

Judiciary
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SENATE FILE 183

By DODERER, KELLY, HILL of
Polk, WILLITS, MURRAY,
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HANSEN, ROBINSON, CARR and
SHAW

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to a complete revision of the juvenile
2 justice laws and subjecting persons to existing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 183

DIVISION I

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

11 DEFINITIONS

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

14 1. "Abandonment of a child" means the permanent
15 relinquishment or surrender, without reference to any
16 particular person, of the parental rights, duties, or
17 privileges inherent in the parent-child relationship. The
18 term includes both the intention to abandon and the acts by
19 which the intention is evidenced. The term does not require
20 that the relinquishment or surrender be over a long or any
21 particular period of time.

22 2. "Adjudicatory hearing" means a hearing to determine
23 whether the allegations of a petition are true.

24 3. "Adult" means a person other than a child.

25 4. "Child" means:

26 a. A person under eighteen years of age; or

27 b. A person eighteen years of age or older who is alleged
28 to have committed a delinquent act prior to having become
29 eighteen years of age, provided that the alleged commission
30 of the delinquent act did not occur more than three years
31 prior to the taking of the person into custody for the act
32 or prior to the filing of a delinquency petition alleging
33 the commission of the act.

34 5. "Child in need of assistance" means a child:

35 a. Whose parent, guardian or other custodian has aban-

1 doned the child.

2 b. Whose parent, guardian or custodian has physically
3 abused or neglected the child.

4 c. Whose parent, guardian or custodian is imminently
5 likely to abuse or neglect the child and thereby create a
6 substantial risk of death, disfigurement, or impairment of
7 bodily functions.

8 d. Who has suffered physical abuse or neglect or with
9 respect to whom there is a substantial likelihood of physical
10 abuse or neglect as a result of:

11 (1) Conditions created by the child's parent, guardian
12 or custodian; or

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

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

19 f. Who is in need of medical treatment to cure, alle-
20 viate, or prevent his or her suffering serious physical injury
21 or illness and whose parent, guardian, or custodian is unwill-
22 ing to provide such treatment although financially able to
23 do so or although offered financial or other reasonable means
24 to do so.

25 g. Who is in need of treatment to cure or alleviate serious
26 mental illness or disorder or emotional damage as evidenced
27 by severe anxiety, depression, withdrawal or untoward
28 aggressive behavior toward others and whose parent, guardian,
29 or custodian is unwilling to provide such treatment although
30 financially able to do so or although offered financial or
31 other reasonable means to do so.

32 h. Whose parent, guardian, or custodian fails to exercise
33 a minimum degree of care in supplying the child with adequate
34 food, clothing or shelter although financially able to do
35 so or offered financial or other reasonable means to do so.

1 i. Who has committed a delinquent act as a result of
2 pressure, guidance, or approval from a parent, guardian, or
3 custodian.

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

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

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

11 9. "Criminal justice agency" means any agency which has
12 as its primary responsibility the enforcement of the state's
13 criminal laws or of local ordinances made pursuant to state
14 law.

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

22 a. To maintain or transfer to another the physical
23 possession of that child.

24 b. To protect, train, and discipline that child.

25 c. To provide food, clothing, housing, and ordinary medical
26 care for that child.

27 d. To consent to emergency medical care, including surgery.

28 e. To sign a release of medical information to a health
29 professional.

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

33 11. "Delinquent act" means:

34 a. The violation of any state law or local ordinance which
35 would constitute a public offense if committed by an adult

1 except any offense which by law is exempted from the
2 jurisdiction of this chapter.

3 b. The violation of a federal law or a law of another
4 state which violation constitutes a criminal offense if the
5 case involving that act has been referred to the juvenile
6 court.

7 12. "Delinquent child" means a child who has committed
8 a delinquent act.

9 13. "Department" means the department of social services
10 and includes the local, county and regional officers of the
11 department.

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

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

20 16. "Dismissal of complaint" means the termination at
21 intake of all proceedings against a child.

22 17. "Dispositional hearing" means a hearing held after
23 an adjudication to determine what dispositional order should
24 be made.

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

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

1 Code, although a person who is appointed to be a guardian
2 may also be appointed to be a conservator.

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

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

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

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

15 d. To make reasonable visitations if the guardian does
16 not have physical possession or custody of the minor child.

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

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

23 21. "Health practitioner" means a licensed physician or
24 surgeon, osteopath, osteopathic physician or surgeon, dentist,
25 optometrist, podiatrist or chiropractor, a resident or intern
26 of any such profession, and any registered nurse or licensed
27 practical nurse.

28 22. "Informal adjustment" means the disposition of a
29 complaint at intake without the filing of a petition and may
30 include but is not limited to the following:

31 a. Placement of the child on nonjudicial probation.

32 b. Provision of intake services.

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

35 23. "Informal adjustment agreement" means an agreement

1 between an intake officer, a child who is the subject of a
2 complaint, and the child's parent, guardian or custodian pro-
3 viding for the informal adjustment of the complaint.

4 24. "Intake" means the preliminary screening of complaints
5 to determine whether the court should take some action with
6 respect to the complaint, and if so, what action.

7 25. "Intake officer" means a juvenile probation officer
8 authorized by the court to perform the intake function.

9 26. "Judge" means the judge of a juvenile court.

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

17 28. "Juvenile detention home" means a physically restrict-
18 ing facility used only for the detention of children.

19 29. "Juvenile parole officer" means a person representing
20 an agency which retains jurisdiction over the case of a child
21 adjudicated delinquent, placed in secure facility and
22 subsequently released, who supervises the activities of the
23 child until the case is dismissed.

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

28 31. "Juvenile shelter care home" means a physically unre-
29 stricting facility used only for the shelter care of children.

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

1 33. "Nonsecure facility" means a physically unrestricting
2 facility in which children adjudicated delinquent may be
3 placed pursuant to a dispositional order of the court.

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

8 a. The docket of the court and entries therein.

9 b. Complaints, petitions, other pleadings, motions, and
10 applications filed with a court.

11 c. Any summons, notice, subpoena, or other process and
12 proofs of publication.

13 d. Transcripts of proceedings before the court.

14 e. Findings, judgments, decrees and orders of the court.

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

18 36. "Peace officer" means a law enforcement officer or
19 a person designated as a peace officer by a provision of the
20 Code.

21 37. "Petition" means a pleading the filing of which ini-
22 tiates formal judicial proceedings in the juvenile court.

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

28 39. "Predisposition investigation" means an investigation
29 conducted for the purpose of collecting information relevant
30 to the court's making an appropriate disposition of a
31 delinquency case.

32 40. "Predisposition report" is a report furnished to the
33 court which contains the information collected during a pre-
34 disposition investigation.

35 41. "Probation" means a legal status which is created

1 by a dispositional order of the court in a case where a child
2 has been adjudicated delinquent, which exists for a specified
3 period of time, and which places the child under the
4 supervision of a juvenile probation officer or other person
5 or agency designated by the court. The probation order may
6 require a child to comply with specified conditions imposed
7 by the court concerning conduct and activities, subject to
8 being returned to the court for violation of those conditions.

9 42. "Provision of intake services" means the informal
10 adjustment of a complaint which involves the provision of
11 services on a continuing basis by an intake officer to a child
12 who is the subject of a complaint for a specified period of
13 time.

14 43. "Registry" means the central registry for child abuse
15 information as established under chapter two hundred thirty-
16 five A (235A) of the Code.

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

23 45. "Secure facility" means a physically restricting
24 facility in which children adjudicated delinquent may be
25 placed pursuant to a dispositional order of the court.

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

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

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

35 49. "Social investigation" means an investigation conducted

1 for the purpose of collecting information relevant to the
2 court's fashioning of an appropriate disposition of a child
3 in need of assistance case over which the court has
4 jurisdiction.

5 50. "Social report" means a report furnished to the court
6 which contains the information collected during a social
7 investigation.

8 51. "Taking into custody" means an act which would be
9 governed by the laws of arrest under the criminal code if
10 the subject of the act were an adult.

11 52. "Termination hearing" means a hearing held to deter-
12 mine whether the court should terminate a parent-child
13 relationship.

14 53. "Termination of the parent-child relationship" means
15 the divestment of the parent and child of all legal rights,
16 privileges, duties and powers with respect to each other.

17 54. "Waiver hearing" means a hearing at which the court
18 determines whether it shall waive its jurisdiction over a
19 child alleged to be delinquent so that the state may prosecute
20 the child as if the child were an adult.

21 DIVISION II

22 JUVENILE DELINQUENCY PROCEEDINGS

23 PART 1

24 GENERAL PROVISIONS

25 Sec. 3. NEW SECTION. JURISDICTION.

26 1. The juvenile court shall have exclusive original
27 jurisdiction in proceedings concerning any child who is alleged
28 to be a delinquent unless otherwise provided by law.

29 2. A case involving a person charged in a court other
30 than the juvenile court with the commission of a public offense
31 not exempted by law from the jurisdiction of the juvenile
32 court and who was under eighteen years of age at the time
33 of the alleged commission of the offense shall immediately
34 be transferred to the juvenile court. The transferring court
35 shall order a transfer and shall forward the transfer order

1 together with all papers, documents and a transcript of all
2 testimony filed or admitted into evidence in connection with
3 the case to the clerk of the juvenile court. The jurisdiction
4 of the juvenile court shall attach immediately upon the signing
5 of an order of transfer. From the time of transfer the
6 custody, shelter care and detention of the person alleged
7 to be or to have been a delinquent child shall be in accordance
8 with the provisions of this Act and the case shall be processed
9 in accordance with the provisions of this Act.

10 3. The juvenile court, after a hearing and in accordance
11 with the provisions of section twenty-two (22) of this Act,
12 may waive jurisdiction of a child alleged to have committed
13 a public offense so that the child may be prosecuted as an
14 adult for such offense in another court. If the child pleads
15 guilty or is found guilty of a public offense in another court
16 of this state that court may, with the consent of the child,
17 defer judgment and without regard to restrictions placed upon
18 deferred judgments for adults, place the child on probation
19 for a period not less than one year upon such conditions as
20 it may require. Upon fulfillment of the conditions of
21 probation the child shall be discharged without entry of
22 judgment.

23 Sec. 4. NEW SECTION. VENUE.

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

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

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

34 b. With the consent of the receiving court the court may
35 transfer the case to the court of the county where the minor

1 is found.

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

4 3. The court shall transfer the case by ordering the
5 transfer and a continuance and by forwarding to the clerk
6 of the receiving court a certified copy of all papers filed
7 together with an order of transfer. The judge of the receiv-
8 ing court may accept the filings of the transferring court
9 or may direct the filing of a new petition and hear the case
10 anew.

11 Sec. 5. NEW SECTION. RIGHT TO ASSISTANCE OF COUNSEL.

12 1. A child shall have the right to be represented by coun-
13 sel at every stage of proceeding under division two (II) of
14 this Act, including:

15 a. At the intake stage prior to and during any question-
16 ing at an intake interview or otherwise and in connection
17 with any discussion regarding an informal adjustment agreement.

