

**Senate File 2050 - Introduced**

SENATE FILE 2050

BY RIELLY and HECKROTH

**A BILL FOR**

1 An Act relating to the emergency detention or hospitalization  
2 of a person incapacitated by a chemical substance or with a  
3 serious mental impairment, and providing penalties.

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

1 Section 1. Section 125.34, subsection 2, Code 2009, is  
2 amended to read as follows:

3 2. If no facility is readily available the person may  
4 be taken to an emergency medical service customarily used  
5 for incapacitated persons. The peace officer in detaining  
6 the person and in taking the person to a facility shall make  
7 every reasonable effort to protect the person's health and  
8 safety. In detaining the person the detaining officer may take  
9 reasonable steps for self-protection. Detaining a person under  
10 section 125.91 is not an arrest and no entry or other record  
11 shall be made to indicate that the person who is detained has  
12 been arrested or charged with a crime except for an entry  
13 or other record relating to an arrest upon discharge that is  
14 permissible under section 125.91.

15 Sec. 2. Section 125.91, subsection 2, paragraphs a and b,  
16 Code Supplement 2009, are amended to read as follows:

17 a. A peace officer who has reasonable grounds to believe  
18 that the circumstances described in subsection 1 are applicable  
19 may, without a warrant, take or cause that person to be taken  
20 to the nearest available facility referred to in section  
21 125.81, subsection 2, paragraph "b" or "c". Such an intoxicated  
22 or incapacitated person may also be delivered to a facility by  
23 someone other than a peace officer upon a showing of reasonable  
24 grounds. Upon delivery of the person to a facility under  
25 this section, the examining physician may order treatment of  
26 the person, but only to the extent necessary to preserve the  
27 person's life or to appropriately control the person's behavior  
28 if the behavior is likely to result in physical injury to the  
29 person or others if allowed to continue. The peace officer or  
30 other person who delivered the person to the facility shall  
31 describe the circumstances of the matter to the examining  
32 physician. If the person is a peace officer, the peace officer  
33 may do so either in person or by written report. A peace  
34 officer shall appear in person if the person is to be arrested  
35 upon discharge. If the examining physician has reasonable

1 grounds to believe that the circumstances in subsection  
2 1 are applicable, the examining physician shall at once  
3 communicate with the nearest available magistrate as defined  
4 in section 801.4, subsection 10. During the communication  
5 with the nearest available magistrate, the peace officer shall  
6 inform the magistrate that the person is to be arrested upon  
7 discharge and notice has been provided pursuant to paragraph  
8 "b". The magistrate shall, based upon the circumstances  
9 described by the examining physician, give the examining  
10 physician oral instructions either directing that the person  
11 be released forthwith, or authorizing the person's detention  
12 in an appropriate facility. The magistrate may also give oral  
13 instructions and order that the detained person be transported  
14 to an appropriate facility.

15 b. In circumstances where a peace officer delivers a person  
16 to the facility and the peace officer notifies the facility, in  
17 writing, that the person is to be arrested upon discharge, the  
18 facility shall notify the law enforcement agency that employs  
19 the peace officer by telephone or electronic mail at least six  
20 hours prior to the planned discharge of the person from the  
21 facility. If the law enforcement agency does not retrieve the  
22 person prior to the time of the planned discharge, the person  
23 may be discharged as planned.

24 ~~b.~~ c. If the magistrate orders that the person be detained,  
25 the magistrate shall, by the close of business on the next  
26 working day, file a written order with the clerk in the county  
27 where it is anticipated that an application may be filed  
28 under section 125.75. The order may be filed by facsimile if  
29 necessary. The order shall state the circumstances under which  
30 the person was taken into custody or otherwise brought to a  
31 facility, and the grounds supporting the finding of probable  
32 cause to believe that the person is a chronic substance abuser  
33 likely to result in physical injury to the person or others if  
34 not detained, and whether notification to a law enforcement  
35 agency seeking to arrest the person is required prior to

1 discharge pursuant to paragraph "b". The order shall confirm  
2 the oral order authorizing the person's detention including  
3 any order given to transport the person to an appropriate  
4 facility. The clerk shall provide a copy of that order to the  
5 chief medical officer of the facility to which the person was  
6 originally taken, any subsequent facility to which the person  
7 was transported, and to any law enforcement department or  
8 ambulance service that transported the person pursuant to the  
9 magistrate's order.

