

employees, trustees, or associates of the cemetery from engaging in conduct or practices deemed a violation of this chapter or rules adopted pursuant to this chapter. Upon proof of any violation of this chapter described in the petition for injunction, the court may grant the injunction. The commissioner or the attorney general shall not be required to post a bond. Failure to obey a court order under this subsection constitutes contempt of court.

Sec. 31. Section 523B.4, Code 1997, is repealed.

Approved May 14, 1998

CHAPTER 1190

JUVENILE JUSTICE — OUT-OF-HOME PLACEMENT, TERMINATION OF PARENTAL RIGHTS, AND ADOPTION

S.F. 2345

AN ACT relating to juvenile justice system provisions involving foster care, termination of parental rights, and adoption preplacement investigations.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 232.2, subsection 4, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

Sec. 2. Section 232.2, subsection 21, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

“Guardian” means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Sec. 3. Section 232.2, subsection 21, Code Supplement 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. f. To make other decisions involving protection, education, and care and control of the child.

Sec. 4. Section 232.78, subsection 1, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. d. The application for the order includes a statement of the facts to support the findings specified in paragraphs “a”, “b”, and “c”.

Sec. 5. Section 232.78, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. The person making the application for an order shall assert facts showing there is reasonable cause to believe that the child cannot either be returned to the place where the child was residing or placed with the parent who does not have physical care of the child.

Sec. 6. Section 232.78, subsection 5, Code 1997, is amended to read as follows:

5. Any person who may file a petition under this chapter may apply for, or the court on its own motion may issue, an order for temporary removal under this section. An appropriate person designated by the court shall confer with a person seeking the removal order, shall make every reasonable effort to inform the parent or other person legally responsible for the child's care of the application, and shall make such inquiries as will aid the court in disposing of such application. The person designated by the court shall file with the court a complete written report providing all details of the designee's conference with the person seeking the removal order, the designee's efforts to inform the parents or other person legally responsible for the child's care of the application, any inquiries made by the designee to aid the court in disposing of the application, and all information the designee communicated to the court. The report shall be filed within five days of the date of the removal order. If the court does not designate an appropriate person who performs the required duties, notwithstanding section 234.39 or any other provision of law, the child's parent shall not be responsible for paying the cost of care and services for the duration of the removal order. Any order entered under this section authorizing temporary removal of a child shall include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

Sec. 7. Section 232.91, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Any person who is entitled under section 232.88 to receive notice of a hearing concerning a child shall be given the opportunity to be heard in any other review or hearing involving the child.

Sec. 8. Section 232.95, subsection 2, paragraph a, unnumbered paragraph 2, Code 1997, is amended to read as follows:

If removal is ordered, the order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation ~~therein~~ in the home would be contrary to the welfare of the child, and that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home. The order shall also include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

Sec. 9. Section 232.96, subsection 10, Code 1997, is amended to read as follows:

10. If the court enters an order adjudicating the child to be a child in need of assistance, the court, if it has not previously done so, may issue an order authorizing temporary removal of the child from the child's home as set forth in section 232.95, subsection 2, paragraph "a", pending a final order of disposition. The order shall include a statement informing the child's parent that the consequences of a permanent removal may include termination of the parent's rights with respect to the child.

Sec. 10. Section 232.99, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. In the initial dispositional hearing, any hearing held under section 232.103, and any dispositional review or permanency hearing, the court shall inquire of the parties as to the sufficiency of the services being provided and whether additional services are needed to facilitate the safe return of the child to the child's home. If the court determines such services are needed, the court shall order the services to be provided. The court shall advise the parties that failure to identify a deficiency in services or to request additional services may preclude the party from challenging the sufficiency of the services in a termination of parent-child relationship proceeding.

Sec. 11. Section 232.102, subsection 1, paragraph a, Code Supplement 1997, is amended to read as follows:

a. A parent who does not have physical care of the child, other relative, or other suitable person.