18 b. A detention or shelter care hearing as provided in
19 section twenty-one (21) of this Act.

20 c. A waiver hearing as provided in section twenty-two
21 (22) of this Act.

22 d. An adjudicatory hearing provided in section twenty-
23 four (24) of this Act.

24 e. A dispositional hearing as provided in section twenty-
25 seven (27) of this Act.

26 f. Hearings to review and modify a dispositional order
27 as provided in section thirty-one (31) of this Act.

28 2. The child's right to be represented by counsel under
29 subsection one (1) of this section shall not be waived.

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

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

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

6 b. If the court determines that the parent, guardian or
7 custodian cannot pay any part of the expenses of counsel to
8 represent the child, it shall appoint such counsel, who shall
9 be reimbursed according to the provisions of section sixty-
10 nine (69), subsection one (1), paragraph d of this Act.

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

19 5. If the court determines, after an inquiry which includes
20 notice and reasonable opportunity to be heard that the parent,
21 guardian or custodian has the ability to pay in whole or in
22 part for the attorney appointed for the child, the court may
23 order that person to pay such sums as the court finds
24 appropriate in the manner and to whom the court directs.
25 If the person so ordered fails to comply with the order without
26 good reason, he or she may be proceeded against for contempt
27 of court, or by action of the county attorney to collect,
28 or both.

29 Sec. 6. NEW SECTION. DUTIES OF COUNTY ATTORNEY. Upon
30 the filing of a petition the county attorney shall represent
31 the state in all proceedings arising under this division and
32 shall present evidence in support of the petition.

33 PART 2

34 TAKING A CHILD INTO CUSTODY; DETENTION AND SHELTER CARE

35 Sec. 7. NEW SECTION. TAKING A CHILD INTO CUSTODY.

- 1 1. A child may be taken into custody:
- 2 a. Pursuant to an order of the court.
- 3 b. For a delinquent act pursuant to the laws relating
- 4 to arrest.
- 5 c. By a peace officer when he or she has reasonable grounds
- 6 to believe the child has run away from his or her parents,
- 7 guardian or other custodian.
- 8 d. By a peace officer, juvenile probation officer or
- 9 juvenile parole officer when the officer has reasonable grounds
- 10 to believe the child has committed a material violation of
- 11 a dispositional order.

12 2. When a child is taken into custody as provided in sub-

13 section one (1) of this section the person taking the child

14 into custody shall notify the child's parent, guardian or

15 custodian as soon as possible. Unless the child is placed

16 in shelter care or detention in accordance with the provisions

17 of section eight (8) of this Act, the child shall be released

18 to the child's parent, guardian, custodian, responsible adult

19 relative or other adult approved by the court upon the promise

20 of such person to produce the child in court, if necessary,

21 at such time as the court may direct.

22 Sec. 8. NEW SECTION. GROUNDS FOR PLACEMENT IN SHELTER

23 CARE OR DETENTION.

- 24 1. No child shall be placed and retained in shelter care
- 25 unless one of the following circumstances applies:
- 26 a. The child has no parent, guardian, custodian,
- 27 responsible adult relative or other adult approved by the
- 28 court who will provide proper shelter, care, and supervision
- 29 for him or her.
- 30 b. The child desires to be placed or remain in shelter
- 31 care.
- 32 c. It is necessary to hold the child until his or her
- 33 parent, guardian or custodian has been contacted and has taken
- 34 custody of the child.
- 35 d. It is necessary to hold the child for transfer to

1 another jurisdiction.

2 2. No child shall be placed or retained in detention
3 unless there is probable cause to believe the child has
4 committed a delinquent act and:

5 a. There is a substantial probability that the child will
6 run away or otherwise be unavailable for subsequent court
7 appearance; or

8 b. The child is being held under warrant for another
9 jurisdiction; or

10 c. The child is an escapee from a juvenile correctional
11 or penal institution; or

12 d. There is probable cause to believe that a child has
13 violated conditions of release imposed under section thirty-
14 one (31) of this Act and there is a substantial probability
15 that the child will run away or be otherwise unavailable for
16 subsequent court appearance; or

17 e. There is probable cause to believe that the child if
18 released may commit an act which would inflict serious bodily
19 harm on himself or herself or on another.

20 3. The grounds for placement of a child in shelter care
21 or detention specified in subsections one (1) and two (2)
22 of this section shall govern the decision of all persons
23 responsible for determining whether a child should be placed
24 or remain in shelter care or detention.

25 Sec. 9. NEW SECTION. ADMISSION OF CHILD TO SHELTER CARE
26 OR DETENTION.

27 1. If a child is taken into custody and not released as
28 provided in section seven (7), subsection two (2), of this
29 Act, the child shall immediately be taken to a detention or
30 shelter care facility as specified in section ten (10) of
31 this Act.

32 2. When a child is admitted to a detention or shelter
33 care facility the person in charge of the facility or his
34 or her designated representative shall notify the court, the
35 child's attorney and the child's parent, guardian, or custodian

1 as soon as possible of the admission and the reasons for that
2 admission.

3 3. No child shall be detained in a police station, lockup,
4 jail, prison or other facility intended or used for the deten-
5 tion of adults for a period in excess of twelve hours without
6 a court order authorizing such detention. No child shall
7 be detained in a juvenile detention facility or other suitable
8 place designated by the court for the detention of a child
9 as specified in section ten (10) of this Act for a period
10 in excess of twenty-four hours without a court order
11 authorizing such detention. No child shall be held in a
12 shelter care facility or other suitable place designated by
13 the court for the shelter care of a child as specified in
14 section ten (10) of this Act for a period in excess of forty-
15 eight hours without a court order authorizing such shelter
16 care.

17 4. The court shall hold a hearing concerning the continued
18 retention of a child in shelter care or detention in accor-
19 dance with the provisions of section twenty-one (21) of this
20 Act.

21 Sec. 10. NEW SECTION. SHELTER CARE AND DETENTION--WHERE.

22 1. A child may be placed in shelter care as provided in
23 section eight (8), subsection one (1), of this Act only in
24 one of the following facilities:

25 a. A juvenile shelter care home.

26 b. A licensed foster home.

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

31 d. Any other suitable place designated by the court pro-
32 vided that no place used for the detention of a child may
33 be so designated.

34 2. A child may be detained as provided in section eight
35 (8), subsection two (2), of this Act only in one of the follow-

1 ing:

2 a. A juvenile detention home.

3 b. Any other suitable place designated by the court.

4 c. A room in a police station, jail, lockup, or other
5 facility intended or used for the detention of adults upon
6 the written order of a judge or magistrate or for a period
7 of up to twelve hours without such an order if:

8 (1) The child is at least fourteen years or older; and

9 (2) The child has shown by his or her conduct, habits,
10 or condition that he or she constitutes an immediate and
11 extreme danger to himself or herself or to the public, and
12 a facility or place enumerated in subsections a or b of this
13 section is unavailable or the court determines that the child's
14 conduct or condition endangers the safety of others in the
15 facility; and

16 (3) The facility has an adequate staff to supervise and
17 monitor the child's activities at all times; and

18 (4) The child is confined in a room entirely separated
19 from confined adults.

20 3. A place used for the detention of children prior to
21 an adjudicatory hearing may also be used for the detention
22 of children adjudicated delinquent only for a period of up
23 to twenty-four hours while the adjudicated child is awaiting
24 transfer to the disposition placement.

25 PART 3

26 INTAKE

27 Sec. 11. NEW SECTION. INTAKE.

28 1. Any person having knowledge of the facts may file a
29 complaint with the court alleging a child to be a delinquent.

30 2. The court shall refer the complaint to an intake offi-
31 cer who shall conduct a preliminary inquiry to determine what
32 action should be taken.

33 3. The intake officer, consulting with the county attor-
34 ney when necessary, shall determine whether the complaint
35 is legally sufficient for the filing of a petition. A

1 complaint shall be deemed legally sufficient for the filing
2 of a petition if the facts as alleged are sufficient to
3 establish the jurisdiction of the court and probable cause
4 to believe that the child is a delinquent. If the intake
5 officer determines that the complaint is legally sufficient
6 to support the filing of a petition, the officer shall
7 determine whether the interests of the child and the public
8 will best be served by the dismissal of the complaint, the
9 informal adjustment of the complaint, or the filing of a
10 petition.

11 4. In the course of a preliminary inquiry, the intake
12 officer may:

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

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

17 c. Hold conferences with the child and his or her parent,
18 guardian or custodian for the purpose of interviewing them
19 and discussing the disposition of the complaint in accor-
20 dance with the requirements set forth in subsection six (6)
21 of this section.

22 5. Inquiries other than those listed in subsection four
23 (4) of this section may be undertaken only with the consent
24 of the child and his or her parent, guardian or custodian.

25 6. Participation of the child and his or her parent,
26 guardian or custodian in a conference with an intake officer
27 shall be voluntary, and they shall have the right to refuse
28 to participate in such conference. At such conference the
29 child shall have the right to the assistance of counsel and
30 the right to remain silent when questioned by the intake
31 officer.

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

1 the complaint.

2 8. If the intake officer determines that the complaint
3 is legally sufficient for the filing of a petition and that
4 an informal adjustment of the complaint is in the best inter-
5 ests of the child and the community, the officer may make
6 an informal adjustment of the complaint in accordance with
7 section twelve (12) of this Act.

8 9. If the intake officer determines that the complaint
9 is legally sufficient for the filing of a petition and that
10 the filing of a petition is in the best interests of the
11 juvenile and the public, the officer may request the county
12 attorney to file a petition in accordance with section thirteen
13 (13) of this Act.

14 Sec. 12. NEW SECTION. INFORMAL ADJUSTMENT.

15 1. The informal adjustment of a complaint is a permis-
16 sible disposition of a complaint at intake subject to the
17 following conditions:

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

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

24 c. Any informal adjustment agreement shall be entered
25 into voluntarily and intelligently by the child with the
26 advice of his or her attorney and of the child's parent,
27 guardian or custodian.

28 d. The terms of such agreement shall be clearly stated
29 in writing and signed by all parties to the agreement.

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

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

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

5 h. If an informal adjustment of a complaint has been made,
6 a petition based upon the events out of which the original
7 complaint arose may be filed only during the period of six
8 months from the date the informal adjustment agreement was
9 entered into. If a petition is filed within this period the
10 child's compliance with the terms of the agreement shall be
11 grounds for dismissal of the petition by the court except
12 when that petition is filed under paragraph g of this
13 subsection.

14 i. The person performing the duties of intake officer
15 shall, at least every six months, file a report with the court
16 listing the number of informal adjustments made during the
17 reporting time, the conditions imposed in each case, the
18 number of informal adjustments resulting in dismissal without
19 the filing of a petition, and the number of informal
20 adjustments resulting in the filing of a petition upon the
21 original complaint.

