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SENATE FILE 2417
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2202)

(p.821)

Passed Senate, Date 3/18/96

Passed House, Date _____

Vote: Ayes 49 Nays 0

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. 2417

1 Section 1. Section 232.37, subsection 4, Code Supplement
2 1995, is amended to read as follows:

3 4. Service of summons or notice shall be made personally
4 by the delivery of a copy of the summons or notice to the
5 person being served. If the court determines that personal
6 service of a summons or notice is impracticable, the court may
7 order service by certified mail addressed to the last known
8 address or by publication or both, or the court may dispense
9 with notice if the person's whereabouts are unknown. Service
10 of summons or notice shall be made not less than five days
11 before the time fixed for hearing. Service of summons,
12 notice, subpoenas or other process, after an initial valid
13 summons or notice, shall be made in accordance with the rules
14 of the court governing such service in civil actions.

15 Sec. 2. Section 232.54, unnumbered paragraph 2, Code
16 Supplement 1995, is amended to read as follows:

17 Notice requirements of this section shall be satisfied in
18 the same manner as for adjudicatory hearings as provided in
19 section 232.37 except that notice ~~shall~~ may be waived
20 dispensed with regarding a person parent, guardian, or
21 custodian who was previously notified of-the-adjudicatory
22 hearing by publication and who failed to appear and whose
23 whereabouts are unknown after reasonable inquiry. At a
24 hearing under this section all relevant and material evidence
25 shall be admitted.

26 Sec. 3. Section 232.82, Code 1995, is amended to read as
27 follows:

28 232.82 REMOVAL OF SEXUAL-~~OFFENDERS-AND-PHYSICAL~~ CHILD
29 ABUSERS FROM THE RESIDENCE PURSUANT TO COURT ORDER.

30 1. Notwithstanding section 561.15, if it is alleged by a
31 person authorized to file a petition under section 232.87,
32 subsection 2, or by the court on its own motion, that a
33 parent, guardian, custodian, or an adult member of the
34 household in which a child resides has committed ~~a-sexual~~
35 ~~offense-with-or-against-the-child,-pursuant-to-chapter-709-or~~

1 ~~section-726.27-or-a-physical-abuse-as-defined-by-section~~
2 ~~232.27-subsection-42~~ child abuse as defined in section 232.68,
3 subsection 2, the juvenile court may enter an ex parte order
4 requiring the alleged ~~sexual-offender-or-physical~~ child abuser
5 to vacate the child's residence upon a showing that probable
6 cause exists to believe that the ~~sexual-offense-or-physical~~
7 child abuse has occurred and that substantial evidence exists
8 to believe that the presence of the alleged ~~sexual-offender-or~~
9 ~~physical~~ child abuser in the child's residence presents a
10 danger to the child's life or physical, emotional, or mental
11 health.

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

17 3. The juvenile court may order on its own motion, or
18 shall order upon the request of the alleged ~~sexual-offender-or~~
19 ~~physical~~ child abuser, a hearing to determine whether the
20 order to vacate the residence should be upheld, modified, or
21 vacated. The juvenile court may in any later child in need of
22 assistance proceeding uphold, modify, or vacate the order to
23 vacate the residence.

24 Sec. 4. Section 232.103, subsection 3, Code 1995, is
25 amended to read as follows:

26 3. A hearing shall be held on a motion to terminate or
27 modify a dispositional order except that a hearing on a motion
28 to terminate an order may be waived upon agreement by all
29 parties. Reasonable notice of the hearing shall be given in
30 accordance with the rules of court governing service in civil
31 actions, provided the parties were previously given an initial
32 valid summons or notice for the adjudicatory hearing, or in
33 the same manner as for adjudicatory hearings in cases of
34 juvenile delinquency as provided in section sections 232.37
35 and 232.54. The hearing shall be conducted in accordance with

1 the provisions of section 232.50.

2 Sec. 5. Section 232.103, Code 1995, is amended by adding
3 the following new subsection:

4 NEW SUBSECTION. 8. The court may terminate an order and
5 place custody of the child with a parent, guardian, or
6 custodian and issue a temporary or permanent injunction
7 prohibiting contact between the child and a person who
8 committed child abuse upon the child and who has been offered
9 or received services to correct the circumstance which led to
10 the adjudication, which circumstance continues to exist
11 despite the offer or receipt of services. A temporary
12 injunction shall be reviewed annually.

