

**Senate File 111 - Introduced**

SENATE FILE 111

BY EDLER

**A BILL FOR**

1 An Act providing for the reinstatement of parental rights of a  
2 former parent under certain circumstances.

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

1 Section 1. NEW SECTION. 232.121 Reinstatement of parental  
2 rights.

3 1. A child, the child's guardian ad litem, the department,  
4 or an agency or person to whom guardianship and custody of the  
5 child has been transferred following termination of parental  
6 rights of a parent under section 232.117, may petition the  
7 juvenile court to reinstate the parental rights of the child's  
8 former parent if all of the following circumstances exist,  
9 making the child an eligible child for purposes of this  
10 section:

11 a. The child was previously found to be a child in need of  
12 assistance under this chapter.

13 b. The child has not achieved the goals of the child's case  
14 permanency plan, and is not likely to do so.

15 c. The child does not have a permanent placement or a  
16 planned permanent placement, is not subject to a permanent  
17 guardianship, is not in an adoptive placement, is not likely  
18 to be adopted within a reasonable period of time, and other  
19 permanency options have been exhausted.

20 d. The child's former parent's parental rights were  
21 terminated in a proceeding under this chapter, but the  
22 termination of the parent-child relationship was not based on a  
23 finding of sexual abuse, a near child fatality, a suspicious  
24 child fatality, or an incident of egregious abuse or neglect  
25 against a child as evidenced by the aggravated circumstances  
26 specified pursuant to section 232.102, subsection 12,  
27 paragraphs "d" through "g".

28 e. Two years have passed since the final order of  
29 termination of parental rights was entered.

30 f. The child is at least twelve years of age when the  
31 petition is filed, or is younger than twelve years of age when  
32 the petition is filed but is part of a sibling group including  
33 a child for whom reinstatement is being sought and that child  
34 meets the other conditions for reinstatement.

35 2. a. If a child meets the criteria of an eligible

1 child under subsection 1, the child's guardian ad litem,  
2 the department, or an agency or person to whom guardianship  
3 and custody of the child has been transferred under section  
4 232.117, shall notify the child of the child's right to  
5 petition the court for the reinstatement.

6     *b.* If the former parent whose rights were previously  
7 terminated contacts the child's guardian ad litem, the  
8 department, or the agency or other person to whom guardianship  
9 and custody of the child has been transferred under section  
10 232.117, and the child is eligible pursuant to subsection 1,  
11 the guardian ad litem, department, agency, or other person  
12 shall notify the eligible child of the child's right to  
13 petition the court for the reinstatement.

14     3. If a child seeking to petition for reinstatement of  
15 parental rights under this section does not have a guardian  
16 ad litem or attorney, the court shall appoint a guardian ad  
17 litem and counsel for the child at no cost to the child. If a  
18 guardian ad litem has previously been appointed for the child  
19 in a proceeding under this chapter, the same person may serve  
20 both as the child's counsel and as guardian ad litem. However,  
21 the court may appoint a separate guardian ad litem if the same  
22 person cannot properly represent the legal interests of the  
23 child as legal counsel and also represent the best interest of  
24 the child as guardian ad litem.

25     4. The petition must be signed by the child unless good  
26 cause is shown as to why the child is unable to do so. The  
27 former parent for whom reinstatement of parental rights is  
28 sought must consent in writing to the petition.

29     5. The court shall hold a threshold hearing to consider  
30 the former parent's apparent interest in the reinstatement of  
31 parental rights. At a minimum, the threshold hearing shall  
32 determine all of the following:

33     *a.* Whether the former parent has remedied the former  
34 parent's deficits as provided in the record of the prior  
35 termination proceedings and prior termination order.

1     *b.* Whether the former parent has participated in an  
2 assessment based on evidence-based criteria that supports the  
3 reinstatement of the parent-child relationship as being in the  
4 best interest of the child.

5     6. If, after a threshold hearing to consider the former  
6 parent's apparent fitness and interest in the reinstatement  
7 of parental rights, the court finds by a preponderance of the  
8 evidence that the best interest of the child may be served by  
9 the reinstatement of parental rights, the court shall order  
10 that a hearing on the merits of the petition be held.

11     7. Before a hearing is held on the merits of the petition,  
12 notice shall be provided to the child's guardian ad litem, the  
13 department, the agency or other person to whom guardianship  
14 and custody of the child has been transferred under section  
15 232.117, the child's attorney, the child, the child's former  
16 parent whose parental rights are the subject of the petition,  
17 any parent whose rights have not been terminated, the child's  
18 current foster parent, the child's relative caregiver, and the  
19 child's tribe, if applicable. Notice shall be provided in the  
20 same manner as in section 232.37.

21     8. The court shall conditionally grant the petition if the  
22 court finds by clear and convincing evidence that the child has  
23 not been adopted, has not achieved the goals of the child's  
24 case permanency plan, and is not imminently likely to achieve  
25 such goals, and that reinstatement of parental rights is in the  
26 child's best interest. In determining whether reinstatement is  
27 in the child's best interest the court shall consider, but is  
28 not limited to considering, all of the following:

29     *a.* Whether the former parent whose rights are to be  
30 reinstated is a fit parent and has remedied the former parent's  
31 deficits as provided in the record of the prior termination  
32 proceedings and prior termination order.