22 PART 4

23 JUDICIAL PROCEEDINGS

24 Sec. 13. NEW SECTION. FILING OF PETITION.

25 1. A formal judicial proceeding to determine whether a
26 child is a delinquent under this Act shall be initiated by
27 the filing by the county attorney of a petition alleging a
28 child to be delinquent.

29 2. If the intake officer determines that a complaint is
30 legally sufficient for the filing of a petition alleging a
31 child to be delinquent and that the filing of a petition would
32 be in the best interests of the child and the community, the
33 officer shall submit a written request for the filing of a
34 petition to the county attorney. The county attorney may
35 grant or deny the request of the intake officer for the filing

1 of a petition. A determination by the county attorney that
2 a petition should not be filed shall be final.

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

17 Sec. 14. NEW SECTION. CONTENTS OF PETITION.

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

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

22 3. The petition shall set forth plainly:

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

25 b. The names and residences of any:

26 (1) Living parent of the child.

27 (2) Guardian of the child.

28 (3) Legal custodian of the child.

29 (4) Guardian ad litem.

30 c. With reasonable particularity, the time, place and
31 manner of the delinquent act alleged and the penal law alleg-
32 edly violated by such act.

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

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

3 Sec. 15. NEW SECTION. SUMMONS, NOTICE, SUBPOENAS AND
4 SERVICE.

5 1. After a petition has been filed the court shall set
6 a time for hearing and shall issue a summons requiring the
7 child to appear before the court at a time and place stated
8 and requiring the person who has custody or control of the
9 child to appear before the court and to bring the child with
10 him or her at that time. The summons shall attach a copy
11 of the petition and shall give notification of the right to
12 counsel provided for in section five (5) of this Act.

13 2. The court shall have notice of the pendency of the
14 case served upon the known parent, guardian or legal custodian
15 of a child if this person is not summoned to appear as provided
16 in subsection one (1) of this section. The court shall also
17 have notice served upon the child and upon the child's guardian
18 ad litem, if any. The notice shall attach a copy of the
19 petition and shall give notification of the right to counsel
20 provided for in section five (5) of this Act.

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

27 4. Service of summons or notice shall be made personally
28 by the delivery of a copy thereof to the person being served.
29 If the court determines that personal service of a summons
30 or notice is impracticable, the court may order service by
31 certified mail addressed to the last known address or by
32 publication or both. Service of summons or notice shall be
33 made not less than five days before the time fixed for hearing.
34 Service of summons, notice, subpoenas or other process, after
35 an initial valid summons or notice, shall be made in accordance

1 with the rules of the court governing such service in civil
2 actions.

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

9 6. The court may issue an order for the removal of the
10 child from the custody of his or her parent, guardian or
11 custodian when there exists an immediate threat that the
12 parent, guardian or custodian will flee the state with the
13 child, or when it appears that the child's immediate removal
14 is necessary to avoid imminent danger to the child's life
15 or health.

16 Sec. 16. NEW SECTION. PRESENCE OF PARENTS AT HEARINGS.

17 1. Any hearings or proceedings under this division sub-
18 sequent to the filing of a petition shall not take place
19 without the presence of one or both of the child's parents,
20 guardian or custodian except that a hearing or proceeding
21 may take place without such presence if the parent, guardian
22 or custodian fails to appear after reasonable notification.

23 2. In any such hearings or proceedings the court may
24 temporarily excuse the presence of the parent, guardian or
25 custodian when the court deems it in the best interests of
26 the child. Counsel for the parent, guardian or custodian
27 shall have the right to participate in a hearing or proceed-
28 ing during the absence of the parent, guardian or custodian.

29 Sec. 17. NEW SECTION. EXCLUSION OF PUBLIC FROM HEARINGS.

30 The court shall exclude the general public from hearings and
31 proceedings under this division. The court shall admit the
32 news media except in those cases in which, in the opinion
33 of the court, the best interests of the child and the public
34 are served by a private hearing, and the court shall admit
35 in its discretion those persons who have a direct interest

1 in the case or the work of the court.

2 Sec. 18. NEW SECTION. OTHER ISSUES ADJUDICATED. When
3 it appears during the course of any hearing or proceeding
4 that some action or remedy other than or in addition to those
5 indicated by the application or pleading is appropriate, the
6 court may, provided all necessary parties consent, proceed
7 to hear and determine the additional or other issues as though
8 originally properly sought and pleaded.

9 Sec. 19. NEW SECTION. REPORTER REQUIRED. Stenographic
10 notes or mechanical recordings shall be taken of all court
11 hearings held pursuant to this division unless waived by the
12 parties. The child shall not be competent to waive the
13 reporting requirement, but waiver may be made for the child
14 by the child's counsel or guardian ad litem. Matters which
15 must be reported under the provisions of this section shall
16 be the same as those required in section six hundred twenty-
17 four point nine (624.9) of the Code.

18 Sec. 20. NEW SECTION. ANSWER--PLEA AGREEMENT--ACCEPTANCE
19 OF PLEA ADMITTING ALLEGATIONS OF PETITION.

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

24 2. The county attorney and the child's counsel may engage
25 in discussion with a view toward reaching a plea agreement
26 which contemplates entry of a plea admitting the allegations
27 of the petition in the expectation that other charges will
28 be dismissed or not filed or that a specific disposition will
29 be recommended by the county attorney and granted by the
30 court.

31 3. The court shall not accept a plea admitting the alle-
32 gations of the petition without first addressing the child
33 personally in court, determining that the plea is voluntary
34 and not the result of any force or threats or promises other
35 than promises made in connection with a plea agreement and

1 informing the child of and determining that the child
2 understands the following:

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

5 b. The severest possible disposition and the maximum
6 length of such disposition which the court may order if the
7 court accepts the child's plea.

8 c. That the child has the right to deny the allegations
9 of the petition.

10 d. That if the child admits the allegations of the petition
11 the child waives the right to a further adjudicatory hearing.

12 4. The court shall not accept a plea admitting the
13 allegations of the petition without first addressing the
14 county attorney and the child's counsel in court and making
15 an inquiry into whether such a plea is the result of a plea
16 agreement. The court shall require the disclosure of the
17 terms of any such agreement in court. If a plea agreement
18 has been reached which contemplates entry of the plea in the
19 expectation that the court will order a specific disposition
20 or dismiss other charges against the child before the court,
21 the court shall indicate to the parties whether the court
22 will concur in the proposed disposition or dismissal of
23 charges. If the court will not concur in such disposition
24 or dismissal, the court should address the child personally
25 and advise the child of this fact, advise the child that the
26 disposition of the case may be less favorable to the child
27 than that contemplated by the plea agreement, and afford the
28 child the opportunity to withdraw the plea. If the court
29 defers decision as to whether the court will concur with the
30 proposed disposition or dismissal until there has been an
31 opportunity to consider the predisposition report, the court
32 shall advise the child that the court is not bound by the
33 plea agreement and afford the child the opportunity to with-
34 draw the plea.

35 5. The court shall not accept a plea admitting the

1 allegations of the petition without:

2 a. Determining that there is a factual basis for the plea.

3 b. Determining that the child was given effective

4 assistance of counsel prior to tender of the plea.

5 c. Inquiring of the parent or parents who are present

6 in court whether they agree as to the course of action that

7 their child has chosen. If either parent expresses

8 disagreement with the plea, the court may refuse to accept

9 that plea.

10 6. If the court determines that a plea is not in the

11 child's best interest it may refuse to accept that plea

12 regardless of the agreement of the parties.

13 Sec. 21. NEW SECTION. DETENTION OR SHELTER CARE HEARING-

14 -RELEASE FROM DETENTION UPON CHANGE OF CIRCUMSTANCE.

15 1. A hearing shall be held within forty-eight hours,

16 excluding Sundays and legal holidays, of the time of the

17 child's admission to a detention or shelter care facility.

18 If the hearing is not held within the time specified, the

19 child shall be released from shelter care or detention. Prior

20 to the hearing a petition shall be filed, except where the

21 child is already under the supervision of a juvenile court

22 under a prior judgment.

23 2. The county attorney or a juvenile probation officer

24 may apply for a hearing at any time after the petition is

25 filed to determine whether the child who is the subject of

26 the petition should be placed in detention or shelter care.

27 The court may upon the application or upon its own motion

28 order such hearing.

29 3. Notice stating the time, place, and purpose of the

30 hearing shall be served personally upon the child, the child's

31 attorney, the child's guardian ad litem if any, and the child's

32 known parent, guardian or custodian not less than twenty-four

33 hours before the time the hearing is scheduled to begin.

34 4. At the hearing the court shall admit only testimony

35 and other evidence relevant to the determination of whether

1 there is probable cause to believe the child has committed
2 the act as alleged in the petition and to the determination
3 of whether the placement of the child in detention or shelter
4 care is authorized under section eight (8) of this Act. Any
5 written reports or records made available to the court at
6 the hearing shall be made available to the parties. A copy
7 of the petition shall be given to each of the parties at or
8 before the hearing.

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

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

15 b. If the court finds that detention or shelter care is
16 not authorized under section eight (8) of this Act, or is
17 authorized but not warranted in a particular case, the court
18 shall order the child's release, and in so doing, may impose
19 one or more of the following conditions:

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

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

26 (3) Impose any other condition deemed reasonably neces-
27 sary and consistent with the grounds for detaining children
28 specified in section eight (8) of this Act, including a con-
29 dition requiring that the child return to custody as required.

30 c. An order releasing a child on conditions specified
31 in this section may at any time be amended to impose additional
32 or different conditions of release or to return the child
33 to custody for failure to conform to the conditions originally
34 imposed.

35 6. If the court finds that there is probable cause to

1 believe that the child is within the jurisdiction of the court
2 under this Act and that full-time detention or shelter care
3 is authorized under section eight (8) of this Act, it may
4 issue an order authorizing either shelter care or detention
5 for up to seven days or until the adjudicatory hearing is
6 held if that hearing is held within seven days.

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

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

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

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

34 Sec. 22. NEW SECTION. WAIVER HEARING AND WAIVER OF
35 JURISDICTION.

1 1. After the filing of a petition alleging a child to
2 be delinquent on the basis of an alleged commission of a
3 public offense and before an adjudicatory hearing on the
4 merits of the petition is held, the county attorney may file
5 a motion requesting the court to waive its jurisdiction over
6 the child so that the child may be prosecuted as an adult
7 for such violation.

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

10 3. Notice stating the time, place, and purpose of the
11 waiver hearing shall be issued and served in accordance with
12 the provisions of section fifteen (15) of this Act. Summons,
13 subpoenas and other process may be issued and served in
14 accordance with the provisions of section fifteen (15) of
15 this Act.

