

Senate Study Bill 1166 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
HEALTH AND HUMAN SERVICES
BILL)

A BILL FOR

1 An Act relating to mental health and disability services
2 provided by the state and judicial procedures relating to
3 child in need of assistance proceedings, adoptions, and the
4 confinement of persons found incompetent to stand trial.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

STATE MENTAL HEALTH INSTITUTES — SPECIALIZATION

Section 1. Section 226.1, subsection 2, paragraph a, subparagraph (1), Code 2023, is amended to read as follows:

(1) Treatment, training, care, habilitation, and support of persons with mental illness ~~or a substance abuse problem~~ including:

(a) Specialized treatment of behaviorally complex youth at a mental health institute located in Independence.

(b) Specialized treatment and security for adults ordered by the court into the custody of the state for the purposes of competency restoration, adults who have been acquitted of a crime by reason of insanity, and similarly situated adults at a mental health institute in Cherokee.

DIVISION II

CHILD IN NEED OF ASSISTANCE — SAFETY PLANS — TEMPORARY REMOVAL

Sec. 2. Section 232.79B, subsections 1, 2, and 3, Code 2023, are amended to read as follows:

1. For the purposes of [this section](#), “*safety plan*” means a short-term, time-limited agreement entered into between the department and a child’s parent or guardian designed to address signs of imminent or impending danger to a child identified by the department.

2. Upon the department’s determination that potential harm to a child may be mitigated by the development of a safety plan, the department may enter into a safety plan with the child’s parent or guardian.

3. A safety plan shall not be construed as a removal from parental or guardian custody absent a court order placing the child with a person or facility other than the parent or guardian who entered into the safety plan.

Sec. 3. Section 232.95, subsection 4, Code 2023, is amended to read as follows:

4. If the court orders the child removed from the home

1 pursuant to [subsection 2](#), paragraph ~~"a"~~ "b" or "c", the court
2 shall hold a hearing to review the removal order within six
3 months unless a dispositional hearing pursuant to section
4 232.99 has been held.

5 Sec. 4. Section 232.102, subsection 10, Code 2023, is
6 amended by striking the subsection.

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DIVISION III

8 MENTAL HEALTH AND DISABILITY SERVICES REGIONS — GOVERNANCE —
9 CASH RESERVES — CORE SERVICES — REPORT

10 Sec. 5. Section 225C.7A, subsection 7, Code 2023, is amended
11 by striking the subsection and inserting in lieu thereof the
12 following:

13 7. For the fiscal year beginning July 1, 2023, and each
14 succeeding fiscal year, each mental health and disability
15 services region for which the amount certified during the
16 fiscal year under [section 331.391, subsection 4](#), paragraph "b",
17 exceeds ten percent of the actual expenditures of the region
18 for the fiscal year preceding the fiscal year in progress, the
19 remaining quarterly payments of the region's regional service
20 payment shall be reduced by an amount equal to the amount by
21 which the region's amount certified under [section 331.391,](#)
22 [subsection 4, paragraph "b"](#), exceeds ten percent of the actual
23 expenditures of the region for the fiscal year preceding the
24 fiscal year in progress, but the amount of the reduction
25 shall not exceed the total amount of the region's regional
26 service payment for the fiscal year. If the region's remaining
27 quarterly payments are insufficient to effectuate the required
28 reductions under this paragraph, the region is required to
29 pay to the department any amount for which the reduction in
30 quarterly payments could not be made. The amount of reductions
31 to quarterly payments and amounts paid to the department under
32 this paragraph shall be transferred and credited to the region
33 incentive fund under [subsection 8](#).

34 Sec. 6. Section 225C.7A, subsection 8, paragraph c,
35 subparagraph (2), subparagraph division (b), Code 2023, is

1 amended by striking the subparagraph division and inserting in
2 lieu thereof the following:

3 (b) For applications for fiscal years beginning on or after
4 July 1, 2023, ten percent of the actual expenditures of the
5 mental health and disability services region for the fiscal
6 year that commenced two years prior to the fiscal year of
7 application for assistance.

