 shall order the sheriff to bring the respondent to the  
12 treatment facility or program for treatment.

13 Sec. 19. NEW SECTION. 229B.17 EVIDENCE -- OUTPATIENT  
14 TREATMENT ORDER.

15 1. In determining whether the criteria of section 229B.3  
16 are met by clear and convincing evidence and therefore that  
17 the respondent should be ordered to a treatment facility or  
18 program, the court shall take into account, both as presently  
19 experienced, and as likely to be the case in the reasonably  
20 foreseeable future, at least the following evidence:

21 a. The subjective distress experienced by the respondent.  
22 b. Any objectively observable functional impairment of the  
23 respondent at work, in school, or in social interactions.

24 1A. In deciding whether the criteria of section 229B.3  
25 have been met, the court shall consider, among other factors,  
26 how frequently and how recently the respondent has failed to  
27 follow reasonable treatment recommendations, and whether such  
28 failures, if any exist, have led to the respondent's  
29 hospitalization, failure to be able to take care of the  
30 respondent's basic needs for nourishment, shelter, clothing,  
31 or health, or to the respondent's being dangerous to self or  
32 others.

33 2. The same factors should be taken into account in  
34 rehearings and writs under sections 229B.13, 229B.18, and  
35 229B.19.

1     Sec. 20. NEW SECTION. 229B.18 REHEARING FOR PROBABLE  
2 CAUSE.

3     1. A respondent, a family member, the respondent's  
4 advocate, or an individual who can demonstrate that the person  
5 has a substantial interest in the welfare of the respondent  
6 may petition for a rehearing on the grounds that the  
7 respondent no longer meets the criteria for ordered outpatient  
8 treatment.

9     2. Upon probable cause that one or more of the required  
10 criterion for an outpatient treatment order can no longer be  
11 proven by clear and convincing evidence, the court shall grant  
12 the petition and assign a rehearing no sooner than three  
13 business days after notification to the respondent per section  
14 229B.5, but within ten business days of the date of service of  
15 the petition upon the respondent.

16     3. Probable cause may be demonstrated by affidavit,  
17 medical report, or any other means deemed appropriate by the  
18 court.

19     4. The procedure set out in this section shall not be  
20 available:

21     a. Until the respondent has been subject to an outpatient  
22 treatment order for six months.

23     b. More than once every six months regarding the same  
24 respondent.

25     5. At any such hearing the respondent shall have the right  
26 to an attorney. If the respondent cannot afford an attorney,  
27 the court shall assign one in accordance with the procedures  
28 in section 229B.6.

29     6. At any probable cause hearing, evidence in support of a  
30 continued outpatient treatment order shall be presented by the  
31 county attorney.

32     7. Review hearings shall be conducted in accordance with  
33 the procedures set for initial hearings in section 229B.10.

34     Sec. 21. NEW SECTION. 229B.19 CHALLENGE TO ORDER FOR  
35 OUTPATIENT TREATMENT.

1 1. All respondents ordered to outpatient treatment shall  
2 be entitled to the benefit of a writ of unconstitutional  
3 deprivation of liberty, which is analogous to a writ of habeas  
4 corpus.

5 2. The question of the constitutionality of the order to  
6 outpatient treatment shall be decided at a hearing on the  
7 writ. The hearing shall be before the district court,  
8 pursuant to this section and chapter 663.

9 3. If the judge decides that the respondent should be  
10 ordered to outpatient treatment, such decision shall be no bar  
11 to the issuing of the writ a second time, whenever it shall be  
12 alleged that such respondent no longer meets constitutional  
13 requirements for being ordered to outpatient treatment.

14 4. The respondent shall have the right to be represented  
15 by an attorney at the hearing. If the respondent cannot  
16 afford an attorney, the court shall appoint one for the  
17 respondent.

18 5. The attorney shall be compensated by the county of  
19 legal settlement of the respondent, or, if no county of legal  
20 settlement exists, then by the state. The attorney shall be  
21 compensated with a maximum fee of three hundred dollars, at an  
22 hourly rate consistent with section 815.7, to be exceeded only  
23 upon motion to the court for good cause shown.

