

Senate File 515 - Introduced

SENATE FILE 515
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 111)

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.