8 Sec. 7. Section 331.390, subsection 2, Code 2023, is amended
9 by striking the subsection and inserting in lieu thereof the
10 following:

11 2. The governing board shall comply with all of the
12 following requirements:

13 a. Each member of the governing board shall have one vote.

14 b. The membership of the governing board shall not include
15 employees of the department of health and human services or a
16 nonelected employee of a county.

17 c. The membership of the governing board shall consist of
18 the following:

19 (1) Members representing the boards of supervisors of
20 counties comprising the region. Members representing the
21 boards of supervisors for a region's counties shall not exceed
22 forty-nine percent of the total membership of the governing
23 board.

24 (2) One member who is an adult person who utilizes mental
25 health and disability services or is an actively involved
26 relative of such an adult person. This member shall be
27 designated by the regional advisory committee formed by the
28 governing board pursuant to paragraph "d".

29 (3) One member representing adult service providers in
30 the region. This member shall be designated by the regional
31 advisory committee formed by the governing board pursuant to
32 paragraph "d".

33 (4) One member representing children's behavioral health
34 services providers in the region. This member shall be
35 designated by the regional children's advisory committee formed

1 by the governing board pursuant to paragraph "e".

2 (5) One member representing the education system in the
3 region. This member shall be designated by the regional
4 children's advisory committee formed by the governing board
5 pursuant to paragraph "e".

6 (6) One member who is a parent of a child who utilizes
7 children's behavioral health services or who is an actively
8 involved relative of such a child. This member shall be
9 designated by the regional children's advisory committee formed
10 by the governing board pursuant to paragraph "e".

11 (7) One member representing law enforcement in the region.

12 (8) One member representing the judicial system in the
13 region.

14 d. The governing board shall have a regional advisory
15 committee consisting of adults who utilize services or actively
16 involved relatives of such adults, service providers, and
17 regional governing board members.

18 e. The governing board shall have a regional children's
19 advisory committee consisting of parents of children who
20 utilize services or actively involved relatives of such
21 children, a member of the education system, an early childhood
22 advocate, a child welfare advocate, a children's behavioral
23 health service provider, a member of the juvenile court, a
24 pediatrician, a child care provider, a local law enforcement
25 representative, and regional governing board members.

26 Sec. 8. Section 331.391, subsection 4, paragraph c, Code
27 2023, is amended to read as follows:

28 c. For fiscal years beginning on or after July 1, 2023, the
29 region's cash flow amount shall not exceed ~~five~~ ten percent
30 of the actual expenditures from the combined account for the
31 fiscal year preceding the fiscal year in progress.

32 Sec. 9. Section 331.397, subsection 4, Code 2023, is amended
33 by adding the following new paragraph:

34 NEW PARAGRAPH. g. Outpatient competency restoration.

35 Sec. 10. Section 331.397A, subsection 4, Code 2023, is

1 amended by adding the following new paragraph:

2 NEW PARAGRAPH. *c.* Outpatient competency restoration.

3 Sec. 11. Section 331.400, Code 2023, is amended to read as
4 follows:

5 **331.400 Quarterly Annual reports.**

6 Beginning with the fiscal year beginning July 1, ~~2022~~ 2023,
7 the department shall deliver on a ~~quarterly~~ annual basis
8 a report to the general assembly that provides a summary of
9 the status of implementing core services in each region,
10 the accessibility of core services in each region, how each
11 region is using the funding provided under section 225C.7A,
12 and recommendations for improvements to the mental health and
13 disability services system in order to attain the outcome
14 improvement goals set by the department consistent with the
15 goals specified in the performance-based contracts under
16 section 225C.7A, subsection 2, paragraph "*c*", subparagraph (5).

17 DIVISION IV

18 ADOPTION NOTICES — HEARINGS

19 Sec. 12. Section 600.11, subsection 2, paragraph a,
20 subparagraph (7), Code 2023, is amended by striking the
21 subparagraph.

