

MAR 10 1995

HUMAN RESOURCES

HOUSE FILE 342
BY BAKER

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

A BILL FOR

1 An Act relating to child abuse provisions.

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

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HF 342

DIVISION I -- DRUG EXPOSURE

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2 Section 1. Section 232.2, subsection 6, paragraph o, Code
3 1995, is amended to read as follows:

4 o. In whose body there is an illegal drug present,
5 determined in accordance with a medically relevant test as
6 defined in section 232.73, as a direct and foreseeable
7 consequence of the acts or willful omissions of the child's
8 parent, guardian, or custodian.

9 Sec. 2. Section 232.68, subsection 2, paragraph f, Code
10 1995, is amended to read as follows:

11 f. An illegal drug is present in a child's body as a
12 direct and foreseeable consequence of the acts or willful
13 omissions of the person responsible for the care of the child.

14 Sec. 3. Section 232.73, unnumbered paragraph 2, Code 1995,
15 is amended to read as follows:

16 As used in this section and section 232.77, "medically
17 relevant test" means a test that produces reliable results of
18 exposure to cocaine, heroin, amphetamine, methamphetamine, or
19 other illegal drugs, or combinations or derivatives thereof,
20 including a drug urine screen test. A reliable test result
21 for exposure to a mixture or substance containing cocaine base
22 requires a reading of more than three hundred nanograms. The
23 department shall consult with the state board of health and
24 the board of pharmacy examiners in developing a list of
25 laboratories approved for the purposes of this chapter to
26 process medically relevant tests for particular types of
27 drugs, drug combinations, and derivatives.

28 Sec. 4. Section 232.77, subsection 2, Code 1995, is
29 amended to read as follows:

30 2. If a health practitioner discovers in a child physical
31 or behavioral symptoms of the effects of exposure to cocaine,
32 heroin, amphetamine, methamphetamine, or other illegal drugs,
33 or combinations or derivatives thereof, which were not
34 prescribed by a health practitioner, or if the health
35 practitioner has determined through examination of the natural

1 mother of the child that the child was exposed in utero, the
2 health practitioner may perform or cause to be performed a
3 medically relevant test, as defined in section 232.73, on the
4 child. The practitioner shall report any positive results of
5 such a test on the child to the department. The department
6 shall begin an investigation pursuant to section 232.71 upon
7 receipt of such a report. A positive test result shall not be
8 used for the criminal prosecution of a parent for acts and
9 omissions resulting in intrauterine exposure of the child to
10 an illegal drug and shall not represent grounds for a
11 determination of child abuse.

12 Sec. 5. NEW SECTION. 232.106 TERMS AND CONDITIONS ON
13 CHILD'S PARENT.

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

19 1. The order shall state the reasons for and purpose of
20 the terms and conditions.

21 2. If a parent, guardian, or custodian is required to have
22 a chemical test of blood or urine for the purpose of
23 determining the presence of an illegal drug, the test shall be
24 a medically relevant test as defined in section 232.73. The
25 parent, guardian, or custodian may select the laboratory which
26 processes the test from among the laboratories approved
27 pursuant to section 232.73. A positive test result shall not
28 be used for the criminal prosecution of a parent, guardian, or
29 custodian for the presence of an illegal drug.

30 Sec. 6. Section 235C.3, subsection 3, Code 1995, is
31 amended to read as follows:

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

DIVISION II -- DEFINITIONS

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2 Sec. 7. Section 232.2, subsection 6, paragraphs b, c, d,
3 e, f, g, m, and n, Code 1995, are amended to read as follows:

4 b. Whose parent, guardian, other custodian, or other
5 member of the household in which the child resides has
6 repeatedly physically abused or neglected the child,~~or-is~~
7 ~~imminently-likely-to-abuse-or-neglect-the-child.~~

8 c. Who has suffered ~~or-is-imminently-likely-to-suffer~~
9 harmful effects as a result of either of the following:

10 (1) Mental injury caused by the acts of the child's
11 parent, guardian, or custodian.

