TERRY E. BRANSTAD
GOVERNOR

OFFICE OF THE GOVERNOR

KIM REYNOLDS
LT. GOVERNOR

April 12, 2012

The Honorable Matt Schultz
Secretary of State of Iowa
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

Senate File 2312, an Act relating to persons with mental health illnesses and substance-related disorders.

The above Senate File is hereby approved this date.

Sincerely,

Terry E. Branstad
Governor

cc: Secretary of the Senate
Clerk of the House

Senate File 2312

AN ACT

RELATING TO PERSONS WITH MENTAL HEALTH ILLNESSES AND SUBSTANCE-RELATED DISORDERS.

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

Section 1. Section 80B.11, subsection 1, paragraph c, Code 2011, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (3) In-service training under this paragraph "c" shall include the requirement that all law enforcement officers complete a course on mental health at least once every four years. In developing the requirements

for this training, the director shall seek input from mental health care providers and mental health care consumers.

Sec. 2. Section 125.91, subsection 1, Code Supplement 2011, is amended to read as follows:

1. The procedure prescribed by this section shall only be used for an intoxicated person who has threatened, attempted, or inflicted physical self-harm or harm on another, and is likely to inflict physical self-harm or harm on another unless immediately detained, or who is incapacitated by a chemical substance, if ~~that person cannot be taken into immediate custody under sections 125.75 and 125.81 because immediate access to the court is not possible~~ an application has not been filed naming the person as the respondent pursuant to section 125.75 and the person cannot be ordered into immediate custody and detained pursuant to section 125.81.

Sec. 3. Section 135C.3, subsection 1, Code 2011, is amended to read as follows:

1. A licensed nursing facility shall provide an organized twenty-four-hour program of services commensurate with the needs of its residents and under the immediate direction of a licensed nurse. Medical and nursing services must be provided under the direction of either a house physician or an individually selected physician. Surgery or obstetrical care shall not be provided within the facility. An admission to the nursing facility must be based on a physician's written order certifying that the individual being admitted requires no greater degree of nursing care than the facility to which the admission is made is licensed to provide and is capable of providing. The nursing facility is not required to admit an individual through court order, referral, or other means without the express prior approval of the administrator of the nursing facility.

Sec. 4. Section 135C.4, Code 2011, is amended to read as follows:

135C.4 Residential care facilities.

1. Each facility licensed as a residential care facility shall provide an organized continuous twenty-four-hour program of care commensurate with the needs of the residents of the home and under the immediate direction of a person approved and certified by the department whose combined training and supervised experience is such as to ensure adequate and competent care.

2. All admissions to residential care facilities shall be

based on an order written by a physician certifying that the individual being admitted does not require nursing services or that the individual's need for nursing services can be avoided if home and community-based services, other than nursing care, as defined by this chapter and departmental rule, are provided.

3. For the purposes of this section, the home and community-based services to be provided shall be limited to the type included under the medical assistance program provided pursuant to chapter 249A, shall be subject to cost limitations established by the department of human services under the medical assistance program, and except as otherwise provided by the department of inspections and appeals with the concurrence of the department of human services, shall be limited in capacity to the number of licensed residential care facilities and the number of licensed residential care facility beds in the state as of December 1, 2003.

4. A residential care facility is not required to admit an individual through court order, referral, or other means without the express prior approval of the administrator of the residential care facility.

Sec. 5. Section 228.1, subsection 6, Code 2011, is amended by striking the subsection and inserting in lieu thereof the following:

6. *"Mental health professional"* means an individual who has either of the following qualifications:

a. The individual meets all of the following requirements:

(1) The individual holds at least a master's degree in a mental health field, including but not limited to psychology, counseling and guidance, nursing, and social work, or is an advanced registered nurse practitioner, a physician assistant, or a physician and surgeon or an osteopathic physician and surgeon.

(2) The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law.

