

Senate File 2165 - Introduced

SENATE FILE 2165

BY ALLEN

A BILL FOR

1 An Act relating to a child in need of assistance and child
2 abuse and a drug-endangered child.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.2, subsection 6, paragraph o, Code
2 2016, is amended by striking the paragraph and inserting in
3 lieu thereof the following:

4 o. Who is a drug-endangered child as the result of the acts
5 or omissions of the child's parent, guardian, or custodian, or
6 a person responsible for the care of the child as defined in
7 section 232.68.

8 Sec. 2. Section 232.2, Code 2016, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 19A. "*Drug-endangered child*" means any of
11 the following:

12 a. (1) A child whose health, safety, or welfare is
13 endangered or threatened as a result of any controlled
14 substance activity in the presence of the child.

15 (2) For purposes of this paragraph "a":

16 (a) "*Controlled substance activity*" means the use,
17 possession, distribution, cultivation, or manufacture, or
18 the attempted use, possession, distribution, cultivation, or
19 manufacture of a controlled substance as defined in section
20 124.101, subsection 5.

21 (b) "*In the presence of the child*" means but is not limited
22 to any of the following:

23 (i) When the child is physically present during the
24 controlled substance activity.

25 (ii) When the controlled substance activity is conducted in
26 the child's home.

27 (iii) When the controlled substance activity is conducted
28 on the premises, or in any building, structure, room, motor
29 vehicle, or property located on the premises where the child is
30 found or can reasonably be expected to be found.

31 (iv) When the controlled substance activity occurs under
32 circumstances in which a reasonably prudent person would know
33 that the controlled substance activity may be seen, smelled,
34 or heard by the child.

35 (v) When the controlled substance activity by the child's

1 parent, guardian, or custodian, or a person responsible for
2 the care of the child, as defined in section 232.68, results
3 in the child's parent, guardian, or custodian, or the person
4 responsible for the care of the child not being able to provide
5 adequate supervision, care, or a safe and nurturing environment
6 for the child.

7 **b.** A child who tests positive at birth for any controlled
8 substance as defined in section 124.101, subsection 5, unless
9 the child tests positive for a controlled substance that is the
10 result of the biological mother's lawful and legal intake of
11 such substance as prescribed or otherwise administered by a
12 licensed health care provider.

13 **c.** A child who tests positive for any controlled substance
14 as defined in section 124.101, subsection 5, as a direct result
15 of an act or omission of the child's parent, guardian, or
16 custodian, unless the child tests positive for a controlled
17 substance that is the result of the child's lawful and
18 legal intake of such substance as prescribed or otherwise
19 administered by a licensed health care provider.

20 Sec. 3. Section 232.68, subsection 2, paragraph a,
21 subparagraph (6), Code 2016, is amended by striking the
22 subparagraph and inserting in lieu thereof the following:

23 (6) A child is a drug-endangered child as the result of the
24 acts or omissions of a person responsible for the care of a
25 child.

26 Sec. 4. Section 232.68, Code 2016, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 5A. "*Drug-endangered child*" means any of
29 the following:

30 **a.** (1) A child whose health, safety, or welfare is
31 endangered or threatened as a result of any controlled
32 substance activity in the presence of the child.

33 (2) For purposes of this paragraph "*a*":

34 **(a)** "*Controlled substance activity*" means the use,
35 possession, distribution, cultivation, or manufacture, or

1 the attempted use, possession, distribution, cultivation, or
2 manufacture of a controlled substance as defined in section
3 124.101, subsection 5.

4 (b) *"In the presence of the child"* means but is not limited
5 to any of the following:

6 (i) When a child is physically present during the controlled
7 substance activity.

8 (ii) When the controlled substance activity is conducted in
9 the child's home.

10 (iii) When the controlled substance activity is conducted
11 on the premises, or in any building, structure, room, motor
12 vehicle, or property located on the premises where a child is
13 found or can reasonably be expected to be found.

14 (iv) When the controlled substance activity occurs under
15 circumstances in which a reasonably prudent person would know
16 that the controlled substance activity may be seen, smelled, or
17 heard by a child.

18 (v) When the controlled substance activity by a person
19 responsible for the care of a child results in the person not
20 being able to provide adequate supervision, care, or a safe and
21 nurturing environment for the child.

22 b. A child who tests positive at birth for any controlled
23 substance as defined in section 124.101, subsection 5, unless
24 the child tests positive for a controlled substance that is the
25 result of the biological mother's lawful and legal intake of
26 such substance as prescribed or otherwise administered by a
27 licensed health care provider.

28 c. A child who tests positive for any controlled substance
29 as defined in section 124.101, subsection 5, as a direct
30 result of an act or omission of a person responsible for
31 the care of a child, unless the child tests positive for a
32 controlled substance that is the result of the child's lawful
33 and legal intake of such substance as prescribed or otherwise
34 administered by a licensed health care provider.

