

SP Human Resources
DO PASS 3-30-89 (p. 1049)

FEB 23 1989

Place On Calendar

HOUSE FILE 402

BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 184)

Passed House, Date 3-2-89 (p. 630) Passed Senate, Date 4-10-89 (p. 1285)

Vote: Ayes 96 Nays 0 Vote: Ayes 49 Nays 0

Approved May 15, 1989

Senate Motion to Reconsider 4-10-89 (p. 1304) Repassed Senate
Motion prevailed 4-11-89 (p. 1341) A BILL FOR 4-11-89 (p. 1341)
Ayes 43 Nays 1 Ayes 49 Nays 0

1 An Act relating to foster care by establishing certain provisions
2 regarding voluntary foster care placements.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4
5 HOUSE FILE 402

6 S-3619

7 1 Amend House File 402, as passed by the House, as
8 2 follows:

9 3 1. Page 3, by striking lines 19 through 21 and
10 4 inserting the following: "care placement is in the
11 5 child's best interests. The court shall determine
12 6 that voluntary foster care".

13 7 2. Page 4, by striking lines 9 through 11 and
14 8 inserting the following:

15 9 "3. A dispositional hearing is open to the public
16 10 unless the court, on the motion of any of the parties
17 11 or upon the court's own motion, excludes the public.
18 12 The court shall exclude the public from a hearing if
19 13 the court determines that the possibility of damage or
20 14 harm to the child outweighs the public's interest in
21 15 having an open hearing. Upon closing the hearing to
22 16 the public, the court may admit those persons who have
23 17 direct interest in the case or in the work of the
18 18 court."

By CHARLES BRUNER

19 S-3619 FILED APRIL 10, 1989

20 Adopted 4-11-89 (p. 1341)

21 Repassed House 4-25-89 (p. 875)
22 Ayes 100 Nays 0

HF 402

1 Section 1. Section 232.2, Code 1989, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 52A. "Voluntary placement" means a foster
4 care placement in which the department provides foster care
5 services to a child according to a signed placement agreement
6 between the department and the child's parent or guardian.

7 Sec. 2. NEW SECTION. 232.175 PURPOSE AND POLICY.

8 It is the purpose and policy of this division to provide
9 court oversight for placements that involve a handicapped
10 child placed voluntarily in foster care by the child's parent
11 or guardian, through review of the voluntary placements every
12 six months by the department's foster care review committees
13 or by a local foster care review board. It is the purpose and
14 policy of this division to assure the additional safeguard of
15 court oversight as required by Pub. L. No. 96-272, as
16 codified in 42 U.S.C. § 671(a)(16), 627(a)(2)(B), and
17 675(1),(5), while maintaining parental decision-making
18 authority.

19 Sec. 3. NEW SECTION. 232.176 JURISDICTION.

20 The court shall have exclusive jurisdiction over voluntary
21 placement proceedings.

22 Sec. 4. NEW SECTION. 232.177 VENUE.

23 Venue for voluntary placement proceedings shall be
24 determined in accordance with section 232.62.

25 Sec. 5. NEW SECTION. 232.178 PETITION.

26 1. The department shall file a petition to initiate a
27 voluntary placement proceeding in accordance with criteria
28 established pursuant to the Child Welfare Act of 1980, Pub. L.
29 No. 96-272, as codified in 42 U.S.C. § 627(a).

30 2. The petition and subsequent court documents shall be
31 entitled "In the interests of . . . , a child".

32 3. The petition shall state the names and residence of the
33 child and the child's living parents, guardian, custodian, and
34 guardian ad litem, if any; the age of the child; and the
35 length of time the child has been in foster care.

1 4. The petition shall allege that the child is placed in
2 foster care on the basis of a signed voluntary placement
3 agreement between the department and the child's parent or
4 guardian; that the child has an emotional, physical, or
5 intellectual handicap which requires care and treatment; that
6 the child's parent or guardian has demonstrated a willingness
7 to fulfill responsibilities to the child as defined in the
8 case permanency plan; and that the voluntary placement is in
9 the child's best interests.

10 Sec. 6. NEW SECTION. 232.179 APPOINTMENT OF COUNSEL AND
11 GUARDIAN AD LITEM.

12 Upon the filing of a petition, the court shall appoint a
13 guardian ad litem to represent the best interests of the child
14 unless the court determines that the child already has a
15 guardian ad litem who represents the child's best interests.
16 If the child's parent, guardian, or custodian desires counsel
17 but cannot pay the counsel's expenses, the court may appoint
18 counsel.

