

CHAPTER 230
PROTECTION OF CHILDREN
H.F. 690

AN ACT relating to the protection of children, by modifying provisions relating to a child in need of assistance, child abuse, termination of parental rights, and providing for a procedure relating to courtroom testimony of children in this state and the deposition testimony of witnesses in a foreign jurisdiction.

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

Section 1. Section 232.2, subsection 6, paragraphs b, c, and h, Code 1989, are amended to read as follows:

b. Whose parent, guardian ~~or~~, other custodian, or other member of the household in which the child resides 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 either of the following:

(1) ~~Conditions created by~~ Mental injury caused by the acts of the child's parent, guardian, or custodian; ~~or~~.

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

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, ~~or~~ custodian, or other member of the household in which the child resides.

Sec. 2. Section 232.2, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 31A. "Mental injury" means a nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin.

Sec. 3. Section 232.68, Code 1989, is amended by adding the following new subsection 3 and renumbering the subsequent subsections as necessary:

NEW SUBSECTION. 3. "Confidential access to a child" means access to a child, during an investigation of an alleged act of child abuse, who is alleged to be the victim of the child abuse. The access may be accomplished by interview, observation, or examination of the child. As used in this subsection:

a. "Interview" means the verbal exchange between the department investigator and the child for the purpose of developing information necessary to protect the child. A department investigator is not precluded from recording visible evidence of abuse.

b. "Observation" means direct physical viewing of a child under the age of four by the department investigator where the viewing is limited to the child's body other than the genitalia and pubes. "Observation" also means direct physical viewing of a child age four or older by the department investigator without touching the child or removing an article of the child's clothing, and doing so without the consent of the child's parent, custodian, or guardian. A department investigator is not precluded from recording evidence of abuse obtained as a result of a child's voluntary removal of an article of clothing without inducement by the investigator. However, if prior consent of the child's parent or guardian, or an ex parte court order, is obtained, "observation" may include viewing the child's unclothed body other than the genitalia and pubes.

c. "Examination" means direct physical viewing, touching, and medically necessary manipulation of any area of the child's body by a physician licensed under chapter 148 or 150A.

Sec. 4. Section 232.68, subsection 6, Code 1989, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. Any person providing care for a child, but with whom the child does not reside, without reference to the duration of the care.

Sec. 5. Section 232.69, subsection 1, paragraphs a and b, Code 1989, are amended to read as follows:

a. Every health practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused. Notwithstanding section 140.3, this provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease.

b. Every self-employed social worker, every social worker under the jurisdiction of the department of human services, any social worker employed by a public or private agency or institution, public or private health care facility as defined in section 135C.1, certified psychologist, certificated school employee, employee or operator of a licensed child care center or registered group day care home or registered family day care home, individual licensee under chapter 237, member of the staff of a mental health center, peace officer, dental hygienist, counselor, paramedic, or mental health professional, who, in the course of employment scope of professional practice or in providing child foster care, examines, attends, counsels or treats a child and reasonably believes a child has suffered abuse.

Sec. 6. Section 232.71, subsection 1, Code 1989, is amended to read as follows:

1. Whenever a report is determined to constitute a child abuse allegation, the department of human services shall promptly commence an appropriate investigation. The primary purpose of this investigation shall be the protection of the child named in the report. The department, within five working days of commencing the investigation, shall provide written notification of the investigation to the child's parents. However, if the department shows the court to the court's satisfaction that notification is likely to endanger the child or other persons, the court shall issue an emergency order restraining the notification.

Sec. 7. Section 232.71, subsection 2, Code 1989, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. An interview of the person alleged to have committed the child abuse, if the person's identity and location are known, to afford the person the opportunity to address the allegations of the child abuse report. The interview shall be conducted, or an opportunity for an interview shall be provided, prior to a determination of child abuse being made. The court may waive the requirement of the interview for good cause.

Sec. 8. Section 232.71, subsection 3, Code 1989, is amended to read as follows:

3. The investigation may, with the consent of the parent or guardian, include a visit to the home of the child ~~or with the consent of the administrator of a facility include a visit to the facility providing care to the child named in the report and examination an interview or observation of the child may be conducted.~~ If permission to enter the home ~~or facility and to examine interview or observe~~ the child is refused, the juvenile court or district court upon a showing of probable cause may authorize the person making the investigation to enter the home ~~or facility and examine interview or observe~~ the child. The department may utilize a multidisciplinary team in investigations of child abuse ~~involving employees or agents of a facility providing care for a child.~~

Sec. 9. Section 232.71, subsection 6, Code 1989, is amended by striking the subsection and inserting in lieu thereof the following:

6. The investigation may include a visit to a facility providing care to the child named in the report or to any public or private school subject to the authority of the department of education where the child named in the report is located. The administrator of a facility, or a public or private school shall cooperate with the investigator by providing confidential access to the child named in the report for the purpose of interviewing the child, and shall allow the investigator confidential access to other children for the purpose of conducting interviews in order to obtain relevant information. The investigator may observe a child named in a report

in accordance with the provisions of section 232.68, subsection 3, paragraph "b". A witness shall be present during an observation of a child. Any child age ten years of age or older can terminate contact with the investigator by stating or indicating the child's wish to discontinue the contact. The immunity granted by section 232.73 applies to acts or omissions in good faith of such administrators and their facilities or school districts for cooperating in an investigation and allowing confidential access to a child. The department may utilize a multidisciplinary team to conduct investigations of child abuse involving employees or agents of a facility providing care for a child.

