

House Study Bill 88 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ANDERSON)

A BILL FOR

1 An Act relating to county attorney duties when representing the
2 department of human services in juvenile court.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.37, subsection 1, Code 2011, is
2 amended to read as follows:

3 1. After a petition has been filed the court shall set
4 a time for an adjudicatory hearing and unless the ~~parties~~
5 persons named in subsection 2 voluntarily appear, shall issue
6 a summons requiring the child to appear before the court at a
7 time and place stated and requiring the person who has custody
8 or control of the child to appear before the court and to bring
9 the child with the person at that time. The summons shall
10 attach a copy of the petition and shall give notification of
11 the right to counsel provided for in section 232.11.

12 Sec. 2. Section 232.71C, subsection 1, Code 2011, is amended
13 to read as follows:

14 1. If, upon completion of an assessment performed under
15 section 232.71B, the department determines that the best
16 interests of the child require juvenile court action, the
17 department shall act appropriately to initiate the action.
18 If at any time during the assessment process the department
19 believes court action is necessary to safeguard a child, the
20 department shall act appropriately to initiate the action. ~~The~~
21 ~~county attorney shall assist the department as provided under~~
22 ~~section 232.90, subsection 2.~~

23 Sec. 3. Section 232.88, Code 2011, is amended to read as
24 follows:

25 **232.88 Summons, notice, subpoenas, and service.**

26 After a petition has been filed, the court shall issue and
27 serve summons, subpoenas, and other process in the same manner
28 as for adjudicatory hearings in cases of juvenile delinquency
29 as provided in section 232.37. Reasonable notice shall be
30 provided to the persons required to be provided notice under
31 section 232.37, except that notice shall be waived regarding
32 a person who was notified of the adjudicatory hearing and who
33 failed to appear. In addition, reasonable notice for any
34 hearing under this division shall be provided to the department
35 of human services, and the agency, facility, institution,

1 or person, including a foster parent, relative, or other
2 individual providing preadoptive care, with whom a child has
3 been placed.

4 Sec. 4. Section 232.90, Code 2011, is amended to read as
5 follows:

6 **232.90 Duties of county attorney.**

7 1. As used in this section, "state" means the general
8 interest held by the people in the health, safety, welfare, and
9 protection of all children living in this state.

10 ~~1. 2.~~ The county attorney shall represent the state in
11 proceedings arising from a petition filed under this division
12 and shall present evidence in support of the petition. The
13 county attorney shall be present at proceedings initiated by
14 petition under this division filed by an intake officer or the
15 county attorney, or if a party to the proceedings contests the
16 proceedings, or if the court determines there is a conflict of
17 interest between the child and the child's parent, guardian, or
18 custodian or if there are contested issues before the court.

19 ~~2. The county attorney shall represent the department in~~
20 ~~proceedings arising under this division. However, if there is~~
21 ~~disagreement between the department and the county attorney~~
22 ~~regarding the appropriate action to be taken, the department~~
23 ~~may request to be represented by the attorney general in place~~
24 ~~of the county attorney.~~

25 Sec. 5. Section 232.111, subsection 4, paragraph b,
26 subparagraph (3), Code 2011, is amended to read as follows:

27 (3) ~~Custodian~~ Legal custodian of the child.

28 Sec. 6. Section 232.112, subsection 1, Code 2011, is amended
29 to read as follows:

30 1. Persons listed in section 232.111, subsection 4, other
31 than the department of human services, shall be necessary
32 parties to a termination of parent-child relationship
33 proceeding and are entitled to receive notice and an
34 opportunity to be heard, except that notice may be dispensed
35 with in the case of any such person whose name or whereabouts

1 the court determines is unknown and cannot be ascertained by
2 reasonably diligent search. In addition to the persons who are
3 necessary parties who may be parties under section 232.111,
4 notice for any hearing under this division shall be provided to
5 the department of human services, the child's foster parent,
6 an individual providing preadoptive care for the child, or a
7 relative providing care for the child.

8 Sec. 7. Section 232.114, Code 2011, is amended to read as
9 follows:

10 **232.114 Duties of county attorney.**

11 1. As used in this section, "state" means the general
12 interest held by the people in the health, safety, welfare, and
13 protection of all children living in this state.

