

CHAPTER 1088
JUVENILE JUSTICE

H. F. 248

AN ACT relating to a complete revision of the juvenile justice laws and subjecting persons to existing penalties.

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

DIVISION I

Section 1. NEW SECTION. RULES OF CONSTRUCTION. This chapter shall be liberally construed to the end that each child under the jurisdiction of the court shall receive, preferably in his or her own home, the care, guidance and control that will best serve the child's welfare and the best interest of the state. When a child is removed from the control of his or her parents, the court shall secure for the child care as nearly as possible equivalent to that which should have been given by the parents.

DEFINITIONS

Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

1. "Abandonment of a child" means the permanent relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.
2. "Adjudicatory hearing" means a hearing to determine if the allegations of a petition are true.
3. "Adult" means a person other than a child.
4. "Child" means a person under eighteen years of age.
5. "Child in need of assistance" means an unmarried child:
 - a. Whose parent, guardian or other custodian has abandoned the child.
 - b. Whose parent, guardian or other custodian has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.
 - c. Who has suffered or is imminently likely to suffer harmful effects as a result of:
 - (1) Conditions created by the child's parent, guardian, custodian; or

(2) The failure of the child's parent, guardian, or custodian to exercise a reasonable degree of care in supervising the child.

d. Who has been sexually abused by his or her parent, guardian, custodian or other member of the household in which the child resides.

e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter or refuses other means made available to provide such essentials.

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, or custodian.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political or artistic value.

j. Who is without a parent, guardian or other custodian.

k. Whose parent, guardian, or other custodian for good cause desires to be relieved of his or her care and custody.

l. Who for good cause desires to have his or her parents relieved of his or her care and custody.

6. "Commissioner" means the commissioner of the department of social services or that person's designee.

7. "Complaint" means a verbal or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

8. "Court" means the juvenile court established in chapter two hundred thirty-one (231) of the Code.

9. "Criminal justice agency" means any agency which has as its primary responsibility the enforcement of the state's

criminal laws or of local ordinances made pursuant to state law.

10. "Custodian" means a step-parent or a relative within the fourth degree of consanguinity to a minor child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division four (IV), or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child shall be as follows:

- a. To maintain or transfer to another the physical possession of that child.
- b. To protect, train, and discipline that child.
- c. To provide food, clothing, housing, and medical care for that child.
- d. To consent to emergency medical care, including surgery.
- e. To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be subject to any residual rights and duties remaining in a parent or guardian.

11. "Delinquent act" means:

- a. The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.
- b. The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

12. "Department" means the department of social services and includes the local, county and regional officers of the department.

13. "Detention" means the temporary care of a child in a physically restricting facility designed to insure the continued custody of the child at any point between the child's initial contact with the juvenile authorities and the final disposition of his or her case.

14. "Detention hearing" means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

15. "Dismissal of complaint" means the termination of all proceedings against a child.

16. "Dispositional hearing" means a hearing held after an adjudication to determine what dispositional order should

be made.

17. "Family in need of assistance" means a family in which there has been a breakdown in the relationship between a child and his or her parent, guardian or custodian.

18. "Guardian" means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section six hundred thirty-three point three (633.3) of the Code, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and duties of a guardian with respect to a child shall be as follows:

a. To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.

b. To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.

c. To serve as custodian, unless another person has been appointed custodian.

d. To make periodic visitations if the guardian does not have physical possession or custody of the child.

e. To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

19. "Guardian ad litem" means a person appointed by the court to represent the interests of the child in any judicial proceeding to which the child is a party.

20. "Health practitioner" means a licensed physician or surgeon, osteopath, osteopathic physician or surgeon, dentist, optometrist, podiatrist or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

21. "Informal adjustment" means the disposition of a complaint without the filing of a petition and may include but is not limited to the following:

a. Placement of the child on nonjudicial probation.

b. Provision of intake services.

c. Referral of the child to a public or private agency other than the court for services.

22. "Informal adjustment agreement" means an agreement between an intake officer, a child who is the subject of a complaint, and the child's parent, guardian or custodian providing for the informal adjustment of the complaint.

23. "Intake" means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if so, what action.

24. "Intake officer" means a juvenile probation officer or other officer appointed by the court to perform the intake function.

25. "Judge" means the judge of a juvenile court.

26. "Juvenile court social records" or "social records" means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this Act other than official records and includes but is not limited to the records made and compiled by intake officers, predisposition reports, and reports of physical and mental examinations.

27. "Juvenile detention home" means a physically restricting facility used only for the detention of children.

28. "Juvenile parole officer" means a person representing an agency which retains jurisdiction over the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed.

29. "Juvenile probation officer" or "probation officer" means a person appointed as a juvenile probation officer under section two hundred thirty-one point eight (231.8) of the Code.

30. "Juvenile shelter care home" means a physically unrestricting facility used only for the shelter care of children.

31. "Nonjudicial probation" means the informal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or probation officer for a period during which the child may be required to comply with specified conditions concerning his or her conduct and activities.

32. "Nonsecure facility" means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this Act.

33. "Official juvenile court records" or "official records" means official records of the court of proceedings over which the court has jurisdiction under this Act which includes but is not limited to the following:

- a. The docket of the court and entries therein.
- b. Complaints, petitions, other pleadings, motions, and applications filed with a court.
- c. Any summons, notice, subpoena, or other process and proofs of publication.
- d. Transcripts of proceedings before the court.
- e. Findings, judgments, decrees and orders of the court.

34. "Parent" means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

35. "Peace officer" means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

36. "Petition" means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

37. "Physical abuse or neglect" or "abuse or neglect" means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian or custodian or other person legally responsible for the child.

38. "Predisposition investigation" means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction.

39. "Predisposition report" is a report furnished to the court which contains the information collected during a predisposition investigation.

40. "Probation" means a legal status which is created by a dispositional order of the court in a case where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile probation officer or other person or agency designated by the court. The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions.

41. "Registry" means the central registry for child abuse information as established under chapter two hundred thirty-

five A (235A) of the Code.

42. "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child. These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support.

43. "Secure facility" means a physically restricting facility in which children adjudicated to have committed a delinquent act may be placed pursuant to a dispositional order of the court.

44. "Sexual abuse" means the commission of a sex offense as defined by the penal law.

45. "Shelter care" means the temporary care of a child in a physically unrestricting facility at any time between a child's initial contact with juvenile authorities and the final judicial disposition of his or her case.

46. "Shelter care hearing" means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

47. "Social investigation" means an investigation conducted for the purpose of collecting information relevant to the court's fashioning of an appropriate disposition of a child in need of assistance case over which the court has jurisdiction.

48. "Social report" means a report furnished to the court which contains the information collected during a social investigation.

49. "Taking into custody" means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.

50. "Termination hearing" means a hearing held to determine whether the court should terminate a parent-child relationship.

51. "Termination of the parent-child relationship" means the divestment by the court of the parent's and child's privileges, duties and powers with respect to each other.

52. "Waiver hearing" means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a delinquent act so that the state may prosecute the child as if the child were an adult.

DIVISION II
JUVENILE DELINQUENCY PROCEEDINGS

PART 1

GENERAL PROVISIONS

Sec. 3. NEW SECTION. JURISDICTION.

1. The juvenile court shall have exclusive original jurisdiction in proceedings concerning any child who is alleged to have committed a delinquent act unless otherwise provided by law, and shall have exclusive original jurisdiction in proceedings concerning an adult who is alleged to have committed a delinquent act prior to having become an adult, provided that the taking of that person into custody for the alleged act or the filing of a delinquency petition alleging the commission of the act occurs

(a) Less than one year after the alleged commission of an act which would be a simple misdemeanor if committed by an adult; or

(b) Less than two years after the alleged commission of an act which would be an offense other than a simple misdemeanor if committed by an adult.

Violations by a child of provisions of chapters one hundred six (106), one hundred six A (106A), one hundred nine (109), one hundred ten (110), one hundred ten A (110A), one hundred ten B (110B), one hundred eleven (111), three hundred twenty-one (321), or three hundred twenty-one G (321G) of the Code which would be simple misdemeanors if committed by an adult, violations of county or municipal curfew or traffic ordinances, and violations by a child of the provisions of section one hundred twenty-three point forty-seven (123.47) of the Code, are excluded from the jurisdiction of the juvenile court and shall be prosecuted as simple misdemeanors as provided by law. The court may advise appropriate juvenile authorities and may refer violations of chapter one hundred twenty-three (123) of the Code to the juvenile court when there is reason to believe that the child regularly abuses alcohol and may be in need of treatment.

2. A case involving a person charged in a court other than the juvenile court with the commission of a public offense not exempted by law from the jurisdiction of the juvenile court and who is within the provisions of subsection one (1) of this section shall immediately be transferred to the juvenile court. The transferring court shall order a transfer and shall forward the transfer order together with all papers, documents and a transcript of all testimony filed or admitted

into evidence in connection with the case to the clerk of the juvenile court. The jurisdiction of the juvenile court shall attach immediately upon the signing of an order of transfer. From the time of transfer, the custody, shelter care and detention of the person alleged to have committed a delinquent act shall be in accordance with the provisions of this Act and the case shall be processed in accordance with the provisions of this Act.

3. The juvenile court, after a hearing and in accordance with the provisions of section twenty-five (25) of this Act, may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult for such offense in another court. If the child pleads guilty or is found guilty of a public offense in another court of this state that court may, with the consent of the child, defer judgment and without regard to restrictions placed upon deferred judgments for adults, place the child on probation for a period not less than one year upon such conditions as it may require. Upon fulfillment of the conditions of probation the child shall be discharged without entry of judgment.

4. Nothing in this Act shall be interpreted as affecting the statutory limitations on prosecutions for murder in the first or second degree.

Sec. 4. NEW SECTION. MOTION FOR CHANGE OF JUDGE. Prior to a hearing pursuant to sections twenty-four (24), twenty-five (25), twenty-six (26), twenty-seven (27), thirty (30) or thirty-four (34) of this Act, the child may file a motion with the district court for the appointment of a new judge. The chief judge of the district court for cause shown shall appoint a new judge.

Sec. 5. NEW SECTION. VENUE.

1. Venue for delinquency proceedings shall be in the judicial district where the child is found, where the child resides or where the alleged delinquent act occurred.

2. The court may transfer delinquency proceedings to the court of any county having venue at any stage in the proceeding as follows:

a. When it appears that the best interests of the minor or society or the convenience of the parties will be served by a transfer, the court may transfer the case to the court of the county of the child's residence.

b. With the consent of the receiving court the court may

transfer the case to the court of the county where the minor is found.

c. The court may transfer the case to the county where the alleged delinquent act occurred.

3. The court shall transfer the case by ordering the transfer and a continuance and by forwarding to the clerk of the receiving court a certified copy of all papers filed together with an order of transfer. The judge of the receiving court may accept the filings of the transferring court or may direct the filing of a new petition and hear the case anew.

Sec. 6. NEW SECTION. RIGHT TO ASSISTANCE OF COUNSEL.

1. A child shall have the right to be represented by counsel at the following stages of the proceedings within the jurisdiction of the juvenile court under division two (II) of this Act:

a. From the time the child is taken into custody for any alleged delinquent act that constitutes a serious or aggravated misdemeanor or felony under the Iowa criminal code, and during any questioning thereafter by a peace officer or probation officer.

b. A detention or shelter care hearing as required by section twenty-four (24) of this Act.

c. A waiver hearing as required by section twenty-five (25) of this Act.

d. An adjudicatory hearing required by section twenty-seven (27) of this Act.

e. A dispositional hearing as required by section thirty (30) of this Act.

f. Hearings to review and modify a dispositional order as required by section thirty-four (34) of this Act.

2. The child's right to be represented by counsel under subsection one (1), paragraphs b through f of this section shall not be waived by a child of any age. The child's right to be represented by counsel under paragraph a of subsection one (1) of this section shall not be waived by the child without the written consent of the child's parent, guardian or custodian.

3. If the child is not represented by counsel as required under subsection one (1) of this section, counsel shall be provided as follows:

a. If the court determines, after giving the child's parent, guardian or custodian an opportunity to be heard, that such person has the ability in whole or in part to pay

for the employment of counsel, it shall either order that person to retain an attorney to represent the child or shall appoint counsel for the child and order the parent, guardian or custodian to pay for that counsel as provided in subsection five (5) of this section.

b. If the court determines that the parent, guardian or custodian cannot pay any part of the expenses of counsel to represent the child, it shall appoint such counsel, who shall be reimbursed according to the provisions of section seventy-five (75), subsection one (1), paragraph d, of this Act.

4. If the child is represented by counsel and the court determines that there is a conflict of interest between the child and his or her parent, guardian or custodian and that the retained counsel could not properly represent the child as a result of the conflict, the court shall appoint other counsel to represent the child and order the parent, guardian or custodian to pay for such counsel as provided in subsection five (5) of this section.

5. If the court determines, after an inquiry which includes notice and reasonable opportunity to be heard that the parent, guardian or custodian has the ability to pay in whole or in part for the attorney appointed for the child, the court may order that person to pay such sums as the court finds appropriate in the manner and to whom the court directs. If the person so ordered fails to comply with the order without good reason, the court shall enter judgment against him or her.