22 Sec. 13. Section 600.11, subsection 2, Code 2023, is amended
23 by adding the following new paragraph:

24 NEW PARAGRAPH. *ob.* (1) At least twenty days prior to the
25 adoption hearing, a copy of the order setting the adoption
26 hearing shall be provided to siblings of the person to be
27 adopted when either of the following applies:

28 (a) The sibling and the person to be adopted have an
29 existing relationship.

30 (b) There is a court finding that ongoing contact with
31 the person to be adopted is in the best interest of each
32 sibling and the person to be adopted was a minor child when the
33 parents of the person to be adopted had their parental rights
34 terminated subsequent to the person to be adopted having been
35 adjudicated a child in need of assistance.

1 (2) Notwithstanding subsection 3, a copy of the order
2 setting the adoption hearing may be provided to a sibling via
3 ordinary mail if the sibling's address is known. A copy of an
4 order setting an adoption hearing sent to a sibling under ten
5 years of age shall be addressed to the sibling's custodian or
6 guardian.

7 (3) This paragraph does not require a copy of the order
8 setting the adoption hearing to be provided to any of the
9 following:

10 (a) A person whose parental rights have been terminated with
11 regard to the person to be adopted.

12 (b) Siblings who are placed with the sibling to be adopted
13 at the time the court issued the order setting the adoption
14 hearing.

15 (c) A previously adopted sibling, unless the siblings were
16 the subjects of child in need of assistance or termination of
17 parental rights proceedings that occurred at the same time.

18 DIVISION V

19 CONFINEMENT OF PERSONS FOUND INCOMPETENT TO STAND TRIAL

20 Sec. 14. Section 812.6, subsection 1, Code 2023, is amended
21 to read as follows:

22 1. If the court finds the defendant does not pose a danger
23 to the public peace and safety, is otherwise qualified for
24 pretrial release, and is willing to cooperate with treatment,
25 the court shall order, as a condition of pretrial release,
26 that the defendant obtain mental health treatment designed to
27 restore the defendant to competency. The costs of treatment
28 pursuant to this subsection shall be paid by the mental
29 health and disability services region for the county of the
30 defendant's residency pursuant to chapter 225C regardless of
31 whether the defendant meets financial eligibility requirements
32 under section 225C.62 or 225C.66.

33 Sec. 15. Section 812.7, Code 2023, is amended to read as
34 follows:

35 **812.7 Mental status reports.**

1 The psychiatrist or licensed doctorate-level psychologist
2 ~~providing~~ evaluating the progress of the outpatient competency
3 restoration treatment to of the defendant, or the director of
4 the facility where the defendant is being held and treated
5 pursuant to a court order, shall provide a written status
6 report to the court regarding the defendant's mental disorder
7 within, methods used to restore competency to the defendant,
8 the defendant's current abilities related to competency,
9 and whether it appears the defendant's competency can be
10 restored within a reasonable amount of time. The psychiatrist,
11 psychologist, or director shall submit an initial report to
12 the court no later than thirty days of after the defendant's
13 placement pursuant to section 812.6. The report shall also
14 state whether it appears that the defendant can be restored to
15 competency in a reasonable amount of time. Progress reports
16 shall be provided to the court, and subsequent reports every
17 sixty days or less thereafter after the submission of the
18 initial report until the defendant's competency is restored or
19 the placement of the defendant is terminated.

20 Sec. 16. Section 812.8, subsections 1 and 3, Code 2023, are
21 amended to read as follows:

22 1. At any time, upon a finding by a psychiatrist or licensed
23 doctorate-level psychologist that there is a substantial
24 probability that the defendant has acquired the ability
25 to appreciate the charge, understand the proceedings, and
26 effectively assist in the defendant's defense, the psychiatrist
27 or licensed doctorate-level psychologist ~~providing~~ evaluating
28 the progress of the defendant's outpatient treatment to the
29 ~~defendant~~ or the director of the inpatient facility shall
30 immediately notify the court. After receiving notice the court
31 shall proceed as provided in subsection 4.