Sec. 12. Section 232.102, subsection 5, unnumbered paragraph 2, Code Supplement 1997, is amended to read as follows:

The order shall, in addition, contain a statement that removal from the home is the result of a determination that continuation ~~therein in the home~~ would be contrary to the welfare of the child, and ~~that shall identify the reasonable efforts that have been made to prevent or eliminate the need for removal of the child from the child's home.~~

Sec. 13. Section 232.102, subsection 7, Code Supplement 1997, is amended to read as follows:

7. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interest of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a parent who does not have physical care of the child, other relative, or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian, or custodian in order to enable them to resume custody of the child. If the court orders the transfer of custody to the department of human services or to another agency for placement in foster group care, the department or agency shall make every reasonable effort to place the child within Iowa, in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

Sec. 14. Section 232.102, Code Supplement 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 7A. Any order transferring custody to the department or an agency shall include a statement informing the child's parent that the consequences of a permanent removal may include the termination of the parent's rights with respect to the child.

Sec. 15. Section 232.102, subsection 8, paragraph c, Code Supplement 1997, is amended to read as follows:

c. For purposes of this subsection, a hearing held pursuant to section 232.103 ~~or 232.104~~ satisfies the requirements for initial dispositional review or subsequent ~~dispositional review~~ permanency hearing.

Sec. 16. Section 232.102, subsection 9, paragraph a, unnumbered paragraph 1, Code Supplement 1997, is amended to read as follows:

As used in this section, "reasonable efforts" means the efforts made to ~~prevent~~ preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of a the child from or make it possible for the child to safely return to the child's family's home. A child's health and safety shall be the paramount concern in making reasonable efforts. Reasonable efforts may include intensive family preservation services or family-centered services, if the child's safety in the home can be maintained during the time the services are provided. In determining whether reasonable efforts have been made, the court shall consider both of the following:

Sec. 17. Section 232.102, Code Supplement 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 10. The performance of reasonable efforts to place a child for adoption or with a guardian may be made concurrently with making reasonable efforts as defined in this section.

NEW SUBSECTION. 11. If the court determines aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

- a. The parent has abandoned the child.
- b. The court finds the circumstances described in section 232.116, subsection 1, paragraph "h", are applicable to the child.
- c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.
- d. The parent has been convicted of the murder of another child of the parent.
- e. The parent has been convicted of the voluntary manslaughter of another child of the parent.
- f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.
- g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

Sec. 18. Section 232.104, subsection 1, Code 1997, is amended to read as follows:

1. ~~a. If a child has been placed in foster care for a period of twelve months, or if the prior legal custodian of a child has abandoned efforts to regain custody of the child, the court shall, on its own motion, or upon application by any interested party, including the child's foster parent if the child has been placed with the foster parent for at least twelve months, hold a hearing to consider the issue of the establishment of permanency for the child. The time for the initial permanency hearing for a child subject to out-of-home placement shall be the earlier of the following:~~

(1) For a temporary removal order entered under section 232.78, 232.95, or 232.96, for a child who was removed without a court order under section 232.79, or for an order entered under section 232.102, for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

(2) For an order entered under section 232.102, for which the court has waived reasonable efforts requirements under section 232.102, subsection 11, the permanency hearing shall be held within thirty days of the date the requirements were waived.

~~b. Such a~~ The permanency hearing may be held concurrently with a hearing under section 232.103 to review, modify, substitute, vacate, or terminate a dispositional order.

c. Reasonable notice of a permanency hearing in a case of juvenile delinquency shall be provided pursuant to section 232.37. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court. Upon completion of the hearing the court shall enter written findings and make a determination based upon the permanency plan which will best serve the child's individual interests at that time.

Sec. 19. Section 232.104, subsection 6, Code 1997, is amended to read as follows:

6. Following an initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall

retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When ~~such the~~ order places the child in the custody of the department for the purpose of long-term foster care placement in a facility, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

Sec. 20. Section 232.111, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. a. Unless any of the circumstances described in paragraph “b” exist, the county attorney shall file a petition for termination of the parent-child relationship and parental rights with respect to a child or if a petition has been filed, join in the petition, under any of the following circumstances:

(1) The child has been placed in foster care for fifteen months or more of the most recent twenty-two-month period.

(2) A court has determined aggravated circumstances exist and has waived the requirement for making reasonable efforts under section 232.102 because the court has found the circumstances described in section 232.116, subsection 1, paragraph “h”, are applicable to the child.

(3) The child is less than twelve months of age and has been judicially determined to meet the definition of abandonment of a child.

(4) The parent has been convicted of the murder or the voluntary manslaughter of another child of the parent.