6. Nothing in this section shall be construed to prevent the child or the child's parent, guardian or custodian from retaining counsel to represent the child in proceedings under division two (II) of this Act in which the alleged delinquent act constitutes a simple misdemeanor under the Iowa Code.

Sec. 7. NEW SECTION. DUTIES OF COUNTY ATTORNEY. Upon the filing of a petition the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition.

Sec. 8. NEW SECTION. SUSPENSION OF TIME LIMITATIONS. Where the child requests a continuance of proceedings under division two (II) of this Act, the court, in an order granting the continuance, may suspend the time limitations imposed on the state by this division for a period of time not to exceed the length of the continuance.

PART 2

Sec. 9. NEW SECTION. TAKING A CHILD INTO CUSTODY.

1. A child may be taken into custody:
 - a. By order of the court.
 - b. For a delinquent act pursuant to the laws relating to arrest.
 - c. By a peace officer for the purpose of reuniting a child with the child's family or removing the child to a shelter care facility when the peace officer has reasonable grounds to believe the child has run away from his or her parents, guardian, or custodian.
 - d. By a peace officer, juvenile probation officer, or juvenile parole officer when the officer has reasonable grounds to believe the child has committed a material violation of a dispositional order.

2. When a child is taken into custody as provided in subsection one (1) of this section the person taking the child into custody shall notify the child's parent, guardian or custodian as soon as possible and shall not place bodily restraints, such as handcuffs, on the child unless the child physically resists or threatens physical violence when being taken into custody. Unless the child is placed in shelter care or detention in accordance with the provisions of sections eleven (11) or twelve (12) of this Act, the child shall be released to the child's parent, guardian, custodian, responsible adult relative, or other adult approved by the court upon the promise of such person to produce the child in court at such time as the court may direct.

Sec. 10. NEW SECTION. ADMISSION OF CHILD TO SHELTER CARE OR DETENTION.

1. If a child is taken into custody and not released as provided in section nine (9), subsection two (2), of this Act, the child shall immediately be taken to a detention or shelter care facility as specified in sections eleven (11) or twelve (12) of this Act.
2. When a child is admitted to a detention or shelter care facility the person in charge of the facility or his or her designated representative shall notify the court, the child's attorney, and the child's parent, guardian, or custodian as soon as possible of the admission and the reasons for that admission.

Sec. 11. NEW SECTION. PLACEMENT IN SHELTER CARE.

1. No child shall be placed in shelter care unless one of the following circumstances applies:

a. The child has no parent, guardian, custodian, responsible adult relative or other adult approved by the court who will provide proper shelter, care and supervision.

b. The child desires to be placed in shelter care.

c. It is necessary to hold the child until his or her parent, guardian, or custodian has been contacted and has taken custody of the child.

d. It is necessary to hold the child for transfer to another jurisdiction.

e. The child is being placed pursuant to an order of the court.

2. A child may be placed in shelter care as provided in this section only in one of the following facilities:

a. A juvenile shelter care home.

b. A licensed foster home.

c. An institution or other facility operated by the department of social services, or one which is licensed or otherwise authorized by law to receive and provide care for the child.

d. Any other suitable place designated by the court provided that no place used for the detention of a child may be so designated.

3. When there is reason to believe that a child placed in shelter care pursuant to section nine (9), subsection one (1), paragraph c of this Act would not voluntarily remain in the shelter care facility, the shelter care facility shall impose reasonable restrictions necessary to insure the child's continued custody.

4. A child placed in a shelter care facility under this section shall not be held for a period in excess of forty-eight hours without a court order authorizing such shelter care. A child placed in shelter care pursuant to section nine (9), subsection one (1), paragraph c of this Act shall not be held in excess of seventy-two hours in any event.

5. If no satisfactory provision is made for uniting a child placed in shelter care pursuant to section nine (9), subsection one (1), paragraph c of this Act with his or her family, a child in need of assistance complaint may be filed pursuant to section forty-two (42) of this Act. Nothing in this subsection shall limit the right of a child to file a family in need of assistance petition under section seventy-one (71) of this Act.

Sec. 12. NEW SECTION. PLACEMENT IN DETENTION.

1. No child shall be placed in detention unless:

- a. The child is being held under warrant for another jurisdiction; or
 - b. The child is an escapee from a juvenile correctional or penal institution; or
 - c. There is probable cause to believe that the child has violated conditions of release imposed under section thirty-four (34) of this Act and there is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance; or
 - d. There is probable cause to believe the child has committed a delinquent act, and:
 - (1) There is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance; or
 - (2) There is a serious risk that the child if released may commit an act which would inflict serious bodily harm on the child or on another; or
 - (3) There is a serious risk that the child if released may commit serious damage to the property of others.
2. A child may be placed in detention as provided in this section only in one of the following facilities:
- a. A juvenile detention home.
 - b. Any other suitable place designated by the court.
 - c. A room in a facility intended or used for the detention of adults if there is probable cause to believe that the child has committed a delinquent act, and if:
 - (1) The child is at least fourteen years of age; and
 - (2) The child has shown by his or her conduct, habits, or condition that he or she constitutes an immediate and serious danger to himself or herself or to another, or to the property of another and a facility or place enumerated in paragraph a or b of this subsection is unavailable, or the court determines that the child's conduct or condition endangers the safety of others in the facility; and
 - (3) The facility has an adequate staff to supervise and monitor the child's activities at all times; and
 - (4) The child is confined in a room entirely separated from adults.
 - d. A place used for the detention of children prior to an adjudicatory hearing may also be used for the detention of a child awaiting disposition to a placement under section thirty-two (32), subsection two (2), paragraph e of this Act while the adjudicated child is awaiting transfer to the disposition placement.

3. No child shall be held in a facility under paragraphs a and b of subsection two (2) of this section for a period in excess of twenty-four hours without a court order authorizing such detention.

4. No child shall be detained in a facility under paragraph c of subsection two (2) of this section for a period in excess of twelve hours without the written order of a judge or a magistrate authorizing such detention.

PART 3

INTAKE

Sec. 13. NEW SECTION. INTAKE.

1. Any person having knowledge of the facts may file a complaint with the court alleging that a child has committed a delinquent act.

2. The court shall refer the complaint to an intake officer who shall conduct a preliminary inquiry to determine what action should be taken.

3. In the course of a preliminary inquiry, the intake officer may:

a. Interview the complainant, victim or witnesses of the alleged delinquent act.

b. Check existing records of the court, law enforcement agencies and public records of other agencies.

c. Hold conferences with the child and his or her parent or parents, guardian or custodian for the purpose of interviewing them and discussing the disposition of the complaint in accordance with the requirements set forth in subsection eight (8) of this section.

d. Examine any physical evidence pertinent to the complaint.

e. Interview such persons as are necessary to determine whether the filing of a petition would be in the best interests of the child and the community as provided in section fifteen (15), subsections two (2) and three (3) of this Act.

4. Any additional inquiries may be made only with the consent of the child and his or her parent or parents, guardian or custodian.

5. Participation of the child and his or her parent or parents, guardian or custodian in a conference with an intake officer shall be voluntary, and they shall have the right to refuse to participate in such conference. At such conference the child shall have the right to the assistance of counsel in accordance with section six (6) of this Act and the right to remain silent when questioned by the intake officer.

6. The intake officer, after consultation with the county attorney when necessary, shall determine whether the complaint is legally sufficient for the filing of a petition. A complaint shall be deemed legally sufficient for the filing of a petition if the facts as alleged are sufficient to establish the jurisdiction of the court and probable cause to believe that the child has committed a delinquent act. If the intake officer determines that the complaint is legally sufficient to support the filing of a petition, the officer shall determine whether the interests of the child and the public will best be served by the dismissal of the complaint, the informal adjustment of the complaint, or the filing of a petition.

7. If the intake officer determines that the complaint is not legally sufficient for the filing of a petition or that further proceedings are not in the best interests of the child or the public, the intake officer shall dismiss the complaint.

8. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that an informal adjustment of the complaint is in the best interests of the child and the community, the officer may make an informal adjustment of the complaint in accordance with section fourteen (14) of this Act.

9. If the intake officer determines that the complaint is legally sufficient for the filing of a petition and that the filing of a petition is in the best interests of the juvenile and the public, the officer shall request the county attorney to file a petition in accordance with section fifteen (15) of this Act.

Sec. 14. NEW SECTION. INFORMAL ADJUSTMENT.

1. The informal adjustment of a complaint is a permissible disposition of a complaint at intake subject to the following conditions:

a. The child has admitted his or her involvement in a delinquent act.

b. The intake officer shall advise the child and his or her parent, guardian or custodian that they have the right to refuse an informal adjustment of the complaint and demand the filing of a petition and a formal adjudication.

c. Any informal adjustment agreement shall be entered into voluntarily and intelligently by the child with the advice of his or her attorney, or by the child with the consent of a parent, guardian, or custodian if the child is not

represented by counsel.

d. The terms of such agreement shall be clearly stated in writing and signed by all parties to the agreement and a copy of this agreement shall be given to the child; the counsel for the child; the parent, guardian or custodian; and the intake officer, who shall retain the copy in the case file.

e. An agreement providing for the supervision of a child by a juvenile probation officer or the provision of intake services shall not exceed six months.

f. An agreement providing for the referral of a child to a public or private agency for services shall not exceed six months.

g. The child and his or her parent, guardian or custodian shall have the right to terminate such agreement at any time and to request the filing of a petition and a formal adjudication.

h. If an informal adjustment of a complaint has been made, a petition based upon the events out of which the original complaint arose may be filed only during the period of six months from the date the informal adjustment agreement was entered into. If a petition is filed within this period the child's compliance with all proper and reasonable terms of the agreement shall be grounds for dismissal of the petition by the court.

i. The person performing the duties of intake officer shall file a report at least annually with the court listing the number of informal adjustments made during the reporting time, the conditions imposed in each case, the number of informal adjustments resulting in dismissal without the filing of a petition, and the number of informal adjustments resulting in the filing of a petition upon the original complaint.

PART 4

JUDICIAL PROCEEDINGS

Sec. 15. NEW SECTION. FILING OF PETITION.

1. A formal judicial proceeding to determine whether a child has committed a delinquent act shall be initiated by the filing by the county attorney of a petition alleging that a child has committed a delinquent act.

2. If the intake officer determines that a complaint is legally sufficient for the filing of a petition alleging that a child has committed a delinquent act and that the filing of a petition would be in the best interests of the child

and the community, the officer shall submit a written request for the filing of a petition to the county attorney. The county attorney may grant or deny the request of the intake officer for the filing of a petition. A determination by the county attorney that a petition should not be filed shall be final.

3. If the intake officer determines that a complaint is not legally sufficient for the filing of a petition or that the filing of a petition would not be in the best interests of the child and the community, the officer shall notify the complainant of his or her determination and the reasons for such determination, and shall advise the complainant that he or she may submit the complaint to the county attorney for review. Upon receiving a request for review, the county attorney shall consider the facts presented by the complainant, consult with the intake officer and make the final determination as to whether a petition should be filed. In the absence of a request by the complainant for a review of the intake officer's determination that a petition should not be filed, the officer's determination shall be final.

Sec. 16. NEW SECTION. CONTENTS OF PETITION.

1. The petition and subsequent court documents shall be entitled "In the interest of, a child."

2. The petition shall be verified and any statements in the petition may be made upon information and belief.

3. The petition shall set forth plainly:

a. The name, age, and residence of the child who is the subject of the petition.

b. The names and residences of any:

- (1) Living parent of the child.
- (2) Guardian of the child.
- (3) Legal custodian of the child.
- (4) Guardian ad litem.

c. With reasonable particularity, the time, place and manner of the delinquent act alleged and the penal law allegedly violated by such act.

4. If any of the facts required under subsection three (3), paragraphs a and b of this section are not known by the petitioner, the petition shall so state.

5. The petition shall set forth plainly the nearest known relative of the child if no parent or guardian can be found.

Sec. 17. NEW SECTION. SUMMONS, NOTICE, SUBPOENAS AND SERVICE.

1. After a petition has been filed the court shall set

a time for an adjudicatory hearing and unless the parties named in subsection two (2) of this section voluntarily appear, shall issue a summons requiring the child to appear before the court at a time and place stated and requiring the person who has custody or control of the child to appear before the court and to bring the child with him or her at that time. The summons shall attach a copy of the petition and shall give notification of the right to counsel provided for in section six (6) of this Act.

2. Notice of the pendency of the case shall be served upon the known parent, guardian or legal custodian of a child if this person is not summoned to appear as provided in subsection one (1) of this section. Notice shall also be served upon the child and upon the child's guardian ad litem, if any. The notice shall attach a copy of the petition and shall give notification of the right to counsel provided for in section six (6) of this Act.

3. Upon request of the child who is identified in the petition as a party to the proceeding, the child's parent, guardian or custodian, a county attorney or on the court's own motion, the court or the clerk of the court shall issue subpoenas requiring the attendance and testimony of witnesses and production of papers at any hearing under this division.