(3) The individual has at least two years of post-degree clinical experience, supervised by another mental health professional, in assessing mental health needs and problems and in providing appropriate mental health services.

b. The individual holds a current Iowa license if practicing in a field covered by an Iowa licensure law and is a psychiatrist, an advanced registered nurse practitioner who holds a national certification in psychiatric mental health care registered by the board of nursing, a physician assistant

practicing under the supervision of a psychiatrist, or an individual who holds a doctorate degree in psychology and is licensed by the board of psychology.

Sec. 6. Section 229.1, Code Supplement 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 8A. *"Mental health professional"* means the same as defined in section 228.1.

Sec. 7. Section 229.1, subsection 14, Code Supplement 2011, is amended by striking the subsection.

Sec. 8. Section 229.1, subsection 16, Code Supplement 2011, is amended to read as follows:

16. *"Serious emotional injury"* is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other ~~qualified~~ mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.

Sec. 9. NEW SECTION. **229.5A Preapplication screening assessment — program.**

Prior to filing an application for involuntary hospitalization pursuant to section 229.6, the clerk of the district court or the clerk's designee shall inform the interested person referred to in section 229.6, subsection 1, about the option of requesting a preapplication screening assessment through a preapplication screening assessment program. The state court administrator shall prescribe practices and procedures for implementation of the preapplication screening assessment program.

Sec. 10. Section 229.6, Code 2011, is amended to read as follows:

229.6 Application for order of involuntary hospitalization.

1. Proceedings for the involuntary hospitalization of an individual may be commenced by any interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located, or which is the respondent's place of residence. The clerk, or the clerk's designee, shall assist the applicant in completing the application. The application shall:

~~1.~~ *a.* State the applicant's belief that the respondent is seriously mentally impaired.

~~2.~~ *b.* State any other pertinent facts.

~~3.~~ *c.* Be accompanied by any of the following:

~~a.~~ (1) A written statement of a licensed physician in

support of the application~~; or~~.

~~*b.*~~ (2) One or more supporting affidavits otherwise corroborating the application~~; or~~.

~~*c.*~~ (3) Corroborative information obtained and reduced to writing by the clerk or the clerk's designee, but only when circumstances make it infeasible to comply with, or when the clerk considers it appropriate to supplement the information supplied pursuant to, either ~~paragraph "*a*" or paragraph "*b*" of this subsection~~ subparagraph (1) or (2).

2. Prior to the filing of an application pursuant to this section, the clerk or the clerk's designee shall inform the interested person referred to in subsection 1 about the option of requesting a preapplication screening assessment pursuant to section 229.5A.

Sec. 11. Section 229.10, subsection 1, paragraph b, Code 2011, is amended to read as follows:

b. Any licensed physician conducting an examination pursuant to this section may consult with or request the participation in the examination of any ~~qualified~~ mental health professional, and may include with or attach to the written report of the examination any findings or observations by any ~~qualified~~ mental health professional who has been so consulted or has so participated in the examination.

Sec. 12. Section 229.12, subsection 3, paragraph b, Code 2011, is amended to read as follows:

b. The licensed physician or ~~qualified~~ mental health professional who examined the respondent shall be present at the hearing unless the court for good cause finds that the licensed physician's or ~~qualified~~ mental health professional's presence or testimony is not necessary. The applicant, respondent, and the respondent's attorney may waive the presence or the telephonic appearance of the licensed physician or ~~qualified~~ mental health professional who examined the respondent and agree to submit as evidence the written report of the licensed physician or ~~qualified~~ mental health professional. The respondent's attorney shall inform the court if the respondent's attorney reasonably believes that the respondent, due to diminished capacity, cannot make an adequately considered waiver decision. "*Good cause*" for finding that the testimony of the licensed physician or ~~qualified~~ mental health professional who examined the respondent is not necessary may include but is not limited to such a waiver. If the court determines that the testimony of the licensed

physician or ~~qualified~~ mental health professional is necessary, the court may allow the licensed physician or the ~~qualified~~ mental health professional to testify by telephone.

