

2/16/96 Judiciary

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SENATE FILE **2202**

BY SZYMONIAK

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

A BILL FOR

1 An Act relating to juvenile justice including notice requirements
 2 for juvenile court actions, custody of and access to a child
 3 designated a child in need of assistance, and associate
 4 juvenile judge jurisdiction.

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

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S.F. 2202

1 Section 1. Section 232.21, subsection 3, Code 1995, is
2 amended to read as follows:

3 3. When there is reason to believe that a child placed in
4 shelter care pursuant to section 232.19, subsection 1,
5 paragraph "c" would not voluntarily remain in the shelter care
6 facility, the shelter care facility shall impose reasonable
7 restrictions necessary to ensure the child's continued
8 custody, including but not limited to physical restraint and
9 control room placement of children making actual attempts at
10 flight from the facility.

11 Sec. 2. Section 232.37, subsection 4, Code Supplement
12 1995, is amended to read as follows:

13 4. Service of summons or notice shall be made personally
14 by the delivery of a copy of the summons or notice to the
15 person being served. If the court determines that personal
16 service of a summons or notice is impracticable, the court may
17 order service by certified mail addressed to the last known
18 address or by publication or both, or the court may dispense
19 with notice if the person's whereabouts are unknown. Service
20 of summons or notice shall be made not less than five days
21 before the time fixed for hearing. Service of summons,
22 notice, subpoenas or other process, after an initial valid
23 summons or notice, shall be made in accordance with the rules
24 of the court governing such service in civil actions.

25 Sec. 3. Section 232.54, unnumbered paragraph 2, Code
26 Supplement 1995, is amended to read as follows:

27 Notice requirements of this section shall be satisfied in
28 the same manner as for adjudicatory hearings as provided in
29 section 232.37 except that notice ~~shall~~ may be waived
30 dispensed with regarding a person parent, guardian, or
31 custodian who was previously notified of-the-adjudicatory
32 hearing by publication and who failed to appear and whose
33 whereabouts are unknown after reasonable inquiry. At a
34 hearing under this section all relevant and material evidence
35 shall be admitted.

1 Sec. 4. Section 232.82, Code 1995, is amended to read as
2 follows:

3 232.82 REMOVAL OF ~~SEXUAL-OFFENDERS-AND-PHYSICAL~~ CHILD
4 ABUSERS FROM THE RESIDENCE PURSUANT TO COURT ORDER.

5 1. Notwithstanding section 561.15, if it is alleged by a
6 person authorized to file a petition under section 232.87,
7 subsection 2, or by the court on its own motion, that a
8 parent, guardian, custodian, or an adult member of the
9 household in which a child resides has committed a ~~sexual~~
10 ~~offense-with-or-against-the-child,-pursuant-to-chapter-709-or~~
11 ~~section-726.2,-or-a-physical-abuse-as-defined-by-section~~
12 ~~232.2,-subsection-42~~ child abuse as defined in section 232.68,
13 subsection 2, the juvenile court may enter an ex parte order
14 requiring the alleged ~~sexual-offender-or-physical~~ child abuser
15 to vacate the child's residence upon a showing that probable
16 cause exists to believe that the ~~sexual-offense-or-physical~~
17 child abuse has occurred and that substantial evidence exists
18 to believe that the presence of the alleged ~~sexual-offender-or~~
19 ~~physical~~ child abuser in the child's residence presents a
20 danger to the child's life or physical, emotional, or mental
21 health.

22 2. If an order is entered under subsection 1 and a
23 petition has not yet been filed under this chapter, the
24 petition shall be filed under section 232.87 by the county
25 attorney, the department of human services, or a juvenile
26 court officer within three days of the entering of the order.

27 3. The juvenile court may order on its own motion, or
28 shall order upon the request of the alleged ~~sexual-offender-or~~
29 ~~physical~~ child abuser, a hearing to determine whether the
30 order to vacate the residence should be upheld, modified, or
31 vacated. The juvenile court may in any later child in need of
32 assistance proceeding uphold, modify, or vacate the order to
33 vacate the residence.