4. Service of summons or notice shall be made personally by the delivery of a copy thereof to the person being served. If the court determines that personal service of a summons or notice is impracticable, the court may order service by certified mail addressed to the last known address or by publication or both. Service of summons or notice shall be made not less than five days before the time fixed for hearing. Service of summons, notice, subpoenas or other process, after an initial valid summons or notice, shall be made in accordance with the rules of the court governing such service in civil actions.

5. If a person personally served with a summons or subpoena fails without reasonable cause to appear or to bring the child, the person may be proceeded against for contempt of court or the court may issue an order for the arrest of such person or both the arrest of the person and the taking into custody of the child.

6. The court may issue an order for the removal of the child from the custody of his or her parent, guardian or custodian when there exists an immediate threat that the parent, guardian or custodian will flee the state with the

child, or when it appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health.

Sec. 18. NEW SECTION. PRESENCE OF PARENTS AT HEARINGS.

1. Any hearings or proceedings under this division subsequent to the filing of a petition shall not take place without the presence of one or both of the child's parents, guardian or custodian except that a hearing or proceeding may take place without such presence if the parent, guardian or custodian fails to appear after reasonable notification, or if the court finds that a reasonably diligent effort has been made to notify the child's parent, guardian, or custodian, and the effort was unavailing.

2. In any such hearings or proceedings the court may temporarily excuse the presence of the parent, guardian or custodian when the court deems it in the best interests of the child. Counsel for the parent, guardian or custodian shall have the right to participate in a hearing or proceeding during the absence of the parent, guardian or custodian.

Sec. 19. NEW SECTION. EXCLUSION OF PUBLIC FROM HEARINGS.

At any time during the proceedings, the court, on the motion of any of the parties or upon the court's own motion, may exclude the public from hearings under this division if the court determines that the possibility of damage or harm to the juvenile outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

Sec. 20. NEW SECTION. OTHER ISSUES ADJUDICATED. When it appears during the course of any hearing or proceeding that some action or remedy other than those indicated by the application or pleading is appropriate, the court, with the consent of all necessary parties, may proceed to hear and determine the additional or other issues as though originally properly sought and pleaded.

Sec. 21. NEW SECTION. REPORTER REQUIRED. Stenographic notes or mechanical or electronic recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. Matters which must be reported under the provisions of this section shall be the same as those required in section six hundred twenty-four point nine (624.9) of the Code.

Sec. 22. NEW SECTION. CONTINUANCES. Continuances in juvenile delinquency proceedings may be granted by the court only for good cause shown on the record if the child is being held in detention.

Sec. 23. NEW SECTION. ANSWER--PLEA AGREEMENT--ACCEPTANCE OF PLEA ADMITTING ALLEGATIONS OF PETITION.

1. A written answer to a delinquency petition need not be filed by the child, but any matters which might be set forth in an answer or other pleading may be filed in writing or pleaded orally before the court.

2. The county attorney and the child's counsel may mutually consider a plea agreement which contemplates entry of a plea admitting the allegations of the petition in the expectation that other charges will be dismissed or not filed or that a specific disposition will be recommended by the county attorney and granted by the court. Any plea discussion shall be open to the child and the child's parent, guardian or custodian.

3. The court shall not accept a plea admitting the allegations of the petition without first addressing the child personally in court, determining that the plea is voluntary and not the result of any force or threats or promises other than promises made in connection with a plea agreement and informing the child of and determining that the child understands the following:

a. The nature of the allegations of the petition to which the plea is offered.

b. The severest possible disposition and the maximum length of such disposition which the court may order if the court accepts the plea.

c. The child has the right to deny the allegations of the petition.

d. If the child admits the allegations of the petition the child waives the right to a further adjudicatory hearing.

4. The court shall not accept a plea admitting the allegations of the petition without first addressing the county attorney and the child's counsel in court and making an inquiry into whether such a plea is the result of a plea agreement. The court shall require the disclosure of the terms of any such agreement in court. If a plea agreement has been reached which contemplates entry of the plea in the expectation that the court will order a specific disposition or dismiss other charges against the child before the court, the court shall state to the parties whether the court will

concur in the proposed disposition or dismissal of charges. If the court will not concur in such disposition or dismissal, the court should advise the child personally of this fact, advise the child that the disposition of the case may be less favorable to the child than that contemplated by the plea agreement, and afford the child the opportunity to withdraw the plea. If the court defers decision as to whether the court will concur with the proposed disposition or dismissal until there has been an opportunity to consider the predisposition report, the court shall advise the child that the court is not bound by the plea agreement and afford the child the opportunity to withdraw the plea.

5. The court shall not accept a plea admitting the allegations of the petition without:

- a. Determining that there is a factual basis for the plea.
- b. Determining that the child was given effective assistance of counsel prior to tender of the plea.
- c. Inquiring of the parent or parents who are present in court whether they agree as to the course of action that their child has chosen. If either parent expresses disagreement with the plea, the court may refuse to accept that plea.

6. If the court determines that a plea is not in the child's best interest it may refuse to accept that plea regardless of the agreement of the parties.

Sec. 24. NEW SECTION. DETENTION OR SHELTER CARE HEARING--RELEASE FROM DETENTION UPON CHANGE OF CIRCUMSTANCE.

1. A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays and legal holidays, of the time of the child's admission to a detention or shelter care facility. If the hearing is not held within the time specified, the child shall be released from shelter care or detention. Prior to the hearing a petition shall be filed, except where the child is already under the supervision of a juvenile court under a prior judgment.

2. The county attorney or a juvenile probation officer may apply for a hearing at any time after the petition is filed to determine whether the child who is the subject of the petition should be placed in detention or shelter care. The court may upon the application or upon its own motion order such hearing.

3. A notice stating the time, place, and purpose of the hearing shall be served personally upon the child, the child's attorney, the child's guardian ad litem if any, and the child's

known parent, guardian or custodian not less than twenty-four hours before the time the hearing is scheduled to begin. If the court finds that there has been reasonably diligent effort to give notice to a parent, guardian or custodian and that the effort has been unavailing, the hearing may proceed without such notice having been served.

4. At the hearing the court shall admit only testimony and other evidence relevant to the determination of whether there is probable cause to believe the child has committed the act as alleged in the petition and to the determination of whether the placement of the child in detention or shelter care is authorized under section eleven (11) or twelve (12) of this Act. Any written reports or records made available to the court at the hearing shall be made available to the parties. A copy of the petition shall be given to each of the parties at or before the hearing.

5. The court shall find release to be proper under the following circumstances:

a. If the court finds that there is not probable cause to believe that the child is a child within the jurisdiction of the court under this Act, it shall release the child and dismiss the petition.

b. If the court finds that detention or shelter care is not authorized under section eleven (11) or twelve (12) of this Act, or is authorized but not warranted in a particular case, the court shall order the child's release, and in so doing, may impose one or more of the following conditions:

(1) Place the child in the custody of a parent, guardian or custodian under that person's supervision, or under the supervision of an organization which agrees to supervise the child.

(2) Place restrictions on the child's travel, association, or place of residence during the period of release.

(3) Impose any other condition deemed reasonably necessary and consistent with the grounds for detaining children specified in section eleven (11) or twelve (12) of this Act, including a condition requiring that the child return to custody as required.

c. An order releasing a child on conditions specified in this section may be amended at any time to impose equally or less restrictive conditions. The order may be amended to impose additional or more restrictive conditions, or to revoke the release, if the child has failed to conform to the conditions originally imposed.

6. If the court finds that there is probable cause to believe that the child is within the jurisdiction of the court under this Act and that full-time detention or shelter care is authorized under section eleven (11) or twelve (12) of this Act, it may issue an order authorizing either shelter care or detention until the adjudicatory hearing is held or for a period not exceeding seven days whichever is shorter.

7. If a child held in shelter care or detention by court order has not been released after a detention hearing or has not appeared at an adjudicatory hearing before the expiration of the order of detention, an additional hearing shall automatically be scheduled for the next court day following the expiration of the order. The child, the child's counsel, the child's guardian ad litem, and the child's parent, guardian or custodian shall be notified of this hearing not less than twenty-four hours before the hearing is scheduled to take place.

8. A child held in a detention or shelter care facility under order of court after a hearing may be released upon a showing that a change of circumstances makes continued detention unnecessary.

9. A written request for the release of the child, setting forth the changed circumstances, may be filed by the child, by a responsible adult on the child's behalf, by the child's custodian, or by the juvenile probation officer.

10. Based upon the facts stated in the request for release the court may grant or deny the request without a hearing, or may order that a hearing be held at a date, time and place determined by the court. Notice of the hearing shall be given to the child and his or her custodian or counsel. Upon receiving evidence at the hearing, the court may release the child to the child's custodian or other suitable person, or may deny the request and remand the child to the detention or shelter care facility.

Sec. 25. NEW SECTION. WAIVER HEARING AND WAIVER OF JURISDICTION.

1. After the filing of a petition which alleges that a child has committed a delinquent act on the basis of an alleged commission of a public offense and before an adjudicatory hearing on the merits of the petition is held, the county attorney or the child may file a motion requesting the court to waive its jurisdiction.

2. The court shall hold a waiver hearing on all such motions.

3. A notice that states the time, place, and purpose of the waiver hearing shall be issued and served in the same manner as for adjudicatory hearings as provided in section seventeen (17) of this Act. Summons, subpoenas and other process may be issued and served in the same manner as for adjudicatory hearings as provided in section seventeen (17) of this Act.

4. Prior to the waiver hearing, the juvenile probation officer or other person or agency designated by the court shall conduct an investigation for the purpose of collecting information relevant to the court's decision to waive its jurisdiction over the child and shall submit a report concerning such investigation to the court. The report shall include any recommendations made concerning waiver. Prior to the hearing the court shall provide the child's counsel and the county attorney with access to the report and to all written material to be considered by the court.

5. At the waiver hearing all relevant and material evidence shall be admitted.

6. At the conclusion of the waiver hearing the court may waive its jurisdiction over the child if:

a. The child is fourteen years of age or older; and
b. The court determines, or has previously determined in a detention hearing under section twenty-four (24) of this Act, that there is probable cause to believe that the child has committed a delinquent act which would constitute a public offense; and

c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child in the event the juvenile court retains jurisdiction over the child and the child is adjudicated to have committed a delinquent act, and that waiver of the court's jurisdiction would be in the best interest of the child or the community.

7. In making the determination required by subsection six (6), paragraph c, of this section, the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

c. The programs, facilities and personnel available to

the juvenile court for rehabilitation and treatment of the child, and the programs, facilities and personnel which would be available to the court that would have jurisdiction in the event the juvenile court waives its jurisdiction so that the child can be prosecuted as an adult.

8. If at the conclusion of the hearing the court waives its jurisdiction over the child, the court shall make and file written findings as to its reasons for waiving its jurisdiction.

9. If the court waives jurisdiction, statements made by the child after being taken into custody and prior to intake are admissible as evidence in chief against the child in subsequent criminal proceedings provided that the statements were made with the advice of the child's counsel or after waiver of the child's right to counsel and provided that the court finds the child had voluntarily waived the right to remain silent. Other statements made by a child are admissible as evidence in chief provided that the court finds the statements were voluntary. In making its determination, the court may consider any factors it finds relevant and shall consider the following factors:

- a. Opportunity for the child to consult with a parent, guardian, custodian, lawyer or other adult.
- b. The age of the child.
- c. The child's level of education.
- d. The child's level of intelligence.
- e. Whether the child was advised of his or her constitutional rights.
- f. Length of time the child was held in shelter care or detention before making the statement in question.
- g. The nature of the questioning which elicited the statement.
- h. Whether physical punishment such as deprivation of food or sleep was used upon the child during the shelter care, detention, or questioning.

Statements made by the child during intake or at a waiver hearing held pursuant to this section are not admissible as evidence in chief against the child in subsequent criminal proceedings over the child's objection in any event.

10. If the court waives its jurisdiction over the child so that the child may be prosecuted as an adult, the judge who made the waiver decision shall not preside at any subsequent proceedings in connection with that prosecution over the objection of the child.

11. If a child who is alleged to have delivered, manufactured, or possessed with intent to deliver or manufacture, a controlled substance except marijuana, as defined in chapter two hundred four (204) of the Code, is waived to district court for prosecution, the mandatory minimum sentence provided in section two hundred four point four hundred thirteen (204.413), Code 1977 Supplement, shall not be imposed if a conviction is had; however, each child convicted of such an offense shall be confined for not less than thirty days in a secure facility.

Upon application of a person charged or convicted under the authority of this subsection, the district court shall order the records in the case sealed if:

- a. Five years have elapsed since the final discharge of that person; and
- b. The person has not been convicted of a felony or an aggravated or serious misdemeanor, or adjudicated a delinquent for an act which if committed by an adult would be a felony, or an aggravated or serious misdemeanor since the final discharge of that person.

Sec. 26. NEW SECTION. CONSENT DECREE.

1. At any time after the filing of a petition and prior to entry of an order of adjudication pursuant to section twenty-seven (27) of this Act, the court may suspend the proceedings on motion of the county attorney or the child's counsel, enter a consent decree, and continue the case under terms and conditions established by the court. These terms and conditions may include the supervision of the child by a juvenile probation officer or other agency or person designated by the court.

