

FEB 21 2001

HUMAN RESOURCES

HOUSE FILE 338
BY BAUDLER

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

A BILL FOR

1 An Act relating to child in need of assistance requirements
2 involving physical and mental examinations involving medically
3 relevant tests.

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

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HF 338

1 Section 1. Section 232.73, unnumbered paragraph 2, Code
2 2001, is amended to read as follows:

3 As used in this section and ~~section~~ in sections 232.77,
4 232.78, and 232.79, "medically relevant test" means a test
5 that produces reliable results of exposure to cocaine, heroin,
6 amphetamine, methamphetamine, or other illegal drugs, or
7 combinations or derivatives ~~thereof~~ of the illegal drugs,
8 including a drug urine screen test.

9 Sec. 2. Section 232.78, subsection 1, paragraph b, Code
10 2001, is amended to read as follows:

11 b. It appears that the child's immediate removal is
12 necessary to avoid imminent danger to the child's life or
13 health. The circumstances or conditions indicating the
14 presence of such imminent danger shall include but are not
15 limited to any of the following:

16 (1) The refusal or failure of the person responsible for
17 the care of the child to comply with the request of a peace
18 officer, juvenile court officer, or child protection worker
19 for such person to obtain and provide to the requester the
20 results of a physical or mental examination of the child. The
21 request for a physical examination of the child may specify
22 the performance of a medically relevant test.

23 (2) The refusal or failure of the person responsible for
24 the care of the child or a person present in the person's home
25 to comply with a request of a peace officer, juvenile court
26 officer, or child protection worker for such a person to
27 submit to and provide to the requester the results of a
28 medically relevant test of the person.

29 Sec. 3. Section 232.78, Code 2001, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 5A. If reasonable cause exists to believe
32 that the child or the child's parent, guardian, or custodian
33 is affected by chemical dependency, an order for a physical or
34 mental examination of the child under subsection 5 shall
35 require a medically relevant test or a chemical dependency

1 evaluation to be performed.

2 Sec. 4. Section 232.79, subsection 1, paragraph a, Code
3 2001, is amended to read as follows:

4 a. The child is in a circumstance or condition that
5 presents an imminent danger to the child's life or health.
6 The circumstances or conditions indicating the presence of
7 such imminent danger shall include but are not limited to any
8 of the following:

9 (1) The refusal or failure of the person responsible for
10 the care of the child to comply with the request of a peace
11 officer, juvenile court officer, or child protection worker
12 for such person to obtain and provide to the requester the
13 results of a physical or mental examination of the child. The
14 request for a physical examination of the child may specify
15 the performance of a medically relevant test.

16 (2) The refusal or failure of the person responsible for
17 the care of the child or a person present in the person's home
18 to comply with a request of a peace officer, juvenile court
19 officer, or child protection worker for such a person to
20 submit to and provide to the requester the results of a
21 medically relevant test of the person.

22 Sec. 5. Section 232.79, subsection 5, Code 2001, is
23 amended to read as follows:

24 5. When there has been an emergency removal or keeping of
25 a child without a court order, a physical examination of the
26 child by a licensed medical practitioner shall be performed
27 within twenty-four hours of such removal, unless the child is
28 returned to the child's home within twenty-four hours of the
29 removal. If reasonable cause exists to believe that the child
30 or the child's parent, guardian, or custodian is affected by
31 chemical dependency, the physical examination of the child
32 shall include the performance of a medically relevant test or
33 a chemical dependency evaluation.

34 Sec. 6. Section 232.98, subsection 1, unnumbered paragraph
35 1, Code 2001, is amended to read as follows:

1 Except as provided in section 232.78, subsection 5, a
2 physical or mental examination of the child may be ordered
3 only after the filing of a petition pursuant to section 232.87
4 and after a hearing to determine whether an examination is
5 necessary to determine the child's physical or mental
6 condition. If reasonable cause exists to believe that the
7 child or the child's parent, guardian, or custodian is
8 affected by chemical dependency, an order for a physical or
9 mental examination of the child shall require the performance
10 of a medically relevant test as defined in section 232.73 or a
11 chemical dependency evaluation. The court may consider
12 chemical dependency as either a physical or mental condition
13 and may consider a chemical dependency evaluation as either a
14 physical or mental examination.

15 Sec. 7. Section 232.98, subsection 2, Code 2001, is
16 amended to read as follows:

17 2. Following an adjudication that a child is a child in
18 need of assistance, the court may after a hearing order the
19 physical or mental examination of the child's parent,
20 guardian, or custodian if that person's ability to care for
21 the child is at issue. If reasonable cause exists to believe
22 that the child's parent, guardian, or custodian is affected by
23 chemical dependency, an order for a physical or mental
24 examination of the parent, guardian, or custodian shall
25 require a medically relevant test as defined in section 232.73
26 or a chemical dependency evaluation.

