

FEB 23 2006
Place On Calendar

HOUSE FILE 2510
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 576)

Passed House, Date _____ Passed Senate, 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:

HF 2510

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1 Section 1. Section 125.82, subsections 1 and 3, Code 2005,
2 are amended to read as follows:

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

17 3. The person who filed the application and a physician or
18 professional who has examined the respondent in connection
19 with the commitment hearing shall be present at the hearing,
20 unless prior to the hearing the court for good cause finds
21 that their presence or testimony is not necessary. The
22 respondent and applicant may waive the presence or telephonic
23 appearance of the physician or professional who examined the
24 respondent and agree to submit as evidence the written report
25 of the physician or professional. "Good cause" for finding
26 that the testimony of the physician or professional who
27 examined the respondent is not necessary may include, but is
28 not limited to, such a waiver. If the court determines that
29 the testimony of the physician or professional is necessary,
30 the court may allow the physician or professional to testify
31 by telephone. The respondent shall be present at the hearing
32 unless prior to the hearing the respondent's attorney
33 stipulates in writing that the attorney has conversed with the
34 respondent, and that in the attorney's judgment the respondent
35 cannot make a meaningful contribution to the hearing, or that

1 the respondent has waived the right to be present, and the
2 basis for the attorney's conclusions. A stipulation to the
3 respondent's absence shall be reviewed by the court before the
4 hearing, and may be rejected if it appears that insufficient
5 grounds are stated or that the respondent's interests would
6 not be served by the respondent's absence.

7 Sec. 2. Section 229.10, subsection 1, unnumbered paragraph
8 1, Code 2005, is amended to read as follows:

9 An examination of the respondent shall be conducted by one
10 or more licensed physicians, as required by the court's order,
11 within a reasonable time. If the respondent is detained
12 pursuant to section 229.11, subsection 2, the examination
13 shall be conducted within twenty-four hours. If the
14 respondent is detained pursuant to section 229.11, subsection
15 1 or 3, the examination shall be conducted within forty-eight
16 hours. If the respondent so desires, the respondent shall be
17 entitled to a separate examination by a licensed physician of
18 the respondent's own choice. The reasonable cost of ~~such~~
19 ~~separate-examination~~ the examinations shall, if the respondent
20 lacks sufficient funds to pay the cost, be paid from county
21 funds upon order of the court.

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

24 3. The respondent's welfare shall be paramount and the
25 hearing shall be conducted in as informal a manner as may be
26 consistent with orderly procedure, but consistent therewith
27 the issue shall be tried as a civil matter. Such discovery as
28 is permitted under the Iowa rules of civil procedure shall be
29 available to the respondent. The court shall receive all
30 relevant and material evidence which may be offered and need
31 not be bound by the rules of evidence. There shall be a
32 presumption in favor of the respondent, and the burden of
33 evidence in support of the contentions made in the application
34 shall be upon the applicant. The physician or professional
35 who examined the respondent shall be present at the hearing

1 unless prior to the hearing the court for good cause finds
2 that the physician's or professional's presence or testimony
3 is not necessary. The respondent and applicant may waive the
4 presence or the telephonic appearance of the physician or
5 professional who examined the respondent and agree to submit
6 as evidence the written report of the physician or
7 professional. "Good cause" for finding that the testimony of
8 the physician or professional who examined the respondent is
9 not necessary may include, but is not limited to, such a
10 waiver. If the court determines that the testimony of the
11 physician or professional is necessary, the court may allow
12 the physician or the professional to testify by telephone. If
13 upon completion of the hearing the court finds that the
14 contention that the respondent is seriously mentally impaired
15 has not been sustained by clear and convincing evidence, it
16 shall deny the application and terminate the proceeding.

17 EXPLANATION

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

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

29 The bill provides that a physician or professional who
30 examined a suspected chronic substance abuser or person with
31 mental illness shall be present at an involuntary commitment
32 or treatment hearing or an involuntary hospitalization hearing
33 unless the court for good cause finds prior to either hearing
34 the presence or testimony of the physician or professional is
35 not necessary. In such a case, the respondent and applicant

1 may waive the presence or telephonic appearance of the
2 physician or professional and agree to submit the physician's
3 or professional's written report as evidence. If the court
4 finds such testimony is necessary, the court may allow the
5 physician or professional to testify by telephone.

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

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HOUSE FILE 2510

H-8059

- 1 Amend House File 2510 as follows:
- 2 1. Page 1, line 22, by striking the words
- 3 "respondent and applicant" and inserting the
- 4 following: "applicant and the attorney, guardian, or
- 5 guardian ad litem for the respondent".
- 6 2. By renumbering as necessary.