24 Sec. 22. NEW SECTION. 229B.20 DISCHARGE.

25 1. When, in the opinion of the chief medical officer of  
26 the treatment facility or program where the respondent has  
27 obtained treatment, the respondent no longer requires  
28 outpatient treatment, the chief medical officer shall  
29 immediately notify the court, and explain in detail why the  
30 respondent no longer needs outpatient treatment and why the  
31 respondent no longer meets the criterion for an order of  
32 outpatient treatment.

33 2. The court shall issue an order approving the  
34 respondent's discharge from the outpatient treatment facility  
35 or program, or in its discretion, may require a hearing be

1 held to determine whether the respondent still meets the  
2 criteria for an outpatient treatment order.

3 3. To justify termination of an outpatient treatment  
4 order, the chief medical officer's report must explain in  
5 detail, including reasons and evidence, why one or more of the  
6 legal criterion for an outpatient treatment order is no longer  
7 satisfied. A report by the chief medical officer asserting  
8 only that the respondent no longer requires outpatient  
9 treatment is insufficient to justify termination of an  
10 outpatient treatment order.

11 4. The clerk of the district court shall send a copy of  
12 the chief medical officer's recommendation and the court's  
13 order to the respondent's patient advocate, and to the  
14 respondent.

15 Sec. 23. NEW SECTION. 229B.21 TREATMENT PENDING APPEAL.

16 When a respondent appeals to the supreme court the decision  
17 that the respondent should be ordered to outpatient treatment,  
18 and the respondent was ordered to a treatment facility or  
19 program before the court is informed of the respondent's  
20 intent to appeal its finding, the respondent shall follow any  
21 treatment plan prescribed by the chief medical officer of the  
22 facility or program, or the officer's agent, and approved by  
23 the court, even if the treatment plan or approval thereof  
24 postdates the appeal, unless the supreme court orders  
25 otherwise.

26 Sec. 24. NEW SECTION. 229B.22 CONFIDENTIALITY.

27 1. The medical records of any examining licensed physician  
28 or treatment facility or program that treats any respondent  
29 under this chapter shall be confidential in accordance with  
30 the provisions in section 229.25 and chapter 228.

31 2. The records of proceedings for outpatient treatment  
32 pursuant to this chapter shall be confidential in accordance  
33 with the terms in section 229.24, chapter 228, and federal  
34 law.

35 Sec. 25. NEW SECTION. 229B.23 PROVISION OF SUMMARY OF

1 PROCEDURES TO APPLICANT IN OUTPATIENT TREATMENT ORDER  
2 APPLICATIONS.

3 1. The department of human services, in consultation with  
4 the office of attorney general, shall develop a summary of the  
5 procedures involved in outpatient treatment orders under this  
6 chapter, and applications for information concerning the  
7 participation of an applicant in the proceedings.

8 2. The summary shall be provided by the department, at the  
9 department's expense, to the clerks of the district court who  
10 shall make the summary available to all applicants prior to  
11 the filing of a verified application under section 229B.4, or  
12 to any other person upon request, and who shall attach a copy  
13 of the summary to the notice of hearing which is served upon  
14 the respondent under section 229B.5.

15 3. The summary may include, but is not limited to, the  
16 following:

17 a. The criteria under section 229B.3 for ordering a person  
18 to outpatient treatment.

19 b. A description of the hearing process.

20 c. An explanation of the applicant's right to testify and  
21 examples of the kinds of relevant information which may be  
22 introduced at the hearing.

23 d. An explanation of the duties of the county attorney in  
24 outpatient treatment proceedings.

25 4. The summary required under this section may be combined  
26 in the summary required under section 229.45, or may be  
27 separately provided.

28 Sec. 26. NEW SECTION. 229B.24 APPLICATION FILED WITHOUT  
29 PROBABLE CAUSE OR GOOD FAITH BELIEF.

30 1. If the court determines that the respondent does not  
31 meet the criteria for outpatient treatment set forth in  
32 section 229B.3, and that the application was filed without  
33 probable cause, the court may order a hearing to determine if  
34 the applicant shall pay the costs of the hearing and medical  
35 examination.



1 sections 229B.8, 229B.9, 229B.11, and 229B.17 address  
2 evidentiary standards and issues relating to the hearing and  
3 order.