(5) The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

(6) The parent has been convicted of a felony assault which resulted in serious bodily injury of the child or of another child of the parent.

b. If any of the following conditions exist, the county attorney is not required to file a petition or join in an existing petition as provided in paragraph “a”:

(1) At the option of the department or by order of the court, the child is being cared for by a relative.

(2) The department or a state agency has documented in the child’s case permanency plan provided or available to the court a compelling reason for determining that filing the petition would not be in the best interest of the child. A compelling reason shall include but is not limited to documentation in the child’s case permanency plan indicating it is reasonably likely the completion of the services being received in accordance with the permanency plan will eliminate the need for removal of the child or make it possible for the child to safely return to the family’s home within six months.

(3) The department has not provided the child’s family, consistent with the time frames outlined in the child’s case permanency plan, with those services the state deems necessary for the safe return of the child to the child’s home, and the limited extension of time necessary to complete the services is clearly documented in the case permanency plan.

Sec. 21. Section 232.111, subsection 3, Code 1997, is amended by adding the following new paragraph after paragraph d and renumbering the subsequent paragraph:

NEW PARAGRAPH. e. A complete list of the services which have been offered to preserve the family and a statement specifying the services provided to address the reasons stated in any order for removal or in any dispositional or permanency order which did not return the child to the child’s home.

Sec. 22. Section 232.112, subsection 1, Code 1997, is amended to read as follows:

1. Persons listed in section 232.111, subsection 3, shall be necessary parties to a termination of parent-child relationship proceeding and are entitled to receive notice and an opportunity to be heard, except that notice may be dispensed with in the case of any such person whose name or whereabouts the court determines is unknown and cannot be ascertained by reasonably diligent search. In addition to the persons who are necessary parties who may be parties under section 232.111, notice for any hearing under this division shall be provided to the child's foster parent, an individual providing preadoptive care for the child, or a relative providing care for the child.

Sec. 23. Section 232.116, subsection 2, unnumbered paragraph 1, Code 1997, is amended to read as follows:

In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child. ~~Such~~ This consideration may include any of the following:

Sec. 24. Section 232.117, subsection 3, paragraph c, Code 1997, is amended to read as follows:

c. A parent who does not have physical care of the child, other relative, or other suitable person.

Sec. 25. Section 232.117, subsection 4, Code 1997, is amended to read as follows:

4. If after a hearing the court does not order the termination of parental rights but finds that there is clear and convincing evidence that the child is a child in need of assistance, under section 232.2, subsection 6, due to the acts or omissions of one or both of the child's parents the court may adjudicate the child to be a child in need of assistance and may enter an order in accordance with the provisions of ~~sections~~ section 232.100, 232.101, ~~or~~ 232.102, or 232.104.

Sec. 26. Section 232.119, subsection 4, Code 1997, is amended to read as follows:

4. The exchange shall include a matching service for children registered or listed in the adoption photo-listing book and prospective adoptive families listed on the exchange. The department shall register a child with the national electronic exchange and electronic photolisting system if the child has not been placed for adoption after three months on the exchange established pursuant to this section.

Sec. 27. NEW SECTION. 232.120 PREADOPTIVE CARE — CONTINUED PLACEMENT.

If a foster parent is providing preadoptive care to a child for whom a termination of parental rights petition has been filed, the placement of the child with that foster parent shall continue through the termination of parental rights proceeding unless the court orders otherwise based upon the best interests of the child.

Sec. 28. Section 232.189, unnumbered paragraph 1, Code 1997, is amended to read as follows:

Based upon a model reasonable efforts family court initiative, the director of human services and the chief justice of the supreme court or their designees shall jointly establish and implement a statewide protocol for reasonable efforts ~~to prevent or eliminate the need for placement of a child outside the child's home, as defined in section 232.102.~~ In addition, the director and the chief justice shall design and implement a system for judicial and departmental reasonable efforts education for deployment throughout the state. The system for reasonable efforts education shall be developed in a manner which addresses the particular needs of rural areas and shall include but is not limited to all of the following topics:

Sec. 29. Section 237.8, subsection 2, paragraphs a and b, Code 1997, are amended to read as follows:

a. (1) If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a licensee under this chapter, or if a person will reside in a facility utilized by a licensee, and if the person has been convicted of a crime or has a record of founded child abuse, the department and the licensee for an employee of the licensee shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