34 Sec. 5. Section 232.103, subsection 3, Code 1995, is
35 amended to read as follows:

1 3. A hearing shall be held on a motion to terminate or
2 modify a dispositional order except that a hearing on a motion
3 to terminate an order may be waived upon agreement by all
4 parties. Reasonable notice of the hearing shall be given in
5 accordance with the rules of court governing service in civil
6 actions, provided the parties were previously given an initial
7 valid summons or notice for the adjudicatory hearing, or in
8 the same manner as for adjudicatory hearings in cases of
9 juvenile delinquency as provided in section sections 232.37
10 and 232.54. The hearing shall be conducted in accordance with
11 the provisions of section 232.50.

12 Sec. 6. Section 232.103, Code 1995, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 8. The court may terminate an order and
15 place custody of the child with a parent, guardian, or
16 custodian and issue a temporary or permanent injunction
17 prohibiting contact between the child and a person who
18 committed child abuse upon the child and who has been offered
19 or received services to correct the circumstance which led to
20 the adjudication, which circumstance continues to exist
21 despite the offer or receipt of services. A temporary
22 injunction shall be reviewed annually.

23 Sec. 7. Section 232.104, Code Supplement 1995, is amended
24 to read as follows:

25 232.104 PERMANENCY HEARING.

26 ~~1. If a child has been placed in foster care for a period~~
27 ~~of twelve months, or if the prior legal custodian of a child~~
28 ~~has abandoned efforts to regain custody of the child, the~~ The
29 court shall, on its own motion, or upon application by any
30 interested party, including the child's foster parent if the
31 child has been placed with the foster parent for at least
32 twelve months, hold a hearing to consider the issue of the
33 establishment of permanency for the child if any of the
34 following have occurred:

35 a. If custody of the child has been transferred for

1 purposes of placement pursuant to section 232.102 for a period
2 of twelve months.

3 b. If the prior legal custodian of a child has abandoned
4 efforts to regain custody of the child.

5 c. If primary physical placement of a child has been
6 granted for a period of twelve months pursuant to section
7 232.101 to the parent having joint custody of the child but
8 who did not have primary physical custody of the child at the
9 time action under this division was commenced.

10 Such a permanency hearing may be held concurrently with a
11 hearing to review, modify, substitute, vacate, or terminate a
12 dispositional order. Reasonable notice of a permanency
13 hearing in a case of juvenile delinquency shall be made in
14 accordance with the rules of court governing service in civil
15 actions, provided the parties were given an initial valid
16 summons or notice for the adjudicatory hearing, or provided
17 pursuant to section sections 232.37 and 232.54. A permanency
18 hearing shall be conducted in substantial conformance with the
19 provisions of section 232.99. During the hearing the court
20 shall consider the child's need for a secure and permanent
21 placement in light of any permanency plan or evidence
22 submitted to the court. Upon completion of the hearing the
23 court shall enter written findings and make a determination
24 based upon the permanency plan which will best serve the
25 child's individual interests at that time.

26 2. After a permanency hearing the court shall do one of
27 the following:

28 a. Enter an order pursuant to section 232.102 to return
29 the child to the child's home.

30 b. Enter an order pursuant to section 232.102 to continue
31 placement of the child for an additional six months at which
32 time the court shall hold a hearing to consider modification
33 of its permanency order. An order entered under this
34 paragraph shall enumerate the specific factors, conditions, or
35 expected behavioral changes which comprise the basis for the

1 determination that the need for removal of the child from the
2 child's home will no longer exist at the end of the additional
3 six-month period.

4 c. Direct the county attorney or the attorney for the
5 child to institute proceedings to terminate the parent-child
6 relationship.

7 d. Enter an order, pursuant to findings required by
8 subsection 3, to do one of the following:

9 (1) Transfer guardianship and custody of the child to a
10 suitable person. When establishing a guardianship, the court
11 shall require the filing of an oath and bond by the guardian
12 pursuant to sections 633.168 and 633.169.