4 New Code section 229B.12 addresses the posthearing  
5 treatment plan, while new Code section 229B.13 addresses the  
6 procedure for periodic review hearings. New Code section  
7 229B.14 sets forth the requirements for progress reports on  
8 the respondent's treatment, and new Code section 229B.15 sets  
9 forth penalties for untimely filings of such progress reports.

10 New Code section 229B.16 addresses the procedures for  
11 dealing with a respondent who does not comply with the  
12 treatment order.

13 New Code section 229B.19 addresses the applicable  
14 procedures for challenging the constitutionality of an order  
15 to outpatient treatment, and new Code section 229.18 addresses  
16 rehearings for probable cause.

17 New Code section 229B.20 addresses the procedure for  
18 discharge from treatment, and new Code section 229B.21  
19 addresses treatment pending appeal.

20 New Code section 229B.22 addresses confidentiality issues,  
21 and new Code section 229B.23 requires the department of human  
22 services to develop a summary of the procedures under this  
23 chapter for applicants and respondents, similar to the summary  
24 required for involuntary hospitalizations.

25 New Code section 229B.24 addresses payment of costs for  
26 applications filed without probably cause or a good faith  
27 belief. New Code section 229B.25 addresses appeals to  
28 district court from hearings before judicial hospitalization  
29 referees.

30 Corresponding amendments are made to Code section 331.756,  
31 regarding duties of the county attorney, and Code section  
32 228.6, regarding disclosure of mental health information.

33 The bill also contains a direction to the courts regarding  
34 development of new forms to encompass the procedures  
35 implemented by the new Code chapter.

1 This bill may include a state mandate as defined in Code  
2 section 25B.3. This bill makes inapplicable Code section  
3 25B.2, subsection 3, which would relieve a political  
4 subdivision from complying with a state mandate if funding for  
5 the cost of the state mandate is not provided or specified.  
6 Therefore, political subdivisions are required to comply with  
7 any state mandate included in this bill.

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HOUSE FILE 2366  
FISCAL NOTE

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A fiscal note for House File 2366 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House File 2366 establishes a procedure for ordering outpatient mental health treatment.

ASSUMPTIONS

1. There will little change in the number of individuals being provided services or in the types and quantity of services.
2. There will be an increase in the number of court actions due to the court procedures specified in the Bill.

FISCAL IMPACT

House File 2366 is expected to have a minimal General Fund fiscal impact to the Department of Human Services. While there is expected to be some impact to the Judicial Department, the actual impact cannot be determined due to insufficient information.

House File 2366 is not expected to have any significant impact on local governments.

SOURCES

Department of Human Services  
Judicial Department

(LSB 5145hv, SLL)

FILED MARCH 6, 2000

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2366

H-8298

1 Amend House File 2366 as follows:

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

4 "Sec. \_\_\_\_ Section 229.7, Code 1999, is amended to  
5 read as follows:

6 229.7 SERVICE OF NOTICE UPON RESPONDENT.

7 Upon the filing of an application for involuntary  
8 hospitalization, the clerk shall docket the case and  
9 immediately notify a district court judge, district  
10 associate judge, or magistrate who is admitted to the  
11 practice of law in this state, who shall review the  
12 application and accompanying documentation. If the  
13 application is adequate as to form, the court may set  
14 a time and place for a hearing on the application, if  
15 feasible, but the hearing shall not be held less than  
16 forty-eight hours after notice to the respondent  
17 unless the respondent waives such minimum prior notice  
18 requirement. The court shall direct the clerk to send  
19 copies of the application and supporting  
20 documentation, together with a notice informing the  
21 respondent of the procedures required by this chapter,  
22 to the sheriff or the sheriff's deputy for immediate  
23 service upon the respondent. If the respondent is  
24 taken into custody under section 229.11, service of  
25 the application, documentation and notice upon the  
26 respondent shall be made at the time the respondent is  
27 taken into custody. The process server shall serve  
28 the respondent in plain clothes via an unmarked  
29 vehicle, if the judge, magistrate, or referee so  
30 requires, unless the sheriff's department does not  
31 have access to an unmarked vehicle."

A.

32 2. Page 5, line 3, by inserting after the word  
33 "requires" the following: ", unless the process  
34 server does not have an unmarked vehicle".

B

35 3. Title page, line 2, by inserting after the  
36 word "treatment" the following: ", and making certain  
37 related changes to inpatient commitment procedures".

38 4. By renumbering as necessary.

