

**CHAPTER 182****MISCELLANEOUS PROVISIONS CONCERNING CHILDREN****S.F. 150**

**AN ACT** relating to children, including child abuse involving termination of parental rights in certain abuse or neglect cases, the department of human services' adoption information exchange, and access by other states to child abuse information, case permanency plans for children in out-of-home placements, state foster care requests, and custody and visitation determinations and providing an applicability and effective date.

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

Section 1. Section 232.2, subsection 4, unnumbered paragraph 1, Code 1995, is amended to read as follows:

"Case permanency plan" means the plan, mandated by Pub. L. No. 96-272, as codified in 42 U.S.C. § 671(a)(16), 627(a)(2)(B), and 675(1),(5), which is designed to achieve placement in the least restrictive, most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian. The plan shall specifically include all of the following:

Sec. 2. Section 232.2, subsection 4, Code 1995, is amended by adding the following new paragraph:

**NEW PARAGRAPH.** g. The actions expected of the parent, guardian, or custodian in order for the department or agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the department or agency to end its involvement with the child and the child's family.

Sec. 3. Section 232.88, Code 1995, is amended to read as follows:

232.88 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 232.37. In addition to the parties required to be provided notice under section 232.37, notice for any hearing under this division shall be provided to the agency, facility, institution, or person, including a foster parent, with whom a child has been placed for the purposes of foster care.

Sec. 4. Section 232.91, Code 1995, is amended to read as follows:

232.91 PRESENCE OF PARENTS, AND GUARDIAN AD LITEM, AND FOSTER 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 the child's parent, guardian, custodian, or guardian ad litem in accordance with and subject to section 232.38. A parent without custody may petition the court to be made a party to proceedings under this division.

2. An agency, facility, institution, or person, including a foster parent, may petition the court to be made a party to proceedings under this division.

Sec. 5. Section 232.104, subsection 2, paragraph b, Code 1995, is amended to read as follows:

b. Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the

determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

Sec. 6. Section 232.2, subsection 6, paragraph o, Code 1995, is amended by striking the paragraph and inserting in lieu thereof the following:

o. Who is described by any other paragraph of this subsection and in whose body there is an illegal drug present as a direct consequence of the acts or omissions of the child's parent, guardian, or custodian which a reasonable and prudent person knew or should have known is likely to lead to the drug's presence in the child's body. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

Sec. 7. Section 232.68, subsection 2, paragraph f, Code 1995, is amended to read as follows:

f. An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the person responsible for the care of the child which a reasonable and prudent person knew or should have known is likely to lead to the drug's presence in the child's body.

Sec. 8. Section 232.73, unnumbered paragraph 2, Code 1995, is amended to read as follows:

As used in this section and section 232.77, "medically relevant test" means a test that produces reliable results of exposure to cocaine, heroin, amphetamine, methamphetamine, or other illegal drugs, or combinations or derivatives thereof, including a drug urine screen test. The Iowa department of public health, in consultation with the department of human services and the council on chemically exposed infants and children created in chapter 235C, shall adopt rules specifying minimum standards for reliable results of medically relevant tests. The rules shall include but are not limited to standards which minimize the incidence of false positive test results. The Iowa department of public health shall maintain a list of laboratories which are approved to perform medically relevant tests in accordance with the standards adopted in administrative rules.

Sec. 9. NEW SECTION. 232.106 TERMS AND CONDITIONS ON CHILD'S PARENT.

If the court enters an order under this chapter which imposes terms and conditions on the child's parent, guardian, or custodian, the purpose of the terms and conditions shall be to assure the protection of the child. The order is subject to the following provisions:

1. The order shall state the reasons for and purpose of the terms and conditions.
2. If a parent, guardian, or custodian is required to have a chemical test of blood or urine for the purpose of determining the presence of an illegal drug, the test shall be a medically relevant test as defined in section 232.73. The parent, guardian, or custodian may select the laboratory which processes the test from among the laboratories approved pursuant to section 232.73. A positive test result shall not be used for the criminal prosecution of a parent, guardian, or custodian for the presence of an illegal drug.