19 Sec. 7. NEW SECTION. 232.180 DUTIES OF COUNTY ATTORNEY.

20 Upon the filing of a petition and the request of the
21 department, the county attorney shall represent the state in
22 all adversary proceedings arising under this division and
23 shall present evidence in support of the petition as provided
24 under section 232.90.

25 Sec. 8. NEW SECTION. 232.181 SOCIAL REPORT.

26 Upon the filing of a petition, the department shall submit
27 a social report. The report shall include the child's
28 handicap, the case permanency plan, a description of the
29 foster care placement, and a description of parental
30 participation in developing the child's case permanency plan
31 and the parent's compliance with responsibilities to the child
32 as defined in the plan.

33 Sec. 9. NEW SECTION. 232.182 INITIAL DETERMINATION.

34 1. Upon the filing of a petition, the court shall fix a
35 time for an initial determination hearing and give notice of

1 the hearing to the child's parent, guardian, or custodian,
2 counsel or guardian ad litem, and the department.

3 2. A parent who does not have custody of the child may
4 petition the court to be made a party to proceedings under
5 this division.

6 3. An initial determination hearing is open to the public
7 unless the court, on the motion of any of the parties or upon
8 the court's own motion, excludes the public. The court shall
9 exclude the public from a hearing only if the court determines
10 that the possibility of damage or harm to the child outweighs
11 the public's interest in having an open hearing. Upon closing
12 the hearing to the public, the court may admit those persons
13 who have direct interest in the case or in the work of the
14 court.

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

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3619-17 5. After the hearing is concluded, the court shall make
18 and file written findings as to whether the voluntary foster
19 care placement is in the child's best interests. The findings
20 shall be issued within sixty days of the date the petition was
21 filed. The court shall determine that voluntary foster care
22 placement is in the child's best interests if the court finds
23 that both of the following conditions exist:

24 a. The child has an emotional, physical, or intellectual
25 handicap which requires care and treatment.

26 b. The child's parent or guardian has demonstrated a
27 willingness to fulfill responsibilities to the child as
28 defined in the case permanency plan.

29 6. The hearing may be waived and the court may issue the
30 findings required under subsection 5 on the basis of the
31 department's written report if all parties agree to the
32 hearing's waiver.

33 Sec. 10. NEW SECTION. 232.183 DISPOSITIONAL HEARING.

34 1. Following an entry of an initial determination order
35 pursuant to section 232.182, the court shall hold a

1 dispositional hearing in order to determine the future status
2 of the child based on the child's best interests. Notice of
3 the hearing shall be given to the child and the child's
4 parent, guardian, or custodian, and the department.

5 2. The dispositional hearing shall be held within eighteen
6 months of the date the child was placed in foster care. The
7 dispositional hearing may be held in conjunction with the
8 initial determination hearing.

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9 3. A dispositional hearing is closed to the public.
10 However, the court may admit persons having a legitimate
11 interest in the case or the work of the court.

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

14 5. Following the hearing, the court shall issue a
15 dispositional order. The dispositional orders which the court
16 may enter subject to its continuing jurisdiction are as
17 follows:

18 a. An order that the child's voluntary placement shall be
19 terminated.

20 b. An order that the child's voluntary placement may
21 continue if the department and the child's parent or guardian
22 continue to agree to the voluntary placement.

23 c. An order that the child remain in foster care and that
24 the county attorney or department file, within three days, a
25 petition alleging the child to be a child in need of
26 assistance.

27 6. With respect to each child whose placement was approved
28 pursuant to subsection 5, the court shall continue to hold
29 periodic dispositional hearings. The hearings shall not be
30 waived or continued beyond eighteen months following the last
31 dispositional hearing. After a dispositional hearing, the
32 court shall enter one of the dispositional orders authorized
33 under subsection 5.

34 7. A dispositional hearing is not required if the court
35 has approved either the local foster care review board review

1 or the department's administrative review procedure as defined
2 under section 234.42, and all parties agree. This provision
3 does not eliminate the initial judicial determination required
4 under section 232.182.

5 Sec. 11. CODIFICATION. The Code editor shall codify this
6 Act as a new division XI of chapter 232, unless the Code
7 editor determines that a different codification is preferable.

8 EXPLANATION

9 This bill establishes a division regarding voluntary foster
10 care placements in the juvenile justice chapter. Purposes and
11 policies are stated and a "voluntary placement" of a child in
12 foster care is defined. The jurisdiction of the court over
13 voluntary foster care placements is established and venue is
14 defined. Requirements of a petition for voluntary foster care
15 placement, appointment of guardian ad litem and counsel,
16 duties of the county attorney, and filing of a social report
17 are specified.