33     *b.* Whether the former parent whose rights are to be  
34 reinstated understands the legal obligations, rights, and  
35 consequences of the reinstatement of parental rights and is

1 willing and able to accept such obligations, rights, and  
2 consequences.

3 *c.* The age and maturity of the child, and the ability of the  
4 child to express the child's preference.

5 *d.* Whether the reinstatement of parental rights will present  
6 a risk to the child's health, welfare, or safety.

7 *e.* Other material changes in circumstances, if any, that may  
8 have occurred which warrant the granting of the petition.

9 9. In determining whether the child has or has not achieved  
10 the goals of the child's case permanency plan or whether the  
11 child is imminently likely to achieve the goals of the child's  
12 case permanency plan, the department, or the agency or other  
13 person to whom guardianship and custody of the child has been  
14 transferred under section 232.117, shall provide the court, and  
15 the court shall review, information related to any efforts to  
16 achieve the goals of the case permanency plan including efforts  
17 to achieve adoption or a permanent placement.

18 10. *a.* If the court conditionally grants the petition under  
19 subsection 8, the case shall be continued for six months and a  
20 temporary order of reinstatement entered. During this period,  
21 the child shall be placed in the custody of the former parent.  
22 The department or agency shall develop a case permanency plan  
23 for the child reflecting reunification and shall provide  
24 transition services to the family, as appropriate.

25 *b.* If the child must be removed from the former parent due  
26 to allegations of abuse or neglect prior to the expiration  
27 of the conditional six-month period, the court shall dismiss  
28 the petition for reinstatement of parental rights if the court  
29 finds the allegations have been proven by a preponderance of  
30 the evidence.

31 11. At the end of the six-month period, the court shall hold  
32 a hearing and order one of the following:

33 *a.* If the placement with the former parent has been  
34 successful, the court shall enter a final order of  
35 reinstatement of parental rights which shall restore all

1 rights, powers, privileges, immunities, duties, and obligations  
2 of the parent as to the child, including those relating  
3 to custody, control, and support of the child. The court  
4 shall vacate the dispositional order in the child in need  
5 of assistance proceeding and direct the clerk's office to  
6 provide a certified copy of the final order of reinstatement of  
7 parental rights to the parent at no cost.

8     *b.* If the placement with the former parent has not been  
9 successful, the court shall dismiss the petition and the  
10 child's case permanency plan shall remain in effect.

11     12. A proceeding to reinstate parental rights is a separate  
12 action from the termination of parental rights proceeding  
13 and does not vacate or otherwise affect the validity of the  
14 original termination of parental rights order. An order  
15 granted under this section reinstates the former parent's  
16 rights to the child. The reinstatement is a recognition that  
17 the situation of the parent and child has changed since the  
18 time of the termination of parental rights and reunification  
19 is now appropriate.

20     13. A parent whose rights are reinstated under this  
21 section shall not be liable for any child support owed to the  
22 department or costs of other services provided to a child for  
23 the time period from the date of termination of parental rights  
24 to the date parental rights are reinstated.

25     14. This section shall apply to any eligible child who is  
26 under the jurisdiction of the juvenile court at the time of the  
27 hearing regardless of the date parental rights were terminated.

28     15. The state, the department, or an agency or other person  
29 or an employee of such entities is not liable for civil damages  
30 resulting from any act or omission in the provision of services  
31 under this section unless the act or omission constitutes gross  
32 negligence. This section does not create any duty and shall  
33 not be construed to create a duty where none exists. This  
34 section does not create a cause of action against the state,  
35 the department, an agency, another person, or the employees of

1 such entities concerning the original termination.

2 EXPLANATION

3 The inclusion of this explanation does not constitute agreement with  
4 the explanation's substance by the members of the general assembly.

5 This bill provides for the reinstatement of parental rights  
6 following the granting of a termination of parental rights  
7 order under certain circumstances. The bill provides that a  
8 child, the child's guardian ad litem (GAL), the department  
9 of human services (DHS), or an agency or person to whom  
10 guardianship and custody of the child has been transferred  
11 following termination of the parental rights of a parent, may  
12 petition the juvenile court (court) to reinstate the previously  
13 terminated parental rights of the child's former parent  
14 if certain circumstances exist, making the child eligible  
15 to petition the court. The circumstances that must exist  
16 are: the child was previously found to be a child in need of  
17 assistance; the child has not achieved the goals of the child's  
18 case permanency plan, and is not likely to do so; the child  
19 does not have a permanent placement or a planned permanent  
20 placement, is not subject to a permanent guardianship, is not  
21 in an adoptive placement, is not likely to be adopted within a  
22 reasonable period of time, and other permanency options have  
23 been exhausted; the child's former parent's parental rights  
24 were terminated, but the termination was not based on a finding  
25 of sexual abuse, a near child fatality, a suspicious child  
26 fatality, or an incident of egregious abuse or neglect evidence  
27 by specified aggravated circumstances; two years have passed  
28 since the final order of termination of parental rights was  
29 entered; and the child is at least 12 years of age when the  
30 petition is filed, or is younger than 12 years of age when the  
31 petition is filed but is part of a sibling group.