2. A consent decree shall not be entered unless the child and his or her parent, guardian or custodian is informed of the consequences of the decree by the court and the court determines that the child has voluntarily and intelligently agreed to the terms and conditions of the decree. If the county attorney objects to the entry of a consent decree, the court shall proceed to determine the appropriateness of entering a consent decree after consideration of any objections or reasons for entering such a decree.

3. A consent decree shall remain in force for six months unless the child is sooner discharged by the court or by the juvenile probation officer or other agency or person supervising the child. Upon application of a juvenile probation officer or other agency or person supervising the

child made prior to the expiration of the decree and after notice and hearing, or upon agreement by the parties, a consent decree may be extended for an additional six months by order of the court.

4. When a child has complied with the express terms and conditions of the consent decree for the required amount of time or until earlier dismissed as provided in subsection three (3) of this section, the original petition may not be reinstated. However, failure to so comply may result in the child's being thereafter held accountable as if the consent decree had never been entered.

5. A child who is discharged or who completes a period of continuance without the reinstatement of the original petition shall not be proceeded against in any court for a delinquent act alleged in the petition.

Sec. 27. NEW SECTION. ADJUDICATORY HEARING--FINDINGS--ADJUDICATION.

1. If a child denies the allegations of the petition, that child may be found to be delinquent only after an adjudicatory hearing conducted in accordance with the provisions of this section.

2. The court shall hear and adjudicate all cases involving a petition alleging a child to have committed a delinquent act.

3. The child shall have the right to adjudication by an impartial finder of fact. A judge of the juvenile court may not serve as the finder of fact over objection of the child based upon a showing of prejudice on the part of the judge. In the event that a judge is disqualified from serving as a finder of fact under this provision, a substitute judge shall serve as the finder of fact.

4. At an adjudicatory hearing the state shall have the burden of proving the allegations of the petition.

5. Only evidence which is admissible under the rules of evidence applicable to the trial of criminal cases shall be admitted at the hearing except as otherwise provided by this section.

6. Statements or other evidence derived directly or indirectly from statements which a child makes to a law enforcement officer while in custody without presence of counsel may be admitted into evidence at an adjudicatory hearing over the child's objection only after the court determines whether the child has voluntarily waived the right to remain silent. In making its determination the court may

consider any factors it finds relevant and shall consider the following factors:

a. Opportunity for the child to consult with a parent, guardian, custodian, lawyer or other adult.

b. The age of the child.

c. The child's level of education.

d. The child's level of intelligence.

e. Whether the child was advised of his or her constitutional rights.

f. Length of time the child was held in shelter care or detention before making the statement in question.

g. The nature of the questioning which elicited the statement.

h. Whether physical punishment such as deprivation of food or sleep was used upon the child during the shelter care, detention, or questioning.

7. The following statements or other evidence shall not be admitted as evidence in chief at an adjudicatory hearing:

a. Statements or other evidence derived directly or indirectly from statements which a child makes to a juvenile intake officer without the presence of counsel subsequent to the filing of a complaint and prior to adjudication unless the child and his or her attorney consent to the admission of such statements or evidence.

b. Statements which the child makes to a juvenile probation officer or other person conducting a predisposition investigation during such an investigation.

8. At the conclusion of an adjudicatory hearing, the court shall make a finding as to whether the child has committed a delinquent act. The court shall make and file written findings as to the truth of the specific allegations of the petition and as to whether the child has engaged in delinquent conduct.

9. If the court finds that the child did not engage in delinquent conduct, the court shall enter an order dismissing the petition.

10. If the court finds that the child did engage in delinquent conduct, the court may enter an order adjudicating the child to have committed a delinquent act. The child shall be presumed to be innocent of the charges against him or her and no finding that a child has engaged in delinquent conduct may be made unless the state has proved beyond a reasonable doubt that the child engaged in such behavior.

Sec. 28. NEW SECTION. PREDISPOSITION INVESTIGATION AND REPORT.

1. The court shall not make a disposition of the matter following the entry of an order of adjudication pursuant to section twenty-seven (27) of this Act until a predisposition report has been submitted to and considered by the court. The court may direct a juvenile probation officer or any other agency or individual to conduct a predisposition investigation and to prepare a predisposition report.

2. A predisposition investigation shall not be conducted prior to the adjudication of the child without the consent of the child and his or her counsel. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing.

3. A predisposition report shall not be disclosed except as provided in this section and in division eight (VIII) of this Act. Prior to the dispositional hearing, the court shall permit the child's attorney to inspect any predisposition report to be considered by the court in making a disposition. The court may in its discretion order counsel not to disclose parts of the report to the child, or to the child's parent, guardian, guardian ad litem, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the child.

Sec. 29. NEW SECTION. PHYSICAL AND MENTAL EXAMINATIONS.

1. Following the entry of an order of adjudication under section twenty-seven (27) of this Act the court may after a hearing which may be simultaneous with the adjudicatory hearing, order a physical or mental examination of the child if it finds that an examination is necessary to determine the child's physical or mental condition.

2. When possible an examination shall be conducted on an out-patient basis, but the court may, if it deems necessary, commit the child to a suitable hospital, facility or institution for the purpose of examination. Commitment for examination shall not exceed thirty days and the civil commitment provisions of chapter two hundred twenty-nine (229) of the Code shall not apply.

3. At any time after the filing of a delinquency petition the court may order a physical or mental examination of the child if the following circumstances apply:

a. The court finds such examination to be in the best interest of the child; and

b. The parent, guardian or custodian and the child's counsel agree.

An examination shall be conducted on an out-patient basis unless the court, the child's counsel and the parent, guardian or custodian agree that it is necessary the child be committed to a suitable hospital, facility or institution for the purpose of examination. Commitment for examination shall not exceed thirty days and the civil commitment provisions of chapter two hundred twenty-nine (229) of the Code shall not apply.

Sec. 30. NEW SECTION. DISPOSITIONAL HEARING.

1. As soon as practicable following the entry of an order of adjudication pursuant to section twenty-seven (27) of this Act, the court shall hold a dispositional hearing in order to determine what disposition should be made of the matter.

2. At that hearing all relevant and material evidence shall be admitted.

3. When the dispositional hearing is concluded the court shall enter an order to make any one or more of the dispositions authorized under section thirty-two (32) of this Act.

Sec. 31. NEW SECTION. DISPOSITION OF MENTALLY ILL OR MENTALLY RETARDED CHILD. If the evidence received at an adjudicatory or a dispositional hearing indicates that the child is mentally ill, the court may direct the juvenile probation officer or the department to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the juvenile court. Such proceedings shall adhere to the requirements of chapter two hundred twenty-nine (229) of the Code. If the evidence received at an adjudicatory or a dispositional hearing indicates that the child is mentally retarded, the court may direct the juvenile probation officer or the department to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the juvenile court. Such proceedings shall adhere to the requirements of chapter two hundred twenty-two (222) of the Code. In the event the child is committed as a mentally ill or mentally retarded child, any order adjudicating the child to have committed a delinquent act shall be set aside and the petition shall be dismissed.

Sec. 32. NEW SECTION. DISPOSITION OF CHILD FOUND TO HAVE COMMITTED A DELINQUENT ACT.

1. Pursuant to a hearing as provided in section thirty (30) of this Act, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness

of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child and the child's prior record. The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department or facility in whom custody is vested.

2. The dispositional orders which the court may enter are as follows:

a. An order prescribing a work assignment of value to the state or to the public, or prescribing restitution consisting of monetary payment or a work assignment of value to the victim. Such order may be the sole disposition or may be included as an element in other dispositional orders.

b. An order placing the child on probation and releasing the child to his or her parent, guardian or custodian.

c. An order providing special care and treatment required for the physical, emotional or mental health of the child, and

(1) Placing the child on probation or other supervision; and

(2) If the court deems appropriate, ordering the parent, guardian, or custodian to reimburse the county for any costs incurred as provided in section seventy-five (75), subsection two (2) of this Act or to otherwise pay or provide for such care and treatment.

d. An order transferring the legal custody of the child, subject to the continuing jurisdiction of the court for purposes of section thirty-four (34) of this Act, to one of the following:

(1) An adult relative or other suitable adult and placing the child on probation.

(2) A child placing agency or other suitable private agency or facility which is licensed or otherwise authorized by law to receive and provide care for children and placing the child on probation or other supervision.

(3) The department of social services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court.

e. An order transferring the guardianship of the child, subject to the continuing jurisdiction of the court for the purposes of section thirty-four (34) of this Act, to the commissioner of the department of social services for purposes

of placement in the Iowa juvenile home at Toledo, the Iowa training school for boys, the Iowa training school for girls, or other facility provided that:

- (1) The child is at least twelve years of age; and
- (2) The court finds such placement to be in the best interests of the child or necessary to the protection of the public.

f. An order committing the child to a mental health institute or other appropriate facility for the purpose of treatment of a mental or emotional condition after making findings pursuant to the standards set out for involuntary commitment in chapter two hundred twenty-nine (229) of the Code.

3. When the court enters an order placing a child on probation pursuant to this section, the court may in cases of change of residency transfer jurisdiction of the child to the juvenile court of the county where the child's residence is established. The court to which the jurisdiction of the child is transferred shall have the same powers with respect to the child as if the petition had originally been filed in that court.

4. When the court enters an order transferring the legal and physical custody of a child to an agency, facility, department or institution, the court shall transmit its order, its finding, and a summary of its information concerning the child to such agency, facility, department or institution.

Sec. 33. NEW SECTION. DURATION OF DISPOSITIONAL ORDERS.

1. Any dispositional order entered by the court pursuant to section thirty-two (32) of this Act shall remain in force for an indeterminate period or until the child becomes eighteen years of age unless otherwise specified by the court or unless sooner terminated pursuant to the provisions of section thirty-four (34) of this Act. No dispositional order made under section thirty-two (32), subsection two (2), paragraph e shall remain in force longer than the maximum possible duration of the sentence which may be imposed on an adult for the commission of the act which the child has been found by the court to have committed.

2. All dispositional orders shall automatically terminate when the child becomes eighteen years of age, except that in the case of an adult within the jurisdiction of the court under the provisions of section three (3), subsection one (1) of this Act, the dispositional order shall automatically

terminate one year after the last date upon which jurisdiction could attach.

3. Any person supervising but not having custody of the child pursuant to such an order shall file a written report with the court at least every six months concerning the status and progress of the child.

Any agency, facility, institution or person to whom custody of the child has been transferred pursuant to such order shall file a written report with the court at least every six months concerning the status and progress of the child.

Sec. 34. NEW SECTION. TERMINATION, MODIFICATION, OR VACATION AND SUBSTITUTION OF DISPOSITIONAL ORDER. At any time prior to its expiration, a dispositional order may be terminated, modified, or vacated and another dispositional order substituted therefor only in accordance with the following provisions:

1. With respect to a dispositional order made pursuant to section thirty-two (32), subsection two (2), paragraph a or b of this Act and upon the motion of a child, a child's parent or guardian, a child's guardian ad litem, a person supervising the child under a dispositional order, a county attorney, or upon its own motion, the court may terminate the order and discharge the child, modify the order, or vacate the order and substitute another order pursuant to the provisions of section thirty-two (32) of this Act. Notice shall be afforded all parties, and a hearing shall be held at the request of any party.

2. With respect to a dispositional order made pursuant to section thirty-two (32), subsection two (2), paragraph d, of this Act, the court may grant a motion of the person to whom custody has been transferred for termination of the order and discharge of the child, for modification of the order by imposition of less restrictive conditions, or for vacation of the order and substitution of a less restrictive order. Notice shall be afforded all parties, and a hearing shall be held at the request of any party.

Notwithstanding the dispositional order, an agency, facility, or institution to whom custody has been granted under section thirty-two (32), subsection two (2), paragraphs d or e of this Act may terminate the order and discharge the child, modify the order by imposing less restrictive conditions, or vacate the order and substitute a less restrictive order without leave of court.

3. With respect to a dispositional order made pursuant

to section thirty-two (32), subsection two (2), paragraphs d or e of this Act, the court shall, in the absence of objection by the child, grant a motion of a person or agency to whom custody has been transferred for modification of the order by transfer to an equally restrictive placement. If the child objects to the transfer the court may, after notice and hearing, either grant or deny the motion for transfer.

4. With respect to a dispositional order made pursuant to section thirty-two (32), subsection two (2), paragraphs d and e of this Act, the court may, after notice and hearing, either grant or deny a motion of the child, the child's parent or guardian, or the child's guardian ad litem, to terminate the order and discharge the child, to modify the order either by imposing less restrictive conditions or by transfer to an equally or less restrictive placement, or to vacate the order and substitute a less restrictive order. A motion may be made pursuant to this paragraph no more than once every six months.

5. With respect to a dispositional order made pursuant to section thirty-two (32), subsection two (2), paragraphs d and e of this Act, the court may, after notice and a hearing at which there is presented clear and convincing evidence to support such an action, either grant or deny a motion by a county attorney or by a person or agency to whom custody has been transferred, to modify an order by imposing more restrictive conditions or to vacate the order and substitute a more restrictive order.