18 The court is required to make an initial determination that
19 a voluntary foster care placement is in the child's best
20 interests within sixty days of the filing of a petition by
21 filing written findings regarding the child's handicap and the
22 parent's commitment to the parental provisions of the child's
23 case permanency plan. If all parties agree, the hearing may
24 be waived and the court's findings entered on the basis of the
25 department's written report.

26 A dispositional hearing, which may be held in conjunction
27 with the initial determination hearing, is required to be held
28 within eighteen months of the initial hearing and at least
29 every eighteen months thereafter. Types of dispositional
30 orders are specified. A dispositional hearing is not required
31 under certain circumstances.

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HOUSE FILE 402
FISCAL NOTE

A fiscal note for HOUSE FILE 402 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 402 creates a separate division in the Code of Iowa regarding voluntary foster care placements. Court jurisdiction over voluntary foster care placements is established, and procedures pertaining to these placements are described. The Court is required to make an initial determination that a voluntary placement is in the child's best interests within 60 days of the filing of the petition.

A dispositional hearing, which may be held in conjunction with the initial determination hearing, is required within 18 months of the initial hearing and at least every 18 months thereafter. A dispositional hearing is not required under certain circumstances.

Fiscal Impact

House File 402 is estimated to result in increased federal funding for foster care, and decreased state expenditures. This is because the federal government reimburses the state only for foster cases that are under court supervision and that have periodic court reviews.

Assuming that foster care caseloads increase as projected by the Iowa State University predictive model, the bill will reduce state expenditures by \$287,109 in FY 1990 and \$288,977 in FY 1991.

Source: Department of Human Services

(LSB 1767bv, JMN)

FILED MARCH 2, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE AMENDMENT TO HOUSE FILE 402

H-4012

1 Amend House File 402, as passed by the House, as
2 follows:

3 1. Page 3, by striking lines 19 through 21 and
4 inserting the following: "care placement is in the
5 child's best interests. The court shall determine
6 that voluntary foster care".

7 2. Page 4, by striking lines 9 through 11 and
8 inserting the following:

9 "3. A dispositional hearing is open to the public
10 unless the court, on the motion of any of the parties
11 or upon the court's own motion, excludes the public.
12 The court shall exclude the public from a hearing if
13 the court determines that the possibility of damage or
14 harm to the child outweighs the public's interest in
15 having an open hearing. Upon closing the hearing to
16 the public, the court may admit those persons who have
17 direct interest in the case or in the work of the
18 court."

RECEIVED FROM THE SENATE

H-4012 FILED APRIL 13, 1989

House Concurred 4-25-89 (p-1873)

NSB 184

HUMAN RESOURCES

HOUSE FILE 407

BY (PROPOSED GOVERNOR'S BILL)

Inford, Chair
Nelson
Haverland
Steele
Spencer

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

A BILL FOR

1 An Act relating to foster care by establishing certain provisions
2 regarding voluntary foster care placements.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 232.2, Code 1989, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 52A. "Voluntary placement" means a foster
4 care placement in which the department provides foster care
5 services to a child according to a signed placement agreement
6 between the department and the child's parent or guardian.

7 Sec. 2. NEW SECTION. 232.176 JURISDICTION.

8 The court shall have exclusive jurisdiction over voluntary
9 placement proceedings.

10 Sec. 3. NEW SECTION. 232.177 VENUE.

11 Venue for voluntary placement proceedings shall be
12 determined in accordance with section 232.62.

13 Sec. 4. NEW SECTION. 232.178 PETITION.

14 1. The department shall file a petition to initiate a
15 voluntary placement proceeding in accordance with criteria
16 established pursuant to the Child Welfare Act of 1980, Pub. L.
17 No. 96-272, as codified in 42 U.S.C. § 627(a).

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

20 3. The petition shall state the names and residence of the
21 child and the child's living parents, guardian, custodian, and
22 guardian ad litem, if any; the age of the child; and the
23 length of time the child has been in foster care.

24 4. The petition shall allege that the child is placed in
25 foster care on the basis of a signed voluntary placement
26 agreement between the department and the child's parent or
27 guardian; that the child has an emotional, physical, or
28 intellectual handicap which requires care and treatment; that
29 the child's parent or or guardian has demonstrated a
30 willingness to fulfill responsibilities to the child as
31 defined in the case permanency plan; and that the voluntary
32 placement is in the child's best interests.

33 Sec. 5. NEW SECTION. 232.179 APPOINTMENT OF COUNSEL AND
34 GUARDIAN AD LITEM.

35 Upon the filing of a petition, the court shall appoint

1 counsel or a guardian ad litem to represent the best interests
2 of the child unless the court determines that the child
3 already has counsel or a guardian ad litem who represents the
4 child's best interests. If the child's parent, guardian, or
5 custodian desires counsel but cannot pay the counsel's
6 expenses, the court may appoint counsel.

