

# House Study Bill 576

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED JUDICIAL BRANCH  
BILL)

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

## A BILL FOR

1 An Act relating to involuntary hospitalization proceedings for  
2 chronic substance abusers and persons with mental illness.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5404DP 81  
5 rh/gg/14

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1 1 Section 1. Section 125.82, subsections 1 and 3, Code 2005,  
1 2 are amended to read as follows:  
1 3 1. At a commitment hearing, evidence in support of the  
1 4 contentions made in the application shall be presented by the  
1 5 applicant, or by an attorney for the applicant, or by the  
1 6 county attorney if the county attorney is the applicant.  
1 7 During the hearing the applicant and the respondent shall be  
1 8 afforded an opportunity to testify and to present and cross=  
1 9 examine witnesses, and the court may receive the testimony of  
1 10 other interested persons. If the respondent is present at the  
1 11 hearing, as provided in subsection 3, and has been medicated  
1 12 within twelve hours, or a longer period of time as the court  
1 13 may designate, prior to the beginning of the hearing or a  
1 14 session of the hearing, the court shall be informed of that  
1 15 fact and of the probable effects of the medication upon  
1 16 convening of the hearing.

1 17 3. The person who filed the application and a physician or  
1 18 professional who has examined the respondent in connection  
1 19 with the commitment hearing shall be present at the hearing,  
1 20 unless prior to the hearing the court for good cause finds  
1 21 that their presence or testimony is not necessary. The  
1 22 respondent and applicant may waive the presence or telephonic  
1 23 appearance of the physician or professional who examined the  
1 24 respondent and agree to submit as evidence the written report  
1 25 of the physician or professional. "Good cause" for finding  
1 26 that the testimony of the physician or professional who  
1 27 examined the respondent is not necessary may include, but is  
1 28 not limited to, such a waiver. If the court determines that  
1 29 the testimony of the physician or professional is necessary,  
1 30 the court may allow the physician or professional to testify  
1 31 by telephone. The respondent shall be present at the hearing  
1 32 unless prior to the hearing the respondent's attorney  
1 33 stipulates in writing that the attorney has conversed with the  
1 34 respondent, and that in the attorney's judgment the respondent  
1 35 cannot make a meaningful contribution to the hearing, or that  
2 1 the respondent has waived the right to be present, and the  
2 2 basis for the attorney's conclusions. A stipulation to the  
2 3 respondent's absence shall be reviewed by the court before the  
2 4 hearing, and may be rejected if it appears that insufficient  
2 5 grounds are stated or that the respondent's interests would  
2 6 not be served by the respondent's absence.  
2 7 Sec. 2. Section 229.10, subsection 1, unnumbered paragraph  
2 8 1, Code 2005, is amended to read as follows:  
2 9 An examination of the respondent shall be conducted by one  
2 10 or more licensed physicians, as required by the court's order,  
2 11 within a reasonable time. If the respondent is detained  
2 12 pursuant to section 229.11, subsection 2, the examination  
2 13 shall be conducted within twenty-four hours. If the  
2 14 respondent is detained pursuant to section 229.11, subsection  
2 15 1 or 3, the examination shall be conducted within forty-eight  
2 16 hours. If the respondent so desires, the respondent shall be  
2 17 entitled to a separate examination by a licensed physician of  
2 18 the respondent's own choice. The reasonable cost of ~~such~~  
2 19 ~~separate examination~~ the examinations shall, if the respondent

2 20 lacks sufficient funds to pay the cost, be paid from county  
2 21 funds upon order of the court.

2 22 Sec. 3. Section 229.12, subsection 3, Code 2005, is  
2 23 amended to read as follows:

2 24 3. The respondent's welfare shall be paramount and the  
2 25 hearing shall be conducted in as informal a manner as may be  
2 26 consistent with orderly procedure, but consistent therewith  
2 27 the issue shall be tried as a civil matter. Such discovery as  
2 28 is permitted under the Iowa rules of civil procedure shall be  
2 29 available to the respondent. The court shall receive all  
2 30 relevant and material evidence which may be offered and need  
2 31 not be bound by the rules of evidence. There shall be a  
2 32 presumption in favor of the respondent, and the burden of  
2 33 evidence in support of the contentions made in the application  
2 34 shall be upon the applicant. The physician or professional  
2 35 who examined the respondent shall be present at the hearing  
3 1 unless prior to the hearing the court for good cause finds  
3 2 that the physician's or professional's presence or testimony  
3 3 is not necessary. The respondent and applicant may waive the  
3 4 presence or the telephonic appearance of the physician or  
3 5 professional who examined the respondent and agree to submit  
3 6 as evidence the written report of the physician or  
3 7 professional. "Good cause" for finding that the testimony of  
3 8 the physician or professional who examined the respondent is  
3 9 not necessary may include, but is not limited to, such a  
3 10 waiver. If the court determines that the testimony of the  
3 11 physician or professional is necessary, the court may allow  
3 12 the physician or the professional to testify by telephone. If  
3 13 upon completion of the hearing the court finds that the  
3 14 contention that the respondent is seriously mentally impaired  
3 15 has not been sustained by clear and convincing evidence, it  
3 16 shall deny the application and terminate the proceeding.

3 17 EXPLANATION

3 18 This bill relates to involuntary hospitalization  
3 19 proceedings for chronic substance abusers and persons with  
3 20 mental illness.

3 21 The bill provides that evidence in support of an  
3 22 application for commitment or treatment of a chronic substance  
3 23 abuser shall be presented by the county attorney at an  
3 24 involuntary hospitalization hearing. Current law allows the  
3 25 applicant or person who filed the application, an attorney for  
3 26 the applicant, or the county attorney to present such  
3 27 evidence.

3 28 The bill provides that a physician or professional who  
3 29 examined a suspected chronic substance abuser or person with  
3 30 mental illness shall be present at an involuntary commitment  
3 31 or treatment hearing or an involuntary hospitalization hearing  
3 32 unless the court for good cause finds prior to either hearing  
3 33 the presence or testimony of the physician or professional is  
3 34 not necessary. In such a case, the respondent and applicant  
3 35 may waive the presence or telephonic appearance of the  
4 1 physician or professional and agree to submit the physician's  
4 2 or professional's written report as evidence. If the court  
4 3 finds such testimony is necessary, the court may allow the  
4 4 physician or professional to testify by telephone.

4 5 The bill also makes a change to language relating to the  
4 6 cost of physician examinations of persons with mental illness  
4 7 to conform to similar language that currently applies to  
4 8 chronic substance abusers.

4 9 LSB 5404DP 81

4 10 rh:rj/gg/14