12 (2) The failure of the child's parent, guardian,
13 custodian, or other member of the household in which the child
14 resides to exercise a reasonable-degree minimum standard of
15 care in supervising the child. The department shall adopt
16 rules identifying the elements comprising a minimum standard
17 of care in sufficient detail for a parent to anticipate
18 whether the department would find the parent's care to be less
19 than the minimum standard. The department shall publicly
20 distribute the rules. The rules shall include but are not
21 limited to standards for identifying lack of supervision which
22 take into consideration all of the following concerning a
23 child left without supervision:

24 (a) The child's age and intelligence.

25 (b) The amount of time the child is left unsupervised.

26 (c) The frequency with which the child is left
27 unsupervised for a given length of time.

28 (d) The age of any older child into whose care a younger
29 child is left.

30 (e) A detailed description of any other form of lack of
31 supervision which would not meet a minimum standard of care.

32 d. Who has been~~or-is-imminently-likely-to-be~~, sexually
33 abused by the child's parent, guardian, custodian or other
34 member of the household in which the child resides.

35 e.~~Who-is-in-need-of-medical-treatment-to-cure,alleviate,~~

1 or-prevent-serious-physical-injury-or-illness-and-whose
2 parent,-guardian-or-custodian-is-unwilling-or-unable-to
3 provide-such-treatment-

4 f.--Who-is-in-need-of-treatment-to-cure-or-alleviate
5 serious-mental-illness-or-disorder,-or-emotional-damage-as
6 evidenced-by-severe-anxiety,-depression,-withdrawal-or
7 untoward-aggressive-behavior-toward-self-or-others-and-whose
8 parent,-guardian,-or-custodian-is-unwilling-or-unable-to
9 provide-such-treatment-

10 g. Whose parent, guardian, or custodian ~~fails~~ commits
11 physical abuse or neglect of a child by failing to exercise a
12 minimal degree of care in supplying the child with adequate
13 food, clothing, or shelter, as described in administrative
14 rules adopted pursuant to subsection 42, and refuses other
15 means made available to provide such essentials.

16 m. Who is in need of treatment to cure or alleviate
17 chemical dependency and whose parent, guardian, or custodian
18 is unwilling or unable to provide such the treatment. This
19 paragraph of this definition shall only apply provided there
20 is treatment available in which at least fifty percent of the
21 treatment recipients remain cured or are alleviated of
22 chemical dependency one year after the treatment.

23 n.--Whose-parent's-or-guardian's-mental-capacity-or
24 condition,-imprisonment,-or-drug-or-alcohol-abuse-results-in
25 the-child-not-receiving-adequate-care-

26 Sec. 8. Section 232.2, Code 1995, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 3A. "Best interest of the child" or "best
29 interests of the child" means a child is provided the maximum
30 continuing contact with the child's parents so that the
31 child's parents maintain full custody of the child without
32 being required to participate in services identified by the
33 department. If a pattern of life-threatening abuse or neglect
34 of the child is identified or the child has been permanently
35 injured as a result of physical abuse, and the risk of further

1 abuse or neglect, if the child's parents maintain full custody
2 of the child, is greater than the risk of abuse and neglect if
3 the child is separated from the child's parents, the child
4 shall be provided with the least restrictive physical
5 separation possible from the child's parents as necessary to
6 protect the child from further abuse or neglect. The best
7 interest of the child shall require that if medical questions
8 are raised concerning the child, the child's physician may
9 contact the child's parents concerning the child's family
10 medical history.

11 Sec. 9. Section 232.2, subsection 42, Code 1995, is
12 amended to read as follows:

13 42. "Physical abuse or neglect" or "abuse or neglect"
14 means any nonaccidental physical injury suffered by a child as
15 the result of the acts or omissions of the child's parent,
16 guardian or custodian or other person legally responsible for
17 the child. The specific instances of neglect which may
18 physically injure a child shall be identified in
19 administrative rules adopted by the department, including but
20 not limited to home hygiene standards and any other act or
21 omission which would constitute neglect of a child. An injury
22 to a child's buttocks is not physical abuse or neglect unless
23 the injury requires medical treatment or causes permanent
24 injury. Any other injury is not a physical injury unless the
25 injury was inflicted willfully, wantonly, and maliciously.