10 Sec. 3. Section 125.91, Code Supplement 2009, is amended by  
11 adding the following new subsection:

12 NEW SUBSECTION. 5. A facility that does not notify a law  
13 enforcement agency about the discharge of a person who is to be  
14 arrested as provided in section 2, paragraph "b", shall pay a  
15 civil penalty as provided in section 805.8C, subsection 8.

16 Sec. 4. Section 229.22, subsection 2, paragraphs a and b,  
17 Code Supplement 2009, are amended to read as follows:

18 a. In the circumstances described in subsection 1, any  
19 peace officer who has reasonable grounds to believe that  
20 a person is mentally ill, and because of that illness is  
21 likely to physically injure the person's self or others if  
22 not immediately detained, may without a warrant take or cause  
23 that person to be taken to the nearest available facility or  
24 hospital as defined in section 229.11, subsection 1, paragraphs  
25 "b" and "c". A person believed mentally ill, and likely  
26 to injure the person's self or others if not immediately  
27 detained, may be delivered to a hospital by someone other  
28 than a peace officer. Upon delivery of the person believed  
29 mentally ill to the hospital, the examining physician may  
30 order treatment of that person, including chemotherapy, but  
31 only to the extent necessary to preserve the person's life  
32 or to appropriately control behavior by the person which is  
33 likely to result in physical injury to that person or others  
34 if allowed to continue. The peace officer who took the person  
35 into custody, or other party who brought the person to the

1 hospital, shall describe the circumstances of the matter to  
2 the examining physician. If the person is a peace officer,  
3 the peace officer may do so either in person or by written  
4 report. A peace officer shall appear in person if the person  
5 is to be arrested upon discharge. If the examining physician  
6 finds that there is reason to believe that the person is  
7 seriously mentally impaired, and because of that impairment is  
8 likely to physically injure the person's self or others if not  
9 immediately detained, the examining physician shall at once  
10 communicate with the nearest available magistrate as defined  
11 in section 801.4, subsection 10. During the communication  
12 with the nearest available magistrate, the peace officer shall  
13 inform the magistrate that the person is to be arrested upon  
14 discharge and notice has been provided pursuant to paragraph  
15 "b". The magistrate shall, based upon the circumstances  
16 described by the examining physician, give the examining  
17 physician oral instructions either directing that the person  
18 be released forthwith or authorizing the person's detention in  
19 an appropriate facility. The magistrate may also give oral  
20 instructions and order that the detained person be transported  
21 to an appropriate facility.

22 b. In circumstances where a peace officer delivers a person  
23 to a facility or hospital and the peace officer notifies the  
24 facility or hospital, in writing, that the person is to be  
25 arrested upon discharge or release, the facility or hospital  
26 shall notify the law enforcement agency that employs the peace  
27 officer by telephone or electronic mail at least six hours  
28 prior to the planned discharge or release of the person from  
29 the facility or hospital. If the law enforcement agency does  
30 not retrieve the person prior to the time of the planned  
31 discharge or release, the person may be discharged or released  
32 as planned.

