

House File 2209 - Introduced

HOUSE FILE 2209

BY LOHSE

A BILL FOR

1 An Act relating to legal representation for children who are
2 placed in, or may be placed in, foster care.

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

1 Section 1. Section 232.89, subsection 2, Code 2024, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 2. *a.* Upon the filing of a petition, the court shall:

5 (1) Appoint counsel for a child identified in the petition
6 as a party to the proceedings if the child is ten years of age
7 or older.

8 (2) Appoint a guardian ad litem for a child identified in
9 the petition as a party to the proceedings if the child is
10 younger than ten years of age.

11 *b.* If counsel has previously been appointed for the child
12 pursuant to section 232.11, 232.113, or 232.126, or a guardian
13 ad litem has previously been appointed for the child in a
14 proceeding under subchapter II or a proceeding in which the
15 court has waived jurisdiction under section 232.45, the court
16 shall appoint the same counsel or guardian ad litem upon the
17 filing of the petition under this part.

18 *c.* Counsel shall be appointed for a child subject to the
19 following:

20 (1) If the child is represented by counsel and the court
21 determines there is a conflict of interest between the child
22 and the child's parent, guardian, putative father, or custodian
23 and that the retained counsel cannot properly represent the
24 child as a result of the conflict, the court shall appoint
25 other counsel to represent the child and that counsel shall
26 be compensated pursuant to section 232.141, subsection 2,
27 paragraph "b".

28 (2) If the child is not represented by counsel, the court
29 shall either order the parent, guardian, or custodian to retain
30 counsel for the child, or the court shall appoint counsel for
31 the child, and the counsel shall be compensated pursuant to
32 section 232.141, subsection 2, paragraph "b".

33 Sec. 2. Section 232.89, subsection 4, Code 2024, is amended
34 by striking the subsection and inserting in lieu thereof the
35 following:

1 4. If a child attains ten years of age while represented by
2 a guardian ad litem pursuant to this section, the court shall
3 enter an order discharging the guardian ad litem and appoint
4 counsel for the child pursuant to the provisions of this
5 section. A court may appoint a guardian ad litem discharged
6 pursuant to this subsection as counsel for the child if the
7 person can properly represent the legal interests of the child.

8 Sec. 3. Section 232.89, Code 2024, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 5. The right to representation pursuant
11 to this section shall continue until a child is no longer
12 receiving foster care.

13 Sec. 4. Section 232.113, subsection 2, Code 2024, is amended
14 by striking the subsection and inserting in lieu thereof the
15 following:

16 2. *a.* Upon the filing of a petition, the court shall:

17 (1) Appoint counsel for a child identified in the petition
18 as a party to the proceedings if the child is ten years of age
19 or older.

20 (2) Appoint a guardian ad litem for a child identified in
21 the petition as a party to the proceedings if the child is
22 younger than ten years of age.

23 *b.* If counsel has previously been appointed for the child
24 pursuant to section 232.11, 232.89, or 232.126, or a guardian
25 ad litem has previously been appointed for the child in a
26 proceeding under subchapter II or a proceeding in which the
27 court has waived jurisdiction under section 232.45, the court
28 shall appoint the same counsel or guardian ad litem upon the
29 filing of the petition under this part.

30 *c.* Counsel shall be appointed for a child subject to the
31 following:

32 (1) If the child is represented by counsel and the court
33 determines there is a conflict of interest between the child
34 and the child's parent, guardian, putative father, or custodian
35 and that the retained counsel cannot properly represent the

1 child as a result of the conflict, the court shall appoint
2 other counsel to represent the child and that counsel shall
3 be compensated pursuant to section 232.141, subsection 2,
4 paragraph "b".

5 (2) If the child is not represented by counsel, the court
6 shall either order the parent, guardian, or custodian to retain
7 counsel for the child, or the court shall appoint counsel for
8 the child, and that counsel shall be compensated pursuant to
9 section 232.141, subsection 2, paragraph "b".

10 Sec. 5. Section 232.113, Code 2024, is amended by adding the
11 following new subsections:

12 NEW SUBSECTION. 3. The court shall determine, after giving
13 the parent, guardian, or custodian an opportunity to be heard,
14 whether the person has the ability to pay in whole or in part
15 for counsel appointed for the child. If the court determines
16 that the person possesses sufficient financial ability, the
17 court shall then consult with the department, the juvenile
18 probation office, or other authorized agency or individual
19 regarding the likelihood of impairment of the relationship
20 between the child and the child's parent, guardian, or
21 custodian as a result of ordering the parent, guardian, or
22 custodian to pay for the child's counsel. If impairment is
23 deemed unlikely, the court shall order that person to pay an
24 amount the court finds appropriate in the manner and to whom
25 the court directs. If the person fails to comply with the
26 order without good reason, the court shall enter judgment
27 against the person. If impairment is deemed likely or if the
28 court determines that the parent, guardian, or custodian cannot
29 pay any part of the expenses of counsel appointed to represent
30 the child, counsel shall be reimbursed pursuant to section
31 232.141, subsection 2, paragraph "b".

32 NEW SUBSECTION. 4. If a child attains ten years of age
33 while represented by a guardian ad litem pursuant to this
34 section, the court shall enter an order discharging the
35 guardian ad litem and appoint counsel for the child pursuant to

1 the provisions of this section. A court may appoint a guardian
2 ad litem discharged pursuant to this subsection as counsel
3 for the child if the person can properly represent the legal
4 interests of the child.

5 NEW SUBSECTION. 5. The right to representation pursuant
6 to this section shall continue until a child is no longer
7 receiving foster care.