13 (2) Transfer sole custody of the child from one parent to
14 another parent or establish primary physical placement in the
15 parent with joint custody but who did not have primary
16 physical custody at the time of commencement of action under
17 this division.

18 (3) Transfer custody of the child to a suitable person for
19 the purpose of long-term care.

20 (4) Order long-term foster care placement for the child in
21 a licensed foster care home or facility.

22 3. Prior to entering a permanency order pursuant to
23 subsection 2, paragraph "d", convincing evidence must exist
24 showing that all of the following apply:

25 a. A termination of the parent-child relationship would
26 not be in the best interest of the child.

27 b. Services were offered to the child's family to correct
28 the situation which led to the child's removal from the home.

29 c. The child cannot be returned to the child's home.

30 4. Any permanency order may provide restrictions upon the
31 contact between the child and the child's parent or parents,
32 consistent with the best interest of the child. The court
33 may, based on the best interests of the child, temporarily or
34 permanently enjoin contact between the child and any person
35 who is the perpetrator of physical abuse, sexual abuse, or

1 neglect upon the child and who has been offered or received
2 services to correct the circumstance which led to the
3 adjudication, which circumstance continues to exist despite
4 the offer or receipt of services. If the court issues a
5 temporary injunction it shall provide for periodic annual
6 review upon hearing and notice.

7 5. Subsequent to the entry of a permanency order pursuant
8 to this section, the child shall not be returned to the care,
9 custody, or control of the child's parent or parents, over a
10 formal objection filed by the child's attorney or guardian ad
11 litem, unless the court finds by a preponderance of the
12 evidence, that returning the child to such custody would be in
13 the best interest of the child.

14 6. Following the entry of a permanency order which places
15 a child in the custody or guardianship of another person or
16 agency, the court shall retain jurisdiction and annually
17 review the order to ascertain whether the best interest of the
18 child is being served. When such order places the child in
19 the custody of the department for the purpose of long-term
20 family foster care or long-term foster care placement in a
21 facility, the review shall be in a hearing that shall not be
22 waived or continued beyond twelve months after the permanency
23 hearing or the last review hearing. Any modification shall be
24 accomplished through a hearing procedure following reasonable
25 notice. During the hearing, all relevant and material
26 evidence shall be admitted and procedural due process shall be
27 provided to all parties.

28 Sec. 8. Section 232.117, Code 1995, is amended by adding
29 the following new subsection:

30 NEW SUBSECTION. 4A. If, after a hearing, the court does
31 not order the termination of parental rights, the court may
32 enter a permanency order pursuant to section 232.104 providing
33 clear and convincing evidence is shown to meet the
34 requirements of that section.

35 Sec. 9. Section 232.133, subsection 1, Code 1995, is

1 amended to read as follows:

2 1. An interested party aggrieved by an order or decree of
3 the juvenile court may appeal from the court for review of
4 questions of law or fact. However, an order adjudicating a
5 child to have committed a delinquent act, entered pursuant to
6 section 232.47, shall not be appealed until the court enters a
7 corresponding dispositional order pursuant to section 232.52.
8 In addition, an order entered pursuant to section 232.102,
9 subsection 8, directing that a termination of the parent-child
10 relationship proceeding should be instituted shall not be
11 appealable.

12 Sec. 10. Section 331.653, subsection 4, Code Supplement
13 1995, is amended to read as follows:

14 4. Provide bailiff and other law enforcement service to
15 the district judges, district associate judges, associate
16 juvenile judges, judicial hospitalization referees, and
17 judicial magistrates of the county upon request.

18 Sec. 11. Section 602.7103, subsection 2, Code 1995, is
19 amended to read as follows:

20 2. The associate juvenile judge shall have the same
21 jurisdiction to conduct juvenile court proceedings and to
22 issue orders, findings, and decisions as the judge of the
23 juvenile court, except that the associate juvenile judge shall
24 not issue warrants other than warrants in juvenile cases,
25 juvenile nontestimonial identification orders, and contempt
26 arrest warrants for adults in juvenile proceedings. However,
27 the appointing judge may limit the exercise of juvenile court
28 jurisdiction by the associate juvenile judge.