Notice requirements of this section shall be satisfied in the same manner as for adjudicatory hearings as provided in section seventeen (17) of this Act. At a hearing under this section all relevant and material evidence shall be admitted.

Sec. 35. NEW SECTION. EFFECT OF ADJUDICATION AND DISPOSITION.

1. An adjudication or disposition in a proceeding under this division shall not be deemed a conviction of a crime and shall not impose any civil disabilities or operate to disqualify the child in any civil service application or appointment.

2. The adjudication and disposition of a child and evidence given in a proceeding under this division shall not be admissible as evidence against the child in any subsequent proceeding in any other court before or after reaching majority except in a sentencing proceeding after conviction of a felony.

DIVISION III
CHILD IN NEED OF ASSISTANCE PROCEEDINGS
PART 1

GENERAL PROVISIONS

Sec. 36. NEW SECTION. JURISDICTION.

1. The juvenile court shall have exclusive jurisdiction over proceedings under this Act alleging that a child is a child in need of assistance.

2. In determining such jurisdiction the age and marital status of the child at the time the proceedings are initiated is controlling.

Sec. 37. NEW SECTION. VENUE.

1. Venue for child in need of assistance proceedings shall be in the judicial district where the child is found or in the judicial district of the child's residence.

2. The court may transfer any child in need of assistance proceedings brought under this Act to the juvenile court of any county having venue at any stage in the proceedings as follows:

a. When it appears that the best interests of the child or the convenience of the proceedings shall be served by a transfer, the court may transfer the case to the court of the county of the child's residence.

b. With the consent of the receiving court, the court may transfer the case to the court of the county where the child is found.

3. The court shall transfer the case by ordering the transfer and a continuance and by forwarding to the clerk of the receiving court a certified copy of all papers filed together with an order of transfer. The judge of the receiving court may accept the filings of the transferring court or may direct the filing of a new petition and hear the case anew.

Sec. 38. NEW SECTION. MODIFICATION OF CUSTODY DECREE. During the pendency of an action under this division, a parent without custody pursuant to a decree of dissolution of marriage is estopped from applying for a modification of the custody decree in a court of this state.

PART 2

TEMPORARY REMOVAL OF A CHILD

Sec. 39. NEW SECTION. TEMPORARY REMOVAL OF A CHILD PURSUANT TO EX PARTE COURT ORDER.

1. The juvenile court may enter an ex parte order directing a peace officer to remove a child from his or her home before

or after the filing of a petition under this Act provided:

a. The parent, guardian, or legal custodian is absent, or though present, was asked and refused to consent to the removal of the child and was informed of an intent to apply for an order under this section; and

b. It appears that the child's immediate removal is necessary to avoid imminent danger to the child's life or health; and

c. There is not enough time to file a petition and hold a hearing under section fifty-one (51) of this Act.

2. The order shall specify the facility to which the child is to be brought. Except for good cause shown or unless the child is sooner returned to the place where he or she was residing, a petition shall be filed under this Act within three days of the issuance of the order.

3. The juvenile court may enter an order authorizing a physician or hospital to provide emergency medical or surgical procedures before the filing of a petition under this Act provided:

a. Such procedures are necessary to safeguard the life and health of the child; and

b. There is not enough time to file a petition under this Act and hold a hearing as provided in section fifty-one (51) of this Act.

4. Any person who may file a petition under this Act may apply for, or the court on its own motion may issue, an order for temporary removal under this section. An appropriate person designated by the court shall confer with a person seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application.

Sec. 40. NEW SECTION. REMOVAL WITHOUT COURT ORDER.

1. A peace officer may remove a child from his or her home or a physician treating a child may keep the child in custody without a court order as required under section thirty-nine (39) of this Act and without the consent of a parent, guardian, or custodian provided that:

a. The child is in such circumstance or condition that his or her continued presence in the residence or in the care or custody of the parent, guardian, or custodian presents an imminent danger to the child's life or health; and

b. There is not enough time to apply for an order under

section thirty-nine (39) of this Act.

2. If a person authorized by this section removes or retains custody of a child, he or she shall:

a. Bring the child immediately to a place designated by the rules of the court for this purpose, unless the person is a physician treating the child and the child is or will presently be admitted to a hospital.

b. Make every reasonable effort to inform the parent, guardian, or custodian of the whereabouts of the child.

c. Promptly inform the court in writing of the emergency removal and the circumstances surrounding the removal.

3. Any person, agency, or institution acting in good faith in the removal or keeping of a child pursuant to this section, and any employer of or person under the direction of such a person, agency, or institution, shall have immunity from any civil or criminal liability that might otherwise be incurred or imposed as the result of such removal or keeping.

4. When the court is informed that there has been an emergency removal or keeping of a child without a court order, the court shall direct the department of social services or the juvenile probation department to make every reasonable effort to communicate immediately with the child's parent or parents or other person legally responsible for the child's care. The court shall also authorize the department of social services or the juvenile probation department to cause a child thus removed or kept to be returned if it concludes there is not an imminent risk to the child's life and health in so doing. If the child is not returned, the department of social services or the juvenile probation department shall forthwith cause a petition to be filed within three days after the removal.

5. When there has been an emergency removal or keeping of a child without a court order, a physical examination of the child by a licensed medical practitioner shall be performed within twenty-four hours of such removal.

Sec. 41. NEW SECTION. HOMEMAKER SERVICES. A homemaker-home health aide may be assigned to give care to a child in the child's place of residence. Whenever possible, such services shall be provided in preference to removal of the child from the home. Such care may be provided under this Act on an emergency basis for up to twenty-four hours without court order, and may be ordered by the court for a period of time extending until dismissal or disposition of the case. Expenses incurred under this section shall be paid for

according to, and reimbursement from the parent, guardian or custodian may be sought under, the provisions of section seventy-five (75) of this Act.

Sec. 42. NEW SECTION. COMPLAINT.

1. Any person having knowledge of the circumstances may file a complaint with the person or agency designated by the court to perform intake duties alleging that a child is a child in need of assistance.

2. Upon receipt of a complaint, the court may request the department of social services, juvenile probation office, or other authorized agency or individual to conduct a preliminary investigation of the complaint to determine if further action should be taken.

3. A petition alleging the child to be a child in need of assistance may be filed pursuant to section forty-three (43) of this Act provided the allegations of the complaint, if proven, are sufficient to establish the court's jurisdiction and the filing is in the best interests of the child.

4. A person or agency shall not maintain any records with regard to a complaint filed under division three (III) of this Act which is dismissed without the filing of a petition.

PART 3

JUDICIAL PROCEEDINGS

Sec. 43. NEW SECTION. FILING OF A PETITION--CONTENTS OF PETITION.

1. A formal judicial proceeding to determine whether a child is a child in need of assistance under this Act shall be initiated by the filing of a petition alleging a child to be a child in need of assistance.

2. A petition may be filed by the department of social services, probation officer, or county attorney.

3. The department, probation officer, county attorney or judge may authorize the filing of a petition with the clerk of the court by any competent person having knowledge of the circumstances without the payment of a filing fee.

4. The petition shall be submitted in the form specified in section sixteen (16) of this Act.

5. The petition shall contain the information specified in section sixteen (16) of this Act and a clear and concise summary of the facts which bring the child within the jurisdiction of the court under this division.

Sec. 44. NEW SECTION. SUMMONS, NOTICE, SUBPOENAS AND SERVICES. After a petition has been filed the court shall issue and serve summons, notice, subpoenas and other process

in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section seventeen (17) of this Act.

Sec. 45. NEW SECTION. RIGHT TO AND APPOINTMENT OF COUNSEL.

1. Upon the filing of a petition the parent, guardian or custodian identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If that person desires but is financially unable to employ counsel, the court shall appoint counsel.

2. Upon the filing of a petition the court shall appoint counsel for the child identified in the petition as a party to the proceedings, and the court shall appoint a guardian ad litem. The same person may serve both as child's counsel and as guardian ad litem.

Sec. 46. NEW SECTION. DUTIES OF COUNTY ATTORNEY. The county attorney shall represent the state in all proceedings arising from a petition filed under this division and shall present evidence in support of the petition.

Sec. 47. NEW SECTION. PRESENCE OF PARENTS AT HEARINGS. Any hearings or proceedings under this division subsequent to the filing of a petition shall not take place without the presence of the child's parent, guardian or custodian in accordance with and subject to the provisions of section eighteen (18) of this Act. A parent without custody may petition the court to be made a party to proceedings under this division.

Sec. 48. NEW SECTION. EXCLUSION OF PUBLIC FROM HEARINGS. The court shall exclude and admit persons to hearings and proceedings under this division in accordance with and subject to the provisions of section nineteen (19) of this Act.

Sec. 49. NEW SECTION. OTHER ISSUES ADJUDICATED. When it appears during the course of any hearing or proceeding that some action or remedy other than those indicated by the application or pleading appears appropriate, the court may, provided all necessary parties consent, proceed to hear and determine the other issues as though originally properly sought and pleaded.

Sec. 50. NEW SECTION. REPORTER REQUIRED. Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings held pursuant to this division unless waived by the parties. The child shall not be competent to waive the reporting requirement, but waiver may be made for the child by the child's counsel or guardian ad litem. Matters which must be reported under the provisions of this section

shall be the same as those required in section six hundred twenty-four point nine (624.9) of the Code.

Sec. 51. NEW SECTION. HEARING CONCERNING TEMPORARY REMOVAL.

1. At any time after the petition is filed any person who may file a petition under section forty-three (43) of this Act may apply for, or the court on its own motion may order, a hearing to determine whether the child should be temporarily removed from home. Where the child is in the custody of a person other than the child's parent, guardian or custodian as the result of action taken pursuant to section thirty-nine (39) or forty (40) of this Act, the court shall hold a hearing to determine whether the temporary removal should be continued.

2. Upon such hearing, the court may:

a. Remove the child from home and place the child in a shelter care facility or in the custody of a suitable person or agency pending a final order of disposition if the court finds that removal is necessary to avoid imminent risk to the child's life or health.

b. Release the child to his or her parent, guardian or custodian pending a final order of disposition.

c. Authorize a physician or hospital to provide medical or surgical procedures if such procedures are necessary to safeguard the child's life or health.

3. The court shall make and file written findings as to the grounds for granting or denying an application under this section.

Sec. 52. NEW SECTION. ADJUDICATORY HEARING.

1. The court shall hear and adjudicate cases involving a petition alleging a child to be a child in need of assistance.

2. The state shall have the burden of proving the allegations by clear and convincing evidence.

3. Only evidence which is admissible under the rules of evidence applicable to the trial of civil cases shall be admitted, except as otherwise provided by this section.

4. A report made to the department of social services pursuant to chapter two hundred thirty-five A (235A) of the Code shall be admissible in evidence if the person making the report does not appear as a witness at the hearing, but such a report shall not alone be sufficient to support a finding that the child is a child in need of assistance unless the attorneys for the child and the parents consent to such a finding.

5. Neither the privilege attaching to confidential communications between a physician and patient nor the prohibition upon admissibility of communications between husband and wife shall be ground for excluding evidence at an adjudicatory hearing.

6. A report, study, record, or other writing made by the department of social services, a juvenile probation officer, a peace officer or a hospital relating to a child in a proceeding under this division shall be admissible notwithstanding any objection to hearsay statements contained therein provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child's parent, guardian, or custodian. The circumstances of the making of the report, study, record or other writing, including the maker's lack of personal knowledge, may be proved to affect its weight.

7. After the hearing is concluded, the court shall make and file written findings as to the truth of allegations of the petition and as to whether the child is a child in need of assistance.

8. If the court concludes facts sufficient to sustain a petition have not been established by clear and convincing evidence or if the court concludes that its aid is not required in the circumstances, the court shall dismiss the petition.

9. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence and that its aid is required, the court may enter an order adjudicating the child to be a child in need of assistance.

Sec. 53. NEW SECTION. SOCIAL INVESTIGATION AND REPORT.

1. The court shall not make any disposition of the petition until a social report has been submitted to and considered by the court. The court may direct the probation officer, department of social services or any other agency licensed by the state to conduct a social investigation and to prepare a social report.

2. The social investigation may be conducted and the social history may be submitted to the court prior to the adjudication of the child as a child in need of assistance with the consent of the parties.

3. The social report shall not be disclosed except as provided in this section and except as otherwise provided in this Act. Prior to the hearing at which the disposition is determined, the court shall permit counsel for the child

and counsel for the child's parent, guardian or custodian to inspect any social report to be considered by the court. The court may in its discretion order such counsel not to disclose parts of the report to the child, or to the parent, guardian or custodian if disclosure would seriously harm the treatment or rehabilitation of the child or would violate a promise of confidentiality given to a source of information.

Sec. 54. NEW SECTION. PHYSICAL AND MENTAL EXAMINATIONS.

1. A physical or mental examination of the child may be ordered only after the filing of a petition pursuant to section forty-three (43) of this Act and after a hearing to determine whether such an examination is necessary to determine the child's physical or mental condition.

The hearing required by this section may be held simultaneously with the adjudicatory hearing.

