

3/5/96 Do Pass

FEB 1 1996
JUDICIARY

HOUSE FILE 2136
BY JOCHUM

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

A BILL FOR

1 An Act relating to the inclusion of a communication or contact
2 agreement in an order for the termination of parental rights
3 or in an adoption decree if the child had previously received
4 child foster care.

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

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HF 2136

1 Section 1. NEW SECTION. 232.117A COMMUNICATION OR
2 CONTACT AGREEMENT.

3 1. Prior to the issuance of an order pursuant to section
4 232.117, subsection 3, the court may approve inclusion in the
5 order of an agreement regarding communication or contact after
6 the termination of parental rights among a biological parent,
7 the child, and a prospective adoptive parent if the child had
8 previously received child foster care.

9 2. Prior to approval of such an agreement, the court shall
10 appoint a guardian ad litem for the child, if the child is not
11 already represented by a guardian ad litem, and the guardian
12 ad litem shall represent the best interest of the child
13 relating to the proposed agreement.

14 3. The court may approve inclusion of such an agreement in
15 the order upon the motion of a biological parent or a
16 prospective adoptive parent if all of the following conditions
17 are met:

18 a. The terms of the agreement are agreed to, in writing,
19 by the biological parent and the prospective adoptive parent.

20 b. The court finds that, based upon the recommendations of
21 the guardian ad litem and the court's own review, approval of
22 the agreement is in the best interest of the child.

23 4. In determining whether the agreement is in the best
24 interest of the child, the guardian ad litem and the court
25 shall consider all of the following, as applicable:

26 a. Whether the child and the biological parent lived
27 together for a substantial period of time.

28 b. Whether the child exhibits attachment to or bonding
29 with the biological parent.

30 c. Whether the biological parent is unable to provide
31 adequate parenting due to certain circumstances including but
32 not limited to a terminal condition or mental illness. For
33 the purposes of this paragraph, "mental illness" means mental
34 illness as defined in section 229.1 and "terminal condition"
35 means an incurable and irreversible condition that, without

1 the administration of life-sustaining treatment, will, within
2 reasonable medical judgment, result in death within two years.

3 5. Subsequent to the issuance of an order pursuant to
4 section 232.117, subsection 3, failure to comply with an
5 agreement approved under this section shall not be grounds for
6 appeal of a termination of parental rights order or appeal of
7 an adoption decree.

8 6. An agreement may be enforced by a civil action for
9 specific performance or for damages. The prevailing party may
10 be awarded reasonable attorney fees and court costs.

11 7. An agreement included in an order issued pursuant to
12 section 232.117, subsection 3, shall not be modified unless
13 the court finds any of the following:

14 a. That modification is in the best interest of the child
15 and the modification is agreed to by the adoptive parent and
16 the biological parent.

17 b. Circumstances have arisen subsequent to the issuance of
18 the order which justify modification of the agreement.

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EXPLANATION

20 This bill provides for the inclusion in a termination of
21 parental rights order under chapter 232 of an agreement which
22 provides for communication or contact between a biological
23 parent, a child, and a prospective adoptive parent if the
24 child had previously received child foster care. The
25 agreement must be approved by the juvenile court, and may only
26 be approved if the biological parent and the prospective
27 adoptive parent agree, in writing, to the agreement and if the
28 juvenile court finds that approval of the agreement is in the
29 best interest of the child. The bill provides criteria for
30 determining if the agreement is in the best interest of the
31 child, including if the child lived with the biological
32 parent, bonded with the biological parent, or if the
33 biological parent is unable to adequately parent the child due
34 to circumstances such as mental illness or a terminal
35 condition. "Mental illness" and "terminal condition" are

1 defined in the bill. The bill also provides for the
2 appointment of a guardian ad litem for the child to represent
3 the child's best interest relating to the agreement.

4 The bill provides that noncompliance with the agreement,
5 following the issuance of a termination of parental rights
6 order or the issuance of an adoption decree, is not grounds
7 for appeal of either of these orders. However, the bill does
8 provide for enforcement of the agreement through a civil
9 action for specific performance or for damages. The bill also
10 provides for modification of the agreement if modification is
11 in the best interest of the child and if the parties to the
12 agreement approve the modification or if changed circumstances
13 justify the modification.

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