Sec. 13. Section 229.19, subsection 1, paragraph d, Code 2011, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (7) To utilize the related best practices for the duties identified in this paragraph "d" developed and promulgated by the judicial council.

Sec. 14. Section 229.19, subsection 1, Code 2011, is amended by adding the following new paragraph:

NEW PARAGRAPH. *e.* An advocate may also be appointed pursuant to this section for an individual who has been diagnosed with a co-occurring mental illness and substance-related disorder.

Sec. 15. Section 229.22, subsection 1, Code Supplement 2011, is amended to read as follows:

1. The procedure prescribed by this section shall ~~not~~ be used ~~unless~~ when it appears that a person should be immediately detained due to serious mental impairment, but ~~that person cannot be immediately detained by the procedure prescribed in sections 229.6 and 229.11 because there is no means of immediate access to the district court~~ an application has not been filed naming the person as the respondent pursuant to section 229.6, and the person cannot be ordered into immediate custody and detained pursuant to section 229.11.

Sec. 16. Section 602.1209, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 15A. Prescribe practices and procedures for the implementation of the preapplication screening assessment program referred to in section 229.5A.

Sec. 17. CONTINUATION OF WORKGROUP BY JUDICIAL BRANCH AND DEPARTMENT OF HUMAN SERVICES — CONSOLIDATION OF SERVICES — PATIENT ADVOCATE. The judicial branch and department of human services shall continue the workgroup implemented pursuant to 2010 Iowa Acts, chapter 1192, section 24, subsection 2, and extended pursuant to 2011 Iowa Acts, chapter 121, section 2, to study and make recommendations relating to the consolidation of the processes for involuntary commitment for persons with substance-related disorders under chapter 125, for intellectual disability under chapter 222, and for serious mental illness under chapter 229. The workgroup shall also include representatives from the department of public health. The workgroup shall also study and make

recommendations concerning the feasibility of establishing an independent statewide patient advocate program for qualified persons representing the interests of patients suffering from mental illness, intellectual disability, or a substance-related disorder and involuntarily committed by the court, in any matter relating to the patients' hospitalization or treatment under chapters 125, 222, and 229, and shall also include recommendations for a patient advocate representing the interests of patients found not guilty of a crime by reason of insanity. The workgroup shall also consider the implementation of consistent reimbursement standards for patient advocates supported by a state-funded system and shall also consider the role of the advocate for a person who has been diagnosed with a co-occurring mental illness and substance-related disorder. The workgroup shall solicit input from current mental health advocates and mental health and substance-related disorder care providers and individuals receiving services whose interests would be represented by an independent statewide advocate program and shall submit a report on the study and make recommendations to the governor and the general assembly by December 1, 2012.

Sec. 18. COMPREHENSIVE JAIL DIVERSION PROGRAM —— MENTAL HEALTH COURTS —— STUDY. The division of criminal and juvenile justice planning of the department of human rights shall conduct a study regarding the possible establishment of a comprehensive statewide jail diversion program, including the establishment of mental health courts, for nonviolent criminal offenders who suffer from mental illness. The division shall solicit input from the department of human services, the department of corrections, and other members of the criminal justice system including but not limited to judges, prosecutors, and defense counsel, and mental health treatment providers and consumers. The division shall establish the duties, scope, and membership of the study commission and shall also consider the feasibility of establishing a demonstration mental health court. The division shall submit a report on the study and make recommendations to the governor and the general assembly by December 1, 2012.

Sec. 19. PRIOR LAW ENFORCEMENT MENTAL HEALTH TRAINING. A law enforcement officer who has completed academy-approved mental health training within the twelve-month period prior to the effective date of this Act, either through in-service or academy-approved basic training, shall be considered to have

met the first four-year mental health training requirement of section 80B.11, subsection 1, paragraph "c", subparagraph (3), as enacted in this Act.

JOHN P. KIBBIE
President of the Senate

KRAIG PAULSEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2312, Eighty-fourth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved April 12, 2012

TERRY E. BRANSTAD
Governor