16 4. Prior to the waiver hearing, the juvenile probation
17 officer or other person or agency designated by the court
18 shall conduct an investigation for the purpose of collecting
19 information relevant to the court's decision as to whether
20 to waive jurisdiction over the child and shall submit a report
21 concerning such investigation to the court. Prior to the
22 hearing the court shall provide the child's counsel and the
23 county attorney with access to the report and to all written
24 material to be considered by the court.

25 5. At the waiver hearing all relevant and material evi-
26 dence shall be admitted.

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

29 a. The child is fourteen years of age or older; and

30 b. The court determines that there is probable cause to
31 believe that the child has committed a delinquent act which
32 would constitute a public offense; and

33 c. The court determines that the state has established
34 that there are not reasonable prospects for rehabilitating
35 the child in the event the juvenile court retains jurisdic-

1 tion over the child and the child is adjudicated delinquent
2 and that waiver of the court's jurisdiction would be in the
3 best interest of the child or the community.

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

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

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

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

20 8. If at the conclusion of the hearing the court waives
21 its jurisdiction over the child the court shall make and file
22 written findings as to its reasons for waiving its jurisdic-
23 tion.

24 9. If the court waives jurisdiction, statements made by
25 the child after being taken into custody and prior to ser-
26 vice of notice under subsection three (3) of this section,
27 or at a waiver hearing held pursuant to this section, are
28 not admissible against the child in subsequent criminal
29 proceedings over the child's objection.

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

35 Sec. 23. NEW SECTION. CONSENT DECREE.

1 1. At any time after the filing of a petition and prior
2 to entry of an order of adjudication pursuant to section
3 twenty-four (24) of this Act, the court may, on motion of
4 the county attorney or counsel for the child, suspend the
5 proceedings, enter a consent decree, and continue the case
6 under terms and conditions established by the court. These
7 terms and conditions may include the supervision of the child
8 by a juvenile probation officer or other agency or person
9 designated by the court.

10 2. A consent decree shall not be entered unless the child
11 and his or her parent, guardian or custodian are informed
12 of the consequences of the decree by the court and the court
13 determines that the child has voluntarily and intelligently
14 agreed to the terms and conditions of the decree. If the
15 county attorney objects to the entry of a consent decree,
16 the court shall, after considering the objection and reasons
17 therefor, proceed to determine whether it is appropriate to
18 enter a consent decree.

19 3. A consent decree shall remain in force for six months
20 unless the child is sooner discharged by the court or by the
21 juvenile probation officer or other agency or person
22 supervising the child. Upon application of a juvenile
23 probation officer or other agency or person supervising the
24 child made prior to the expiration of the decree, and after
25 notice and hearing, a consent decree may be extended for an
26 additional six months by order of the court upon agreement
27 by the parties.

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

35 5. A child who is discharged or who completes a period

1 of continuance without the reinstatement of the original peti-
2 tion shall not be proceeded against in any court for a delin-
3 quent act alleged in the petition.

4 Sec. 24. NEW SECTION. ADJUDICATORY HEARING--FINDINGS-
5 ADJUDICATION.

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

10 2. The court shall hear and adjudicate all cases involv-
11 ing a petition alleging a child to be delinquent.

12 3. A judge of the juvenile court may not serve as the
13 finder of fact over objection of the child based upon a showing
14 of prejudice on the part of the judge.

15 4. At an adjudicatory hearing the state shall have the
16 burden of proving the allegations of the petition beyond a
17 reasonable doubt.

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

22 6. The following statements or other evidence shall not
23 be admitted into evidence at an adjudicatory hearing:

24 a. Statements or other evidence derived directly or indi-
25 rectly from statements which a child makes without the presence
26 of counsel to a law enforcement officer while in custody
27 unless the child and his or her attorney consent to the
28 admission of such statements or evidence.

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

35 c. Statements which the child makes to a juvenile proba-

1 tion officer or other person conducting a predisposition
2 investigation during such an investigation.

3 7. At the conclusion of an adjudicatory hearing, the court
4 shall make a written finding as to whether the child has
5 committed a delinquent act, and the court shall make and file
6 written findings as to the truth of the specific allegations
7 of the petition.

8 8. If the court finds that the child did not commit a
9 delinquent act, the court shall enter an order dismissing
10 the petition.

11 9. If the court finds that the child did commit a
12 delinquent act, the court may enter an order adjudicating
13 the child to be a delinquent child.

14 Sec. 25. NEW SECTION. PREDISPOSITION INVESTIGATION AND
15 REPORT.

16 1. The court shall not make a disposition of the peti-
17 tion following the entry of an order of adjudication pursuant
18 to section twenty-four (24) of this Act until a predisposition
19 report has been submitted to and considered by the court.
20 The court may direct a juvenile probation officer or any other
21 agency or individual to conduct a predisposition investigation
22 and to prepare a predisposition report.

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

28 3. A predisposition report shall not be disclosed except
29 as provided in this section and except as otherwise provided
30 in Division nine (IX) of this Act. Prior to the dispositional
31 hearing, the court shall permit the child's attorney to inspect
32 any predisposition report to be considered by the court in
33 making a disposition. The court may in its discretion order
34 counsel not to disclose parts of the report to the child,
35 or to the child's parent, guardian, guardian ad litem, or

1 custodian if the court finds that disclosure would seriously
2 harm the treatment or rehabilitation of the child or would
3 violate a promise of confidentiality given to a source of
4 information.

5 Sec. 26. NEW SECTION. PHYSICAL AND MENTAL EXAMINATIONS.

6 1. Following the entry of an order of adjudication under
7 section twenty-four (24) of this Act the court may after a
8 hearing, order a physical or mental examination of the child
9 if it finds that an examination is necessary to determine
10 the child's physical or mental condition.

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

18 Sec. 27. NEW SECTION. DISPOSITIONAL HEARING.

19 1. As soon as practicable following the entry of an order
20 of adjudication pursuant to section twenty-four (24) of this
21 Act, the court shall hold a dispositional hearing in order
22 to determine what disposition should be made of the petition.

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

25 3. When the dispositional hearing is concluded the court
26 shall enter an order to make any one or more of the disposi-
27 tions authorized under section twenty-nine (29) of this Act.

28 Sec. 28. NEW SECTION. DISPOSITION OF MENTALLY ILL CHILD.

29 If the evidence received at an adjudicatory or a dispositional
30 hearing indicates that the child is mentally ill, the court
31 may direct the juvenile probation officer or the department
32 to initiate proceedings or to assist the child's parent or
33 guardian to initiate proceedings under chapter two hundred
34 twenty-nine (229) of the Code. If the evidence received at
35 an adjudicatory or a dispositional hearing indicates that

1 the child is mentally retarded, the court may direct the
2 juvenile probation officer or the department to initiate
3 proceedings or to assist the child's parent or guardian to
4 initiate proceedings under chapter two hundred twenty-two
5 (222) of the Code. In the event the child is committed as
6 a mentally ill or mentally retarded child, any order
7 adjudicating the child a delinquent shall be set aside and
8 the petition shall be dismissed.

9 Sec. 29. NEW SECTION. DISPOSITION OF DELINQUENT CHILD.

10 1. No dispositional order shall be made unless the court
11 finds that the child is in need of rehabilitation or that
12 the protection of the public or the child requires that a
13 dispositional order be made. If the court does not make such
14 a finding it shall enter a final judgment without ordering
15 a disposition. Nothing in this paragraph shall preclude the
16 court from ordering restitution in appropriate cases.
17 Restitution may include monetary restitution if the child
18 has his or her own source of income, and may include an
19 appropriate work assignment or assignments.

20 2. If the court makes a finding in compliance with subsec-
21 tion one (1) of this section the court shall enter a disposi-
22 tional order specifying the following:

- 23 a. The nature of the disposition.
24 b. The maximum duration of such disposition.
25 c. Where such order affects the residency and the legal
26 custody of the child, the type of residence or confinement
27 ordered and the agency, association, institution, facility
28 or individual in whom custody is vested.

29 3. The court shall enter the least restrictive
30 dispositional order appropriate in view of the seriousness
31 of the delinquent act, the child's culpability as indicated
32 by the circumstances of the particular case, the age of the
33 child and the child's prior record.

34 4. The dispositional orders which the court may enter,
35 ranging from least restrictive to most restrictive, are as

1 follows:

2 a. An order permitting the child to remain in his or her
3 place of residence and in the custody of his or her parent,
4 guardian or custodian, subject to such conditions and terms
5 as the court prescribes.

6 b. An order permitting the child to remain in his or her
7 place of residence and in the custody of his or her parent,
8 guardian or custodian and placing the child on probation sub-
9 ject to such conditions and terms as the court prescribes.

10 c. An order transferring the custody of the child, subject
11 to the continuing jurisdiction of the court for the purposes
12 of section thirty-one (31) of this Act, to the juvenile
13 probation office, to the commissioner of the department of
14 social services or to the director of another agency for
15 placement in a licensed foster home or to an adult relative
16 or other adult suitable to the court and placing the child
17 on probation under such conditions as the court prescribes.

18 d. An order transferring the custody of the child, subject
19 to the continuing jurisdiction of the court for the purposes
20 of section thirty-one (31) of this Act, to the commissioner
21 of the department of social services or to the director of
22 another agency, facility or institution which is licensed
23 or otherwise authorized by law to receive and provide care
24 for the child, provided that:

25 (1) The child is at least ten years of age; and

26 (2) The court finds that the dispositions enumerated in
27 paragraphs a, b, or c of this subsection would be inadequate
28 for the needs of the child and that such needs can be met
29 by placement of the child in a nonsecure facility.

30 e. An order transferring the custody of the child, subject
31 to the continuing jurisdiction of the court for the purposes
32 of section thirty-one (31) of this Act, to the commissioner
33 of the department of social services for purposes of placement
34 in the Iowa training school for boys or the Iowa training
35 school for girls or other secure facility operated or

1 supervised by the department, provided that:

2 (1) The child is at least twelve years of age; and

3 (2) The court finds that there is a substantial likeli-
4 hood that such placement is necessary to prevent the child
5 from inflicting physical harm on others or from committing
6 repeated, serious crimes against property and that the disposi-
7 tions enumerated in paragraphs a, b, c, or d of this subsec-
8 tion will not provide adequate protection from such risks.

9 5. If the child is in need of special care or treatment
10 for his or her physical, emotional or mental health, the court
11 may provide for such treatment on its own order, and may order
12 the parent, guardian, or custodian to reimburse the county
13 for costs incurred as provided in section sixty-nine (69),
14 subsection two (2) of this Act. The court may order a
15 commitment to a mental health institute or other appropriate
16 secure facility for the purposes of treatment of a mental
17 or emotional condition only after making findings pursuant
18 to the standards set out for involuntary commitment in chapter
19 two hundred twenty-nine (229) of the Code.