29 Sec. 12. Section 665.4, Code 1995, is amended to read as
30 follows:

31 665.4 PUNISHMENT.

32 The punishment for contempt, where not otherwise
33 specifically provided, shall be:

34 1. In the supreme court or the court of appeals, by a fine
35 not exceeding one thousand dollars or by imprisonment in a

1 county jail not exceeding six months, or by both such fine and
2 imprisonment.

3 2. Before district judges, and district associate judges,
4 and associate juvenile judges by a fine not exceeding five
5 hundred dollars or imprisonment in a county jail not exceeding
6 six months or by both such fine and imprisonment.

7 3. Before judicial magistrates ~~and juvenile court~~
8 referees, by a fine not exceeding one hundred dollars or
9 imprisonment in a county jail not exceeding thirty days.

10 EXPLANATION

11 This bill does the following:

12 1. Section 232.21 is amended to allow juvenile shelter
13 care facilities to use physical restraint or control rooms in
14 the case of juveniles who attempt to leave the facility.

15 2. Section 232.37 is amended to provide that notice of
16 juvenile court proceedings may be given by publication and to
17 give the court the discretion to dispense with notice in
18 delinquency cases to a person whose whereabouts are unknown.

19 3. Section 232.54 is amended to allow the court to
20 dispense with notice of dispositional order modification
21 hearings to a person whose whereabouts remain unknown if prior
22 notice of the delinquency adjudicatory hearing was given by
23 publication.

24 4. Section 232.82 is amended to allow the court to remove
25 any child abuser, not just a physical or sexual abuser, from
26 the home of the child. This allows persons who abuse a child
27 emotionally or who neglect to provide a child with necessities
28 to be removed from the home.

29 5. Section 232.103 is amended to allow the court to
30 provide ordinary mailed notice to parties of modification
31 hearings in child in need of assistance cases, rather than
32 requiring personal service of notice, and to allow the court
33 to dispense with notice of a child in need of assistance
34 modification hearing to a person whose whereabouts are unknown
35 and who was provided prior published notice of the

1 adjudicatory hearing. The section is also amended to
2 authorize the court to remove a child from the home of a child
3 abuser and enjoin the abuser from further contact with the
4 child, even after the child in need of assistance proceedings
5 are concluded.

6 6. Section 232.104 is amended to provide that permanent
7 placement hearings may be held whenever a child is removed
8 from the home of the custodial parent for 12 months and placed
9 anywhere, not only in foster care. Also, ordinary mailed
10 notice of the hearing is authorized instead of personal or
11 published notice and certified mail. Further, the court is
12 authorized to dispense with personal service to a person whose
13 whereabouts are unknown and who previously received published
14 notice of the child in need of assistance adjudicatory
15 hearing.

16 7. Section 232.104 is also amended to require guardians
17 appointed by the court to file an oath as required under the
18 probate code, to allow the court to enjoin a child abuser from
19 further contact with a child following a permanent placement
20 hearing, to transfer custody or primary physical placement to
21 the other parent on a long-term basis, and to require review
22 of permanent placement orders when a child is placed in family
23 foster care, not just in cases where the child is placed in
24 group foster care.

25 8. Section 232.117 is amended to allow the court the
26 option of entering a permanent placement order as an
27 alternative to termination of parental rights.

28 9. Section 232.133 is amended to provide that orders
29 directing the filing of a termination petition are not
30 appealable orders.

31 10. Section 331.653 is amended to require the sheriff to
32 provide bailiff and law enforcement services, including
33 transportation services, to associate juvenile judges and
34 hospitalization referees.

35 11. Section 602.7103 is amended to provide that associate

1 juvenile judges may issue warrants in juvenile cases.

2 12. Section 665.4 is amended to provide that associate
3 juvenile judges may punish persons committing contempt of
4 court before them in the same manner that district court
5 judges may punish persons for contempt.

6 This bill may contain a state mandate under chapter 25B.
7 Under section 25B.3, the mandate does not take effect unless
8 the cost of the mandate is provided or specified by the state.

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