14 ~~1. 2.~~ Upon the filing of a petition the county attorney
15 shall represent the state in all adversary proceedings arising
16 under this division and shall present evidence in support of
17 the petition.

18 ~~2. The county attorney shall represent the department in~~
19 ~~proceedings arising under this division. However, if there is~~
20 ~~disagreement between the department and the county attorney~~
21 ~~regarding the appropriate action to be taken, the department~~
22 ~~may request to be represented by the attorney general in place~~
23 ~~of the county attorney.~~

24 Sec. 8. Section 232.180, Code 2011, is amended to read as
25 follows:

26 **232.180 Duties of county attorney.**

27 1. As used in this section, "state" means the general
28 interest held by the people in the health, safety, welfare, and
29 protection of all children living in this state.

30 ~~2.~~ Upon the filing of a petition and the request of the
31 department, the county attorney shall represent the state in
32 all adversary proceedings arising under this division and shall
33 present evidence in support of the petition as provided under
34 section 232.90.

35

EXPLANATION

1 This bill relates to county attorney duties when
2 representing the department of human services in juvenile
3 court.

4 Code section 232.37 is amended to provide that unless the
5 known parents, guardians or legal custodians of a child, the
6 child, and the child's guardian ad litem voluntarily appear for
7 an adjudicatory hearing to determine if the child has committed
8 a delinquent act, the court shall issue a summons requiring the
9 child to appear before the court at a time and place stated and
10 requiring the person who has custody or control of the child to
11 appear before the court and to bring the child with the person
12 at the time of the hearing. Code section 232.37(5) provides
13 that if a person personally served with a summons fails without
14 reasonable cause to appear or to bring the child, the person
15 may be held in contempt of court or the court may issue an order
16 for the arrest of the person or take the child into custody.

17 The amendment to Code section 232.37 affects a notice for
18 waiver hearings in Code section 232.45(3), a notice and summons
19 issued for hearings to change dispositional orders in Code
20 section 232.54(2), and a notice and summons issued for child in
21 need of assistance proceedings in Code section 232.88.

22 Code section 232.71C is amended to strike a provision
23 requiring the county attorney to assist the department of human
24 services in a child in need of assistance proceeding.

25 Code section 232.88 is amended to add the department of human
26 services to the list of parties required to be provided notice
27 of a child in need of assistance proceeding.

28 Code section 232.90 is amended to require the county
29 attorney to represent the state in a child in need of
30 assistance proceeding and strikes a provision requiring the
31 county attorney to represent the department of human services
32 in such a proceeding. The amendment to Code section 232.90
33 defines "state" to mean the general interest held by the people
34 in the health, safety, welfare, and protection of all children
35 living in the state. Code section 232.90 is also amended to

1 strike a provision allowing the attorney general to represent
2 the department of human services if a dispute arises between
3 the county attorney and the department of human services in a
4 child in need of assistance proceeding.

5 Code section 232.111 is amended to require a petition
6 for termination of parental rights to contain the name and
7 residence of the "legal custodian" of the child. Current law
8 requires the petition for termination of parental rights to
9 contain the name and residence of the "custodian" of the child.

10 Code section 232.112 is amended to strike a provision
11 requiring the participation of the department of human services
12 in a termination of parental rights proceeding.

13 Code section 232.114 is amended to require a county attorney
14 to represent the state in a termination of parental rights
15 proceeding and strikes a provision requiring a county attorney
16 to represent the department of human services in such a
17 proceeding. The amendment to Code section 232.114 defines
18 "state" to mean the general interest held by the people in the
19 health, safety, welfare, and protection of all children living
20 in the state. The amendment to Code section 232.114 also
21 strikes a provision allowing the attorney general to represent
22 the department of human services if a dispute arises between
23 the county attorney and the department of human services in a
24 termination of parental rights proceeding.

25 Code section 232.180 is amended to require the county
26 attorney to represent the state in a voluntary foster care
27 placement proceeding and strikes a provision requiring the
28 county attorney to represent the department of human services.
29 The amendment to Code section 232.180 defines "state" to mean
30 the general interest held by the people in the health, safety,
31 welfare, and protection of all children living in the state.