

232.96 Adjudicatory hearing.

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

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

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

4. A report made to the department pursuant to [chapter 235A](#) shall be admissible in evidence, but such a report shall not alone be sufficient to support a finding that the child is a child in need of assistance unless the attorneys for the child and the parents consent to such a finding.

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

6. A report, study, record, or other writing or an audiotape or videotape recording made by the department, a juvenile court officer, a peace officer, a child protection center, or a hospital relating to a child in a proceeding under [this subchapter](#) is admissible notwithstanding any objection to hearsay statements contained in it provided it is relevant and material and provided its probative value substantially outweighs the danger of unfair prejudice to the child's parent, guardian, or custodian. The circumstances of the making of the report, study, record or other writing or an audiotape or videotape recording, including the maker's lack of personal knowledge, may be proved to affect its weight.

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

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

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

10. If the court enters an order adjudicating the child to be a child in need of assistance, the court, if it has not previously done so, may issue an order authorizing temporary removal of the child from the child's home as set forth in [section 232.95, subsection 2](#), paragraph "b" or "c", pending a final order of disposition. The order shall include all of the following:

a. A determination that continuation of the child in the child's home would be contrary to the welfare of the child, that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and the court has found that substantial evidence exists to demonstrate that the need for removal due to an imminent risk to the child's life or health is greater than the potential harm including but not limited to any physical, emotional, social, or mental trauma the removal may cause the child. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the court order. However, preserving the safety of the child is the paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for temporary removal of the child.

b. A statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

c. If the court orders a removal of a child pursuant to [this subsection](#) and placement of a child pursuant to [section 232.95, subsection 2](#), paragraph "c", subparagraph (2), (3), (4), or (5), a specific finding that placement with an adult relative is not in the child's best interests and the reasons for the finding.

11. *a.* If the court places custody of the child with the department pursuant to [subsection 10](#), the court may identify a category listed in [section 232.95, subsection 2](#), paragraph “c”, for placement of the child, but the department shall have the authority to select the specific person or facility within that category for placement, subject to court review at the request of an interested party.

b. The court shall give deference to the department’s decision for placement of a child. A party opposed to the department’s placement of a child shall have the burden to prove the department failed to act in the child’s best interests by unreasonably or irresponsibly failing to discharge its duties in selecting a suitable placement for the child.

[C66, 71, 73, 75, 77, §232.31; C79, 81, §232.96]

[83 Acts, ch 96, §157, 159](#); [83 Acts, ch 186, §10055, 10201](#); [84 Acts, ch 1207, §4](#); [87 Acts, ch 153, §7](#); [98 Acts, ch 1190, §9](#); [2000 Acts, ch 1067, §9](#); [2001 Acts, ch 135, §16](#); [2020 Acts, ch 1062, §94](#); [2022 Acts, ch 1098, §41 – 43](#); [2023 Acts, ch 19, §617](#)

Referred to in [§232.99, 232.104, 232.116, 600A.7](#)

Subsections 4 and 6 amended