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8 Upon the filing of a petition and the request of the
9 department, the county attorney shall represent the state in
10 all adversary proceedings arising under this division and
11 shall present evidence in support of the petition.

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15 handicap, the case permanency plan, a description of the
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18 and the parent's compliance with responsibilities to the child
19 as defined in the plan.

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23 the hearing to the child's parent, guardian, or custodian,
24 counsel or guardian ad litem, and the department.

25 2. A parent who does not have custody of the child may
26 petition the court to be made a party to proceedings under
27 this division.

28 3. An initial determination hearing is closed to the
29 public. However, the court may admit persons having a
30 legitimate interest in the case or the work of the court.

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32 material evidence shall be admitted.

33 5. After the hearing is concluded, the court shall make
34 and file written findings as to whether the voluntary foster
35 care placement is in the child's best interests. The findings

1 shall be issued within sixty days of the date the petition was
2 filed. The court shall determine that voluntary foster care
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6 handicap which requires care and treatment.

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8 willingness to fulfill responsibilities to the child as
9 defined in the case permanency plan.

10 6. The hearing may be waived and the court may issue the
11 findings required under subsection 5 on the basis of the
12 department's written report if all parties agree to the
13 hearing's waiver.

14 Sec. 9. NEW SECTION. 232.183 DISPOSITIONAL HEARING.

15 1. Following an entry of an initial determination order
16 pursuant to section 232.182, the court shall hold a
17 dispositional hearing in order to determine the future status
18 of the child based on the child's best interests. Notice of
19 the hearing shall be given to the child and the child's
20 parent, guardian, or custodian, and the department.

21 2. The dispositional hearing shall be held within eighteen
22 months of the date the child was placed in foster care. The
23 dispositional hearing may be held in conjunction with the
24 initial determination hearing.

25 3. A dispositional hearing is closed to the public.
26 However, the court may admit persons having a legitimate
27 interest in the case or the work of the court.

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

30 5. Following the hearing, the court shall issue a
31 dispositional order. The dispositional orders which the court
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35 terminated.

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3 continue to agree to the voluntary placement.

4 c. An order that the child remain in foster care and that
5 the county attorney or department file, within three days, a
6 petition alleging the child to be a child in need of
7 assistance.

8 6. With respect to each child whose placement was approved
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10 periodic dispositional hearings. The hearings shall not be
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14 under subsection 5.

15 7. A dispositional hearing is not required if the court
16 has approved either the local foster care review board review
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19 does not eliminate the initial judicial determination required
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21 Sec. 10. CODIFICATION. The Code editor shall codify this
22 Act as a new division XI of chapter 232, unless the Code
23 editor determines that a different codification is preferable.

24 EXPLANATION

25 This bill establishes a division regarding voluntary foster
26 care placements in the juvenile justice chapter. A "voluntary
27 placement" of a child in foster care is defined. The
28 jurisdiction of the court over voluntary foster care
29 placements is established and venue is defined. Requirements
30 of a petition for voluntary foster care placement, appointment
31 of counsel and guardian ad litem, duties of the county
32 attorney, and filing of a social report are specified.

33 The court is required to make an initial determination that
34 a voluntary foster care placement is in the child's best
35 interests within sixty days of the filing of a petition by

1 filing written findings regarding the child's handicap and the
2 parent's commitment to the parental provisions of the child's
3 case permanency plan. If all parties agree, the hearing may
4 be waived and the court's findings entered on the basis of the
5 department's written report.

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7 with the initial determination hearing, is required to be held
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HOUSE FILE 402

AN ACT
RELATING TO FOSTER CARE BY ESTABLISHING CERTAIN PROVISIONS
REGARDING VOLUNTARY FOSTER CARE PLACEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 232.2, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 52A. "Voluntary placement" means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child's parent or guardian.

Sec. 2. NEW SECTION. 232.175 PURPOSE AND POLICY.

It is the purpose and policy of this division to provide court oversight for placements that involve a handicapped child placed voluntarily in foster care by the child's parent or guardian, through review of the voluntary placements every six months by the department's foster care review committees or by a local foster care review board. It is the purpose and policy of this division to assure the additional safeguard of court oversight as required by Pub. L. No. 96-272, as codified in 42 U.S.C. § 671(a)(16), 627(a)(2)(B), and 675(1),(5), while maintaining parental decision-making authority.

Sec. 3. NEW SECTION. 232.176 JURISDICTION.

The court shall have exclusive jurisdiction over voluntary placement proceedings.

