

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.

EXPLANATION

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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.