26 DIVISION III -- REMOVAL OF CHILDREN AND PARENTS AND
27 TERMINATION
28 OF PARENTAL RIGHTS

29 Sec. 10. Section 232.78, subsection 2, Code 1995, is
30 amended to read as follows:

31 2. The order shall specify the facility to which the child
32 is to be brought. Except for good cause shown or unless the
33 child is sooner returned to the place where the child was
34 residing or permitted to return to the child day care
35 facility, a petition shall be filed under this chapter within

1 three days of the issuance of the order. Unless the
2 proceeding is continued for good cause shown pursuant to
3 section 232.96, if an adjudicatory hearing is not held in
4 accordance with the provisions of section 232.96 and a
5 dispositional order is not entered, the order entered under
6 this section shall expire thirty days from the date the order
7 was entered and the child shall be returned to the child's
8 home.

9 Sec. 11. Section 232.95, subsection 4, Code 1995, is
10 amended to read as follows:

11 4. If the court orders the child removed from the home
12 pursuant to subsection 2, paragraph "a", the court shall hold
13 a hearing to review the removal order within ~~six-months~~ thirty
14 days unless a dispositional hearing pursuant to section 232.99
15 has been held.

16 Sec. 12. Section 232.96, subsection 1, Code 1995, is
17 amended to read as follows:

18 1. The court shall hear and adjudicate cases involving a
19 petition alleging a child to be a child in need of assistance.
20 If the child has been removed from the child's home pursuant
21 to section 232.78, 232.79, or 232.95, the hearing shall be
22 held within thirty days of the date of the removal unless the
23 court continues the proceeding for good cause shown on the
24 record. If a continuance is granted, the court may extend the
25 removal order. The term of the continuance shall not exceed
26 thirty days and no further continuances shall be granted.

27 Sec. 13. Section 232.96, subsection 4, Code 1995, is
28 amended to read as follows:

29 4. A report made to the department of human services
30 pursuant to chapter 235A shall be admissible in evidence,
31 subject to objections to any component of the report, but such
32 a the report shall not alone be sufficient to support a
33 finding that the child is a child in need of assistance unless
34 the attorneys for the child and the parents consent to such a
35 finding.

1 Sec. 14. Section 232.98, subsection 1, unnumbered
2 paragraph 5, Code 1995, is amended to read as follows:

3 The child's parent, guardian, or custodian ~~shall~~ may choose
4 to be included in counseling sessions offered during the
5 child's stay in a hospital, facility, or institution when
6 ~~feasible, and when in the best interests of the child and the~~
7 ~~child's parent, guardian, or custodian.~~ The child's parent,
8 guardian, or custodian may establish a record of the
9 examination and the counseling sessions by making a video or
10 audio recording or by bringing one or more witnesses to the
11 examination or sessions. If separate counseling sessions are
12 conducted for the child and the child's parent, guardian, or
13 custodian, a joint counseling session shall be offered prior
14 to the release of the child from the hospital, facility, or
15 institution. The court shall require that notice be provided
16 to the child's guardian ad litem of the counseling sessions
17 and of the participants and results of the sessions.

18 Sec. 15. Section 232.98, subsection 2, Code 1995, is
19 amended to read as follows:

20 2. Following an adjudication that a child is a child in
21 need of assistance, the court may after a hearing order the
22 physical or mental examination of the parent, guardian or
23 custodian if the court finds that person's physical or mental
24 ability to care for the child is at issue.

25 Sec. 16. Section 232.116, subsection 2, unnumbered
26 paragraph 1, Code 1995, is amended to read as follows:

27 In considering whether to terminate the rights of a parent
28 under this section, the court shall give primary consideration
29 to the ~~physical, mental, and emotional condition and needs~~
30 best interest of the child. Such The consideration may
31 include any of the following:

32 Sec. 17. Section 232.116, subsection 2, paragraph b,
33 unnumbered paragraph 1, Code 1995, is amended to read as
34 follows:

35 For a child who has been placed in foster family care by a

1 court or has been voluntarily placed in foster family care by
2 a parent or by another person, ~~whether-the-child-has-become~~
3 ~~integrated-into-the-foster-family-to-the-extent-that-the~~
4 ~~child's-familial-identity-is-with-the-foster-family,~~ and
5 whether the foster family is able and willing to permanently
6 integrate the child into the foster family. In considering
7 integration into a foster family, the court shall review the
8 following:

9 Sec. 18. Section 232.116, subsection 3, unnumbered
10 paragraph 1, Code 1995, is amended to read as follows:

11 The court ~~need~~ shall not terminate the relationship between
12 the parent and child if the court finds any of the following:

13 Sec. 19. Section 232.116, subsection 3, Code 1995, is
14 amended by adding the following new paragraph c after
15 paragraph b and relettering the succeeding paragraphs:

16 NEW PARAGRAPH. c. The child is ten years of age or less
17 and objects to the termination, objected during any removal of
18 the child from the child's home under this chapter, and
19 objected to any allegation of child abuse during an interview
20 conducted during a child abuse investigation performed
21 pursuant to section 232.71.