By EICHHORN of Hamilton

H-8059 FILED FEBRUARY 27, 2006

HOUSE FILE 2510

H-8097

- 1 Amend House File 2510 as follows:
- 2 1. Page 1, by striking line 22 and inserting the
- 3 following: "applicant, respondent, and the
- 4 respondent's attorney may waive the presence or
- 5 telephonic".
- 6 2. Page 3, by striking line 3 and inserting the
- 7 following: "is not necessary. The applicant,
- 8 respondent, and the respondent's attorney may waive
- 9 the".
- 10 3. By renumbering as necessary.

By EICHHORN of Hamilton

H-8097 FILED MARCH 6, 2006

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 2510 – Civil Commitment (LSB 5404 HV)

Analyst: Beth Lenstra (Phone: (515) (281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version – New

Description

House File 2510 permits the court for good cause to waive the presence of the physician or professional at the hearing for a respondent under Chapter 125, Code of Iowa (Chemical Substance Abuse Civil Commitment Proceedings). The Bill also requires the physician or professional to be present at the hearing for a respondent under Chapter 229, Code of Iowa (Hospitalization of Persons with Mental Illness). House File 2510 provides a waiver of this requirement. The Bill permits the court to allow the physician to testify by telephone for either type of civil commitment proceeding.

Background

1. Current law requires the presence of the physician for Chapter 125 hearings, and permits a waiver for good cause. It is not known how many waivers are granted.
2. Currently, doctors or professionals submit a written report of their examination of the respondent to the court for Chapter 229 hearings; they are not required to testify at the hospitalization proceeding either in person or by telephone.

Assumptions

1. There may be savings to the counties and the Department of Human Services under the amendment to Chapter 125, Code of Iowa. However, that potential savings cannot be estimated due to a lack of data.
2. Fees for physicians to testify for a court appearance ranges from \$350 for the first hour in Polk County and \$600 flat fee in Linn County. The average fee statewide is approximately \$350 per commitment hearing.
3. Under Chapter 229, Code of Iowa, there are approximately 275 commitments in Polk County annually, 400 commitments in Pottawattamie County annually, and 300 commitments in Linn County annually. The average number of commitments statewide is estimated to be 2,400 annually.
4. The physicians at the four Mental Health Institutes (MHI) could be required to testify in person or by telephone at Chapter 229, Code of Iowa hearings. There are approximately 39 court appearances per month. Another psychiatrist would need to be on campus if the physician is in court, to meet the mandatory requirements of coverage at the MHI. Cost estimates include reimbursement for mileage.

Fiscal Impact

The impact on the counties ranges from zero (if waivers are granted at every hearing) to \$1.5 million (\$350 per hearing x 2,400 hearings) if a physician is required to be in attendance at the civil commitment hearing.

The General Fund impact on the Department of Human Services ranges from zero (if waivers are granted at every hearing) to \$300,000 if a physician is required to be in attendance.

Sources

Iowa State Association of Counties
Iowa Department of Human Services

/s/ Holly M. Lyons

February 27, 2006

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

Carroll - ch
Van Fossen
Smith

HSB 576

JUDICIARY

ded By

SF 02510

SENATE/HOUSE FILE _____
BY (PROPOSED JUDICIAL BRANCH
BILL)

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MEMORANDUM

TO: MEMBERS OF THE GENERAL ASSEMBLY

FROM: IOWA JUDICIAL BRANCH

DATE: January 16, 2006

RE: TLSB 5404DP

The proposed legislation is in response to an opinion handed down by the Supreme Court of Iowa on November 4, 2005, *In the Matter of T.S., Alleged to Be a Substance Abuser*, 94/04-1820. In this opinion, the court held that the county attorney could not participate in an involuntary commitment proceeding for substance abuse under Iowa Code chapter 125 when the county attorney is not the applicant; and that Iowa Code section 125.82(3) requires the physical presence of a physician at the commitment hearing absent the showing of good cause.

The first change in the proposed legislation allows the county attorney to present the evidence in support of an application for commitment or treatment of a chronic substance abuser under chapter 125. The purpose for the change is two-fold. First, it eliminates the county expense of appointing an attorney to represent the applicant in the proceedings. Second, it makes the provisions of chapter 125 consistent with the provisions found in chapter 229 regarding mental health hospitalization proceedings.

The second change in the proposed legislation allows the respondent and the applicant in the proceeding to waive at the commitment hearing the appearance of the physician or professional who examined the respondent. Additionally, when the testimony of the physician or professional is necessary, the court is given discretion to allow the testimony to take place by telephone. For consistency, the proposed legislation would apply similar provisions to chapter 229 regarding testimony by a physician or professional at mental health hospitalization proceedings.