20 6. When the court enters an order placing a child on
21 probation pursuant to subsection four (4) of this section,
22 the court may in cases of change of residency transfer juris-
23 diction of the child to the juvenile court of the county where
24 the child's residence is established. The court to which
25 the jurisdiction of the child is transferred shall have the
26 same powers with respect to the child as if the petition had
27 originally been filed in that court.

28 7. When the court enters an order transferring legal and
29 physical custody of a child to an agency, facility or
30 institution pursuant to this section, the court shall transmit
31 its order, a copy of its finding and a summary of its
32 information concerning the child to such agency, association,
33 facility or institution.

34 Sec. 30. NEW SECTION. DURATION OF DISPOSITIONAL ORDERS.

35 1. Any dispositional order entered by the court pursuant

1 to section twenty-nine (29) of this Act shall remain in force
2 for an indeterminate period or until the child becomes eighteen
3 years of age unless otherwise specified by the court or unless
4 sooner terminated pursuant to the provisions of section thirty-
5 one (31) of this Act provided that no dispositional order
6 shall remain in force longer than the maximum possible duration
7 of the sentence which may be imposed on an adult for the
8 commission of the act for which the child is alleged to be
9 delinquent.

10 2. All dispositional orders shall automatically terminate
11 when the child becomes eighteen years of age.

12 3. Any person supervising the child pursuant to such an
13 order shall file a written report with the court at least
14 every nine months concerning the status and progress of the
15 child.

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

20 Sec. 31. NEW SECTION. TERMINATION, MODIFICATION, OR
21 VACATION AND SUBSTITUTION OF DISPOSITIONAL ORDER. At any
22 time prior to its expiration, a dispositional order may be
23 terminated, modified, or vacated and another dispositional
24 order substituted therefor only in accordance with the
25 following provisions:

26 1. With respect to a dispositional order made pursuant
27 to section twenty-nine (29), subsection four (4), paragraph
28 b of this Act and upon the motion of a child, a child's parent
29 or guardian, a child's guardian ad litem, a person supervising
30 the child under a dispositional order, a county attorney,
31 or upon its own motion, the court may terminate the order
32 and discharge the child, modify the order, or vacate the order
33 and substitute another order pursuant to the provisions of
34 section twenty-nine (29) of this Act. Notice shall be afforded
35 all parties, and a hearing shall be held at the request of

1 any party.

2 2. With respect to a dispositional order made pursuant
3 to section twenty-nine (29), subsection four (4), paragraphs
4 c, d, or e of this Act, the court shall grant a motion of
5 the person or agency to whom custody has been transferred
6 for termination of the order and discharge of the child, for
7 modification of the order by imposition of less restrictive
8 conditions, or for vacation of the order and substitution
9 of a less restrictive order. Notice shall be afforded all
10 parties and a hearing shall be held at the request of any
11 party.

12 3. With respect to a dispositional order made pursuant
13 to section twenty-nine (29), subsection four (4), paragraphs
14 c, d, or e of this Act, the court shall, in the absence of
15 objection by the child, grant a motion of a person or agency
16 to whom custody has been transferred for modification of the
17 order by transfer to an equally restrictive placement. If
18 the child objects to the transfer the court may, after notice
19 and hearing, either grant or deny the motion for transfer.

20 4. With respect to a dispositional order made pursuant
21 to section twenty-nine (29), subsection four (4), paragraphs
22 c, d, and e of this Act, the court may, after notice and a
23 hearing at which there is presented clear and convincing
24 evidence to support such an action, either grant or deny a
25 motion by a person or agency to whom custody has been
26 transferred, to modify an order by imposing more restrictive
27 conditions or to vacate the order and substitute a more
28 restrictive order. Notice and hearing requirements of this
29 section shall be afforded pursuant to sections fifteen (15)
30 and twenty-seven (27) of this Act.

31 5. With respect to a dispositional order made pursuant
32 to section twenty-nine (29), subsection four (4), paragraphs
33 c, d, and e of this Act, the court may, after notice and
34 hearing, either grant or deny a motion of the child, the
35 child's parent or guardian, or the child's guardian ad litem,

1 to terminate the order and discharge the child, to modify
2 the order either by imposing less restrictive conditions or
3 by transfer to an equally or less restrictive placement, or
4 to vacate the order and substitute a less restrictive order.
5 A motion may be made pursuant to this paragraph no more than
6 once every six months.

7 Sec. 32. NEW SECTION. EFFECT OF ADJUDICATION AND DISPOSI-
8 TION.

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

14 2. The adjudication and disposition of a child and evi-
15 dence given in a proceeding under this division shall not
16 be admissible as evidence against the child in any subsequent
17 proceeding in any court other than a juvenile court before
18 or after reaching majority except in a sentencing proceeding
19 after conviction of a felony.

20 DIVISION III

21 CHILD IN NEED OF ASSISTANCE PROCEEDINGS

22 PART 1

23 GENERAL PROVISIONS

24 Sec. 33. NEW SECTION. JURISDICTION.

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

28 2. In determining such jurisdiction the age of the child
29 at the time the proceedings are initiated is controlling.

30 Sec. 34. NEW SECTION. VENUE.

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

34 2. The court may transfer any child in need of assistance
35 proceedings brought under this Act to the juvenile court of

1 any county having venue at any stage in the proceedings as
2 follows:

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

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

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

17 PART 2

18 TEMPORARY REMOVAL OF A CHILD

19 Sec. 35. NEW SECTION. TEMPORARY REMOVAL OF A CHILD PURSU-
20 ANT TO EX PARTE COURT ORDER.

21 1. The juvenile court may enter an ex parte order directing
22 a peace officer to remove a child from his or her home before
23 or after the filing of a petition under this Act provided:

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

28 b. It appears that the child's immediate removal is neces-
29 sary to avoid imminent danger to the child's life or health;
30 and

31 c. There is not enough time to file a petition and hold
32 a hearing under section forty-seven (47) of this Act.

33 2. The order shall specify the facility to which the child
34 is to be brought. Except for good cause shown or unless the
35 child is sooner returned to the place where he or she was

1 residing, a petition shall be filed under this Act within
2 three days of the issuance of the order.

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

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

9 b. There is not enough time to file a petition under this
10 Act and hold a hearing as provided in section forty-seven
11 (47) of this Act.

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

21 Sec. 36. NEW SECTION. REMOVAL WITHOUT COURT ORDER.

22 1. A peace officer may remove a child from his or her
23 home or a physician treating a child may keep the child in
24 his or her custody without a court order as required under
25 section thirty-five (35) of this Act and without the consent
26 of a parent, guardian, or custodian provided that:

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

31 b. There is not enough time to apply for an order under
32 section thirty-five (35) of this Act.

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

35 a. Bring the child immediately to a place designated by

1 the rules of the court for this purpose, unless the person
2 is a physician treating the child and the child is or will
3 presently be admitted to a hospital.

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

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

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

13 4. When the court is informed that there has been an emer-
14 gency removal or keeping of a child without a court order,
15 the court shall direct the department of social services or
16 the juvenile probation department to make every reasonable
17 effort to communicate immediately with the child's parent
18 or other person legally responsible for the child's care.
19 The court shall also authorize the department of social
20 services or the juvenile probation department to cause a child
21 thus removed or kept to be returned if it concludes there
22 is not an imminent risk to the child's life and health in
23 so doing. If the child is not returned, the department of
24 social services or the juvenile probation department shall
25 forthwith cause a petition to be filed within three days after
26 the removal.

27 Sec. 37. NEW SECTION. HOMEMAKER SERVICES. A homemaker-
28 home health aide may be assigned to give care to a child in
29 the child's place of residence. Such care may be provided
30 under this Act on an emergency basis for up to twenty-four
31 hours without court order, and may be ordered by the court
32 for a period of time extending until dismissal or disposition
33 of the case. Expenses incurred under this section shall be
34 paid for according to, and reimbursement from the parent,
35 guardian or custodian may be sought under, the provisions

1 of section sixty-nine (69) of this Act.

2 Sec. 38. NEW SECTION. COMPLAINT.

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

7 2. Upon receipt of a complaint, the court may request
8 the department of social services, juvenile probation office,
9 or other authorized agency or individual to conduct a prelim-
10 inary investigation of the complaint to determine if further
11 action should be taken.

12 3. A petition alleging the child to be a child in need
13 of assistance should be filed pursuant to section thirty-nine
14 (39) of this Act provided the allegations of the complaint,
15 if proven, are sufficient to establish the court's jurisdic-
16 tion and the filing is in the best interests of the child.

17 PART 3

18 JUDICIAL PROCEEDINGS

19 Sec. 39. NEW SECTION. FILING OF A PETITION--CONTENTS
20 OF PETITION.

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

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

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

31 4. The petition shall contain the relevant information
32 specified in section fourteen (14) of this Act and a clear
33 and concise summary of the facts which bring the child within
34 the jurisdiction of the court under this division.

35 Sec. 40. NEW SECTION. SUMMONS, NOTICE, SUBPOENAS AND

1 SERVICES. After a petition has been filed the court shall
2 issue and serve summons, notice, subpoenas and other process
3 in accordance with the provisions of section fifteen (15)
4 of this Act.

5 Sec. 41. NEW SECTION. RIGHT TO AND APPOINTMENT OF COUNSEL.

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

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

16 Sec. 42. NEW SECTION. DUTIES OF COUNTY ATTORNEY. The
17 county attorney shall represent the state in all proceedings
18 arising from a petition filed under this division and shall
19 present evidence in support of the petition.

20 Sec. 43. NEW SECTION. PRESENCE OF PARENTS AT HEARINGS.
21 Any hearings or proceedings under this division subsequent
22 to the filing of a petition shall not take place without the
23 presence of the child's parent, guardian or custodian in
24 accordance with and subject to the provisions of section
25 sixteen (16) of this Act.

26 Sec. 44. NEW SECTION. EXCLUSION OF PUBLIC FROM HEARINGS.
27 The court shall exclude and admit persons to hearings and
28 proceedings under this division in accordance with and subject
29 to the provisions of section seventeen (17) of this Act.

30 Sec. 45. NEW SECTION. OTHER ISSUES ADJUDICATED. When
31 it appears during the course of any hearing or proceeding
32 that some action or remedy other than or in addition to those
33 indicated by the application or pleading appears appropriate,
34 the court may, provided all necessary parties consent, proceed
35 to hear and determine the additional or other issues as though

1 originally properly sought and pleaded.

2 Sec. 46. NEW SECTION. REPORTER REQUIRED. Stenographic
3 notes or mechanical recordings shall be taken of all court
4 hearings held pursuant to this division unless waived by the
5 parties. The child shall not be competent to waive the
6 reporting requirement, but waiver may be made for the child
7 by the child's counsel or guardian ad litem. Matters which
8 must be reported under the provisions of this section shall
9 be the same as those required in section six hundred twenty-
10 four point nine (624.9) of the Code.