22 DIVISION IV -- APPOINTMENT OF COUNSEL OR GUARDIAN AD LITEM

23 Sec. 20. Section 232.71, subsection 14, Code 1995, is
24 amended to read as follows:

25 14. In every case involving child abuse which results in a
26 child protective judicial proceeding, whether or not the
27 proceeding arises under this chapter, a child shall have a
28 right to have the child's interests represented by a guardian
29 ad litem. The judge shall explain to the child that the child
30 may choose to have the child's interests represented by a
31 guardian ad litem. If the child chooses, a guardian ad litem
32 shall be appointed by the court to represent the interests of
33 the child in the proceedings. Before a guardian ad litem is
34 appointed pursuant to this section, the court shall require
35 the person responsible for the care of the child to complete

1 under oath a detailed financial statement. If, on the basis
2 of that financial statement, the court deems that the person
3 responsible for the care of the child is able to bear the cost
4 of the guardian ad litem, the court shall so order. In cases
5 where the person responsible for the care of the child is
6 unable to bear the cost of the guardian ad litem, the expense
7 shall be paid out of the county treasury.

8 Sec. 21. Section 232.89, subsection 2, unnumbered
9 paragraph 1, Code 1995, is amended to read as follows:

10 Upon the filing of a petition, the court shall appoint
11 counsel and, if the child chooses, may appoint a guardian ad
12 litem for the child identified in the petition as a party to
13 the proceedings. If the child so chooses and a guardian ad
14 litem has previously been appointed for the child in a
15 proceeding under division II of this chapter or a proceeding
16 in which the court has waived jurisdiction under section
17 232.45, the court shall appoint the same guardian ad litem
18 upon the filing of the petition under this part. Counsel
19 shall be appointed as follows:

20 Sec. 22. Section 232.97, subsection 3, Code 1995, is
21 amended to read as follows:

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

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EXPLANATION

1 This bill relates to child abuse provisions.

2 Division I relates to drug exposure of children. In
3 section 232.2, subsection 6, the definition of a child in need
4 of assistance, the part involving the presence of an illegal
5 drug in the body of a child is amended to require the presence
6 be indicated by a medically relevant test and the omission
7 leading to the presence of the drug be willful.

8 Section 232.68, the definition of child abuse for purposes
9 of child abuse investigations, is amended to require that the
10 omission leading to the presence of the drug be willful.

11 Section 232.73 is amended to require that a medically
12 relevant test for illegal drug exposure to cocaine base
13 requires a reading of more than 300 nanograms. The department
14 of human services is directed to work with other state
15 agencies in developing a list of approved laboratories for
16 processing of medically relevant tests.

17 Section 232.77 is amended to prohibit a test for the
18 presence of an illegal drug to be used as grounds for a
19 determination of child abuse.

20 New section 232.106 relates to terms and conditions imposed
21 on a child's parent, guardian, or custodian in a court order
22 under chapter 232. The order must state the reasons for and
23 purpose of the terms and conditions. If a chemical test is
24 required for the presence of an illegal drug, the test must be
25 a medically relevant test and the parent, guardian, or
26 custodian may choose the laboratory which processes the test.
27 A positive test result cannot be used in a criminal
28 prosecution of the parent, guardian, or custodian.

29 Section 235C.3 is amended to require the council for
30 chemically exposed infants to develop recommendations for
31 increasing the accuracy rather than the volume of the
32 identification of chemically exposed infants and children.

