Senate Study Bill 3141 - Introduced

SEN	TE FILE
ВУ	(PROPOSED COMMITTEE
	ON JUDICIARY BILL BY
	CHAIRPERSON KREIMAN)

A BILL FOR

- 1 An Act relating to transfer of guardianship for a child in need
- 2 of assistance to the probate court.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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- 1 Section 1. Section 232.104, subsection 7, Code 2009, is 2 amended to read as follows:
- 3 7. a. Following an initial permanency hearing and the
- 4 entry of a permanency order which places a child in the custody
- 5 or guardianship of another person or agency, the court shall
- 6 retain jurisdiction and annually review the order to ascertain
- 7 whether the best interest of the child is being served. When
- 8 the order places the child in the custody of the department
- 9 for the purpose of long-term foster care placement in a
- 10 facility, the review shall be in a hearing that shall not be
- ll waived or continued beyond twelve months after the initial
- 12 permanency hearing or the last permanency review hearing. Any
- 13 modification shall be accomplished through a hearing procedure
- 14 following reasonable notice. During the hearing, all relevant
- 15 and material evidence shall be admitted and procedural due
- 16 process shall be provided to all parties.
- 17 b. In lieu of the procedures specified in paragraph "a",
- 18 the court may close the child in need of assistance case by
- 19 transferring jurisdiction over the child's guardianship to the
- 20 probate court. Before transferring jurisdiction, the court
- 21 shall direct the probate clerk to issue letters of appointment
- 22 for guardianship and docket the case in probate.
- 23 Sec. 2. Section 633.559, Code 2009, is amended to read as
- 24 follows:
- 25 633.559 Preference as to appointment of guardian.
- 26 The Except for a minor child for whom the court's
- 27 jurisdiction over the child's guardianship was established
- 28 pursuant to transfer of the child's case in accordance with
- 29 section 232.104, the parents of a minor child, or either of
- 30 them, if qualified and suitable, shall be preferred over all
- 31 others for appointment as guardian. Preference shall then be
- 32 given to any person, if qualified and suitable, nominated as
- 33 guardian for a minor child by a will executed by the parent
- 34 having custody of a minor child, and any qualified and suitable
- 35 person requested by a minor fourteen years of age or older, or

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- 1 by standby petition executed by a person having physical and
- 2 legal custody of a minor. Subject to these preferences, the
- 3 court shall appoint as guardian a qualified and suitable person
- 4 who is willing to serve in that capacity.
- 5 Sec. 3. NEW SECTION. 633.563 Child in need of assistance
- 6 cases closing guardianship.
- 7 If the court appointed a guardian for a minor child for
- 8 whom the court's jurisdiction over the child's quardianship
- 9 was established pursuant to transfer of the child's case in
- 10 accordance with section 232.104, the court shall not enter
- ll an order closing the quardianship before the child becomes
- 12 age eighteen unless the court finds by clear and convincing
- 13 evidence that the best interests of the child warrant a return
- 14 of custody to the child's parent.
- 15 EXPLANATION
- 16 This bill relates to transfer of guardianship for a child in
- 17 need of assistance to the probate court.
- 18 Code section 232.104, relating to permanency hearings
- 19 for children in need of assistance who are subject to an
- 20 out-of-home placement order entered by the juvenile court, is
- 21 amended. Under current law, once there has been an initial
- 22 permanency hearing which places a child in the custody or
- 23 quardianship of another person or agency, the juvenile
- 24 court retains jurisdiction and annually reviews the order to
- 25 ascertain whether the best interest of the child is being
- 26 served. The bill allows the juvenile court instead to close
- 27 the case by transferring jurisdiction over the quardianship of
- 28 the child to the probate court.
- 29 Before transferring jurisdiction, the court is required to
- 30 direct the probate clerk to issue letters of appointment for
- 31 guardianship and docket the case in probate.
- 32 The bill applies an exception to current probate law in
- 33 Code section 633.559 which otherwise establishes an overall
- 34 preference for child guardianships to be with the child's
- 35 parent. Under the bill, the preference does not apply to

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- 1 transferred child in need of assistance cases.
- New Code section 633.563 prohibits the probate court from
- 3 entering an order closing a transferred child in need of
- 4 assistance guardianship before the child becomes age 18 unless
- 5 the court finds by clear and convincing evidence that the best
- 6 interests of the child warrant a return of custody to the
- 7 child's parent.