11 Sec. 47. NEW SECTION. HEARING CONCERNING TEMPORARY
12 REMOVAL.

13 1. At any time after the petition is filed any person
14 who may file a petition under section thirty-nine (39) of
15 this Act may apply for, or the court on its own motion may
16 order, a hearing to determine whether the child should be
17 temporarily removed from home. Where the child is in the
18 custody of a person other than the child's parent, guardian
19 or custodian as the result of action taken pursuant to section
20 thirty-five (35) or thirty-six (36) of this Act, the court
21 shall hold a hearing to determine whether the temporary removal
22 should be continued.

23 2. Upon such hearing, the court may:

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

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

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

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

1 section.

2 Sec. 48. NEW SECTION. ADJUDICATORY HEARING.

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

6 2. The state shall have the burden of proving the alle-
7 gations by clear and convincing evidence.

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

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

17 5. Neither the privilege attaching to confidential com-
18 munications between a physician and patient nor the privilege
19 attaching to confidential communications between husband and
20 wife shall be ground for excluding evidence at an adjudicatory
21 hearing.

22 6. A report, study, record, or other writing made by the
23 department of social services, a juvenile probation offi-
24 cer, a peace officer or a hospital relating to a child in
25 a proceeding under this division shall be admissible notwith-
26 standing any objection to hearsay statements contained therein
27 provided it is relevant and material and provided its probative
28 value substantially outweighs the danger of unfair prejudice
29 to the child's parent, guardian, or custodian. The circum-
30 stances of the making of the report, study, record or other
31 writing, including the maker's lack of personal knowledge,
32 may be proved to affect its evidentiary weight.

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

1 of assistance.

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

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

11 Sec. 49. NEW SECTION. SOCIAL INVESTIGATION AND REPORT.

12 1. The court shall not make any disposition of the petition
13 until a social report has been submitted to and considered
14 by the court. The court may direct the department of social
15 services or any other agency or individual to conduct a social
16 investigation and to prepare a social report.

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

21 3. The social report shall not be disclosed except as
22 provided in this section and except as otherwise provided
23 in this Act. Prior to the hearing at which the disposition
24 is determined, the court shall permit counsel for the child
25 and counsel for the child's parent, guardian or custodian
26 to inspect any social report to be considered by the court.
27 The court may in its discretion order such counsel not to
28 disclose parts of the report to the child, or to the parent,
29 guardian or custodian if disclosure would seriously harm the
30 treatment or rehabilitation of the child or would violate
31 a promise of confidentiality given to a source of information.

32 Sec. 50. NEW SECTION. PHYSICAL AND MENTAL EXAMINATIONS.

33 1. A physical or mental examination of the child may be
34 ordered only after the filing of a petition pursuant to section
35 thirty-nine (39) of this Act and after a hearing to determine

1 whether such an examination is necessary to determine the
2 child's physical or mental condition.

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

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

14 Sec. 51. NEW SECTION. DISPOSITIONAL HEARING--FINDINGS.

15 1. Following the entry of an order pursuant to section
16 forty-eight (48) of this Act, the court shall, as soon as
17 practicable, hold a dispositional hearing in order to determine
18 what disposition should be made of the petition.

19 2. All relevant and material evidence shall be admitted.

20 3. When the dispositional hearing is concluded the court
21 shall make the least restrictive disposition appropriate
22 considering all the circumstances of the case. The
23 dispositions which may be entered under this division are
24 listed in sections fifty-two (52) through fifty-four (54)
25 of this Act in order from least to most restrictive.

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

28 Sec. 52. NEW SECTION. SUSPENDED JUDGMENT. After the
29 dispositional hearing the court may enter an order suspending
30 judgment and continuing the proceedings subject to terms and
31 conditions imposed to assure the proper care and protection
32 of the child. The maximum duration of any term or condition
33 of a suspended judgment shall be twelve months unless the
34 court finds at a hearing at the conclusion of that period
35 that exceptional circumstances require an extension of the

1 term or condition for an additional six months.

2 Sec. 53. NEW SECTION. RETENTION OF CUSTODY BY PARENT.

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

19 2. The duration of any period of supervision or other
20 terms or conditions shall be for an initial period of no more
21 than eighteen months and the court, at the expiration of that
22 period, upon a hearing and for good cause shown, may make
23 successive extensions of such supervision or other terms or
24 conditions of up to twelve months each.

25 Sec. 54. NEW SECTION. TRANSFER OF LEGAL CUSTODY OF JUVE-
26 NILE AND PLACEMENT.

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

30 a. A relative or other suitable person.

31 b. A child placing agency or other suitable private agency,
32 facility or institution which is licensed or otherwise
33 authorized by law to receive and provide care for the child.

34 c. The department of social services.

35 2. Whenever possible the court should permit the child

1 to remain at home with his or her parent, guardian or custo-
2 dian. Custody of the child should not be transferred unless
3 the court finds there is clear and convincing evidence that:

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

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

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

11 4. If the court orders the transfer of the custody of
12 the child to the department of social services or other agency
13 for placement, the department or agency should submit to the
14 court a specific plan for placement of the child and should
15 make every effort to return the child to his or her home as
16 quickly as possible. If the court orders the transfer of
17 custody to a relative or other suitable person, the court
18 may direct the department or other agency to provide services
19 to the child's parent, guardian or custodian in order to
20 enable them to resume custody of the child.

21 5. The duration of any placement made after an order pur-
22 suant to this section shall be for an initial period of six
23 months. At the expiration of that period, the court shall
24 hold a hearing and review the placement in order to determine
25 whether the child should be returned home, an extension of
26 the placement should be made, or a termination of the parent-
27 child relationship proceeding should be instituted. The
28 placement should be terminated and the child returned to his
29 or her home if the court finds by a preponderance of the
30 evidence that the child will not suffer harm in the manner
31 specified in section two (2), subsection five (5), of this
32 Act. If the placement is extended, the court should determine
33 whether additional services are necessary to facilitate the
34 return of the child to his or her home, and if the court
35 determines such services are needed, the court shall order

1 the provision of such services.

2 Sec. 55. NEW SECTION. TERMINATION, MODIFICATION, VACA-
3 TION AND SUBSTITUTION OF DISPOSITIONAL ORDER.

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

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

12 a. The child.

13 b. The child's parent, guardian or custodian, except that
14 such motion may be filed by that person not more often than
15 once every six months.

16 c. The child's guardian ad litem.

17 d. A person supervising the child pursuant to a dispo-
18 sitional order.

19 e. An agency, facility, institution or person to whom
20 legal custody has been transferred pursuant to a dispositional
21 order.

22 f. The county attorney.

23 3. A hearing shall be held on a motion to terminate or
24 modify a dispositional order except that a hearing on a motion
25 to terminate an order may be waived upon agreement by all
26 parties. Reasonable notice of the hearing shall be given
27 in accordance with the provisions of section fifteen (15)
28 of this Act. The hearing shall be conducted in accordance
29 with the provisions of section fifty-one (51) of this Act.

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

34 5. The court may modify or vacate an order for good cause
35 shown provided that where the request to modify or vacate

1 is based on the child's alleged failure to comply with the
2 conditions or terms of the order, the court may modify or
3 vacate the order only if it finds that there is clear and
4 convincing evidence that the child violated a material and
5 reasonable condition or term of the order.

6 6. If the court vacates the order it may make any other
7 order in accordance with and subject to the provisions of
8 sections fifty-two (52) through fifty-four (54) of this Act.

9 DIVISION IV

10 TERMINATION OF PARENT-CHILD

11 RELATIONSHIP PROCEEDING

12 Sec. 56. NEW SECTION. JURISDICTION. The juvenile court
13 shall have exclusive jurisdiction over proceedings under this
14 Act to terminate a parent-child relationship and all parental
15 rights with respect to a child. No such termination shall
16 be ordered except under the provisions of this Act if the
17 court has made an order concerning the child pursuant to the
18 provisions of Division three (III) of this Act and the order
19 is in force at the time a petition for termination is filed.

20 Sec. 57. NEW SECTION. VENUE.

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

25 2. If a court has made an order concerning the child pur-
26 suant to the provisions of this Act and the order is still
27 in force at the time the termination petition is filed, such
28 court shall hear and adjudicate the case unless the court
29 transfers the case.

30 3. The judge may transfer the case to the juvenile court
31 of any county having venue in accordance with the provisions
32 of section thirty-four (34) of this Act.

33 Sec. 58. NEW SECTION. PETITION.

34 1. A child's guardian or custodian, the department of
35 social services, a juvenile probation officer or the county

1 attorney may file a petition for termination of the parent-
2 child relationship and parental rights with respect to a child
3 as provided in section thirty-nine (39) of this Act.

4 2. The department probation officer, county attorney or
5 judge may authorize any competent person having knowledge
6 of the circumstances to file a termination petition with the
7 clerk of the court as provided in section thirty-nine (39)
8 of this Act without the payment of a filing fee.

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

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

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

14 (1) Living parents of the child.

15 (2) Guardian of the child.

16 (3) Custodian of the child.

17 (4) Guardian ad litem of the child.

18 (5) Petitioner.

19 (6) Person standing in the place of the parents of the
20 child.

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

24 d. A plain statement of those facts and grounds specified
25 in section sixty (60) of this Act which indicate that the
26 parent-child relationship should be terminated.

27 e. The signature and verification of the petitioner.

28 Sec. 59. NEW SECTION. NOTICE-SERVICE.

29 1. Persons listed in section fifty-eight (58), subsection
30 three (3), of this Act shall be necessary parties to a
31 termination of parent-child relationship proceeding and are
32 entitled to receive notice and an opportunity to be heard
33 with the following exception: Any such person whose name
34 or address the court determines is unknown and cannot be
35 ascertained by reasonably diligent search shall not be

1 considered a necessary party.

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

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

23 Sec. 60. NEW SECTION. GROUNDS FOR TERMINATION. Except
24 as provided in subsection six (6) of this section, the court
25 may order the termination of both the parental rights with
26 respect to a child and the relationship between the parents
27 and the child provided:

28 1. The court finds that the parents voluntarily and
29 intelligently consent to the termination of parental rights
30 and the parent-child relationship and for good cause desire
31 the termination.

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

34 3. The court finds that:

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

1 and

2 b. The court has previously adjudicated the child to be
3 a child in need of assistance after finding the child to have
4 been physically abused as the result of the acts or omissions
5 of the parent or parents, or the court has previously adjudi-
6 cated a child who is a member of the same family to be a child
7 in need of assistance after such a finding; and

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

11 4. The court finds that:

12 a. The child has been adjudicated a child in need of
13 assistance pursuant to section forty-eight (48) of this Act;
14 and

15 b. The custody of the child has been transferred from
16 his or her parents for placement pursuant to section fifty-
17 four (54) of this Act and such placement has lasted for a
18 period of at least six months, but less than twelve months;
19 and

20 c. There is clear and convincing evidence that the child
21 cannot be returned to the custody of his or her parents as
22 provided in section fifty-four (54) of this Act; and

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

27 5. The court finds that:

28 a. The child has been adjudicated a child in need of
29 assistance pursuant to section forty-eight (48) of this Act;
30 and

31 b. The custody of the child has been transferred from
32 his or her parents for placement pursuant to section fifty-
33 four (54) of this Act for at least twelve months; and

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

1 provided in section fifty-four (54) of this Act.