By KREIMAN of Davis RAECKER of Polk  
GRUNDBERG of Polk KETTERING of Sac

H-8298 FILED MARCH 9, 2000

*A. adopted 3-14-00 (P.751)*  
*B. w/d 3/14/00 (P.751)*

HOUSE FILE 2366

H-8300

1 Amend House File 2366 as follows:

2 1. Page 20, by striking lines 19 and 20.

By KREIMAN of Davis

H-8300 FILED MARCH 9, 2000

*Adopted*  
*3-14-00*  
*(P.753)*

HOUSE FILE 2366

H-8309

1 Amend the amendment, H-8294, to House File 2366, as  
2 follows:

3 1. Page 1, line 17, by inserting after the word  
4 "information." the following: "In addition to any  
5 other distribution pursuant to this subsection, a copy  
6 of the summary shall also be provided by the hospital  
7 or other institution to every inpatient psychiatric  
8 patient upon discharge from the hospital or other  
9 institution."

By KREIMAN of Davis  
GRUNDBERG of Polk

RAECKER of Polk  
KETTERING of Sac

H-8309 FILED MARCH 13, 2000

*adopted*

*3-14-00  
(p. 152)*

HOUSE FILE 2366

H-8311

1 Amend the amendment, H-8298, to House File 2366, as  
2 follows:

3 1. Page 1, by striking lines 27 through 31 and  
4 inserting the following: "taken into custody. The  
5 judge, magistrate, or judicial hospitalization referee  
6 shall require the sheriff to utilize plain clothes and  
7 an unmarked vehicle, unless the sheriff demonstrates  
8 good cause for waiver of the requirement."

9 2. Page 1, by striking lines 32 through 34 and  
10 inserting the following:

11 "\_\_\_\_. Page 5, by striking lines 1 through 3, and  
12 inserting the following: "respondent. The judge,  
13 magistrate, or judicial hospitalization referee shall  
14 require the process server to utilize plain clothes  
15 and an unmarked vehicle, unless the process server  
16 demonstrates good cause for waiver of the  
17 requirement.""

18 3. By renumbering as necessary.

By KREIMAN of Davis  
GRUNDBERG of Polk

RAECKER of Polk  
KETTERING of Sac

H-8311 FILED MARCH 13, 2000

*Lost  
3-14-00  
(p. 151)*

## HOUSE FILE 2366

H-8295

- 1 Amend House File 2366 as follows:  
 2 1. Page 3, line 21, by inserting after the word  
 3 and figure "section 229.1," the following: "within  
 4 the previous five years,".

By KREIMAN of Davis  
 GRUNDBERG of Polk

RAECKER of Polk  
 KETTERING of Sac

H-8295 FILED MARCH 9, 2000

*Adapted*

3-14-00

(P. 752)

## HOUSE FILE 2366

H-8296

- 1 Amend House File 2366 as follows:  
 2 1. Page 1, by inserting before line 1 the  
 3 following:  
 4 "Section 1. Section 144B.2, Code 1999, is amended  
 5 to read as follows:  
 6 144B.2 DURABLE POWER OF ATTORNEY FOR HEALTH CARE.  
 7 1. A durable power of attorney for health care  
 8 authorizes the attorney in fact to make health care  
 9 decisions for the principal if the durable power of  
 10 attorney for health care substantially complies with  
 11 the requirements of this chapter. A durable power of  
 12 attorney for health care may be executed with regard  
 13 to decisions related to the principal's physical  
 14 condition, mental condition, or both physical and  
 15 mental conditions.  
 16 2. A document executed prior to May 8, 1991,  
 17 purporting to create a durable power of attorney for  
 18 health care shall be deemed valid if the document  
 19 specifically authorizes the attorney in fact to make  
 20 health care decisions and is signed by the principal."  
 21 2. Title page, line 1, by inserting after the  
 22 word "Act" the following: "relating to mental health  
 23 commitments, by".  
 24 3. Title page, line 2, by inserting after the  
 25 word "treatment" the following: ", and relating to  
 26 execution of powers of attorney for mental or physical  
 27 conditions".  
 28 4. By renumbering as necessary.