Sec. 10. Section 232.116, subsection 1, paragraph h, Code 1995, is amended to read as follows:

- h. The court finds that ~~both~~ all of the following have occurred:
- (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
  - (2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
  - ~~(2) (3) There is clear and convincing evidence that the circumstances surrounding the abuse or neglect of the child, despite the offer or receipt of services, constitutes imminent~~

danger to the child would not correct the conditions which led to the abuse or neglect of the child within a reasonable period of time.

Sec. 11. Section 232.116, subsection 1, Code 1995, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The parent has been convicted of child endangerment resulting in the death of the child's sibling, has been convicted of three or more acts of child endangerment involving the child, the child's sibling, or another child in the household, or has been convicted of child endangerment resulting in a serious injury to the child, the child's sibling, or another child in the household.

(3) There is clear and convincing evidence that the circumstances surrounding the parent's conviction for child endangerment would result in a finding of imminent danger to the child.

Sec. 12. Section 232.119, subsection 5, Code 1995, is amended to read as follows:

5. A request to defer registering the child on the exchange shall be submitted in writing and shall be granted if any of the following conditions exist:

a. The child is in an adoptive placement.

b. The child's foster parents or another person with a significant relationship is being considered as the adoptive family.

c. ~~The child needs~~ A diagnostic study or testing is necessary to clarify the child's ~~problem needs~~ and to provide an adequate description of the problem child's needs.

d. ~~The At the time of the request, the child is currently hospitalized and receiving medical care, mental health treatment, or other treatment and the child's care or treatment provider has determined that does not permit adoptive placement meeting prospective adoptive parents is not in the child's best interest.~~

e. The child is fourteen years of age or older and will not consent to an adoption plan and the consequences of not being adopted have been explained to the child.

~~Upon receipt of a valid written request for deferral pursuant to paragraphs "a" through "e", the exchange shall grant the deferral, except that a deferral based on paragraph "b" or "e" shall be granted for no more than a one-time, ninety-day period unless the termination of parental rights order is appealed. However, if the foster parents or another person with a significant relationship continues to be considered the child's prospective adoptive family, additional extensions of the deferral may be granted until ninety days after the date of the final decision regarding the appeal.~~

6. The following requirements apply to a request to defer registering a child on the adoption exchange under subsection 5:

a. For a deferral granted by the exchange pursuant to subsection 5, paragraph "a", "b", or "e", the child's guardian shall address the child's deferral status in the report filed with the court and the court shall review the deferral status in the six-month review hearings held pursuant to section 232.117, subsection 6.

b. In addition to the requirements of paragraph "a", a deferral granted by the exchange pursuant to subsection 5, paragraph "b", shall be limited to not more than a one-time, ninety-day period unless the termination of parental rights order is appealed or the child is placed in a hospital or other institutional placement. However, if the foster parents or another person with a significant relationship continues to be considered the child's prospective adoptive family, additional extensions of the deferral request under subsection 5, paragraph "b", may be granted until sixty days after the date of the final decision regarding the appeal or until the date the child is discharged from a hospital or other institutional placement.

c. A deferral granted by the exchange pursuant to subsection 5, paragraph "c", shall be limited to not more than a one-time, ninety-day period.

d. A deferral granted by the exchange pursuant to subsection 5, paragraph "d", shall be limited to not more than a one-time, one hundred-twenty-day period.

Sec. 13. Section 232.189, Code 1995, is amended to read as follows:

232.189 REASONABLE EFFORTS ADMINISTRATIVE REQUIREMENTS.

Based upon a model reasonable efforts family court initiative, the director of human services and the chief justice of the supreme court or their designees shall jointly establish and implement a statewide protocol for reasonable efforts to prevent or eliminate the need for placement of a child outside the child's home. In addition, the director and the chief justice shall design and implement a system for judicial and departmental reasonable efforts education for deployment throughout the state. The system for reasonable efforts education shall be developed in a manner which addresses the particular needs of rural areas and shall include but is not limited to all of the following topics:

1. Regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

2. The duties of judicial and departmental employees associated with placing a child removed from the child's home into a permanent home and the urgency of the placement for the child.