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

5 a. A person within the fourth degree of consanguinity
6 or affinity to the child has legal custody of the child; or

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

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

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

16 Sec. 61. NEW SECTION. TERMINATION--FINDINGS--DISPOSITION.

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

19 2. If the court concludes that facts sufficient to
20 terminate parental rights have not been established in
21 accordance with section sixty (60) of this Act, the court
22 shall dismiss the petition.

23 3. If the court concludes that facts sufficient to sustain
24 the petition have been established in accordance with section
25 sixty (60) of this Act, the court may order parental rights
26 terminated. If the court terminates the parental rights of
27 both parents, or of a sole parent, the court shall transfer
28 the guardianship and custody of the child to one of the
29 following:

30 a. The department of social services.

31 b. A child placing agency or other suitable private agency,
32 facility or institution which is licensed or otherwise
33 authorized by law to receive and provide care for the child.

34 c. A suitable person.

35 4. If after a hearing the court does not order the ter-

1 mination of parental rights but finds that there is clear
2 and convincing evidence that the child has been abandoned
3 by his or her parents or has been sexually abused as the
4 result of the acts or omissions of one or both of his or her
5 parents the court may adjudicate the child to be a child in
6 need of assistance and may enter an order in accordance with
7 the provisions of sections fifty-two (52), fifty-three (53)
8 and fifty-four (54) of this Act.

9 Sec. 62. NEW SECTION. REMOVAL OF GUARDIAN.

10 1. Upon application of an interested party or upon the
11 court's own motion, the court having jurisdiction of the child
12 may, after notice to the parties and a hearing, remove a court
13 appointed guardian and appoint a guardian in accordance with
14 the provisions of section sixty-one (61), subsection three
15 (3), of this Act.

16 2. Any minor fourteen years of age or older who has not
17 been adopted but who is placed in a satisfactory foster home
18 may with the consent of the foster parents join with the
19 guardian appointed by the court in an application to the court
20 to remove the existing guardian and appoint the foster parents
21 as guardians of the child.

22 3. The authority of a guardian appointed by the court
23 terminates when the child reaches the age of majority or is
24 adopted.

25 DIVISION V

26 FAMILY IN NEED OF ASSISTANCE PROCEEDINGS

27 Sec. 63. NEW SECTION. JURISDICTION. The juvenile court
28 shall have exclusive jurisdiction over family in need of
29 assistance proceedings.

30 Sec. 64. NEW SECTION. VENUE. Venue for family in need
31 of assistance proceedings shall be determined in accordance
32 with section thirty-four (34) of this Act.

33 Sec. 65. NEW SECTION. PETITION.

34 1. A family in need of assistance proceeding shall be
35 initiated by the filing of a petition alleging that a child

1 and his or her parent, guardian or custodian are a family
2 in need of assistance.

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

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

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

13 5. The petition shall allege that there has been a break-
14 down in the familial relationship.

15 Sec. 66. NEW SECTION. APPOINTMENT OF COUNSEL AND GUARDIAN
16 AD LITEM. The court shall appoint counsel or a guardian ad
17 litem to represent the interests of the child at the hearing
18 to determine whether the family is a family in need of assis-
19 tance unless the child already has such counsel or guardian.

20 Sec. 67. NEW SECTION. HEARING--ADJUDICATION--DISPOSITION.

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

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

28 3. The hearing shall be informal and all relevant and
29 material evidence shall be admitted.

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

33 a. There has been a breakdown in the relationship between
34 the child and his or her parent, guardian or custodian; and

35 b. The child or his or her parent, guardian or custodian

1 has unsuccessfully sought services from public or private
2 agencies to maintain and improve the familial relationship;
3 and

4 c. The court has at its disposal services for this pur-
5 pose which can be made available to the family.

6 5. If the court makes such a finding the court may order
7 the parties to accept counseling or other services designed
8 to maintain and improve the familial relationship. Such an
9 order shall remain in force for a period not to exceed one
10 year unless the court otherwise specifies or sooner terminates
11 the order.

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

18 DIVISION VI

19 APPEAL

20 Sec. 68. NEW SECTION. APPEAL.

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

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

29 3. The pendency of an appeal or application therefor shall
30 not suspend the order of the juvenile court regarding a child
31 and shall not discharge the child from the custody of the
32 court or the agency, association, facility, institution or
33 person to whom the court has transferred legal custody unless
34 the appellate court otherwise orders on application of an
35 appellant.

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

7 DIVISION VII

8 EXPENSES AND COSTS

9 Sec. 69. NEW SECTION. EXPENSES CHARGED TO COUNTY.

10 1. The following expenses upon certification of the judge
11 or upon such other authorization as provided by law are a
12 charge upon the county in which the proceedings are held.

13 a. The fees and mileage of witnesses and the expenses
14 and mileage of officers serving notices and subpoenas.

15 b. The expenses of transporting a child to a place desig-
16 nated by a child placing agency for the care of a child if
17 the court transfers legal custody to a child placing agency.

18 c. The expense of transporting a child to or from a place
19 designated by the court.

20 d. Reasonable compensation for an attorney appointed by
21 the court to serve as counsel or guardian ad litem.

22 e. The expense of treatment or care ordered by the court
23 under an authority of subsection two (2) of this section.

24 2. Whenever legal custody of a minor is transferred by
25 the court or whenever the minor is placed by the court with
26 someone other than the parents or whenever homemaker-home
27 health aide service is provided under section thirty-seven
28 (37) of this Act, or whenever a minor is given physical or
29 mental examinations or treatment under order of the court
30 and no provision is otherwise made by law for payment for
31 the care, examination, or treatment of the minor, the costs
32 shall be charged upon the funds of the county in which the
33 proceedings are held upon certification of the judge to the
34 board of supervisors. Except where the parent-child
35 relationship is terminated, the court may inquire into the

1 ability of the parents to support the minor and after giving
2 the parents a reasonable opportunity to be heard may order
3 the parents to pay in the manner and to whom the court may
4 direct, such sums as will cover in whole or in part the cost
5 of care, examination, or treatment of the minor. If the
6 parents fail to pay the sum without good reason, the parents
7 may be proceeded against for contempt or the court may inform
8 the county attorney who shall proceed against the parents
9 to collect the unpaid sums or both. Any such sums ordered
10 by the court shall be a judgment against each of the parents
11 and a lien as provided in section six hundred twenty-four
12 point twenty-three (624.23) of the Code. If all or any part
13 of the sums that the parents are ordered to pay is subsequently
14 paid by the county, the judgment and lien shall thereafter
15 be against each of the parents in favor of the county to the
16 extent of such payments.

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

29 Sec. 70. NEW SECTION. MAINTENANCE AND COST OF JUVENILE
30 HOMES.

31 1. County boards of supervisors may either singly or in
32 conjunction with one or more other counties provide and main-
33 tain juvenile detention and juvenile shelter care homes.

34 2. For the purpose of providing and maintaining such a
35 county or multi-county home, the board of supervisors of any

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

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

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

25 5. The commissioner shall adopt minimal rules and stan-
26 dards for the establishment, maintenance, and operation of
27 such homes as shall be necessary to effect the purposes of
28 this Act. The commissioner shall, upon request, give guidance
29 and consultation in the establishment and administration of
30 such homes and programs for such homes.

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

35

DIVISION VIII

RECORDS

1
2 Sec. 71. NEW SECTION. CONFIDENTIALITY OF JUVENILE COURT
3 RECORDS.

4 1. Juvenile court records shall be confidential. They
5 shall not be inspected and their contents shall not be dis-
6 closed except as provided in this section.

7 2. Official juvenile court records may be inspected and
8 their contents may be disclosed to the following without court
9 order:

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

12 b. The child and his or her counsel.

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

15 d. The county attorney and his or her assistants.

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

19 f. A court, court professional staff, and adult proba-
20 tion officers in connection with the preparation of a presen-
21 tence report concerning a person who prior thereto had been
22 the subject of a juvenile court proceeding.

23 g. An appellate court in connection with an appeal pur-
24 suant to section sixty-eight (68) of this Act.

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

27 a. A person conducting bona fide research for research
28 purposes under whatever conditions the court may deem proper.

29 b. Persons who have a direct and legitimate interest in
30 a proceeding or in the work of the court.

31 4. Inspection of social records and disclosure of their
32 contents shall not be permitted except pursuant to court order
33 or unless otherwise provided in this Act.

34 Sec. 72. NEW SECTION. FINGERPRINTS--PHOTOGRAPHS.

35 1. Except as provided in this section, a child shall not

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

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

10 3. If a peace officer has reasonable grounds to believe
11 that latent fingerprints found during the investigation of
12 the commission of a public offense are those of a particular
13 child, fingerprints of the child may be taken for immediate
14 comparison with the latent fingerprints regardless of the
15 age of the child or the nature of the offense. If the
16 comparison is negative the fingerprint card and other copies
17 of the fingerprints taken shall be immediately destroyed.
18 If the comparison is positive and the child is referred to
19 the court, the fingerprint card and other copies of the
20 fingerprints taken shall be delivered to the court for
21 disposition. If the child is not referred to the court, the
22 fingerprint card and copies of the fingerprints shall be
23 immediately destroyed.

24 4. Fingerprint files of children shall be kept separate
25 from those of adults. Copies of fingerprints of a child shall
26 not be placed in any data storage system established and main-
27 tained by the department of public safety pursuant to chapter
28 seven hundred forty-nine B (749B) of the Code, or in any
29 federal depository for fingerprints.

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

35 6. Fingerprints of a child shall be removed from the file

1 and destroyed if:

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

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

6 c. Upon petition by the child when he or she reaches
7 twenty-one years of age and he or she has not been adjudicated
8 a delinquent nor convicted of committing an aggravated
9 misdemeanor or a felony after reaching sixteen years of age.

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

15 Sec. 73. NEW SECTION. LAW ENFORCEMENT RECORDS.

16 1. The taking of a child into custody under the provisions
17 of section seven (7) of this Act shall not be considered an
18 arrest.

19 2. Records and files of a criminal justice agency con-
20 cerning a child other than fingerprint and photograph records
21 and files shall not be open to inspection and their contents
22 shall not be disclosed except as provided in this section
23 and section seventy-four (74) of this Act unless the juvenile
24 court waives its jurisdiction over the child so that the child
25 may be prosecuted as an adult for a public offense.

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

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

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

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

1 d. The designated representative of any agency, asso-
2 ciation, facility or institution which has custody of the
3 child, or is responsible for the care, treatment or super-
4 vision of the child pursuant to a court order.