Sec. 10. Section 232.71, subsection 5, Code 1989, is amended to read as follows:

5. The department of human services may request information from any person believed to have knowledge of a child abuse case. The county attorney, any law enforcement or social services agency in the state, and any mandatory reporter, whether or not the reporter made the specific child abuse report, shall cooperate and assist in the investigation upon the request of the department of human services. The county attorney and appropriate law enforcement agencies shall also take any other lawful action which may be necessary or advisable for the protection of the child.

Sec. 11. Section 232.71, subsection 7, Code 1989, is amended to read as follows:

7. The department, upon completion of its investigation, shall make a preliminary report of its investigation as required by subsection 2. A copy of this report shall be transmitted to juvenile court within ~~ninety-six hours~~ four regular working days after the department initially receives the abuse report unless the juvenile court grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within ten working days of the receipt of the abuse report, unless the juvenile court grants an extension of time for good cause shown. The department shall notify a subject of the report of the result of the investigation, of the subject's right to correct the information pursuant to section 235A.19, and of the procedures to correct the information. The juvenile court shall notify the registry of any action it takes with respect to a suspected case of child abuse.

Sec. 12. Section 232.71, subsection 11, Code 1989, is amended to read as follows:

11. If, upon completion of the investigation, the department of human services determines that the best interests of the child require juvenile court action, the department shall take the appropriate action to initiate such action under this chapter. The county attorney shall assist the county department of human services ~~in the preparation of the necessary papers to initiate such action and shall appear and represent the department at all juvenile court proceedings as provided under section 232.90, subsection 2.~~

Sec. 13. Section 232.71, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 17. In each county or multicounty area in which more than fifty child abuse reports are made per year, the department shall establish a multidisciplinary team, as defined in section 235A.13, subsection 9. Upon the department's request, a multidisciplinary team shall assist the department in the assessment, diagnosis, and disposition of a child abuse report.

Sec. 14. Section 232.78, subsection 1, unnumbered paragraph 1 and paragraph a, Code 1989, are amended to read as follows:

The juvenile court may enter an ex parte order directing a peace officer to ~~remove a child from the child's home or a child day care facility~~ take custody of a child before or after the filing of a petition under this chapter provided all of the following apply:

a. ~~The parent, guardian, legal custodian, or employee of the child day care facility person responsible for the care of the child 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, or the parent, guardian, or legal custodian has a prior instance of flight to avoid a child abuse investigation or there is reasonable cause to believe that a request for consent~~

would further endanger the child, or there is reasonable cause to believe that a request for consent will cause the parent, guardian, or legal custodian to take flight with the child.

Sec. 15. Section 232.79, subsection 1, unnumbered paragraph 1 and paragraph a, Code 1989, are amended to read as follows:

A peace officer may ~~remove a child from the child's home or a child day care facility~~ take a child into custody or a physician treating a child may keep the child in custody without a court order as required under section 232.78 and without the consent of a parent, guardian, or custodian provided that both of the following apply:

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

Sec. 16. Section 232.90, Code 1989, is amended to read as follows:

232.90 DUTIES OF COUNTY ATTORNEY.

1. The county attorney shall represent the state in proceedings arising from a petition filed under this division and shall present evidence in support of the petition. The county attorney shall be present at proceedings initiated by petition under this division filed by an intake officer or the county attorney, or if a party to the proceedings contests the proceedings, or if the court determines there is a conflict of interest between the child and the child's parent, guardian, or custodian or if there are contested issues before the court.

2. The county attorney shall represent the department in proceedings arising under this division. However, if there is disagreement between the department and the county attorney regarding the appropriate action to be taken, the department may request to be represented by the attorney general in place of the county attorney.

Sec. 17. Section 232.92, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

232.92 EXCLUSION OF PUBLIC FROM HEARINGS.

Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child 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. 18. Section 232.114, Code 1989, is amended to read as follows:

232.114 DUTIES OF COUNTY ATTORNEY.

1. 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.

2. The county attorney shall represent the department in proceedings arising under this division. However, if there is disagreement between the department and the county attorney regarding the appropriate action to be taken, the department may request to be represented by the attorney general in place of the county attorney.

Sec. 19. Section 232.117, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 8. Hearings held under this division are open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having a public hearing. Upon closing the hearing, the court may admit persons who have a direct interest in the case or in the work of the court.

Sec. 20. Section 235A.18, subsection 2, Code 1989, is amended by adding the following new unnumbered paragraph following paragraph c:

NEW UNNUMBERED PARAGRAPH. The juvenile or district court and county attorney shall expunge child abuse information upon notice from the registry.