8 Sec. 6. Section 232.126, subsection 1, Code 2024, is amended
9 by striking the subsection and inserting in lieu thereof the
10 following:

11 1. *a.* Upon the filing of a petition, the court shall:

12 (1) Appoint counsel for a child identified in the petition
13 as a party to the proceedings if the child is ten years of age
14 or older.

15 (2) Appoint a guardian ad litem for a child identified in
16 the petition as a party to the proceedings if the child is
17 younger than ten years of age.

18 *b.* If counsel has previously been appointed for the child
19 pursuant to section 232.11, 232.89, or 232.113, or a guardian
20 ad litem has previously been appointed for the child in a
21 proceeding under subchapter II or a proceeding in which the
22 court has waived jurisdiction under section 232.45, the court
23 shall appoint the same counsel or guardian ad litem upon the
24 filing of the petition under this part.

25 *c.* Counsel shall be appointed for a child subject to the
26 following:

27 (1) If the child is represented by counsel and the court
28 determines there is a conflict of interest between the child
29 and the child's parent, guardian, putative father, or custodian
30 and that the retained counsel cannot properly represent the
31 child as a result of the conflict, the court shall appoint
32 other counsel to represent the child and that counsel shall
33 be compensated pursuant to section 232.141, subsection 2,
34 paragraph "b".

35 (2) If the child is not represented by counsel, the court

1 shall either order the parent, guardian, or custodian to retain
2 counsel for the child, or the court shall appoint counsel for
3 the child, and that counsel shall be compensated pursuant to
4 section 232.141, subsection 2, paragraph "b".

5 Sec. 7. Section 232.126, Code 2024, is amended by adding the
6 following new subsections:

7 NEW SUBSECTION. 3. The court shall determine, after giving
8 the parent, guardian, or custodian an opportunity to be heard,
9 whether the person has the ability to pay in whole or in part
10 for counsel appointed for the child. If the court determines
11 that the person possesses sufficient financial ability, the
12 court shall then consult with the department, the juvenile
13 probation office, or other authorized agency or individual
14 regarding the likelihood of impairment of the relationship
15 between the child and the child's parent, guardian, or
16 custodian as a result of ordering the parent, guardian, or
17 custodian to pay for the child's counsel. If impairment is
18 deemed unlikely, the court shall order that person to pay an
19 amount the court finds appropriate in the manner and to whom
20 the court directs. If the person fails to comply with the
21 order without good reason, the court shall enter judgment
22 against the person. If impairment is deemed likely or if the
23 court determines that the parent, guardian, or custodian cannot
24 pay any part of the expenses of counsel appointed to represent
25 the child, counsel shall be reimbursed pursuant to section
26 232.141, subsection 2, paragraph "b".

27 NEW SUBSECTION. 4. If a child attains ten years of age
28 while represented by a guardian ad litem pursuant to this
29 section, the court shall enter an order discharging the
30 guardian ad litem and appoint counsel for the child pursuant to
31 the provisions of this section. A court may appoint a guardian
32 ad litem discharged pursuant to this subsection as counsel
33 for the child if the person can properly represent the legal
34 interests of the child.

35 NEW SUBSECTION. 5. The right to representation pursuant

1 to this section shall continue until a child is no longer
2 receiving foster care.

3

EXPLANATION

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

5

6 This bill relates to legal representation for children who
7 are placed in, or may be placed in, foster care.

8 The bill requires a court to appoint counsel for a child 10
9 years of age or older when the child is identified in a child
10 in need of assistance (CINA) petition as a party to the CINA
11 proceedings.

12 The bill requires a court to appoint a guardian ad litem for
13 a child below 10 years of age when the child is identified in a
14 CINA petition as a party to the CINA proceedings.

15 If a child identified in a CINA petition already has counsel
16 in a juvenile delinquency matter or parental termination
17 proceeding, or a guardian ad litem has previously been
18 appointed for the child in a juvenile delinquency proceeding
19 or a matter involving a public offense in which the court has
20 waived jurisdiction, the bill requires the court to appoint the
21 same counsel or guardian ad litem upon the filing of the CINA
22 petition.

23 The bill requires a court to appoint alternate counsel to
24 represent a child if the child is represented by counsel and
25 the court determines there is a conflict of interest between
26 the child and the child's parent, guardian, putative father,
27 or custodian and that the retained counsel cannot properly
28 represent the child as a result of the conflict.

29 When appointing counsel for a child in a CINA proceeding,
30 the bill requires a court to either order the parent, guardian,
31 or custodian to retain counsel for the child, or counsel be
32 appointed for the child.

33 The bill requires a court to discharge the guardian ad litem
34 for a child in a CINA proceeding and appoint counsel for the
35 child upon the child attaining 10 years of age. A discharged

1 guardian ad litem may be appointed counsel for a child if the
2 person can properly represent the legal interests of the child.

3 The bill contains similar provisions relating to the
4 appointment of counsel or a guardian ad litem for a child in
5 termination of parental rights proceedings and in family in
6 need of assistance proceedings.

7 The bill requires a court in a termination of parental
8 rights proceeding or a family in need of assistance proceeding
9 to determine whether a child's parent, guardian, or custodian
10 is able to compensate an attorney appointed for the child.
11 If the court determines a parent, guardian, or custodian is
12 able to compensate the appointed attorney, the bill requires
13 the court to order the parent, guardian, or custodian to
14 compensate the attorney. If the court determines a parent,
15 guardian, or custodian cannot compensate the appointed attorney
16 without impairment, then the bill requires the county to make
17 reasonable compensation for the appointed attorney.