32 3. At any time upon a finding by a ~~treating~~ evaluating
33 psychiatrist or licensed doctorate-level psychologist that
34 there is no substantial probability that the defendant will
35 be restored to competency in a reasonable amount of time,

1 the psychiatrist or licensed doctorate-level psychologist
2 ~~providing~~ evaluating the defendant's outpatient treatment ~~to~~
3 ~~the defendant~~ or the director of the inpatient facility shall
4 immediately notify the court. Upon receiving notification, the
5 court shall proceed as provided under [subsection 4](#).

6 DIVISION VI

7 CONFORMING CODE CHANGES

8 Sec. 17. Section 256.25, subsections 2 and 3, Code 2023, are
9 amended to read as follows:

10 2. A school district, which may collaborate and partner
11 with one or more school districts, area education agencies,
12 accredited nonpublic schools, nonprofit agencies, and
13 institutions that provide children's mental health services,
14 located in mental health and disability services regions
15 providing children's behavioral health services in accordance
16 with chapter ~~331~~ 225C, subchapter ~~III~~ VII, ~~part 6~~, may apply
17 for a grant under this program to establish a therapeutic
18 classroom in the school district in accordance with this
19 section.

20 3. The department shall develop a grant application
21 and selection and evaluation criteria. Selection criteria
22 shall include a method for prioritizing grant applications
23 submitted by school districts. First priority shall be given
24 to applications submitted by school districts that submitted an
25 application pursuant to [this section](#) for the previous fiscal
26 year. Second priority shall be given to applications submitted
27 by school districts that, pursuant to [subsection 2](#), are
28 collaborating and partnering with one or more school districts,
29 area education agencies, accredited nonpublic schools,
30 nonprofit agencies, or institutions that provide mental health
31 services for children. Third priority shall be given to
32 applications submitted by school districts located in mental
33 health and disability services regions providing behavioral
34 health services for children in accordance with chapter ~~331~~
35 225C, subchapter ~~III~~, ~~part 6~~ VII. Grant awards shall be

1 distributed as equitably as possible among small, medium, and
2 large school districts. For purposes of [this subsection](#), a
3 small school district is a district with an actual enrollment
4 of fewer than six hundred pupils; a medium school district is a
5 district with an actual enrollment that is at least six hundred
6 pupils, but less than two thousand five hundred pupils; and a
7 large school district is a district with an actual enrollment
8 of two thousand five hundred or more pupils.

9 DIVISION VII
10 CODE EDITOR DIRECTIVE — MENTAL HEALTH AND DISABILITY SERVICES
11 CODE TRANSFERS

12 Sec. 18. CODE EDITOR DIRECTIVE.

13 1. The Code editor is directed to make the following
14 transfers:

- 15 a. Section 331.388 to section 225C.55.
- 16 b. Section 331.389 to section 225C.56.
- 17 c. Section 331.390, as amended in this Act, to section
18 225C.57.
- 19 d. Section 331.391, as amended in this Act, to section
20 225C.58.
- 21 e. Section 331.392 to section 225C.59.
- 22 f. Section 331.393 to section 225C.60.
- 23 g. Section 331.394 to section 225C.61.
- 24 h. Section 331.395 to section 225C.62.
- 25 i. Section 331.396 to section 225C.63.
- 26 j. Section 331.396A to section 225C.64.
- 27 k. Section 331.397, as amended in this Act, to section
28 225C.65.
- 29 l. Section 331.397A, as amended in this Act, to section
30 225C.66.
- 31 m. Section 331.398 to section 225C.67.
- 32 n. Section 331.399 to section 225C.68.
- 33 o. Section 331.400, as amended in this Act, to section
34 225C.69.