An examination ordered prior to the adjudication may be performed on an outpatient basis only. An examination ordered after adjudication shall be conducted on an outpatient basis whenever possible, but if necessary the court may commit the child to a suitable hospital, facility or institution for the purpose of examination for a period not to exceed thirty days. The civil commitment provisions of chapter two hundred twenty-nine (229) of the Code shall not apply to such commitments.

2. Following an adjudication that a child is a child in need of assistance, the court may after a hearing order the physical or mental examination of the parent, guardian or custodian if that person's ability to care for the child is at issue.

Sec. 55. NEW SECTION. DISPOSITIONAL HEARING--FINDINGS.

1. Following the entry of an order pursuant to section fifty-two (52) of this Act, the court shall, as soon as practicable, hold a dispositional hearing in order to determine what disposition should be made of the petition.

2. All relevant and material evidence shall be admitted.

3. When the dispositional hearing is concluded the court shall make the least restrictive disposition appropriate considering all the circumstances of the case. The dispositions which may be entered under this division are listed in sections fifty-six (56) through fifty-eight (58) of this Act in order from least to most restrictive.

4. The court shall make and file written findings as to its reasons for the disposition.

Sec. 56. NEW SECTION. SUSPENDED JUDGMENT. After the

dispositional hearing the court may enter an order suspending judgment and continuing the proceedings subject to terms and conditions imposed to assure the proper care and protection of the child. Such terms and conditions may include the supervision of the child and of the parent, guardian or custodian by the department of social services, juvenile probation office or other appropriate agency designated by the court. The maximum duration of any term or condition of a suspended judgment shall be twelve months unless the court finds at a hearing held during the last month of that period that exceptional circumstances require an extension of the term or condition for an additional six months.

Sec. 57. NEW SECTION. RETENTION OF CUSTODY BY PARENT.

1. After the dispositional hearing, the court may enter an order permitting the child's parent, guardian or custodian at the time of the filing of the petition to retain custody of the child subject to terms and conditions which the court prescribes to assure the proper care and protection of the child. Such terms and conditions may include supervision of the child and the parent, guardian or custodian by the department of social services, juvenile probation office or other appropriate agency which the court designates. Such terms and conditions may also include the provision or acceptance by the parent, guardian or custodian of special treatment or care which the child needs for his or her physical or mental health. If the parent, guardian or custodian fails to provide the treatment or care, the court may order the department of social services or some other appropriate state agency to provide such care or treatment.

2. The duration of any period of supervision or other terms or conditions shall be for an initial period of no more than eighteen months and the court, at the expiration of that period, upon a hearing and for good cause shown, may make not more than two successive extensions of such supervision or other terms or conditions of up to twelve months each.

Sec. 58. NEW SECTION. TRANSFER OF LEGAL CUSTODY OF JUVENILE AND PLACEMENT.

1. After a dispositional hearing the court may enter an order transferring the legal custody of the child to one of the following for purposes of placement:

- a. A relative or other suitable person.
- b. A child placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.

c. The department of social services.

2. After a dispositional hearing the court may enter an order transferring the guardianship of the court for the purposes of subsection six (6) of this section, to the commissioner of the department of social services for the purposes of placement in the Iowa Juvenile Home at Toledo.

3. Whenever possible the court should permit the child to remain at home with his or her parent, guardian or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

a. The child cannot be protected from physical abuse without transfer of custody; or

b. The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

4. The child shall not be placed in the Iowa training school for boys or the Iowa training school for girls.

5. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court may prescribe the type of placement which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court.

If the court orders the transfer of the custody of the child to the department of social services or other agency for placement, the department or agency shall submit to the court a specific plan for placement of the child and shall make every effort to return the child to his or her home as quickly as possible. If the court orders the transfer of custody to a relative or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian or custodian in order to enable them to resume custody of the child.

6. The duration of any placement made after an order pursuant to this section shall be for an initial period of six months. At the expiration of that period, the court shall hold a hearing and review the placement in order to determine whether the child should be returned home, an extension of the placement should be made, or a termination of the parent-child relationship proceeding should be instituted. The placement should be terminated and the child returned to his or her home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section two (2), subsection five (5), of this

Act. If the placement is extended, the court should determine whether additional services are necessary to facilitate the return of the child to his or her home, and if the court determines such services are needed, the court shall order the provision of such services.

Sec. 59. NEW SECTION. TERMINATION, MODIFICATION, VACATION AND SUBSTITUTION OF DISPOSITIONAL ORDER.

1. At any time prior to expiration of a dispositional order and upon the motion of an authorized party or upon its own motion as provided in this section, the court may terminate the order and discharge the child, modify the order, or vacate the order and make a new order.

2. The following persons shall be authorized to file a motion to terminate, modify or vacate and substitute a dispositional order:

- a. The child.
- b. The child's parent, guardian or custodian, except that such motion may be filed by that person not more often than once every six months except with leave of court for good cause shown.
- c. The child's guardian ad litem.
- d. A person supervising the child pursuant to a dispositional order.
- e. An agency, facility, institution or person to whom legal custody has been transferred pursuant to a dispositional order.
- f. The county attorney.

3. A hearing shall be held on a motion to terminate or modify a dispositional order except that a hearing on a motion to terminate an order may be waived upon agreement by all parties. Reasonable notice of the hearing shall be given in the same manner as for adjudicatory hearings in cases of juvenile delinquency as provided in section seventeen (17) of this Act. The hearing shall be conducted in accordance with the provisions of section thirty (30) of this Act.

4. The court may terminate an order and release the child if the court finds that the purposes of the order have been accomplished and the child is no longer in need of supervision, care or treatment.

5. The court may modify or vacate an order for good cause shown provided that where the request to modify or vacate is based on the child's alleged failure to comply with the conditions or terms of the order, the court may modify or

vacate the order only if it finds that there is clear and convincing evidence that the child violated a material and reasonable condition or term of the order.

6. If the court vacates the order it may make any other order in accordance with and subject to the provisions of sections fifty-six (56) through fifty-eight (58) of this Act.

DIVISION IV

TERMINATION OF PARENT-CHILD

RELATIONSHIP PROCEEDING

Sec. 60. NEW SECTION. JURISDICTION. The juvenile court shall have exclusive jurisdiction over proceedings under this Act to terminate a parent-child relationship and all parental rights with respect to a child. No such termination shall be ordered except under the provisions of this Act if the court has made an order concerning the child pursuant to the provisions of division three (III) of this Act and the order is in force at the time a petition for termination is filed.

Sec. 61. NEW SECTION. VENUE.

1. Venue for termination proceedings under this Act shall be in the judicial district where the child is found or the judicial district where the child resides except as otherwise provided in subsection two (2) of this section.

2. If a court has made an order concerning the child pursuant to the provisions of this Act and the order is still in force at the time the termination petition is filed, such court shall hear and adjudicate the case unless the court transfers the case.

3. The judge may transfer the case to the juvenile court of any county having venue in accordance with the provisions of section thirty-seven (37) of this Act.

Sec. 62. NEW SECTION. PETITION.

1. A child's guardian or custodian, the department of social services, a juvenile probation officer or the county attorney may file a petition for termination of the parent-child relationship and parental rights with respect to a child as provided in section forty-three (43) of this Act.

2. The department, probation officer, county attorney or judge may authorize any competent person having knowledge of the circumstances to file a termination petition with the clerk of the court without the payment of a filing fee as provided in section forty-three (43) of this Act.

3. A petition for termination of parental rights shall include the following:

a. The legal name, age, and domicile, if any, of the child.

b. The names, residences, and domicile of any:

- (1) Living parents of the child.
- (2) Guardian of the child.
- (3) Custodian of the child.
- (4) Guardian ad litem of the child.
- (5) Petitioner.
- (6) Person standing in the place of the parents of the child.

c. A plain statement of those facts and grounds specified in section sixty-five (65) of this Act which indicate that the parent-child relationship should be terminated.

d. A plain statement explaining why the petitioner does not know any of the information required under paragraphs a and b of this subsection.

e. The signature and verification of the petitioner.

Sec. 63. NEW SECTION. NOTICE-SERVICE.

1. Persons listed in section sixty-two (62), subsection three (3), of this Act shall be necessary parties to a termination of parent-child relationship proceeding and are entitled to receive notice and an opportunity to be heard, except that notice may be dispensed with in the case of any such person whose name or whereabouts the court determines is unknown and cannot be ascertained by reasonably diligent search.

2. Prior to the service of notice on the necessary parties, the juvenile court shall appoint a guardian ad litem for a minor child if the child does not have a guardian or guardian ad litem or if the interests of the guardian or guardian ad litem conflict with the interests of the child. Such guardian ad litem shall be a necessary party under subsection one (1) of this section.

3. Notice under this section shall be served personally or shall be sent by restricted certified mail, whichever is determined by the court to be the most effective means of notification. Such notice shall be made according to the rules of civil procedure relating to an original notice where not inconsistent with the provisions of this section. Notice by personal delivery shall be served not less than seven days prior to the hearing on termination of parental rights. Notice by restricted certified mail shall be sent not less than fourteen days prior to the hearing on termination of parental rights. A notice by restricted certified mail which is refused by the necessary party given notice shall be sufficient notice to the party under this section.

Sec. 64. NEW SECTION. RIGHT TO AND APPOINTMENT OF COUNSEL.

1. Upon the filing of a petition the parent identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings. If the parent desires but is financially unable to employ counsel, the court shall appoint counsel.

2. Upon the filing of a petition the court shall appoint counsel for the child identified in the petition as a party to the proceedings. The same person may serve both as the child's counsel and as guardian ad litem.

Sec. 65. NEW SECTION. GROUNDS FOR TERMINATION. Except as provided in subsection six (6) of this section, the court may order the termination of both the parental rights with respect to a child and the relationship between the parents and the child on any of the following grounds:

1. The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

2. The court finds that there is clear and convincing evidence that the child has been abandoned.

3. The court finds that:

a. One or both parents has physically or sexually abused the child; and

b. The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused as the result of the acts or omissions of the parent or parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding; and

c. There is clear and convincing evidence that the parents had received or were offered services to correct the situation which led to the abuse.

4. The court finds that:

a. The child has been adjudicated a child in need of assistance pursuant to section fifty-two (52) of this Act; and

b. The custody of the child has been transferred from his or her parents for placement pursuant to section fifty-eight (58) of this Act and such placement has lasted for a period of at least six months, but less than twelve months; and

c. There is clear and convincing evidence that the child cannot be returned to the custody of his or her parents as

provided in section fifty-eight (58) of this Act; and

d. There is clear and convincing evidence that the parents have not maintained contact with the child during the previous six months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so.

5. The court finds that:

a. The child has been adjudicated a child in need of assistance pursuant to section fifty-two (52) of this Act; and

b. The custody of the child has been transferred from his or her parents for placement pursuant to section fifty-eight (58) of this Act for at least twelve months; and

c. There is clear and convincing evidence that the child cannot be returned to the custody of his or her parents as provided in section fifty-eight (58) of this Act.

6. Notwithstanding the provisions of subsections two (2) through five (5) of this section the court need not terminate the relationship between parents and child if the court finds:

a. A relative has legal custody of the child; or

b. The child is over ten years of age and objects to such termination; or

c. There is clear and convincing evidence that such termination would be detrimental to the child at the time due to the closeness of the parent-child relationship; or

d. It is necessary to place the child in a hospital, facility or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.

e. That the absence of a parent is due to the parent's admission or commitment to any institution, hospital or health facility or due to active service in the state or federal armed forces.

Sec. 66. NEW SECTION. TERMINATION--FINDINGS--DISPOSITION.

1. After the hearing is concluded the court shall make and file written findings.

2. If the court concludes that facts sufficient to terminate parental rights have not been established by clear and convincing evidence, the court shall dismiss the petition.

3. If the court concludes that facts sufficient to sustain the petition have been established by clear and convincing evidence, the court may order parental rights terminated. If the court terminates the parental rights of the child's natural or adoptive parents, the court shall transfer the guardianship and custody of the child to one of the following:

- a. The department of social services.
 - b. A child placing agency or other suitable private agency, facility or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
 - c. A relative or other suitable person.
4. If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance, under section two (2), subsection five (5) of this Act, due to the acts or omissions of one or both of his or her parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of sections fifty-six (56), fifty-seven (57) or fifty-eight (58) of this Act.

Sec. 67. NEW SECTION. REMOVAL OF GUARDIAN.

1. Upon application of an interested party or upon the court's own motion, the court having jurisdiction of the child may, after notice to the parties and a hearing, remove a court appointed guardian and appoint a guardian in accordance with the provisions of section sixty-six (66), subsection three (3), of this Act.
2. Any minor fourteen years of age or older who has not been adopted but who is placed in a satisfactory foster home may with the consent of the foster parents join with the guardian appointed by the court in an application to the court to remove the existing guardian and appoint the foster parents as guardians of the child.
3. The authority of a guardian appointed by the court terminates when the child reaches the age of majority or is adopted.

DIVISION V

FAMILY IN NEED OF ASSISTANCE PROCEEDINGS

Sec. 68. NEW SECTION. JURISDICTION. The juvenile court shall have exclusive jurisdiction over family in need of assistance proceedings.