Sec. 21. Section 235A.19, subsection 2, Code 1989, is amended to read as follows:

2. a. A person may file with the department within six months of the date of the notice of the results of an investigation required by section 232.71, subsection 7, a written statement to the effect that child abuse information referring to the person is in whole or in part erroneous, and may request a correction of that information or of the findings of the investigation report. The department shall provide the person with an opportunity for an evidentiary hearing pursuant to chapter 17A to correct the information or the findings, unless the department corrects the information or findings as requested. The department shall delay the expungement of information which is not determined to be founded until the conclusion of a proceeding to correct the information or findings. The department may defer the hearing until the conclusion of a pending juvenile or district court case relating to the information or findings.

b. The department shall not disclose any child abuse information until the conclusion of the proceeding to correct the information or findings, except as follows:

- (1) As necessary for the proceeding itself.
- (2) To the parties and attorneys involved in a judicial proceeding.
- (3) For the regulation of child care or child placement.
- (4) Pursuant to court order.
- (5) To the subject of an investigation.
- (6) For the care or treatment of a child named in a report as a victim of abuse.

Sec. 22. Section 622.84, Code 1989, is amended to read as follows:

622.84 SUBPOENAS — ENFORCING OBEDIENCE.

1. When, by the laws of this or any other state or country, testimony may be taken in the form of depositions to be used in any of the courts thereof, the person authorized to take such the depositions may issue subpoenas for witnesses, which must be served by the same officers and returned in the same manner as is required in district court, and obedience thereto to the subpoenas may be enforced in the same way and to the same extent, or the person may report the matter to the district court who may enforce obedience as though the action was pending in said the district court.

2. If a witness is located in any other state or country and refuses to voluntarily submit to the deposition, the court of jurisdiction in this state may, upon the application of any party, petition the court of competent jurisdiction in the foreign jurisdiction where the witness is located to issue subpoenas or make other appropriate orders to compel the witness' attendance at the deposition.

Sec. 23. Section 910A.14, subsection 1, unnumbered paragraph 2, Code 1989, is amended by striking the paragraph.

Sec. 24. Section 910A.14, subsection 2, Code 1989, is amended to read as follows:

2. The court may, upon its own motion or upon motion of a party, order that the testimony of a child, as defined in section 702.5, be taken by recorded deposition for use at trial, pursuant to rule of criminal procedure 12(2)(b). In addition to requiring that such testimony be recorded by stenographic means, the court may on motion and hearing, and upon a finding that the child is unavailable as provided in Iowa rules of evidence 804(a), order the videotaping of the child's testimony for viewing in the courtroom by the court. The videotaping shall comply with the provisions of rule of criminal procedure 12(2)(b), and shall be admissible as evidence in the trial of the cause.

Approved May 26, 1989

CHAPTER 231**INSPECTIONS AND APPEALS DEPARTMENT DUTIES AND POWERS,
INCLUDING RACING AND GAMING REGULATION***H.F. 490*

AN ACT relating to the department of inspections and appeals, revising provisions governing the structure and allocation of duties within the department, changing the structure for racing and gaming regulation, providing changes in certain statutory requirements relating to bingo and other games and raffles, authorizing the enforcement of agreements or compacts entered into between the state and Indian tribes under the Indian Gaming Regulatory Act, authorizing warrantless searches of excursion gambling boats under certain conditions, revising the responsibilities of the department, and providing other properly related matters.

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

Section 1. Section 10A.101, subsection 3, Code 1989, is amended to read as follows:

3. "Administrators" "Administrator" means the chief administrative law judge, chief inspector, chief investigator, and chief auditor, or the person administering a division of the department.

Sec. 2. Section 10A.104, subsection 2, Code 1989, is amended to read as follows:

2. Employ ~~Appoint~~ the administrators of the divisions within the department and all ~~additional other personnel deemed necessary for the administration of this chapter, except the state public defender, and assistant state public defender, deemed necessary for the administration of this chapter in accordance with chapter 19A~~ defenders, administrator of the racing commission, members of the employment appeal board, and administrator of the state foster care review board. The administrators of the divisions are not exempt from the merit system. All persons appointed and employed in the department are covered by the provisions of chapter 19A, but persons not appointed by the director are exempt from the merit system provisions of chapter 19A.

Sec. 3. Section 10A.104, Code 1989, is amended by adding the following new subsection:
NEW SUBSECTION. 9. Administer and enforce chapters 10A, 99B, 135B, 135C, 170, 170A, 170B, 170C, and 191A.

Sec. 4. Section 10A.104, Code 1989, is amended by adding the following new subsection:
NEW SUBSECTION. 10. Enter into and implement agreements or compacts between the state of Iowa and Indian tribes located in the state which are entered into under the authority of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.). The agreements or compacts shall contain provisions intended to implement the policies and objectives of the Indian Gaming Regulatory Act.

Sec. 5. Section 10A.105, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

10A.105 CONFIDENTIALITY.

1. For the purposes of this section, "governmental entity" includes an administrative division within the department.

2. The confidentiality of all information in the department produced or collected during or as a result of a hearing, appeal, investigation, inspection, audit, or other function performed by the department on behalf of another governmental entity is governed by the law applicable to the records of that governmental entity. The department may provide information to a governmental entity for which it is conducting a hearing, appeal, inspection, audit, investigation, or other function.