35 2. The Code editor shall correct internal references in the

1 Code and in any enacted legislation as necessary due to the
2 enactment of this section.

3 3. The Code editor may add a new subchapter to chapter
4 225C preceding section 225C.55 entitled "MENTAL HEALTH AND
5 DISABILITY SERVICES — REGIONAL SERVICE SYSTEM — CHILDREN'S
6 BEHAVIORAL HEALTH SYSTEM".

7 EXPLANATION

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

10 This bill relates to mental health and disability services
11 provided by the state and judicial procedures relating to
12 child in need of assistance proceedings, adoptions, and the
13 confinement of persons found incompetent to stand trial. The
14 bill is organized into divisions.

15 DIVISION I — STATE MENTAL HEALTH INSTITUTES —
16 SPECIALIZATION. The bill removes persons who solely have a
17 substance abuse problem as a population eligible to receive
18 treatment, training, care, habilitation, and support at a state
19 mental health institute.

20 The bill designates the state mental health institute
21 located in Independence, Iowa, for specialized treatment of
22 behaviorally complex youth, and designates the state mental
23 health institute located in Cherokee, Iowa, for specialized
24 treatment and security of adults ordered by the court into
25 the custody of the state for the purposes of competency
26 restoration, adults who have been acquitted of a crime by
27 reason of insanity, and similarly situated adults.

28 DIVISION II — CHILD IN NEED OF ASSISTANCE — SAFETY PLANS
29 — TEMPORARY REMOVAL. The bill allows, in a child in need
30 of assistance proceeding, a child's guardian to enter into a
31 safety plan, and prohibits a safety plan from being construed
32 as a child's removal from a guardian absent a court order
33 placing the child with a person or facility other than the
34 guardian who entered into the safety plan.

35 The bill makes a corrective change to Code section

1 232.95(2)(a) relating to hearings concerning the temporary
2 removal of a child in child in need of assistance cases.

3 The bill strikes Code section 232.102(10) relating to
4 transfer of legal custody of a child in a child in need of
5 assistance case for placement and visitation of the child by
6 the child's grandparents, great-grandparents, and certain other
7 adult relatives.

8 DIVISION III — MENTAL HEALTH AND DISABILITY SERVICES
9 REGIONS — GOVERNANCE — CASH RESERVES — CORE SERVICES —
10 REPORT. The bill increases the amount of moneys a mental
11 health and disability services (MHDS) regional combined account
12 may have before payments to the MHDS region are reduced and
13 an MHDS region is disqualified from receiving funding from
14 an MHDS incentive fund. The bill provides that, for fiscal
15 years beginning on or after July 1, 2023, an MHDS region's cash
16 reserves cannot exceed 10 percent of the actual expenditures
17 from the combined account for the fiscal year preceding the
18 fiscal year in progress. Under current law, for fiscal years
19 beginning on or after July 1, 2023, an MHDS region's cash
20 reserves cannot exceed 5 percent of the actual expenditures
21 from the combined account for the fiscal year preceding the
22 fiscal year in progress.

23 The bill makes changes to the regional governance of
24 MHDS governing boards. The bill allows each member of an
25 MHDS governing board to have a vote, limits the number of
26 representatives county boards of supervisors may have on an
27 MHDS regional governing board to 49 percent of the total
28 governing board membership, and adds a member representing law
29 enforcement and a member representing the judicial system in an
30 MHDS region as representatives on an MHDS governing board.

31 The bill limits an MHDS region's cash flow amount to 10
32 percent of the actual expenditures from the combined account
33 for the fiscal year preceding the fiscal year in progress.
34 Under current law, the cash flow amount is limited to 5 percent
35 of the actual expenditures from the combined account for the

1 fiscal year preceding the fiscal year in progress.

2 The bill adds outpatient competency restoration as a core
3 service for both adult and children's MHDS regions.

4 The bill requires the department of health and human
5 services (HHS) to deliver a report on an annual basis to the
6 general assembly that provides a summary of the status of
7 implementing core services in each region, the accessibility
8 of core services in each region, how each region is using the
9 funding provided to MHDS regions, and recommendations for
10 improvements to the MHDS system in order to attain the outcome
11 improvement goals set by HHS. Under current law, HHS is
12 required to give such a report on a quarterly basis.