35 Sec. 5. Section 232.68, subsection 8, Code 2016, is amended

1 by adding the following new paragraph:

2 NEW PARAGRAPH. *e.* Any person who exercises control or
3 supervision of a child.

4 Sec. 6. Section 232.71B, subsection 3, Code 2016, is amended
5 to read as follows:

6 3. *Involvement of law enforcement.*

7 *a.* The department shall apply protocols, developed with the
8 local child protection assistance team established pursuant to
9 section 915.35, to prioritize the actions taken in response
10 to a child abuse assessment and shall work jointly with child
11 protection assistance teams and law enforcement agencies in
12 performing assessment and investigative processes for child
13 abuse assessments in which a criminal act harming a child is
14 alleged. The county attorney and appropriate law enforcement
15 agencies shall also take any other lawful action which may be
16 necessary or advisable for the protection of the child. If a
17 report is determined not to constitute a child abuse allegation
18 or if the child abuse report is accepted but assessed under
19 the family assessment, but a criminal act harming a child is
20 alleged, the department shall immediately refer the matter to
21 the appropriate law enforcement agency.

22 *b.* The department shall provide written or verbal
23 notification to the appropriate law enforcement agency if the
24 department determines that a child is a drug-endangered child.
25 The appropriate law enforcement agency shall determine whether
26 a removal of the child pursuant to section 232.79 is necessary
27 or whether a criminal investigation should be conducted. A
28 law enforcement agency receiving a referral or notification
29 pursuant to this paragraph shall provide the department and the
30 county attorney with a copy of the written report of any law
31 enforcement investigation resulting from the referral.

32 Sec. 7. Section 232.107, Code 2016, is amended to read as
33 follows:

34 **232.107 Parent visitation.**

35 If a child is removed from the child's home in accordance

1 with an order entered under this division based upon evidence
2 indicating the ~~presence of an illegal drug in the child's~~
3 ~~body~~ child is a drug-endangered child, unless the court finds
4 that substantial evidence exists to believe that reasonable
5 visitation or supervised visitation would cause an imminent
6 risk to the child's life or health, the order shall allow the
7 child's parent reasonable visitation or supervised visitation
8 with the child.

9

EXPLANATION

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

12 This bill relates to a child in need of assistance and child
13 abuse and a drug-endangered child.

14 The bill amends the definition of "child in need of
15 assistance" and "child abuse" in Code chapter 232 (juvenile
16 justice) by replacing current provisions relating to the
17 presence of an illegal drug in a child's body due to the acts
18 or omissions of a child's parent, guardian, or custodian or
19 a person responsible for the care of a child with provisions
20 that "child in need of assistance" and "child abuse" include
21 a child who is a drug-endangered child as a result of the acts
22 or omissions of a parent, guardian, or custodian or a person
23 responsible for the care of the child. The bill requires
24 the department of human services to commence a child abuse
25 assessment when a child abuse report accepted by the department
26 alleges that a child is a drug-endangered child, as defined in
27 the bill.

28 "Drug-endangered child" is defined as any of the following:
29 (1) a child whose health, safety, or welfare is endangered or
30 threatened as a result of any controlled substance activity,
31 as defined in the bill, in the presence of the child, (2) a
32 child who tests positive at birth for any controlled substance,
33 unless as a result of the biological mother's lawful and
34 legal intake of such substance as prescribed or otherwise
35 administered by a health care provider, or (3) a child who

1 tests positive for any controlled substance as a direct result
2 of acts or omissions of a person responsible for the care
3 of a child, unless as a result of the child's lawful and
4 legal intake of such substance as prescribed or otherwise
5 administered by a health care provider.

6 The bill includes any person who exercises control
7 or supervision of a child in the definition of a person
8 responsible for the care of a child.

9 The bill requires the department to provide written or
10 verbal notification to the appropriate law enforcement agency
11 if the department determines that a child is a drug-endangered
12 child. The appropriate law enforcement agency is required to
13 determine whether a removal of the child from the custody of
14 the child's parent, guardian, or custodian is necessary or
15 whether a criminal investigation should be conducted. A law
16 enforcement agency receiving a referral or notification shall
17 provide the department and the county attorney with a copy
18 of the written report of any law enforcement investigation
19 resulting from the referral.

20 Under current law, if the department determines a child
21 abuse report constitutes a child abuse allegation, the
22 department is required to promptly commence either a child
23 abuse assessment within 24 hours of receiving the report or
24 a family assessment within 72 hours of receiving the report,
25 depending on the circumstances of the child abuse report. If a
26 family assessment is completed and if any of the criteria for a
27 child in need of assistance are met, the department is required
28 to determine whether to request a child in need of assistance
29 petition to the juvenile court and the county attorney.

30 The bill makes a conforming Code change to a parent
31 visitation provision relating to an order for removal of a
32 child from the child's home based upon evidence indicating the
33 child is a drug-endangered child.