

FILED MAR 07 2006  
SENATE FILE 2362  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3030)

Passed Senate, Date 3-13-06

Passed House, Date 4-5-06

Vote: Ayes 50 Nays 0

Vote: Ayes 99 Nays 0

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:

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SF 2362

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

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

8 Sec. 2. Section 229.10, subsection 1, unnumbered paragraph  
9 1, Code 2005, is amended to read as follows:

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

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

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

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

19 EXPLANATION

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

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

31 The bill provides that a physician or professional who  
32 examined a suspected chronic substance abuser or person with  
33 mental illness shall be present at an involuntary commitment  
34 or treatment hearing or an involuntary hospitalization hearing  
35 unless the court for good cause finds prior to either hearing

1 the presence or testimony of the physician or professional is  
2 not necessary. In such cases, the applicant, the respondent,  
3 and the respondent's attorney may waive the presence or  
4 telephonic appearance of the physician or professional and  
5 agree to submit the physician's or professional's written  
6 report as evidence. If the court finds such testimony is  
7 necessary, the court may allow the physician or professional  
8 to testify by telephone.

9 The bill also makes a change to language relating to the  
10 conducting of physician examinations of persons with mental  
11 illness to conform to similar language that currently applies  
12 to chronic substance abusers.

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Tinsman co-chair  
Kreiman co-chair  
Zawn  
Quirnbach

SSB# 3030  
Judiciary

**Succeeded By**  
**SF/HF 2362**

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED JUDICIAL BRANCH  
BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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7 During the hearing the applicant and the respondent shall be  
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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

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20 lacks sufficient funds to pay the cost, be paid from county  
21 funds upon order of the court.

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25 hearing shall be conducted in as informal a manner as may be  
26 consistent with orderly procedure, but consistent therewith  
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33 evidence in support of the contentions made in the application  
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21 The bill provides that evidence in support of an  
22 application for commitment or treatment of a chronic substance  
23 abuser shall be presented by the county attorney at an  
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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.

SENATE FILE 2362

AN ACT

RELATING TO INVOLUNTARY HOSPITALIZATION PROCEEDINGS FOR  
CHRONIC SUBSTANCE ABUSERS AND PERSONS WITH MENTAL ILLNESS.

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

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

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

3. The person who filed the application and a physician or professional who has examined the respondent in connection

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and convincing evidence, it shall deny the application and terminate the proceeding.

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JEFFREY M. LAMBERTI  
President of the Senate

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CHRISTOPHER C. RANTS  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2362, Eighty-first General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved \_\_\_\_\_, 2006

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THOMAS J. VILSACK  
Governor