13 DIVISION IV — ADOPTION NOTICES — HEARINGS. The bill
14 requires an adoption petitioner to provide a copy of the order
15 setting the adoption hearing to siblings of a person to be
16 adopted at least 20 days prior to the adoption hearing when
17 there is either an existing relationship or a court finding
18 that ongoing contact with the person to be adopted is in the
19 best interests of each sibling and the person to be adopted was
20 a minor child when the parents of the person to be adopted had
21 their parental rights terminated subsequent to the person to be
22 adopted having been adjudicated a child in need of assistance.

23 The bill allows a copy of the order setting the adoption
24 hearing to be provided to a sibling via ordinary mail if the
25 sibling's address is known. A copy of an order setting an
26 adoption hearing sent to a sibling under 10 years of age shall
27 be addressed to the sibling's custodian or guardian.

28 The bill does not require a copy of the order setting the
29 adoption hearing to be provided to a person whose parental
30 rights have been terminated with regard to the person to be
31 adopted; siblings who are placed with the sibling to be adopted
32 at the time the court issued the order setting the adoption
33 hearing; or a previously adopted sibling, unless the siblings
34 were the subjects of child in need of assistance or termination
35 of parental rights proceedings that occurred at the same time.

1 DIVISION V — CONFINEMENT OF PERSONS FOUND INCOMPETENT TO
2 STAND TRIAL. The bill requires the MHDS region for the county
3 of a defendant's residency to pay for the costs of mental
4 health treatment the defendant receives as a condition of
5 pretrial release.

6 The bill allows a psychiatrist or licensed doctorate-level
7 psychologist evaluating the progress of a defendant's
8 outpatient competency restoration treatment, or the director
9 of the facility where the defendant is being held and treated
10 pursuant to a court order, to provide a written status report
11 to the court regarding the defendant's mental disorder. Under
12 current law, only the psychiatrist or licensed doctorate
13 level psychologist providing the defendant's treatment or the
14 director of the facility where the defendant is being held and
15 treated can provide the written status report.

16 The bill requires a written status report prepared for an
17 incompetent defendant to include the methods used to restore
18 competency to the defendant, the defendant's current abilities
19 related to competency, and whether it appears the defendant's
20 competency can be restored within a reasonable amount of time.
21 The bill requires a psychiatrist, psychologist, or director to
22 submit an initial report to the court no later than 30 days
23 after the defendant's placement by the court for treatment, and
24 subsequent reports every 60 days or less after submission of
25 the initial report until the defendant's competency is restored
26 or the placement of the defendant is terminated.

27 The bill requires a psychiatrist or licensed doctorate-level
28 psychologist evaluating the progress of a defendant's
29 outpatient competency restoration treatment, or the director
30 of the facility where the defendant is being held and treated
31 pursuant to a court order, to notify a court if there is a
32 substantial probability or is no substantial probability that
33 a defendant formerly deemed incompetent either has acquired
34 the ability to appreciate the charge against the defendant,
35 understand the proceedings, and effectively assist in the

1 defendant's defense or will be restored to competency in
2 a reasonable amount of time. Under current law, only the
3 psychiatrist or licensed doctorate-level psychologist providing
4 the defendant's treatment or the director of the facility where
5 the defendant is being held and treated could provide such
6 notice to a court.

7 DIVISION VI — CONFORMING CODE CHANGE. The bill makes a
8 conforming change to Code section 256.25 (therapeutic classroom
9 incentive grant program — fund).

10 DIVISION VII — CODE TRANSFERS. The bill transfers Code
11 sections 331.388 through 331.400 (mental health and disability
12 services — regional service system — children's behavioral
13 health system) to Code sections 225C.55 through 225C.69 and
14 directs the Code editor to make conforming changes.