33 ~~b.~~ c. If the magistrate orders that the person be detained,  
34 the magistrate shall, by the close of business on the next  
35 working day, file a written order with the clerk in the county

1 where it is anticipated that an application may be filed  
2 under section 229.6. The order may be filed by facsimile if  
3 necessary. The order shall state the circumstances under which  
4 the person was taken into custody or otherwise brought to a  
5 facility or hospital, and the grounds supporting the finding  
6 of probable cause to believe that the person is seriously  
7 mentally impaired and likely to injure the person's self or  
8 others if not immediately detained, and whether notification  
9 to a law enforcement agency seeking to arrest the person is  
10 required prior to discharge pursuant to paragraph "b". The  
11 order shall confirm the oral order authorizing the person's  
12 detention including any order given to transport the person  
13 to an appropriate facility or hospital. The clerk shall  
14 provide a copy of that order to the chief medical officer of  
15 the facility or hospital to which the person was originally  
16 taken, to any subsequent facility or hospital to which the  
17 person was transported, and to any law enforcement department  
18 or ambulance service that transported the person pursuant to  
19 the magistrate's order.

20 Sec. 5. Section 229.22, Code Supplement 2009, is amended by  
21 adding the following new subsection:

22 NEW SUBSECTION. 5. A hospital that does not notify a law  
23 enforcement agency about the discharge of a person who is to be  
24 arrested as provided in section 2, paragraph "b", shall pay a  
25 civil penalty as provided in section 805.8C, subsection 8.

26 Sec. 6. Section 805.8C, Code Supplement 2009, is amended by  
27 adding the following new subsection:

28 NEW SUBSECTION. 8. *Notification Violations*. For violations  
29 described in section 125.91 or 229.22 the scheduled fine is  
30 five hundred dollars for a first violation, and one thousand  
31 dollars for a second or subsequent violation. The scheduled  
32 fine under this subsection is a civil penalty, and the criminal  
33 penalty surcharge under section 911.1 shall not be added to the  
34 penalty.

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EXPLANATION

This bill relates to the emergency detention or hospitalization of a person incapacitated by a chemical substance or with a serious mental impairment.

The bill applies to persons who are not under arrest but who will be placed under arrest upon discharge or release from the facility or hospital treating the person.

Under the bill, if a peace officer delivers a person to a facility for detention due to incapacitation from a chemical substance, and the peace officer indicates the person is to be arrested upon discharge from the facility, the facility shall contact the law enforcement agency that employs the peace officer by telephone or electronic mail at least six hours prior to the planned discharge of the person from the facility. The bill provides that if the law enforcement agency does not retrieve the person prior to the time of the planned discharge, the person may be discharged as planned. If the person is to be arrested upon discharge, the bill requires the peace officer to remain at the facility, and inform the magistrate about the pending arrest. If the peace officer informs the magistrate that the person is to be arrested upon discharge, the bill also requires the magistrate to indicate in the detention order that the facility is required to notify the law enforcement agency about the discharge prior to such discharge.

Under the bill, if a peace officer delivers a person to a hospital for emergency hospitalization for a serious mental impairment, and the peace officer indicates the person is to be arrested upon discharge or release from the hospital, the hospital shall contact the law enforcement agency that employs the peace officer by telephone or electronic mail at least six hours prior to the planned discharge or release of the person from the hospital. The bill provides that if the law enforcement agency does not retrieve the person prior to the time of the planned discharge or release, the person may be discharged or released as planned. If the person is to be

1 arrested upon discharge, the bill requires the peace officer  
2 to remain at the hospital, and inform the magistrate about the  
3 pending arrest. If the peace officer informs the magistrate  
4 that the person is to be arrested upon discharge, the bill also  
5 requires the magistrate to indicate in the detention order that  
6 the hospital is required to notify the law enforcement agency  
7 about the discharge prior to such discharge.

8 If a facility detaining a person due to incapacitation from  
9 a chemical substance or a hospital detaining a person due to a  
10 serious mental impairment, fails to notify a law enforcement  
11 agency about the discharge of a person who is to be arrested  
12 upon discharge, the facility or hospital shall be in violation  
13 of the bill and subject to a civil penalty. The bill assesses  
14 a \$500 civil penalty for a first violation and a \$1,000 civil  
15 penalty for a second or subsequent violation.

16 Code section 602.8108 governs the distribution of fines and  
17 fees collected by the clerk of the district court.