

CHAPTER 1323**DISCHARGE OF CERTAIN HOSPITALIZED MENTALLY IMPAIRED PERSONS***H.F. 2465*

AN ACT relating to the discharge of seriously mentally impaired persons who have been involuntarily hospitalized in connection with a criminal conviction or unresolved criminal charge or pursuant to an acquittal due to insanity or diminished responsibility.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 226.27, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

226.27 PATIENT ACCUSED OR ACQUITTED OF CRIME OR AWAITING JUDGMENT. If a patient was committed to a state hospital for evaluation or treatment under chapter 812 or the rules of criminal procedure, further proceedings shall be had under chapter 812 or the applicable rule when the evaluation has been completed or the patient has regained mental capacity, as the case may be.

Sec. 2. Section 229.1, subsection 1, Code Supplement 1983, is amended to read as follows:

1. "Mental illness" means every type of mental disease or mental disorder, except that it does not refer to mental retardation as defined in section 222.2, subsection 5, or to insanity, diminished responsibility, or mental incompetency as the terms are defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules, 2d ed.

Sec. 3. Section 229.26, Code 1983, is amended to read as follows:

229.26 EXCLUSIVE PROCEDURE FOR INVOLUNTARY HOSPITALIZATION. Sections 229.6 to ~~229.20~~ shall ~~229.19~~ constitute the exclusive procedure for involuntary hospitalization of persons by reason of serious mental impairment in this state, except that nothing in this chapter shall ~~negate~~ negates the provisions of sections 245.12 and 246.16 relative relating to transfer of mentally ill prisoners to state hospitals for the mentally ill or applies to commitments of persons under chapter 812 or the rules of criminal procedure, Iowa court rules, 2d ed.

Sec. 4. Rule of criminal procedure 1, section 2, Iowa court rules, 2d ed., is amended by adding the following new subsection:

NEW SUBSECTION. "Mentally ill", as used in these rules, describes the condition of a person who is suffering from a mental disease or disorder and who, by reason of that condition, lacks sufficient judgment to make responsible decisions regarding treatment and is reasonably likely to injure the person's self or others who may come into contact with the person if the person is allowed to remain at liberty without treatment.

Sec. 5. Rule of criminal procedure 21, section 8, Iowa court rules, 2d ed., is amended by striking the section and inserting in lieu thereof the following:

8. ACQUITTAL ON GROUND OF INSANITY OR DIMINISHED RESPONSIBILITY; COMMITMENT; HEARING.

a. **JURY FINDING.** If the defense is insanity or diminished responsibility, the jury must be instructed that, if it acquits the defendant on either of those grounds, it shall state that fact in its verdict.

b. **COMMITMENT FOR EVALUATION.** Upon a verdict of not guilty by reason of insanity or diminished responsibility, the court shall immediately order the defendant committed to a state mental health institute or other appropriate facility for a complete psychiatric evaluation and shall set a date for a hearing to inquire into the defendant's present mental condition. The court shall prepare written findings which shall be delivered to the facility at the time the defendant is admitted fully informing the chief medical officer of the facility of the reason for the commitment. The chief medical officer shall report to the court within fifteen days of the admission of the defendant to the facility, stating the chief medical officer's diagnosis and opinion as to whether the defendant is mentally ill and dangerous to the defendant's self or to others. The court shall promptly forward a copy of the report to the defendant's attorney and to the attorney for the state. An extension of time for the evaluation, not to exceed fifteen days, may be granted upon the chief medical officer's request after due consideration of any objections or comments the defendant may have.

c. **INDEPENDENT EXAMINATION.** The defendant may have a separate examination conducted at the facility by a licensed physician of the defendant's choice and the report of the independent examiner shall be submitted to the court.

d. **RETURN FOR HEARING.** Upon filing the report required by this rule or the filing of any subsequent report regarding the defendant's mental condition, the chief medical officer shall give notice to the sheriff and county attorney of the county from which the defendant was committed and the sheriff shall receive and hold the defendant for hearing. However, if the chief medical officer believes continued custody of the defendant at the facility is necessary to ensure the defendant's safety or the safety of others and states that finding in the report, the court shall make arrangements for the hearing to be conducted as soon as practicable at a suitable place within the facility to which the defendant was committed.

e. **HEARING; RELEASE OR RETENTION IN CUSTODY.** If, upon hearing, the court finds that the defendant is not mentally ill and no longer dangerous to the defendant's self or to others, the court shall order the defendant released. If, however, the court finds that the defendant is mentally ill and dangerous to the defendant's self or to others, the court shall order the defendant committed to a state mental health institute or to the Iowa security and medical facility and retained in custody until the court finds that the defendant is no longer mentally ill and dangerous to the defendant's self or to others. The court shall give due consideration to the chief medical officer's findings and opinion along with any other relevant evidence that may be submitted.

No more than thirty days after entry of an order for continued custody, and thereafter at intervals of not more than sixty days as long as the defendant is in custody, the chief medical officer of the facility to which the defendant is committed shall report to the court which entered the order. Each periodic report shall describe the defendant's condition and state the chief medical officer's prognosis if the defendant's condition has remained unchanged or has deteriorated. The court shall forward a copy of each report to the defendant's attorney and to the attorney for the state.

If the chief medical officer reports at any time that the defendant is no longer mentally ill and is no longer dangerous to the defendant's self or to others, the court shall, upon hearing, order the release of the defendant unless the court finds that continued custody and treatment are necessary to protect the safety of the defendant's self or others in which case the court shall order the defendant committed to the Iowa security and medical facility for further evaluation, treatment, and custody.

Sec. 6. Rule of criminal procedure 22, section 3, subsections b and c, Iowa court rules, 2d ed., are amended by striking the subsections and inserting in lieu thereof the following:

b. **WHAT MAY BE SHOWN FOR CAUSE.** The defendant may show for cause against the entry of judgment any sufficient ground for a new trial or in arrest of judgment.

c. **INCOMPETENCY.** If it reasonably appears to the court that the defendant is suffering from a mental disorder which prevents the defendant from appreciating or understanding the nature of the proceedings or effectively assisting defendant's counsel, judgment shall not be immediately entered and the defendant's mental competency shall be determined according to the procedures described in sections 812.3 through 812.5.

Sec. 7. Sections 226.28, 226.29, and 229.20, Code 1983, are repealed.

Approved May 11, 1984