3. The essential elements, including writing techniques, in developing effective permanency plans.

4. The essential elements of gathering evidence sufficient for the evidentiary standards required for judicial orders under this chapter.

Sec. 14. NEW SECTION. 234.7 DEPARTMENT DUTIES.

The department of human services shall comply with the following requirement associated with child foster care licensees under chapter 237:

The department shall include a child's foster parent in and provide timely notice of planning and review activities associated with the child, including but not limited to permanency planning and placement review meetings, which shall include discussion of the child's rehabilitative treatment needs.

Sec. 15. Section 235A.15, subsection 2, paragraph e, subparagraph (4), Code 1995, is amended to read as follows:

(4) To a legally constituted child protection agency of another state which is investigating or treating a child named in a report as having been abused or ~~to~~ which is investigating or treating a person named as having abused a child.

(4A) To a public or licensed child placing agency of another state responsible for an adoptive or foster care preplacement or placement evaluation.

Sec. 16. Section 235A.15, subsection 2, paragraph e, subparagraph (9), Code 1995, is amended to read as follows:

(9) To a legally constituted child protection agency in another state if the agency is conducting a records check of a person who is providing care or has applied to provide care to a child in the other state.

Sec. 17. Section 235C.3, subsection 3, Code 1995, is amended to read as follows:

3. IDENTIFICATION. The council shall develop recommendations regarding state programs or policies to increase the accuracy of the identification of chemically exposed infants and children.

Sec. 18. Section 237.15, subsection 1, unnumbered paragraph 1, Code 1995, is amended to read as follows:

"Case permanency plan" means the plan, mandated by Pub. L. No. 96-272, as codified in 42 U.S.C., §§ 671(a)(16), 627(a)(2)(B), and 675(1),(5), which is designed to achieve placement in the least restrictive, most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which

considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian. The plan shall specifically include all of the following:

Sec. 19. Section 237.15, subsection 1, Code 1995, is amended by adding the following new paragraph:

NEW PARAGRAPH. j. The actions expected of the parent, guardian, or custodian in order for the agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the agency to end its involvement with the child and the child's family.

Sec. 20. Section 273.2, subsection 1, Code 1995, is amended to read as follows:

1. In-service training programs for employees of school districts and area education agencies, provided at the time programs and services are established they do not duplicate programs and services available in that area from the universities under the state board of regents and from other universities and four-year institutions of higher education in Iowa. The in-service training programs shall include but are not limited to regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

Sec. 21. Section 598.8, Code 1995, is amended to read as follows:

#### 598.8 HEARINGS.

Hearings for dissolution of marriage shall be held in open court upon the oral testimony of witnesses, or upon the depositions of such witnesses taken as in other equitable actions or taken by a commissioner appointed by the court. However, the court may in its discretion close the hearing. Hearings held for the purpose of determining child custody may be limited in attendance by the court. Upon request of either party, the court shall provide security in the courtroom during the custody hearing if a history of domestic abuse relating to either party exists.

Sec. 22. Section 598.41, subsections 1 and 2, Code 1995, are amended to read as follows:

1. a. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent, ~~and which will encourage parents to share the rights and responsibilities of raising the child.~~

b. Notwithstanding paragraph "a", if the court finds that a history of domestic abuse exists, a rebuttable presumption against the awarding of joint custody exists.

c. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Just cause may include a determination by the court pursuant to subsection 3, paragraph "j", that a history of domestic abuse exists between the parents.

d. If a history of domestic abuse exists as determined by a court pursuant to subsection 3, paragraph "j", and if a parent who is a victim of such domestic abuse relocates or is absent from the home based upon the fear of or actual acts or threats of domestic abuse perpetrated by the other parent, the court shall not consider the relocation or absence of that parent as a factor against that parent in the awarding of custody or visitation.

e. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. a. On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody.

b. If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed.

c. A finding by the court that a history of domestic abuse exists, as specified in subsection 3, paragraph "j", which is not rebutted, shall outweigh consideration of any other factor specified in subsection 3 in determination of the awarding of custody under this subsection.

d. Before ruling upon the joint custody petition in these cases, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph "j", or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parties to participate in custody mediation counseling to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation counseling insofar as the court determines the child's participation is advisable.

e. The costs of custody mediation counseling shall be paid in full or in part by the parties and taxed as court costs.