13 Sec. 6. Section 232.104, Code Supplement 1995, is amended
14 to read as follows:

15 232.104 PERMANENCY HEARING.

16 1. ~~If a child has been placed in foster care for a period~~
17 ~~of twelve months, or if the prior legal custodian of a child~~
18 ~~has abandoned efforts to regain custody of the child, the~~ The
19 court shall, on its own motion, or upon application by any
20 interested party, including the child's foster parent if the
21 child has been placed with the foster parent for at least
22 twelve months, hold a hearing to consider the issue of the
23 establishment of permanency for the child if any of the
24 following have occurred:

25 a. If custody of the child has been transferred for
26 purposes of placement pursuant to section 232.102 for a period
27 of twelve months.

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

30 c. If primary physical placement of a child has been
31 granted for a period of twelve months pursuant to section
32 232.101 to the parent having joint custody of the child but
33 who did not have primary physical custody of the child at the
34 time action under this division was commenced.

35 Such a permanency hearing may be held concurrently with a

1 hearing to review, modify, substitute, vacate, or terminate a
2 dispositional order. Reasonable notice of a permanency
3 hearing in a case of juvenile delinquency shall be made in
4 accordance with the rules of court governing service in civil
5 actions, provided the parties were given an initial valid
6 summons or notice for the adjudicatory hearing, or provided
7 pursuant to ~~section~~ sections 232.37 and 232.54. A permanency
8 hearing shall be conducted in substantial conformance with the
9 provisions of section 232.99. During the hearing the court
10 shall consider the child's need for a secure and permanent
11 placement in light of any permanency plan or evidence
12 submitted to the court. Upon completion of the hearing the
13 court shall enter written findings and make a determination
14 based upon the permanency plan which will best serve the
15 child's individual interests at that time.

16 2. After a permanency hearing the court shall do one of
17 the following:

18 a. Enter an order pursuant to section 232.102 to return
19 the child to the child's home.

20 b. Enter an order pursuant to section 232.102 to continue
21 placement of the child for an additional six months at which
22 time the court shall hold a hearing to consider modification
23 of its permanency order. An order entered under this
24 paragraph shall enumerate the specific factors, conditions, or
25 expected behavioral changes which comprise the basis for the
26 determination that the need for removal of the child from the
27 child's home will no longer exist at the end of the additional
28 six-month period.

29 c. Direct the county attorney or the attorney for the
30 child to institute proceedings to terminate the parent-child
31 relationship.

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

34 (1) Transfer guardianship and custody of the child to a
35 suitable person. When establishing a guardianship, the court

1 shall require the filing of an oath and bond by the guardian
2 pursuant to sections 633.168 and 633.169.

3 (2) Transfer sole custody of the child from one parent to
4 another parent or establish primary physical placement in the
5 parent with joint custody but who did not have primary
6 physical custody at the time of commencement of action under
7 this division.

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

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

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

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

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

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

20 4. Any permanency order may provide restrictions upon the
21 contact between the child and the child's parent or parents,
22 consistent with the best interest of the child. The court
23 may, based on the best interests of the child, temporarily or
24 permanently enjoin contact between the child and any person
25 who commits child abuse as defined in section 232.68,
26 subsection 2, upon the child and who has been offered or
27 received services to correct the circumstance which led to the
28 adjudication, which circumstance continues to exist despite
29 the offer or receipt of services. If the court issues a
30 temporary injunction it shall provide for periodic annual
31 review upon hearing and notice.

32 5. Subsequent to the entry of a permanency order pursuant
33 to this section, the child shall not be returned to the care,
34 custody, or control of the child's parent or parents, over a
35 formal objection filed by the child's attorney or guardian ad

1 litem, unless the court finds by a preponderance of the
2 evidence, that returning the child to such custody would be in
3 the best interest of the child.

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

18 Sec. 7. Section 232.117, Code 1995, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 4A. If, after a hearing, the court does
21 not order the termination of parental rights, the court may
22 enter a permanency order pursuant to section 232.104 providing
23 clear and convincing evidence is shown to meet the
24 requirements of that section.

25 Sec. 8. Section 232.133, subsection 1, Code 1995, is
26 amended to read as follows:

27 1. An interested party aggrieved by an order or decree of
28 the juvenile court may appeal from the court for review of
29 questions of law or fact. However, an order adjudicating a
30 child to have committed a delinquent act, entered pursuant to
31 section 232.47, shall not be appealed until the court enters a
32 corresponding dispositional order pursuant to section 232.52.
33 In addition, an order entered pursuant to section 232.102,
34 subsection 8, directing that a termination of the parent-child
35 relationship proceeding should be instituted shall not be

1 appealable.

