

Senate Study Bill 1099 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOGG)

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 2013, 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 2013, 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 232.87, subsection 2, Code 2013, is amended
24 to read as follows:

25 2. A petition may be filed by the department of human
26 services, juvenile court officer, or county attorney. In
27 determining whether a petition is to be filed, the department
28 or a juvenile court officer may consult with the county
29 attorney. If the county attorney declines to file a petition
30 requested by the department or juvenile court officer, the
31 department or juvenile court officer may file the petition
32 pursuant to this section, and may request that the attorney
33 general represent the state in place of the county attorney.

34 Sec. 4. Section 232.88, Code 2013, is amended to read as
35 follows:

1 **232.88 Summons, notice, subpoenas, and service.**

2 After a petition has been filed, the court shall issue and
3 serve summons, subpoenas, and other process in the same manner
4 as for adjudicatory hearings in cases of juvenile delinquency
5 as provided in section 232.37. Reasonable notice shall be
6 provided to the persons required to be provided notice under
7 section 232.37, except that notice shall be waived regarding
8 a person who was notified of the adjudicatory hearing and who
9 failed to appear. In addition, reasonable notice for any
10 hearing under this division shall be provided to the department
11 of human services, and the agency, facility, institution,
12 or person, including a foster parent, relative, or other
13 individual providing preadoptive care, with whom a child has
14 been placed.

15 Sec. 5. Section 232.90, Code 2013, is amended to read as
16 follows:

17 **232.90 Duties of county attorney.**

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

21 ~~1. 2.~~ The county attorney shall represent the state in
22 proceedings arising from a petition filed under this division
23 ~~and shall present evidence in support of the petition.~~ The
24 county attorney shall be present at proceedings initiated by
25 petition under this division filed by an intake officer or the
26 county attorney, or if a party to the proceedings contests the
27 proceedings, or if the court determines there is a conflict of
28 interest between the child and the child's parent, guardian, or
29 custodian or if there are contested issues before the court.

30 ~~2. The county attorney shall represent the department in~~
31 ~~proceedings arising under this division. However, if there is~~
32 ~~disagreement between the department and the county attorney~~
33 ~~regarding the appropriate action to be taken, the department~~
34 ~~may request to be represented by the attorney general in place~~
35 ~~of the county attorney.~~

1 3. At the dispositional hearing or any subsequent
2 modification hearing held pursuant to this division, the county
3 attorney shall present to the court evidence regarding the
4 availability, fiscal impact, or fiscal limitations of any
5 placement for the child that is under consideration by the
6 court, if such evidence is provided by the department to the
7 county attorney.

8 4. In any proceeding under this division, the county
9 attorney shall consult with the department to ensure
10 compliance with all applicable state and federal laws regarding
11 permanency.

12 Sec. 6. Section 232.102, subsection 1, paragraph a,
13 unnumbered paragraph 1, Code 2013, is amended to read as
14 follows:

15 After a dispositional hearing and consideration of
16 all information provided by the department regarding the
17 availability, fiscal impact, or fiscal limitations to placement
18 for the child, the court may enter an order transferring the
19 legal custody of the child to one of the following for purposes
20 of placement:

21 Sec. 7. Section 232.104, subsection 1, Code 2013, is amended
22 by adding the following new paragraph:

23 NEW PARAGRAPH. d. If an initial permanency hearing is
24 not timely scheduled by the court, the department may seek
25 assistance of the county attorney in requesting that the court
26 set a timely permanency hearing.

27 Sec. 8. Section 232.111, subsection 1, Code 2013, is amended
28 to read as follows:

29 1. A child's guardian, guardian ad litem, or custodian,
30 the department of human services, a juvenile court officer, or
31 the county attorney may file a petition for termination of the
32 parent-child relationship and parental rights with respect to a
33 child. In determining whether a petition is to be filed, the
34 department or a juvenile court officer may consult with the
35 county attorney. If the county attorney declines to file a

1 petition requested by the department or juvenile court officer,
2 the department or juvenile court officer may file the petition
3 pursuant to this section, and may request that the attorney
4 general represent the state in place of the county attorney.

5 Sec. 9. Section 232.111, subsection 4, paragraph b,
6 subparagraph (3), Code 2013, is amended to read as follows:

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

8 Sec. 10. Section 232.112, subsection 1, Code 2013, is
9 amended to read as follows:

10 1. Persons listed in section 232.111, subsection 4, other
11 than the department of human services, shall be necessary
12 parties to a termination of parent-child relationship
13 proceeding and are entitled to receive notice and an
14 opportunity to be heard, except that notice may be dispensed
15 with in the case of any such person whose name or whereabouts
16 the court determines is unknown and cannot be ascertained by
17 reasonably diligent search. In addition to the persons who are
18 necessary parties who may be parties under section 232.111,
19 notice for any hearing under this division shall be provided to
20 the department of human services, the child's foster parent,
21 an individual providing preadoptive care for the child, or a
22 relative providing care for the child.