Sec. 23. Section 598.41, subsection 3, Code 1995, is amended by adding the following new paragraph:

NEW PARAGRAPH. j. Whether a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to, commencement of an action pursuant to section 236.3, the issuance of a protective order against the parent or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a parent in contempt pursuant to section 236.8, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

Sec. 24. Section 598.41, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 7. If an application for modification of a decree or a petition for modification of an order is filed, based upon differences between the parents regarding the custody arrangement established under the decree or order, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph "j", or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parents to participate in mediation to attempt to resolve the differences between the parents.

Sec. 25. Section 600A.5, subsection 3, paragraph c, Code 1995, is amended to read as follows:

c. A plain statement of the facts and grounds in section 600A.8, ~~subsections 1 to 4,~~ which indicate that the parent-child relationship should be terminated.

Sec. 26. Section 600A.8, Code 1995, is amended by adding the following new subsection:

NEW SUBSECTION. 8. Both of the following circumstances apply to a parent:  
a. The parent has been determined to be a chronic substance abuser as defined in section 125.2 and the parent has committed a second or subsequent domestic abuse assault pursuant to section 708.2A.

b. The parent has abducted the child, has improperly removed the child from the physical custody of the person entitled to custody without the consent of that person, or has improperly retained the child after a visit or other temporary relinquishment of physical custody.

Sec. 27. Section 600B.40, Code 1995, is amended by adding the following new unnumbered paragraph:

**NEW UNNUMBERED PARAGRAPH.** In determining the visitation or custody arrangements of a child born out of wedlock, if a judgment of paternity is entered and the mother of the child has not been awarded sole custody, section 598.41 shall apply to the determination, as applicable, and the court shall consider the factors specified in section 598.41, subsection 3, including but not limited to the factor related to a parent's history of domestic abuse.

Sec. 28. Section 602.1203, Code 1995, is amended to read as follows:  
602.1203 PERSONNEL CONFERENCES.

The chief justice may order conferences of judicial officers or court employees on matters relating to the administration of justice or the affairs of the department. For judges and other court employees who handle cases involving children and family law, the chief justice shall require regular training concerning mental or emotional disorders which may afflict children and the impact children with such disorders have upon their families.

Sec. 29. **APPLICABILITY AND EFFECTIVE DATE.** Section 9 of this Act, enacting section 232.106, being deemed of immediate importance, takes effect upon enactment and applies to medically relevant tests performed on or after the effective date of this Act pursuant to court orders imposing terms and conditions which are in effect on or after the effective date of this Act.

Approved May 19, 1995

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## CHAPTER 183

### MEDIATION IN DISSOLUTION OF MARRIAGE PROCEEDINGS

S.F. 239

**AN ACT** relating to the provision of mediation in dissolution of marriage proceedings.

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

Section 1. **NEW SECTION.** 598.7A DISSOLUTION OF MARRIAGE – MEDIATION.

In addition to the custody mediation provided pursuant to section 598.41, unless the court determines that a history of domestic abuse exists as specified in section 598.41, subsection 3, paragraph “j”, if enacted by 1995 Iowa Acts, Senate File 150,\* or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, on the application of either party, or on the court's own motion, the court may require the parties to participate in mediation to attempt to resolve differences between the parties relative to the granting of a marriage dissolution decree, if the court determines that mediation may effectuate a resolution of the differences without court intervention.

The costs of mediation shall be paid in full or in part by the parties, as determined by the court and taxed as court costs.

Sec. 2. Section 598.41, subsection 2, Code 1995, is amended to read as follows:

2. On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody. If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest

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\*Chapter 182 herein