2 Sec. 9. Section 331.653, subsection 4, Code Supplement
3 1995, is amended to read as follows:

4 4. Provide bailiff and other law enforcement service to
5 the district judges, district associate judges, associate
6 juvenile judges, judicial hospitalization referees, and
7 judicial magistrates of the county upon request.

8 Sec. 10. Section 602.7103, subsection 2, Code 1995, is
9 amended to read as follows:

10 2. The associate juvenile judge shall have the same
11 jurisdiction to conduct juvenile court proceedings and to
12 issue orders, findings, and decisions as the judge of the
13 juvenile court, except that the associate juvenile judge shall
14 not issue warrants other than warrants in juvenile cases,
15 juvenile nontestimonial identification orders, and contempt
16 arrest warrants for adults in juvenile proceedings. However,
17 the appointing judge may limit the exercise of juvenile court
18 jurisdiction by the associate juvenile judge.

19 Sec. 11. Section 665.4, Code 1995, is amended to read as
20 follows:

21 665.4 PUNISHMENT.

22 The punishment for contempt, where not otherwise
23 specifically provided, shall be:

24 1. In the supreme court or the court of appeals, by a fine
25 not exceeding one thousand dollars or by imprisonment in a
26 county jail not exceeding six months, or by both such fine and
27 imprisonment.

28 2. Before district judges, and district associate judges,
29 and associate juvenile judges by a fine not exceeding five
30 hundred dollars or imprisonment in a county jail not exceeding
31 six months or by both such fine and imprisonment.

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

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EXPLANATION

1 This bill does the following:

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

6 2. Section 232.54 is amended to allow the court to
7 dispense with notice of dispositional order modification
8 hearings to a person whose whereabouts remain unknown if prior
9 notice of the delinquency adjudicatory hearing was given by
10 publication.

11 3. Section 232.82 is amended to allow the court to remove
12 any child abuser, not just a physical or sexual abuser, from
13 the home of the child. This allows persons who abuse a child
14 emotionally or who neglect to provide a child with necessities
15 to be removed from the home.

16 4. Section 232.103 is amended to allow the court to
17 provide ordinary mailed notice to parties of modification
18 hearings in child in need of assistance cases, rather than
19 requiring personal service of notice, and to allow the court
20 to dispense with notice of a child in need of assistance
21 modification hearing to a person whose whereabouts are unknown
22 and who was provided prior published notice of the
23 adjudicatory hearing. The section is also amended to
24 authorize the court to remove a child from the home of a child
25 abuser and enjoin the abuser from further contact with the
26 child, even after the child in need of assistance proceedings
27 are concluded.

28 5. Section 232.104 is amended to provide that permanent
29 placement hearings may be held whenever a child is removed
30 from the home of the custodial parent for 12 months and placed
31 anywhere, not only in foster care. Also, ordinary mailed
32 notice of the hearing is authorized instead of personal or
33 published notice and certified mail. Further, the court is
34 authorized to dispense with personal service to a person whose
35 whereabouts are unknown and who previously received published

1 notice of the child in need of assistance adjudicatory
2 hearing.

3 6. Section 232.104 is also amended to require guardians
4 appointed by the court to file an oath as required under the
5 probate code, to allow the court to enjoin a child abuser from
6 further contact with a child following a permanent placement
7 hearing, to transfer custody or primary physical placement to
8 the other parent on a long-term basis, and to require review
9 of permanent placement orders when a child is placed in family
10 foster care, not just in cases where the child is placed in
11 group foster care.

12 7. Section 232.117 is amended to allow the court the
13 option of entering a permanent placement order as an
14 alternative to termination of parental rights.

15 8. Section 232.133 is amended to provide that orders
16 directing the filing of a termination petition are not
17 appealable orders.

18 9. Section 331.653 is amended to require the sheriff to
19 provide bailiff and law enforcement services, including
20 transportation services, to associate juvenile judges and
21 hospitalization referees.

22 10. Section 602.7103 is amended to provide that associate
23 juvenile judges may issue warrants in juvenile cases.

24 11. Section 665.4 is amended to provide that associate
25 juvenile judges may punish persons committing contempt of
26 court before them in the same manner that district court
27 judges may punish persons for contempt.

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

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