

**CHAPTER 1103****EMERGENCY HOSPITALIZATION OF MENTALLY ILL PERSONS — NOTICE OF ARREST WARRANTS OR PENDING CRIMINAL CHARGES — DISCHARGE PROCEDURES***S.F. 2352*

**AN ACT** relating to the emergency hospitalization of a person with a serious mental impairment, and providing penalties.

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

Section 1. Section 229.22, subsections 2 and 3, Code Supplement 2009, are amended to read as follows:

2. *a.* In the circumstances described in subsection 1, any peace officer who has reasonable grounds to believe that a person is mentally ill, and because of that illness is likely to physically injure the person's self or others if not immediately detained, may without a warrant take or cause that person to be taken to the nearest available facility or hospital as defined in section 229.11, subsection 1, paragraphs "b" and "c". A person believed mentally ill, and likely to injure the person's self or others if not immediately detained, may be delivered to a facility or hospital by someone other than a peace officer. Upon delivery of the person believed mentally ill to the hospital, the examining physician may order treatment of that person, including chemotherapy, but only to the extent necessary to preserve the person's life or to appropriately control behavior by the person which is likely to result in physical injury to that person or others if allowed to continue. The peace officer who took the person into custody, or other party who brought the person to the facility or hospital, shall describe the circumstances of the matter to the examining physician. If the person is a peace officer, the peace officer may do so either in person or by written report. If the examining physician finds that there is reason to believe that the person is seriously mentally impaired, and because of that impairment is likely to physically injure the person's self or others if not immediately detained, the examining physician shall at once communicate with the nearest available magistrate as defined in section 801.4, subsection 10. The magistrate shall, based upon the circumstances described by the examining physician, give the examining physician oral instructions either directing that the person be released forthwith or authorizing the person's detention in an appropriate facility. A peace officer from the law enforcement agency that took the person into custody, if available, during the communication with the magistrate, may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any oral or written order issued under this subsection require the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The magistrate may also give oral instructions and order that the detained person be transported to an appropriate facility.

*b.* If the magistrate orders that the person be detained, the magistrate shall, by the close of business on the next working day, file a written order with the clerk in the county where it is anticipated that an application may be filed under section 229.6. The order may be filed by facsimile if necessary. A peace officer from the law enforcement agency that took the person into custody, if no request was made under paragraph "a", may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any written order issued under this paragraph require the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The order shall state the circumstances under which the person was taken into custody or otherwise brought to a facility or hospital, and the grounds supporting the finding of probable cause to believe that the person is seriously mentally impaired and likely to injure the person's self or others if not immediately detained. The order shall also include any law enforcement agency notification requirements if applicable. The order shall confirm the oral order authorizing the person's detention including any order given to transport the person to an appropriate facility. A peace officer from the law enforcement agency that took the person into custody may also request an order, separate from the written order, requiring the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The clerk shall provide a copy of ~~that~~ the written order or any separate order to the chief medical officer

of the facility or hospital to which the person was originally taken, to any subsequent facility to which the person was transported, and to any law enforcement department or ambulance service that transported the person pursuant to the magistrate's order.

c. If an arrest warrant has been issued for or charges are pending against the person, but no court order exists requiring notification to a law enforcement agency under paragraph "a" or "b", and if the peace officer delivers the person to a facility or hospital and the peace officer notifies the facility or hospital in writing on a form prescribed by the department of public safety that the facility or hospital notify the law enforcement agency about the discharge of the person prior to discharge, the facility or hospital shall do all of the following:

(1) Notify the dispatch of the law enforcement agency that employs the peace officer by telephone prior to the discharge of the person from the facility or hospital.

(2) Notify the law enforcement agency that employs the peace officer by electronic mail prior to the discharge of the person from the facility or hospital.