32 If a child meets the criteria of an eligible child, the  
33 child's GAL, DHS, or an agency or person to whom guardianship  
34 and custody of the child has been transferred, is required to  
35 notify the child of the child's right to petition the court for

1 the reinstatement. Additionally, if the former parent whose  
2 rights have been previously terminated contacts the child's  
3 GAL, DHS, or the agency or other person, and the child meets  
4 the criteria of an eligible child, the GAL, DHS, or the agency  
5 or other person is required to notify the eligible child of the  
6 child's right to petition the court for the reinstatement.

7 The bill provides for the appointment of a GAL and attorney  
8 for the child if the child does not already have a GAL and  
9 attorney, at no cost to the child.

10 The petition must be signed by the child, unless good cause  
11 is shown as to why the child is unable to do so. The former  
12 parent for whom reinstatement of parental rights is sought must  
13 consent in writing to the petition.

14 The court shall hold a threshold hearing to consider the  
15 former parent's apparent fitness and interest in reinstatement  
16 of parental rights. At a minimum, the threshold hearing shall  
17 determine whether the former parent has remedied the former  
18 parent's deficits as provided in the record of the prior  
19 termination proceedings and prior termination order and whether  
20 the former parent has participated in an assessment based on  
21 evidence-based criteria that supports the reinstatement of  
22 the parent-child relationship as being in the best interest  
23 of the child. If the court finds by a preponderance of the  
24 evidence that the best interest of the child may be served by  
25 the reinstatement of parental rights, the court shall order  
26 that a hearing on the merits of the petition be held. The bill  
27 provides for notice to certain parties prior to the hearing  
28 on the merits of the petition. Following the hearing on the  
29 merits of the petition, the court shall conditionally grant the  
30 petition if the court finds by clear and convincing evidence  
31 that the child has not been adopted, has not achieved the goals  
32 of the child's case permanency plan, and is not imminently  
33 likely to achieve such goals, and that the reinstatement  
34 of parental rights is in the child's best interest. The  
35 bill specifies considerations for the court in determining



1 whether reinstatement is in the child's best interest and in  
2 determining whether the child has or has not achieved the goals  
3 of the child's case permanency plan or is imminently likely  
4 to achieve such goals. If the court conditionally grants the  
5 petition, the case is continued for six months and a temporary  
6 order of reinstatement is entered. During the six-month  
7 period, the child is placed in the custody of the former parent  
8 and DHS or an agency shall develop a case permanency plan for  
9 the child reflecting reunification and provide transition  
10 services to the family, as appropriate. If, during the  
11 six-month period, the child must be removed from the former  
12 parent due to allegations of abuse or neglect, the court shall  
13 dismiss the petition for reinstatement of parental rights if  
14 the allegations are proven by a preponderance of the evidence.

15 At the end of the six-month period, the court is required  
16 to hold a hearing and make certain determinations and  
17 dispositions. If the placement with the former parent has  
18 been successful, the court shall enter a final order of  
19 reinstatement of parental rights which shall restore all  
20 rights, powers, privileges, immunities, duties, and obligations  
21 of the parent as to the child, including those relating to  
22 custody, control, and support of the child. Additionally, the  
23 court shall vacate the dispositional order in the child in  
24 need of assistance proceeding and direct the clerk's office to  
25 provide a certified copy of the final order of reinstatement  
26 of parental rights to the parent at no cost. If the placement  
27 with the former parent has not been successful, the court shall  
28 dismiss the petition and the child's case permanency plan shall  
29 remain in effect.

30 The bill provides that a proceeding to reinstate parental  
31 rights is a separate action from the termination of parental  
32 rights proceeding and does not vacate or otherwise affect the  
33 validity of the original termination of parental rights order.  
34 A reinstatement order reinstates the former parent's parental  
35 rights to the child. The reinstatement is a recognition that

1 the situation of the parent and child has changed since the  
2 time of the termination of parental rights and reunification  
3 is now appropriate. A parent whose rights are reinstated is  
4 not liable for any child support owed to DHS or costs of other  
5 services provided to a child during the time period from the  
6 date of termination of parental rights to the date parental  
7 rights are reinstated. The bill applies to any eligible child  
8 who is under the jurisdiction of the juvenile court at the  
9 time of the hearing regardless of the date parental rights  
10 were terminated. The bill provides that the state, DHS, an  
11 agency, or other person or an employee of such entities is not  
12 liable for civil damages resulting from any act or omission  
13 in the provision of services under the bill, unless the act  
14 or omission constitutes gross negligence. The bill does not  
15 create any duty and shall not be construed to create a duty  
16 where none exists, and does not create a cause of action  
17 against the state, DHS, an agency, another person, or the  
18 employees of such entities concerning the original termination.