23 Sec. 11. Section 232.114, Code 2013, is amended to read as
24 follows:

25 **232.114 Duties of county attorney.**

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

29 ~~1.~~ 2. Upon the filing of a petition the county attorney
30 shall represent the state in all adversary proceedings arising
31 under this division ~~and shall present evidence in support of~~
32 ~~the petition.~~

33 ~~2. The county attorney shall represent the department in~~
34 ~~proceedings arising under this division. However, if there is~~
35 ~~disagreement between the department and the county attorney~~

1 ~~regarding the appropriate action to be taken, the department~~
2 ~~may request to be represented by the attorney general in place~~
3 ~~of the county attorney.~~

4 Sec. 12. Section 232.180, Code 2013, is amended to read as
5 follows:

6 **232.180 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 2. Upon the filing of a petition and the request of the
11 department, the county attorney shall represent the state in
12 all adversary proceedings arising under this division and shall
13 present evidence in support of the petition as provided under
14 section 232.90.

15 EXPLANATION

16 This bill relates to county attorney duties when
17 representing the department of human services in juvenile
18 court.

19 Code section 232.37 is amended to provide that unless the
20 known parents, guardians or legal custodians of a child, the
21 child, and the child's guardian ad litem voluntarily appear for
22 an adjudicatory hearing to determine if the child has committed
23 a delinquent act, the court shall issue a summons requiring the
24 child to appear before the court at a time and place stated and
25 requiring the person who has custody or control of the child to
26 appear before the court and to bring the child with the person
27 at the time of the hearing. Code section 232.37(5) provides
28 that if a person personally served with a summons fails without
29 reasonable cause to appear or to bring the child, the person
30 may be held in contempt of court or the court may issue an order
31 for the arrest of the person or take the child into custody.

32 The amendment to Code section 232.37 affects a notice for
33 waiver hearings in Code section 232.45(3), a notice and summons
34 issued for hearings to change dispositional orders in Code
35 section 232.54(2), and a notice and summons issued for child in

1 need of assistance proceedings in Code section 232.88.

2 Code section 232.71C is amended to provide that the county
3 attorney shall assist the department of human services in a
4 child in need of assistance proceeding, but strikes a reference
5 requiring the county attorney to represent the department in
6 such proceedings.

7 Code section 232.87 is amended by adding a provision
8 providing that the department of human services or a juvenile
9 court officer may consult with the county attorney to determine
10 whether a child in need of assistance petition should be filed.
11 Under the bill, if the county attorney declines to file such a
12 petition, the department of human services or juvenile court
13 officer may file the petition, and request the attorney general
14 represent the state in place of the county attorney.

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

18 Code section 232.90 is amended to require the county
19 attorney to represent the state in a child in need of
20 assistance proceeding and strikes a provision requiring the
21 county attorney to represent the department of human services
22 in such a proceeding. The amendment to Code section 232.90
23 defines "state" to mean the general interest held by the people
24 in the health, safety, welfare, and protection of all children
25 living in the state. Code section 232.90 is amended to strike
26 a provision allowing the attorney general to represent the
27 department of human services if a dispute arises between the
28 county attorney and the department of human services in a child
29 in need of assistance proceeding.

30 Code section 232.90 is also amended to provide that at
31 a dispositional hearing of a child in need of assistance
32 proceeding or any subsequent modification, the county attorney
33 shall present evidence to the court regarding the availability,
34 fiscal impact, or fiscal limitations of any placement being
35 considered for the child, if such evidence is provided by the

1 department of human services to the county attorney. Code
2 section 232.90 is also amended to require the county attorney
3 to consult with the department to ensure compliance with all
4 applicable state and federal laws regarding permanency for a
5 child adjudicated a child in need of assistance.

6 Code section 232.104 is amended to permit the department of
7 human services to seek assistance of the county attorney in
8 setting a timely permanency hearing for a child adjudicated a
9 child in need of assistance.

10 Code section 232.111 is amended to require a petition
11 for termination of parental rights to contain the name and
12 residence of the "legal custodian" of the child. Current law
13 requires the petition for termination of parental rights to
14 contain the name and residence of the "custodian" of the child.

15 Code section 232.111 is also amended by adding a provision
16 providing that the department of human services or a juvenile
17 court officer may consult with the county attorney to determine
18 whether a termination of parental rights petition should be
19 filed. Under the bill, if the county attorney declines to file
20 such a petition, the department of human services or juvenile
21 court officer may file the petition and request the attorney
22 general represent the state in place of the county attorney.

23 Code section 232.112 is amended to strike a provision
24 requiring the participation of the department of human services
25 in a termination of parental rights proceeding.

26 Code section 232.114 is amended to require a county attorney
27 to represent the state in a termination of parental rights
28 proceeding and strikes a provision requiring a county attorney
29 to represent the department of human services in such a
30 proceeding. The amendment to Code section 232.114 defines
31 "state" to mean the general interest held by the people in the
32 health, safety, welfare, and protection of all children living
33 in the state. The amendment to Code section 232.114 also
34 strikes a provision allowing the attorney general to represent
35 the department of human services if a dispute arises between

1 the county attorney and the department of human services in a
2 termination of parental rights proceeding.

3 Code section 232.180 is amended to require the county
4 attorney to represent the state in a voluntary foster care
5 placement proceeding and strikes a provision requiring the
6 county attorney to represent the department of human services.
7 The amendment to Code section 232.180 defines "state" to mean
8 the general interest held by the people in the health, safety,
9 welfare, and protection of all children living in the state.