Sec. 69. NEW SECTION. VENUE. Venue for family in need of assistance proceedings shall be determined in accordance with section thirty-seven (37) of this Act.

Sec. 70. NEW SECTION. MODIFICATION OF CUSTODY DECREE. During the pendency of an action under this division, a parent without custody pursuant to a decree of dissolution of marriage is estopped from applying for a modification of the custody decree in a court of this state.

Sec. 71. NEW SECTION. PETITION.

1. A family in need of assistance proceeding shall be initiated by the filing of a petition alleging that a child and his or her parent, guardian or custodian are a family in need of assistance.

2. Such a petition may be filed by the child's parent, guardian or custodian or by the child. The judge, county attorney, or probation officer may authorize such parent, guardian, custodian, or child to file a petition with the clerk of the court without the payment of a filing fee.

3. The petition and subsequent court documents shall be entitled "In re the family of"

4. The petition shall state the names and residences of the child, and his or her living parents, guardian, custodian and guardian ad litem, if any and the age of the child.

5. The petition shall allege that there has been a breakdown in the familial relationship and that the petitioner has sought services from public or private agencies to maintain and improve the familial relationship.

Sec. 72. NEW SECTION. APPOINTMENT OF COUNSEL AND GUARDIAN AD LITEM. The court shall appoint counsel or a guardian ad litem to represent the interests of the child at the hearing to determine whether the family is a family in need of assistance unless the child already has such counsel or guardian. The court shall appoint counsel for the parent, guardian or custodian if that person desires but is financially unable to employ counsel.

Sec. 73. NEW SECTION. HEARING--ADJUDICATION--DISPOSITION.

1. Upon the filing of a petition, the court shall fix a time for a hearing and give notice thereof to the child and the child's parent, guardian or custodian.

2. A parent without custody may petition the court to be made a party to proceedings under this division.

3. The court shall exclude the general public from such hearing except the court in its discretion may admit persons having a legitimate interest in the case or the work of the court.

4. The hearing shall be informal and all relevant and material evidence shall be admitted.

5. The court may adjudicate the family to be a family in need of assistance and enter an appropriate dispositional order if the court finds:

a. There has been a breakdown in the relationship between

the child and his or her parent, guardian or custodian; and

b. The child or his or her parent, guardian or custodian has sought services from public or private agencies to maintain and improve the familial relationship; and

c. The court has at its disposal services for this purpose which can be made available to the family.

6. If the court makes such a finding the court may order any or all of the parties to accept counseling and to comply with any other reasonable orders designed to maintain and improve the familial relationship. At the conclusion of any counseling ordered by the court, or at any other time deemed necessary, the parties shall be required to meet together and be apprised of the findings and recommendations of such counseling. Such an order shall remain in force for a period not to exceed one year unless the court otherwise specifies or sooner terminates the order.

7. The court may not order the child placed on probation, in a foster home or in a nonsecure facility unless the child requests and agrees to such supervision or placement. In no event shall the court order the child placed in the Iowa training school for boys or the Iowa training school for girls or other secure facility.

8. A child who is found in contempt of court because of violation of conditions imposed under section seventy-three (73) of this Act shall not be considered delinquent. Such a contempt may be punished by imposition of a work assignment or assignments to benefit the state or a governmental subdivision of the state. In addition to or in lieu of such an assignment or assignments, the court may impose one of the dispositions set out in sections fifty-six (56) through fifty-eight (58) of this Act.

DIVISION VI

APPEAL

Sec. 74. NEW SECTION. APPEAL.

1. Any interested party aggrieved by any order or decree of the juvenile court may appeal from the court for review of questions of law or fact.

2. The procedure for such appeals shall be governed by the same provisions applicable to appeals from the district court provided that when such order or decree affects the custody of a child the appeal shall be heard at the earliest practicable time.

3. The pendency of an appeal or application therefor shall not suspend the order of the juvenile court regarding a child

and shall not discharge the child from the custody of the court or the agency, association, facility, institution or person to whom the court has transferred legal custody unless the appellate court otherwise orders on application of an appellant.

4. If the appellate court does not dismiss the proceedings and discharge the child, the appellate court shall affirm or modify the order of the juvenile court and remand the child to the jurisdiction of the juvenile court for disposition not inconsistent with the appellate court's finding on the appeal.

DIVISION VII

EXPENSES AND COSTS

Sec. 75. NEW SECTION. EXPENSES CHARGED TO COUNTY.

1. The following expenses upon certification of the judge or upon such other authorization as provided by law are a charge upon the county in which the proceedings are held to the extent provided in subsection four (4) of this section.

- a. The fees and mileage of witnesses and the expenses and mileage of officers serving notices and subpoenas.
- b. The expenses of transporting a child to a place designated by a child placing agency for the care of a child if the court transfers legal custody to a child placing agency.
- c. The expense of transporting a child to or from a place designated by the court.
- d. Reasonable compensation for an attorney appointed by the court to serve as counsel or guardian ad litem.
- e. The expense of treatment or care ordered by the court under an authority of subsection two (2) of this section.

2. Whenever legal custody of a minor is transferred by the court or whenever the minor is placed by the court with someone other than the parents or whenever homemaker-home health aide service is provided under section forty-one (41) of this Act, or whenever a minor is given physical or mental examinations or treatment under order of the court and no provision is otherwise made by law for payment for the care, examination, or treatment of the minor, the costs shall be charged upon the funds of the county in which the proceedings are held upon certification of the judge to the board of supervisors. Except where the parent-child relationship is terminated, the court may inquire into the ability of the parents to support the minor and after giving the parents a reasonable opportunity to be heard may order the parents to pay in the manner and to whom the court may direct, such

sums as will cover in whole or in part the cost of care, examination, or treatment of the minor. An order entered under this section shall not obligate a parent paying child support under a custody decree, except that any part of such a monthly support payment may be used to satisfy the obligations imposed by an order entered under this section. If the parents fail to pay the sum without good reason, the parents may be proceeded against for contempt or the court may inform the county attorney who shall proceed against the parents to collect the unpaid sums or both. Any such sums ordered by the court shall be a judgment against each of the parents and a lien as provided in section six hundred twenty-four point twenty-three (624.23) of the Code. If all or any part of the sums that the parents are ordered to pay is subsequently paid by the county, the judgment and lien shall thereafter be against each of the parents in favor of the county to the extent of such payments.

3. The county charged with the cost and expenses under subsection one (1) or two (2) of this section may recover the costs and expenses from the county where the child has legal settlement by filing verified claims which shall be payable as are other claims against the county. A detailed statement of the facts upon which the claim is based shall accompany the claim. Any dispute involving the legal settlement of a child for which the court has ordered payment under authority of this section shall be settled in accordance with sections two hundred fifty-two point twenty-two (252.22) and two hundred fifty-two point twenty-three (252.23) of the Code.

4. Costs incurred under this section shall be paid as follows:

a. The costs incurred under the provisions of section two hundred thirty-two point fifty-two (232.52) of the Code by each county for the fiscal years beginning July 1, 1974, 1975, and 1976 shall be averaged. The average cost for each county shall be that county's base cost for the first fiscal year after the effective date of this Act.

b. Each county shall be required to pay for the first fiscal year after the effective date of this Act an amount equal to its base cost plus an amount equal to the percentage rate of change in the consumer price index as tabulated by the bureau of labor statistics for the current fiscal year times the base cost.

c. A county's base cost for a fiscal year plus the percentage rate of change amount as computed in paragraph b of this subsection shall become that county's base cost for the succeeding fiscal year. The amount to be paid in the succeeding year by the county shall be computed as provided in paragraph b of this subsection.

d. Costs incurred under provisions of this section which are not paid by the county under the provisions of paragraphs a, b and c of this subsection shall be paid by the state.

Sec. 76. NEW SECTION. MAINTENANCE AND COST OF JUVENILE HOMES.

1. County boards of supervisors may either singly or in conjunction with one or more other counties provide and maintain juvenile detention and juvenile shelter care homes.

2. For the purpose of providing and maintaining such a county or multi-county home, the board of supervisors of any county may issue bonds and authorize the expenditure of such amounts as are consistent with the provisions of chapter three hundred forty-five (345) of the Code. The board of supervisors of any county is authorized to levy a tax not to exceed thirteen and one-half cents per thousand dollars of assessed value for the purpose of maintaining such a home. In counties of over one hundred fifty thousand population, the board of supervisors is authorized to levy a tax not to exceed twenty and one-fourth cents per thousand dollars of assessed value for the maintenance of such a home. Expenses for providing and maintaining such a home shall be paid by the county or counties participating in a manner to be determined by board or boards of supervisors of participating counties.

3. Upon request of the board of supervisors, the area education agency shall provide suitable curriculum, teaching staff, books, supplies, and other necessary materials and equipment for the instruction of children of school age who are detained in such a home.

4. Approved county or multi-county juvenile homes shall be entitled to receive financial aid from the state in the amount and in such manner as determined by the commissioner. Aid paid by the state shall not exceed fifty percent of the total cost of the establishment, improvements, operation, and maintenance of such a home.

5. The commissioner shall adopt minimal rules and standards for the establishment, maintenance, and operation of such homes as shall be necessary to effect the purposes of this Act. The commissioner shall, upon request, give guidance

and consultation in the establishment and administration of such homes and programs for such homes.

6. The commissioner shall approve annually all such homes established and maintained under the provisions of this Act. No such home shall be approved unless it complies with minimal rules and standards adopted by the commissioner.

DIVISION VIII

RECORDS

Sec. 77. NEW SECTION. CONFIDENTIALITY OF JUVENILE COURT RECORDS.

1. Juvenile court records shall be confidential. They shall not be inspected and their contents shall not be disclosed except as provided in this section.

2. Official juvenile court records in cases alleging delinquency shall be public records, subject to sealing under section eighty (80) of this Act.

3. Official juvenile court records in all cases except those alleging delinquency may be inspected and their contents shall be disclosed to the following without court order:

a. The judge and professional court staff, including juvenile probation officers.

b. The child and his or her counsel.

c. The child's parent, guardian or custodian, and guardian ad litem.

d. The county attorney and his or her assistants.

e. An agency, association, facility or institution which has custody of the child, or is legally responsible for the care, treatment or supervision of the child.

f. A court, court professional staff, and adult probation officers in connection with the preparation of a presentence report concerning a person who prior thereto had been the subject of a juvenile court proceeding.

g. An appellate court in connection with an appeal pursuant to section seventy-four (74) of this Act.

4. Pursuant to court order official records may be inspected by and their contents may be disclosed to:

a. A person conducting bona fide research for research purposes under whatever conditions the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

5. Inspection of social records and disclosure of their contents shall not be permitted except pursuant to court order

or unless otherwise provided in this Act.

Sec. 78. NEW SECTION. FINGERPRINTS--PHOTOGRAPHS.

1. Except as provided in this section, a child shall not be fingerprinted by a criminal justice agency after he or she is taken into custody and fingerprint files of children shall not be inspected unless the juvenile court waives its jurisdiction over the child so that the child may be prosecuted as an adult for the commission of a public offense.

2. Fingerprints of a child who has been taken into custody and who is fourteen years of age or older may be taken and filed by a criminal justice agency investigating the commission of a public offense constituting a felony.

3. If a peace officer has reasonable grounds to believe that latent fingerprints found during the investigation of the commission of a public offense are those of a particular child, fingerprints of the child may be taken for immediate comparison with the latent fingerprints regardless of the age of the child or the nature of the offense. If the comparison is negative the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive and the child is referred to the court, the fingerprint card and other copies of the fingerprints taken shall be delivered to the court for disposition. If the child is not referred to the court, the fingerprint card and copies of the fingerprints shall be immediately destroyed.

4. Fingerprint files of children shall be kept separate from those of adults. Copies of fingerprints of a child shall not be placed in any data storage system established and maintained by the department of public safety pursuant to chapter six hundred ninety-two (692) of the Code Supplement, or in any federal depository for fingerprints.

5. Fingerprint files of children may be inspected by peace officers when necessary for the discharge of their official duties. The juvenile court may authorize other inspections of such files in individual cases upon a showing that inspection is necessary in the public interest.

6. Fingerprints of a child shall be removed from the file and destroyed if:

a. A petition alleging the child to be delinquent is not filed; or

b. After a petition is filed, the petition is dismissed or the child is found by the court not to be delinquent; or

c. Upon petition by the child when he or she reaches

twenty-one years of age and he or she has not been adjudicated a delinquent nor convicted of committing an aggravated misdemeanor or a felony after reaching sixteen years of age.

7. A child shall not be photographed by a criminal justice agency after he or she is taken into custody without the consent of the court unless the court waives jurisdiction over the child so that he or she may be prosecuted as an adult for the commission of a public offense.

Sec. 79. NEW SECTION. LAW ENFORCEMENT RECORDS.

1. The taking of a child into custody under the provisions of section nine (9) of this Act shall not be considered an arrest.

2. Records and files of a criminal justice agency concerning a child other than fingerprint and photograph records and files shall not be open to inspection and their contents shall not be disclosed except as provided in this section and section eighty (80) of this Act unless the juvenile court waives its jurisdiction over the child so that the child may be prosecuted as an adult for a public offense.