3. The chief medical officer of the facility or hospital shall examine and may detain and care for the person taken into custody under the magistrate's order for a period not to exceed forty-eight hours from the time such order is dated, excluding Saturdays, Sundays and holidays, unless the order is sooner dismissed by a magistrate. The facility or hospital may provide treatment which is necessary to preserve the person's life, or to appropriately control behavior by the person which is likely to result in physical injury to the person's self or others if allowed to continue, but may not otherwise provide treatment to the person without the person's consent. The person shall be discharged from the facility or hospital and released from custody not later than the expiration of that period, unless an application for the person's involuntary hospitalization is sooner filed with the clerk pursuant to section 229.6. Prior to such discharge the facility or hospital shall, if required by this section, notify the law enforcement agency requesting such notification about the discharge of the person. The law enforcement agency shall retrieve the person no later than six hours after notification from the facility or hospital but in no circumstances shall the detention of the person exceed the period of time prescribed for detention by this subsection. The detention of any person by the procedure and not in excess of the period of time prescribed by this section shall not render the peace officer, physician, facility, or hospital so detaining that person liable in a criminal or civil action for false arrest or false imprisonment if the peace officer, physician, facility, or hospital had reasonable grounds to believe the person so detained was mentally ill and likely to physically injure the person's self or others if not immediately detained, or if the facility or hospital was required to notify a law enforcement agency by this section, and the law enforcement agency requesting notification prior to discharge retrieved the person no later than six hours after the notification, and the detention prior to the retrieval of the person did not exceed the period of time prescribed for detention by this subsection.

Sec. 2. Section 229.22, Code Supplement 2009, is amended by adding the following new subsections:

NEW SUBSECTION. 5. The department of public safety shall prescribe the form to be used when a law enforcement agency desires notification under this section from a facility or hospital prior to discharge of a person admitted to the facility or hospital and for whom an arrest warrant has been issued or against whom charges are pending. The form shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, and regulations promulgated in accordance with that Act and published in 45 C.F.R. pts. 160-64.

NEW SUBSECTION. 6. A facility or hospital, which has been notified by a peace officer or a law enforcement agency by delivery of a form as prescribed by the department of public safety indicating that an arrest warrant has been issued for or charges are pending against a person admitted to the facility or hospital, that does not notify the law enforcement agency about the discharge of the person as required by subsection 2, paragraph "c", shall pay a civil penalty as provided in section 805.8C, subsection 8.

Sec. 3. Section 805.8C, Code Supplement 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 8. *Notification violations.* For violations of section 229.22, subsection 6, the scheduled fine is one thousand dollars for a first violation and two thousand dollars for a second or subsequent violation. The scheduled fine under this subsection is a civil penalty, and the criminal penalty surcharge under section 911.1 shall not be added to the penalty.

Approved March 24, 2010

## CHAPTER 1104

### SEX OFFENDER REGISTRY CHANGES

*S.F. 2305*

**AN ACT** modifying sex offender registry provisions, and providing penalties and including effective date provisions.

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

Section 1. Section 692A.101, subsection 2, Code Supplement 2009, is amended to read as follows:

2. a. “*Aggravated offense against a minor*” means a conviction for any of the following offenses, if such offense was committed against a minor, or otherwise involves a minor:

a. (1) Sexual abuse in the first degree in violation of section 709.2.

b. (2) Sexual abuse in the second degree in violation of section 709.3.

e. (3) Sexual abuse in the third degree in violation of section 709.4, except for a violation of section 709.4, subsection 2, paragraph “c”, subparagraph (4).

b. Any offense specified in the laws of another jurisdiction or prosecuted in federal, military, or foreign court, that is comparable to an offense listed in paragraph “a” shall be considered an aggravated offense against a minor if such an offense was committed against a minor or otherwise involves a minor.

Sec. 2. Section 692A.101, subsection 27, Code Supplement 2009, is amended to read as follows:

27. “*Sex offense*” means an indictable offense for which a conviction has been entered that ~~has an element involving a sexual act, sexual contact, or sexual conduct, and which is~~ enumerated in section 692A.102, and means any comparable offense for which a conviction has been entered under prior law, or any comparable offense for which a conviction has been entered in a federal, military, or foreign court, or another jurisdiction.

Sec. 3. Section 692A.101, Code Supplement 2009, is amended by adding the following new subsection:

NEW SUBSECTION. 28A. “*Sexually motivated*” means the same as defined in section 229A.2.

Sec. 4. Section 692A.102, subsection 1, paragraph a, subparagraphs (6) and (7), Code Supplement 2009, are amended to read as follows:

(6) (a) Harassment in violation of section 708.7, subsection 1, 2, or 3, if a determination is made that the offense was sexually motivated pursuant to section 692A.126.

~~(7)~~ (b) Stalking in violation of section 708.11, except a violation of subsection 3, paragraph “b”, subparagraph (3), if a determination is made that the offense was sexually motivated pursuant to section 692A.126.