Sec. 4. NEW SECTION. 232.177 VENUE.

Venue for voluntary placement proceedings shall be determined in accordance with section 232.62.

Sec. 5. NEW SECTION. 232.178 PETITION.

1. The department shall file a petition to initiate a voluntary placement proceeding in accordance with criteria established pursuant to the Child Welfare Act of 1980, Pub. L. No. 96-272, as codified in 42 U.S.C. § 627(a).

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

3. The petition shall state the names and residence of the child and the child's living parents, guardian, custodian, and guardian ad litem, if any; the age of the child; and the length of time the child has been in foster care.

4. The petition shall allege that the child is placed in foster care on the basis of a signed voluntary placement agreement between the department and the child's parent or guardian; that the child has an emotional, physical, or intellectual handicap which requires care and treatment; that the child's parent or guardian has demonstrated a willingness to fulfill responsibilities to the child as defined in the case permanency plan; and that the voluntary placement is in the child's best interests.

Sec. 6. NEW SECTION. 232.179 APPOINTMENT OF COUNSEL AND GUARDIAN AD LITEM.

Upon the filing of a petition, the court shall appoint a guardian ad litem to represent the best interests of the child unless the court determines that the child already has a guardian ad litem who represents the child's best interests. If the child's parent, guardian, or custodian desires counsel but cannot pay the counsel's expenses, the court may appoint counsel.

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Upon the filing of a petition and the request of the department, the county attorney shall represent the state in all adversary proceedings arising under this division and shall present evidence in support of the petition as provided under section 232.90.

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Upon the filing of a petition, the department shall submit a social report. The report shall include the child's handicap, the case permanency plan, a description of the foster care placement, and a description of parental participation in developing the child's case permanency plan and the parent's compliance with responsibilities to the child as defined in the plan.

Sec. 9. NEW SECTION. 232.182 INITIAL DETERMINATION.

1. Upon the filing of a petition, the court shall fix a time for an initial determination hearing and give notice of the hearing to the child's parent, guardian, or custodian, counsel or guardian ad litem, and the department.

2. A parent who does not have custody of the child may petition the court to be made a party to proceedings under this division.

3. An initial determination hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing only if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

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

5. After the hearing is concluded, the court shall make and file written findings as to whether the voluntary foster care placement is in the child's best interests. The court shall determine that voluntary foster care placement is in the child's best interests if the court finds that both of the following conditions exist:

a. The child has an emotional, physical, or intellectual handicap which requires care and treatment.

b. The child's parent or guardian has demonstrated a willingness to fulfill responsibilities to the child as defined in the case permanency plan.

6. The hearing may be waived and the court may issue the findings required under subsection 5 on the basis of the department's written report if all parties agree to the hearing's waiver.

Sec. 10. NEW SECTION. 232.183 DISPOSITIONAL HEARING.

1. Following an entry of an initial determination order pursuant to section 232.182, the court shall hold a

dispositional hearing in order to determine the future status of the child based on the child's best interests. Notice of the hearing shall be given to the child and the child's parent, guardian, or custodian, and the department.

2. The dispositional hearing shall be held within eighteen months of the date the child was placed in foster care. The dispositional hearing may be held in conjunction with the initial determination hearing.

3. A dispositional hearing is open to the public unless the court, on the motion of any of the parties or upon the court's own motion, excludes the public. The court shall exclude the public from a hearing if the court determines that the possibility of damage or harm to the child outweighs the public's interest in having an open hearing. Upon closing the hearing to the public, the court may admit those persons who have direct interest in the case or in the work of the court.

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5. Following the hearing, the court shall issue a dispositional order. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order that the child's voluntary placement shall be terminated.

b. An order that the child's voluntary placement may continue if the department and the child's parent or guardian continue to agree to the voluntary placement.

c. An order that the child remain in foster care and that the county attorney or department file, within three days, a petition alleging the child to be a child in need of assistance.

6. With respect to each child whose placement was approved pursuant to subsection 5, the court shall continue to hold periodic dispositional hearings. The hearings shall not be waived or continued beyond eighteen months following the last dispositional hearing. After a dispositional hearing, the court shall enter one of the dispositional orders authorized under subsection 5.

7. A dispositional hearing is not required if the court has approved either the local foster care review board review or the department's administrative review procedure as defined under section 234.42, and all parties agree. This provision does not eliminate the initial judicial determination required under section 232.182.

Sec. 11. CODIFICATION. The Code editor shall codify this Act as a new division XI of chapter 232, unless the Code editor determines that a different codification is preferable.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 402, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 15, 1989

TERRY E. BRANSTAD
Governor