3. Such records may be inspected and their contents may be disclosed without a court order to the following:

a. Peace officers of this state and other jurisdictions when necessary for the discharge of their official duties.

b. The judge and professional staff, including juvenile probation officers, of a juvenile court or of a juvenile or family court in another jurisdiction having the child currently before it in any proceeding.

c. The child, his or her counsel, parent, guardian, custodian and guardian ad litem.

d. The designated representative of any agency, association, facility or institution which has custody of the child, or is responsible for the care, treatment or supervision of the child pursuant to a court order.

e. A court in which the child has been convicted of a public offense in connection with a presentence report or dispositional proceedings.

4. Pursuant to court order such records may be inspected by and their contents may be disclosed to the following:

a. A person conducting bona fide research for research purposes under such conditions as the court may deem proper, provided that no personal identifying data shall be disclosed to such a person.

b. Persons who have a direct interest in a proceeding or in the work of the court.

Sec. 80. NEW SECTION. SEALING OF RECORDS.

1. Upon application of a person who was taken into custody for a delinquent act or was the subject of a complaint alleging delinquency or was the subject of a delinquency petition, or upon the court's own motion, the court, after hearing, shall order the records in the case including those specified in sections seventy-seven (77) and seventy-nine (79) of this Act sealed if the court finds that:

a. Two years have elapsed since the final discharge of such person or since the last official action in his or her case if there was no adjudication and disposition; and

b. Such person has not been subsequently convicted of a felony or an aggravated or serious misdemeanor or adjudicated a delinquent child for an act which if committed by an adult would be a felony, an aggravated misdemeanor or a serious misdemeanor and no proceeding is pending seeking such conviction or adjudication.

2. Reasonable notice of the hearing shall be given to the person who is the subject of the records named in the motion, the county attorney, and the agencies having custody of the records named in the application or motion.

3. Notice and copies of a sealing order shall be sent to each agency or person having custody of the records named therein.

4. On entry of a sealing order:

a. All agencies and persons having custody of records which are named therein, shall send such records to the court issuing the order.

b. All index references to sealed records shall be deleted.

5. The sealed records shall no longer be deemed to exist as a matter of law, and the juvenile court and any other agency or person who received notice and a copy of the sealing order shall reply to an inquiry that no such records exist, except when such reply is made to an inquiry pursuant to subsection six (6) of this section.

6. Inspection of sealed records and disclosure of their contents thereafter may be permitted only pursuant to an order of the court upon application of the person who is the subject of such records except that the court in its discretion may permit reports to be inspected by or their contents to be disclosed for research purposes to a person conducting bona fide research under whatever conditions the court deems proper.

Sec. 81. NEW SECTION. CRIMINAL PENALTIES. Any person who knowingly discloses, receives, or makes use or permits

the use of information derived directly or indirectly from the records concerning a child referred to in sections seventy-seven (77) through eighty (80) of this Act except as provided by those sections shall be guilty of a serious misdemeanor.

Sec. 82. Section one hundred six point thirteen (106.13), unnumbered paragraph two (2), Code 1977, is amended to read as follows:

~~Chapter-232~~ This Act shall have no application in the prosecution of offenses committed in violation of this chapter or rules and regulations which are adopted under the authority of this chapter which are punishable by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.

Sec. 83. Section two hundred thirty-one point three (231.3), unnumbered paragraph two (2), Code 1977, is amended to read as follows:

The judge of the juvenile court may appoint a referee in juvenile court proceedings. The referee shall be qualified for his or her duties by training which includes being a licensed attorney and by experience and shall hold office at the pleasure of the judge. The compensation of the referee shall be fixed by the judge. The judge may direct that any case or class of cases arising under ~~chapter-232~~ this Act or chapter 600A shall be heard in the first instance by the referee in the manner provided for the hearing of cases by the court.

Sec. 84. Section two hundred thirty-three point one (233.1), subsection one (1), Code 1977, is amended to read as follows:

1. To encourage any child under eighteen years of age to commit any act of delinquency defined in ~~chapter-232-of this-title~~ this Act.

Sec. 85. Section two hundred thirty-four point thirty-six (234.36), Code 1977, is amended to read as follows:

234.36 WHEN COUNTY TO PAY FOSTER CARE COSTS. Each county shall pay from the county mental health and institutions fund as provided by section 444.12, subsection 2, the cost of foster care for a child placed by a court as provided in ~~section-232-337-subsection-3-or-4,-or-section-232-347-subsection-3-or-4~~ section thirty (30) or section fifty-five (55) of this Act. However, in any fiscal year for which the general assembly appropriates state funds to pay for foster care for children placed by courts under the ~~statutes~~ statute

or sections of this Act cited in this section, the county shall become responsible for these costs only when the funds so appropriated to the department for that fiscal year have been exhausted. The rate of payment by the county or the state, as the case may be, under this section shall be that fixed by the department of social services pursuant to section 234.38.

Sec. 86. Section two hundred thirty-eight point thirty-two (238.32), subsection one (1), Code 1977, is amended to read as follows:

1. Receive children in need of assistance, or delinquent children who are under eighteen years of age, under commitment from the juvenile court, and control and dispose of them subject to the provisions of ~~chapter-232~~ this Act and chapter 600A.

Sec. 87. Section two hundred thirty-eight point forty-one (238.41), Code 1977, is amended to read as follows:

238.41 STATUTES NOT AFFECTED. Nothing contained in sections 238.33 through 238.40 shall be deemed to affect or modify the provisions of ~~chapters-232-and~~ this Act or of chapter 600.

Sec. 88. Section two hundred forty-two point five (242.5), Code 1977, is amended to read as follows:

242.5 PROCEDURE TO COMMIT. The procedure for the commitment of children to the state training school, except as otherwise provided, shall be the same as provided in ~~chapter 232~~ this Act.

Sec. 89. Section two hundred forty-four point four (244.4), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

244.4 PROCEDURE. The procedure for commitment to said homes shall be the same as provided by this Act.

Sec. 90. Section three hundred twenty-one point four hundred eighty-two (321.482), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

It is a misdemeanor for any person to do any act forbidden or to fail to perform any act required by any of the provisions of this chapter unless any such violation is by this chapter or other law of this state declared to be a felony. ~~Chapter 232~~ This Act shall have no application in the prosecution of offenses committed in violation of this chapter which are punishable by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days.

Sec. 91. Section three hundred twenty-one G point fourteen

(321G.14), unnumbered paragraph two (2), Code 1977, is amended to read as follows:

~~Chapter-232~~ This Act shall have no application in the prosecution of offenses which are committed in violation of this chapter, and which are punishable by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.

Sec. 92. Section three hundred thirty-six B point two (336B.2), Code 1977 Supplement, is amended to read as follows:

336B.2 FINANCIAL STATEMENT. Before an attorney is appointed under the provisions of sections 68.8, 145.17, 145.19, 222.22, ~~232-28~~ this Act, or rule 8, rules of criminal procedure, or to represent any person charged with a crime in this state, the court shall require the client, or his or her parent, guardian, or custodian to complete under oath a detailed financial statement.

Sec. 93. Section three hundred fifty-six point three (356.3), Code 1977, is amended to read as follows:

356.3 MINORS SEPARATELY CONFINED. Any sheriff, city marshal, or chief of police, having in his or her care or custody any prisoner under the age of eighteen years, shall keep such prisoner separate and apart, and prevent communication by such prisoner with prisoners above that age, while such prisoners are not under the personal supervision of such officer, if suitable buildings or jails are provided for that purpose, unless such prisoner is likely to or does exercise an immoral influence over other minors with whom he or she may be imprisoned.

A person under the age of eighteen years prosecuted under this Act and not waived to criminal court shall be confined in a jail only under the conditions provided in this Act.

PARAGRAPH DIVIDED. Any officer having charge of prisoners who without just cause or excuse neglects or refuses to perform the duties imposed on him or her by this section may be suspended or removed from office therefor.

Sec. 94. Section six hundred A point five (600A.5), subsections one (1) and two (2), Code 1977, are amended to read as follows:

1. The following persons may petition a juvenile court for termination of parental rights under this chapter if the child of the parent-child relationship is born or expected to be born within one hundred eighty days of the date of the petition filing:

a. A parent or prospective parent of the parent-child

relationship.

b. A custodian or guardian of the child.

~~c. Any other person who has knowledge of circumstances indicating that the parent-child relationship should be terminated.~~

2. A petition for termination of parental rights shall be filed with the juvenile court in which the guardian or custodian of the child resides or the child or the pregnant woman is domiciled. ~~However,~~ If a juvenile court has made an order pertaining to a minor child under ~~section two-hundred thirty-two-point-thirty-three-(232.33)-of-the-Code~~ division three (III) of this Act and that order is still in force, ~~the petition termination proceedings shall be filed with that juvenile court conducted pursuant to the provisions of division four (IV) of this Act.~~

Sec. 95. Section six hundred A point six (600A.6), subsection one (1), Code 1977, is amended to read as follows:

1. A termination of parental rights under this chapter shall, unless provided otherwise in this section, be effectuated only after notice has been served on all necessary parties and these parties have been given an opportunity to be heard before the juvenile court. A "necessary party" includes any person whose name, residence, and domicile is required to be included on the petition under section six hundred A point five (600A.5), subsection three (3), paragraphs "a" and "b". However, a "necessary party" does not include a natural parent who has been adjudicated to have raped the other natural parent thereby producing the birth of the child designated in section six hundred A point five (600A.5), subsection three (3), paragraph "a".

Sec. 96. Section six hundred A point seven (600A.7), subsection one (1), Code 1977, is amended to read as follows:

1. The hearing on termination of parental rights shall be conducted in accordance ~~to~~ with the provisions of sections ~~232.27, 232.28, 232.30, and 232.32~~ forty-seven (47) through fifty-two (52) of this Act and otherwise in accordance with the rules of civil procedure. Such hearing shall be held not less than one week after the child is born.

Sec. 97. Section six hundred A point eight (600A.8), Code 1977, is amended by striking subsections four (4), five (5), and six (6).

Sec. 98. Section six hundred A point nine (600A.9), subsections one (1) and two (2), Code 1977, are amended to read as follows:

1. Subsequent to the hearing on termination of parental rights under this chapter, the juvenile court shall make a finding of facts and shall order that either:

a. The petition be dismissed; or,

~~b. The petition shall not be granted at that time, but that conditions indicating that the child is in need of assistance exist, and an order to that effect is issued pursuant to section two hundred thirty-two point thirty-three (232.33) of the Code; or~~

e b. The petition be granted. The juvenile court shall appoint a guardian and a custodian or a guardian only. An order issued under this paragraph shall include the finding of facts. This finding shall enumerate the factual basis which indicates that the parent-child relationship should be terminated and shall specify how this finding applies to the grounds upon which the termination is ordered.

2. If an order is issued under paragraph e b of subsection one (1) of this section, the juvenile court shall retain jurisdiction to change a guardian or custodian and to allow a terminated parent to request vacation of the termination order if:

a. The child is not on placement for adoption or a petition for adoption of the child is not on file; and,

b. The guardian consents in writing to the vacation. The juvenile court shall grant the vacation request if it is in the best interest of the child.

Sec. 99. Chapter two hundred thirty-two (232), Code 1977, is repealed.

Sec. 100. The supreme court is authorized to propose rules of juvenile procedure for consideration by the first session of the sixty-eighth general assembly. This section shall be effective July 1, 1978. Any rules promulgated under the authority of this section shall become effective July 1, 1979. Thereafter, the rules of juvenile procedure may be amended, provisions deleted, and new rules added, in the manner prescribed for civil rules under chapter six hundred eighty-four (684).

Sec. 101. The provisions of this Act shall become effective July 1, 1979.

Sec. 102. The Code editor shall place the interstate compact, sections two hundred thirty-one point fourteen (231.14) and two hundred thirty-one point fifteen (231.15) of the Code, in this Act as division seven (VII), following division six (VI), appeal. The Code editor shall place the

child abuse mandatory reporting provisions, sections two hundred thirty-five A point three (235A.3) through two hundred thirty-five A point eleven (235A.11) of the Code in this Act as part two (2) of division three (III).

Approved July 3, 1978

CHAPTER 1089
FOOD STAMP PROGRAM

S. F. 2158

AN ACT relating to the food stamp program, vesting the authority to administer the program in the department of social services, and prescribing penalties for violations.

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

Section 1. Section two hundred thirty-four point one (234.1), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

234.1 DEFINITIONS. As used in this chapter, unless the context otherwise requires:

1. "Division" or "state division" means that division of the department of social services to which the commissioner has assigned responsibility for income and service programs.

2. "Director" or "state director" means the director of the division.

3. "County board" means the county board of social welfare appointed pursuant to section two hundred thirty-four point nine (234.9) of the Code.

4. "Child" means a person less than eighteen years of age or a person who is at least eighteen years of age but less than twenty-one years of age who is regularly attending an approved school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training either as part of a regular school program or under special arrangements adapted to the individual person's needs.

5. "Food programs" means the food stamp and donated foods programs authorized by federal law under the United States department of agriculture.

Sec. 2. Section two hundred thirty-four point six (234.6), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

The state director shall be vested with the authority to