27 Sec. 8. Section 232.102, Code 2001, is amended by adding
28 the following new subsection:

29 NEW SUBSECTION. 13. If by a showing of clear and
30 convincing evidence the court determines the child's parent,
31 guardian, or custodian is affected by chemical dependency and
32 this chemical dependency is a contributing factor to the child
33 in need of assistance adjudication, the court shall not permit
34 the child to remain at home with the child's parent, guardian,
35 or custodian. The court may impose terms and conditions on

1 the child's parent, guardian, or custodian in accordance with
2 section 232.106 for the parent, guardian, or custodian to
3 address the chemical dependency. Until the court determines
4 the parent, guardian, or custodian is no longer affected by
5 the chemical dependency, the child shall not be subject to an
6 order under this chapter for return of the child to the
7 child's parent, guardian, or custodian and the making of
8 reasonable efforts to return the child to the child's family
9 home shall not be considered appropriate or possible.

10 Sec. 9. Section 232.107, Code 2001, is amended to read as
11 follows:

12 232.107 PARENT VISITATION.

13 If a child is removed from the child's home in accordance
14 with an order entered under this division based upon evidence
15 indicating the presence of an illegal drug in the child's body
16 or indicating that the child's parent, guardian, or custodian
17 is affected by chemical dependency and that this chemical
18 dependency is a contributing factor to the child in need of
19 assistance adjudication, unless the court finds that
20 substantial evidence exists to believe that reasonable
21 visitation or supervised visitation would cause an imminent
22 risk to the child's life or health, the order shall allow the
23 child's parent reasonable visitation or supervised visitation
24 with the child.

25 EXPLANATION

26 This bill relates to child in need of assistance (CINA)
27 requirements involving physical and mental examinations
28 involving medically relevant tests.

29 Code section 232.73, defining the term "medically relevant
30 test" for the presence of illegal drugs, is amended to apply
31 to Code section 232.78, relating to temporary removal of a
32 child pursuant to an ex parte court order, and Code section
33 232.79, relating to custody of a child without a court order.

34 Code sections 232.78 and 232.79 are amended to provide that
35 conditions or circumstances indicating the presence of

1 imminent danger to a child's health or life include the
2 refusal or failure of the person responsible for the care of a
3 child to obtain and provide the results of a requested
4 physical or examination of the child or for that person or
5 another person present in the person's home to submit to and
6 provide the results of a requested medically relevant test of
7 such person. The persons authorized to make the request and
8 to receive the results include a peace officer, juvenile court
9 officer, or department of human services child protection
10 worker.

11 Code sections 232.78, 232.79, and 232.98 currently provide
12 for the physical or mental examination of a child who is
13 subject to a court order. Under the bill, if reasonable cause
14 exists to believe that the child or the child's parent,
15 guardian, or custodian is affected by chemical dependency, the
16 examination of the child must include a medically relevant
17 test or a chemical dependency evaluation. Under current law
18 in Code section 232.98, after a CINA adjudication, the court
19 may order a physical or mental examination of the child's
20 parent, guardian, or custodian if the person's ability to care
21 for the child is at issue. If reasonable cause exists to
22 believe that the child or the child's parent, guardian, or
23 custodian is affected by chemical dependency, the order must
24 require a medically relevant test or a chemical dependency
25 evaluation.

26 Code section 232.102, relating to dispositions following a
27 CINA adjudication, is amended. The bill provides that if
28 evidence exists that the child's parent, guardian, or
29 custodian is affected by chemical dependency and that the
30 dependency is a contributing factor to the CINA adjudication,
31 the court is prohibited from allowing the child to remain at
32 home with the parent, guardian, or custodian. The court is
33 authorized to impose terms and conditions for the parent,
34 guardian, or custodian to address the chemical dependency.
35 Until the court determines that the parent, guardian, or

1 custodian is no longer affected by the chemical dependency,
2 the child cannot be ordered to return home and requirements
3 for making reasonable efforts to preserve and unify the family
4 are not to be considered appropriate or possible.
5 Code section 232.107, relating to parent visitation of a
6 child who is removed from the home due to evidence indicating
7 the presence of an illegal drug in the child's body, is
8 amended. The bill expands the scope of the law to also
9 include a child removed due to evidence that the child's
10 parent, guardian, or custodian is affected by chemical
11 dependency and this dependency is a contributing factor to the
12 CINA adjudication.

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