(2) An individual applying to be a foster parent licensee shall not be granted a license and an evaluation shall not be performed under this subsection if the individual has been convicted of any of the following felony offenses:

- (a) Within the five-year period preceding the application date, a drug-related offense.
- (b) Child endangerment or neglect or abandonment of a dependent person.
- (c) Domestic abuse.
- (d) A crime against a child, including but not limited to sexual exploitation of a minor.
- (e) A forcible felony.

b. If Except as otherwise provided in paragraph "a", if the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee, or resides in a licensed facility the department shall notify the licensee that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

Sec. 30. Section 600.8, subsection 2, paragraph b, Code 1997, is amended to read as follows:

b. (1) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph "a", subparagraph (3), and an evaluation shall not be performed under subparagraph (2), if the petitioner has been convicted of any of the following felony offenses:

- (a) Within the five-year period preceding the petition date, a drug-related offense.
- (b) Child endangerment or neglect or abandonment of a dependent person.
- (c) Domestic abuse.
- (d) A crime against a child, including but not limited to sexual exploitation of a minor.
- (e) A forcible felony.

(2) The person making the investigation shall not approve a prospective adoption petitioner pursuant to subsection 1, paragraph "a", subparagraph (3), unless an evaluation has been made which considers the nature and seriousness of the crime or founded abuse in relation to the adoption, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuse committed by the person involved.

Sec. 31. Section 600.12A, if enacted by the 1998 Iowa Acts, Senate File 2338,* is amended by adding the following new subsection:

NEW SUBSECTION. 1A. If the person to be adopted dies following termination of the parental rights of the person's biological parents but prior to the filing of an adoption petition, the person who was the guardian or custodian of the person to be adopted prior to the person's death or the person who was in a parent-child relationship with the person to be adopted prior to the person's death may file an adoption petition and the court in the interest of justice may waive any other procedures or requirements related to the adoption, proceed to the adoption hearing, and issue a final adoption decree, unless any person to whom notice is to be provided pursuant to section 600.11 objects to the adoption.

* See chapter 1064 herein

Sec. 32. PRESERVATION OF REASONABLE PARENTING. Nothing in this Act is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting.

Approved May 14, 1998

CHAPTER 1191

CITIZENS' AIDE REVIEW OF CHILD PROTECTION SYSTEM

S.F. 2359

AN ACT providing for a review of juvenile justice provisions involving child protection by the citizens' aide and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. CHILD PROTECTION SYSTEM REVIEW.

1. The citizens' aide shall conduct a review of the state's child protection system in accordance with this section. The review shall encompass all aspects of the system, including child abuse reporting, investigation, and assessment, child removal, child in need of assistance proceedings, review and appeals, and termination of parental rights. The purpose of review is to determine whether the current system adequately provides fairness and due process protections for all persons involved with the system.

2. The review may include but is not limited to all of the following:

a. Surveys of attorneys experienced in representing subjects of child abuse investigations and assessments and in child welfare and family law.

b. Surveys of persons who have been the subject of a child abuse investigation or assessment.

c. Reviews of known complaints concerning the system.

d. Reviews of previous testimony and submissions by critics and proponents of the system to legislative, administrative, and other bodies organized to provide oversight of the child protection system. In addition, the review may include review of the reports and findings of these bodies.

e. Review of legal information concerning child protection including state and federal statutory requirements, rules, regulations, and policies, judicial decisions including dissenting opinions, and opinions of the attorney general.

f. Interviews of recognized critics and supporters of the child protection system.

g. Use of focus groups to refine the issues for consideration.

h. Random sample reviews of closed child abuse investigations and assessments.

3. The citizens' aide may appoint a project team or contract for a project team to perform the review. Any project team shall include persons with skills and knowledge concerning child welfare and juvenile justice and due process rights. The project team may include an attorney, an authority on social work, and a skilled general investigator or a paralegal. The citizens' aide may also utilize a broad-based advisory group.

4. The citizens' aide shall submit a report containing findings and recommendations in accordance with chapter 2C to the department of human services, chief juvenile court officer of each judicial district, governor, and general assembly. The report shall be submitted on or before February 1, 1999.