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

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

10 a. A person conducting bona fide research for research
11 purposes under such conditions as the court may deem proper.

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

14 Sec. 74. NEW SECTION. SEALING OF RECORDS.

15 1. Upon application of a person who was taken into custody
16 for a delinquent act or was the subject of a complaint alleging
17 delinquency or was the subject of a delinquency petition,
18 or upon the court's own motion, the court, after hearing,
19 shall order the records in the case including those specified
20 in sections seventy (70) and seventy-two (72) of this Act
21 sealed if the court finds that:

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

25 b. Such person has not been subsequently convicted of
26 a felony or an aggravated or serious misdemeanor or adjudi-
27 cated a delinquent child for an act which if committed by
28 an adult would be a felony, an aggravated misdemeanor or a
29 serious misdemeanor and no proceeding is pending seeking such
30 conviction or adjudication.

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

35 3. Notice and copies of a sealing order shall be sent

1 to each agency or person having custody or the records named
2 therein.

3 4. On entry of a sealing order:

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

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

8 5. The sealed records shall no longer be deemed to exist
9 as a matter of law, and the juvenile court and any other
10 agency or person who received notice and a copy of the sealing
11 order may properly reply to an inquiry that no such records
12 exist.

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

20 Sec. 75. NEW SECTION. CRIMINAL PENALTIES. Any person
21 who knowingly discloses, receives, or makes use or permits
22 the use of information derived directly or indirectly from
23 the records concerning a child referred to in sections seventy
24 (70), seventy-one (71), seventy-two (72), and seventy-three
25 (73) of this Act except as provided by those sections shall
26 be guilty of a serious misdemeanor.

27 Sec. 76. Section one hundred six point thirteen (106.13),
28 unnumbered paragraph two (2), Code 1977, is amended to read
29 as follows:

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

1 Sec. 77. Section two hundred thirty-one point three
2 (231.3), unnumbered paragraph two (2), Code 1977, is amended
3 to read as follows:

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

14 Sec. 78. Section two hundred thirty-three point one
15 (233.1), subsection one (1), Code 1977, is amended to read
16 as follows:

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

20 Sec. 79. Section two hundred thirty-four point thirty-
21 six (234.36), Code 1977, is amended to read as follows:

22 234.36 WHEN COUNTY TO PAY FOSTER CARE COSTS. Each county
23 shall pay from the county mental health and institutions fund
24 as provided by section 444.12, subsection 2, the cost of
25 foster care for a child placed by a court as provided in
26 ~~section-232-33,-subsection-3-or-4,-or-section-232-34,-~~
27 ~~subsection-3-or-4~~ section twenty-nine (29) or section fifty-
28 four (54) of this Act. However, in any fiscal year for which
29 the general assembly appropriates state funds to pay for
30 foster care for children placed by courts under the ~~statutes~~
31 statute or sections of this Act cited in this section, the
32 county shall become responsible for these costs only when
33 the funds so appropriated to the department for that fiscal
34 year have been exhausted. The rate of payment by the county
35 or the state, as the case may be, under this section shall

1 be that fixed by the department of social services pursuant
2 to section 234.38.

3 Sec. 80. Section two hundred thirty-eight point thirty-
4 two (238.32), subsection one (1), Code 1977, is amended to
5 read as follows:

6 1. Receive children in need of assistance, or delinquent
7 children who are under eighteen years of age, under commitment
8 from the juvenile court, and control and dispose of them
9 subject to the provisions of ~~chapter-232~~ this Act and chapter
10 600A.

11 Sec. 81. Section two hundred thirty-eight point forty-
12 one (238.41), Code 1977, is amended to read as follows:

13 238.41 STATUTES NOT AFFECTED. Nothing contained in sec-
14 tions 238.33 through 238.40 shall be deemed to affect or
15 modify the provisions of ~~chapters-232-and~~ this Act or of
16 chapter 600.

17 Sec. 82. Section two hundred forty-two point five (242.5),
18 Code 1977, is amended to read as follows:

19 242.5 PROCEDURE TO COMMIT. The procedure for the commit-
20 ment of children to the state training school, except as
21 otherwise provided, shall be the same as provided in ~~chapter~~
22 ~~232~~ this Act.

23 Sec. 83. Section two hundred forty-four point four (244.4),
24 Code 1977, is amended to read as follows:

25 244.4 PROCEDURE. The procedure for commitment to the
26 home shall be the same as provided by ~~chapter-232,~~ this Act
27 but admission may be granted on voluntary applications signed
28 by the legal custodian of the child and approved by a judge
29 of a court of record, or by the board of supervisors, of the
30 county of the child's residence. Such applications shall
31 be subject to the approval of the state director and shall
32 be in such form as he or she may prescribe. Any child not
33 mentally normal, or who is incorrigible, or who has any vicious
34 habits, or whose presence in the home would be inimical to
35 the moral or physical welfare of normal children therein,

1 shall be denied voluntary admission to the home.

2 Sec. 84. Section three hundred twenty-one point four
3 hundred eighty-two (321.482), unnumbered paragraph one (1),
4 Code 1977, is amended to read as follows:

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

14 Sec. 85. Section three hundred twenty-one G point fourteen
15 (321G.14), unnumbered paragraph two (2), Code 1977, is amended
16 to read as follows:

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

22 Sec. 86. Section three hundred fifty-six point three
23 (356.3), Code 1977, is amended by striking the section and
24 inserting in lieu thereof the following:

25 356.3 JUVENILES CONFINED. A person under the age of
26 eighteen years shall not be confined in a jail except as
27 provided in this Act.

28 Sec. 87. Section six hundred A point five (600A.5),
29 subsections one (1) and two (2), Code 1977, are amended to
30 read as follows:

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

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

1 relationship.

2 b. A custodian or guardian of the child.

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

6 2. A petition for termination of parental rights shall
7 be filed with the juvenile court in which the guardian or
8 custodian of the child resides or the child or the pregnant
9 woman is domiciled. ~~However, if~~ If a juvenile court has made
10 an order pertaining to a minor child under ~~section 232-33~~
11 division three (III) of this Act and that order is still in
12 force, the ~~petition~~ termination proceedings shall be filed
13 ~~with that juvenile court~~ conducted pursuant to the provisions
14 of division four (IV) of this Act.

15 Sec. 88. Section six hundred A point six (600A.6),
16 subsection one (1), Code 1977, is amended to read as follows:

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

29 Sec. 89. Section six hundred A point seven (600A.7),
30 subsection one (1), Code 1977, is amended to read as follows:

31 1. The hearing on termination of parental rights shall
32 be conducted in accordance to the provisions of sections
33 ~~232-27, 232-28, 232-30, and 232-32~~ forty-one (41) through
34 forty-six (46) of this Act and otherwise in accordance with
35 the rules of civil procedure. Such hearing shall be held

1 not less than one week after the child is born.

2 Sec. 90. Section six hundred A point eight (600A.8), Code
3 1977, is amended by striking subsections four (4), five (5),
4 and six (6).

5 Sec. 91. Section six hundred A point nine (600A.9),
6 subsections one (1) and two (2), Code 1977, are amended to
7 read as follows:

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

11 a. The petition be dismissed; or,

12 ~~b. The petition should not be granted at that time, but~~
13 ~~that conditions indicating that the child is in need of~~
14 ~~assistance exist, and an order to that effect is issued~~
15 ~~pursuant to section 232.337, or,~~

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

23 2. If an order is issued under subsection 1, paragraph
24 "e" "b", the juvenile court shall retain jurisdiction to
25 change a guardian or custodian and to allow a terminated
26 parent to request vacation of the termination order if:

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

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

32 Sec. 92. Chapter two hundred thirty-two (232), Code 1977,
33 is repealed.

34 Sec. 93. The provisions of this Act shall become effective
35 January 1, 1978.

1 for filing a delinquency petition and procedures for the
2 following types of judicial hearings: detention and shelter
3 care hearings, adjudicatory (trial) hearings, dispositional
4 hearings and hearings to modify or terminate a dispositional
5 order. It codifies plea agreements, guidelines for consent
6 decrees, and the rules for predisposition (presentence)
7 investigations and for the ordering of physical and mental
8 examinations of the child. The bill provides that the court
9 shall select the least drastic dispositional alternative
10 appropriate to the circumstances of the case, and provides
11 that a juvenile can not be confined in a secure institution
12 for a longer period of time than could an adult who committed
13 the same offense. It provides that the court shall retain
14 limited jurisdiction over a child after disposition for the
15 purpose of reviewing proposed changes in the disposition.

16 Division III contains the procedures to be observed when
17 a child is alleged to be a child in need of assistance (CINA)
18 and provides detailed instructions for removal of such a child
19 from the home, states that parents and child are entitled
20 to separate counsel and that the child must have counsel,
21 provides for separate temporary removal, adjudication, and
22 disposition hearings and for suspended judgments similar in
23 operation to the consent decree of Division II. It details
24 the procedures for transferring legal custody of the child
25 and for subsequently altering that transfer.

26 Division IV details proceedings for termination of the
27 parent-child relationship. It lists specific grounds for
28 such termination, clearly spells out the rights of parties
29 involved, and outlines permissible dispositions in a
30 termination action. This procedure is designed for involuntary
31 termination of rights and is complementary to the voluntarily
32 initiated termination procedures which are found in Chapter
33 600A of the Code.

34 Division V presents a new type of jurisdiction in which
35 families in need of assistance may submit to the court for

1 a hearing during which the court will determine if there is
2 a breakdown in the familial relationship, whether other
3 feasible avenues of assistance have been exhausted, and whether
4 the court has at its disposal appropriate services for the
5 family. Separation of the child from the family could occur
6 only with the consent of the child. This jurisdiction would
7 encompass situations in which the child has committed a status
8 offense; that is, an act such as truancy or running away which
9 would not be an offense if committed by an adult. Under this
10 bill, such acts are no longer proper subjects of either a
11 delinquency or a CINA proceeding.

12 Division VI deals with appeal and is essentially synonymous
13 with the current code provision on that subject. Division
14 VII brings all the current Code sections dealing with expenses
15 and costs into the same division but leaves their contents
16 essentially unchanged.

17 Division VIII deals with records of juvenile cases, and
18 provides that juvenile court records and law enforcement
19 records concerning juveniles shall be confidential, that rules
20 will be placed on fingerprinting and photographing juveniles,
21 and that a juvenile's records shall be sealed on application
22 after two years if no further adjudications of delinquency
23 or convictions are found. Criminal penalties are provided
24 if persons release juvenile's records without authority to
25 do so.

26 Sections 76 through 94 are coordinating amendments, a
27 number of which harmonize termination proceedings of Chapter
28 600A of the Code with the termination proceedings of Division
29 IV of the bill draft. An effective date of January 1, 1978
30 is provided, and the Code Editor is directed to incorporate
31 child abuse reporting provisions and the interstate juvenile
32 compact into the juvenile code.

33

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