33 Division II amends various definitions used in chapter 232.
34 The definition for child in need of assistance in section
35 232.2, subsection 6, is amended to require repeated physical

1 abuse or neglect rather than any physical abuse or neglect and
2 a provision for imminent abuse or neglect is stricken; a
3 provision for a child who is imminently likely to suffer abuse
4 or neglect by mental injury or failure to supervise is
5 stricken; the department of human services is required to
6 adopt rules identifying the elements comprising a minimum
7 standard of care; a provision for a child who is imminently
8 likely to be sexually abused is stricken; a provision for
9 failure to provide medical treatment or mental health
10 treatment is stricken; the department is required to adopt
11 rules specifying the instances of physical abuse or neglect
12 which would comprise failure to exercise a minimum degree of
13 care for a child; a provision that a child who has a chemical
14 dependency is amended by requiring that the chemical
15 dependency by itself does not meet the definition of child
16 abuse unless treatment is available for chemical dependency
17 with a specified success rate; and a provision for a child
18 whose parent's mental capacity or condition, imprisonment, or
19 drug or alcohol abuse results in the child not receiving
20 adequate care is stricken.

21 Section 232.2 is amended with a new definition of "best
22 interest of the child" which emphasizes the child maintaining
23 the maximum possible contact with the child's parents.

24 The definition of physical abuse or neglect in section
25 232.2, subsection 42, is amended to require the department to
26 identify in administrative rules the specific instances of
27 abuse and neglect which may physically injure a child.

28 Division III addresses provisions relating to removal of
29 children and parents and termination of parental rights.

30 Sections 232.78, 232.95, and 232.96 are amended to require
31 that if a temporary removal order is entered, a child in need
32 of assistance (CINA) hearing must be held within 30 days. The
33 court may continue the CINA hearing one time for good cause
34 shown. Section 232.96, subsection 4, relating to the
35 admissibility of a child abuse report in a CINA adjudication,

1 is amended to make the admissibility subject to objections to
2 any component of the report.

3 Currently under section 232.98, a child's parent, guardian,
4 or custodian may be required, under certain circumstances, to
5 be included in counseling sessions offered during a commitment
6 of a child for a physical or mental examination. Under the
7 bill, the parent, guardian, or custodian may choose whether or
8 not to be included and may make a video or audio recording of
9 the examination or sessions or bring one or more witnesses.
10 Current law provides that following a CINA adjudication, the
11 court may order a physical or mental examination of a child's
12 parent, guardian, or custodian and the bill makes such an
13 order subject to the court finding that the person's physical
14 or mental ability to care for the child is at issue.

15 Various provisions of section 232.116, relating to
16 termination of parental rights, are amended. In considering
17 whether to terminate the rights of a parent under current
18 section 232.116, subsection 2, the court is required to give
19 primary consideration to the physical, mental, and emotional
20 condition and needs of the child. The bill strikes this
21 criteria and replaces it with the best interest of the child
22 as defined by the bill. Under current law, the court's
23 consideration is to include the integration of the child into
24 a family foster care placement and the bill strikes
25 consideration of whether the child has familial identity with
26 the foster family.

27 Section 232.116, subsection 3, currently gives the court
28 the option to not order termination of parental rights if
29 certain conditions exist. The bill prohibits the court from
30 entering the order if any of the conditions exist. One of
31 those conditions in current law is if a child who is more than
32 10 years of age and objects to the termination. A similar
33 provision is added if a child is age 10 or less and objected
34 to any allegation of child abuse, to any removal of the child,
35 and objects to the termination.

1 Division IV relates to appointment of counsel or a guardian
2 ad litem for a child. Under current section 232.71, relating
3 to child abuse investigations, and section 232.89, relating to
4 appointment of counsel for CINA proceedings, a guardian ad
5 litem is required to be appointed for a child in any judicial
6 proceeding. The bill makes the appointment of a guardian ad
7 litem optional for the child rather than required.

8 Section 232.97, relating to disclosure of a social report
9 prepared pursuant to a court order during a CINA proceeding,
10 under current law limits disclosure of the report to the
11 child's counsel and guardian ad litem and the counsel of the
12 parent, guardian, or custodian. The bill strikes language
13 authorizing the court to prohibit counsel from disclosing
14 parts of the report to the child or to the child's parent,
15 guardian, or custodian, if the disclosure would harm the child
16 or violate a promise of confidentiality. In addition, the
17 bill provides access to the social report for the child's
18 parent, guardian, or custodian, or for any person alleged to
19 have abused the child.

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