By KREIMAN of Davis  
 GRUNDBERG of Polk

RAECKER of Polk  
 KETTERING of Sac

H-8296 FILED MARCH 9, 2000

*Adapted*

3-14-00

(P. 748)

HOUSE FILE 2366

H-8297

1 Amend House File 2366 as follows:

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

4 "Sec. \_\_\_\_ . Section 229.13, Code 1999, is amended  
5 by adding the following new unnumbered paragraph:  
6 NEW UNNUMBERED PARAGRAPH. The order entered by the  
7 court under this section shall continue for one year,  
8 subject to the provisions for discharge and  
9 termination under section 229.16, and the provisions  
10 for renewal of the order after a review hearing,  
11 pursuant to section 229.16A.

12 Sec. \_\_\_\_ . NEW SECTION. 229.16A REVIEW HEARING.

13 1. For any respondent who is subject to an order  
14 to receive hospitalization or treatment under this  
15 chapter, a review hearing may be conducted once every  
16 twelve months to determine whether or not the  
17 respondent shall remain under order to receive  
18 hospitalization or treatment, upon application by any  
19 party to the proceeding, or upon the court's own  
20 motion.

21 2. The review hearing shall be held no more than  
22 sixty days after the filing of an application or  
23 motion for a review hearing.

24 3. The court may enter an order pursuant to  
25 section 229.10 to ensure that a current psychological  
26 evaluation is on file prior to the time of the review  
27 hearing. The order shall not include detention  
28 pursuant to section 229.11 unless the respondent is  
29 already committed to inpatient treatment, or unless  
30 there is no other reasonable alternative for obtaining  
31 the evaluation.

32 4. At the review hearing, all rights, procedures,  
33 and standards applicable in an initial hearing under  
34 this chapter shall apply.

35 5. The court shall order the continued  
36 hospitalization or treatment of the respondent for  
37 another one-year period if the court finds that the  
38 contention that the respondent has a serious mental  
39 impairment is sustained by clear and convincing  
40 evidence."

A.

41 2. Title page, line 1, by inserting after the  
42 word "Act" the following: "relating to mental health  
43 commitments, by".

B

44 3. Title page, line 2, by inserting after the  
45 word "treatment" the following: ", and making certain  
46 related changes to inpatient commitment procedures".

A.

47 4. By renumbering as necessary.

By KREIMAN of Davis  
GRUNDBERG of Polk

RAECKER of Polk  
KETTERING of Sac

H-8297 FILED MARCH 9, 2000

A. adopted 3-14-00 (p. 749)

B - W/A 3/14/00 p. (749)

HOUSE FILE 2366

H-8294

1 Amend House File 2366 as follows:

2 1. Page 19, by inserting after line 27 the  
3 following:

4 "Sec. . . . NEW SECTION. 229B.23A PROVISION OF  
5 MATERIALS REGARDING POWERS OF ATTORNEY FOR MENTAL  
6 HEALTH TREATMENT.

7 1. The department of human services, in  
8 consultation with the office of attorney general,  
9 shall develop a summary of the procedures involved for  
10 execution of a durable power of attorney for mental  
11 health treatment, and if requested, shall provide  
12 assistance in completing the forms.

13 2. The summary shall be provided by the  
14 department, at the department's expense, by a method  
15 that uses best efforts to ensure that all consumers of  
16 mental health services in this state have the  
17 opportunity to receive the information."

18 2. By renumbering as necessary.

By KREIMAN of Davis  
GRUNDBERG of Polk

RAECKER of Polk  
KETTERING of Sac

H-8294 FILED MARCH 9, 2000

*Adopted*  
*3-14-00*

*(p. 752)*

HOUSE FILE 2366

H-8308

1 Amend the amendment, H-8297, to House File 2366, as  
2 follows:

3 1. Page 1, lines 25 and 26, by striking the words  
4 "psychological evaluation" and inserting the  
5 following: "report of a physician's examination,  
6 conducted pursuant to the procedures in section  
7 229.10,".

8 2. Page 1, line 27, by inserting after the word  
9 "hearing." the following: "For purposes of this  
10 section, "current" means a report of a physician's  
11 examination completed no more than seven days prior to  
12 the hearing."

By KREIMAN of Davis  
GRUNDBERG of Polk

RAECKER of Polk  
KETTERING of Sac

H-8308 FILED MARCH 13, 2000

*Adopted*

*3-14-00*

*(p. 749)*