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Iowa Supreme Court Select Committee
-To Review State Court Practices in Child Welfare Matters

**Iowa Supreme Court
Improvement Project for
Child in Need of Assistance Cases**

**Annual Report and
Proposed Policy Revisions**

**Submitted for Consideration to the
Iowa Supreme Court**

October 1997



Iowa Supreme Court Select Committee *-To Review State Court Practices in Child Welfare Matters*

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Annual Report and Proposed Policy Revisions

**Submitted for Consideration to the
Iowa Supreme Court**

October 1997

Edited by:

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Iowa Supreme Court Select Committee ***-To Review State Court Practices in Child Welfare Matters***

October 10, 1997

To the Chief Justice and members of the Iowa Supreme Court:

Our committee has completed the first year of a three-year plan to evaluate and make recommended improvements in the performance of Iowa's juvenile courts. We have been aided in our efforts by the many interested juvenile justice professionals who were willing to serve on our task forces. The value of their insight and contributions cannot be overstated. We commend them for their unselfish devotion to this task and their commitment to the welfare of Iowa's children and families.

Dr. Jim McCullagh, a task force member, observed that it is time to light a fire under Iowa's child welfare system. In doing so, Dr. McCullagh expressed the needed sense of urgency with which Iowa courts must act to effectively meet our obligations to those children and families in need of our protection. This committee's report, and recommendations included with it, represent a considered attempt to accomplish the ideals expressed by Dr. McCullagh's exhortation.

The committee is also indebted to the members of the Iowa Supreme Court for their continuing support of this vitally important project. We look forward to the next two years and the successful completion of our assignment.

Judge Terry Huitink
Iowa Court of Appeals

Judge Stephen C. Clarke
Associate Juvenile Court Judge
First Judicial District

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Introduction

Project History

The Iowa Court Improvement Project began in 1995 as a project funded by a grant under the Omnibus Budget Reconciliation Act of 1993, also known as the Family Preservation and Support Act. This grant was awarded to the State of Iowa to improve the quality and timeliness of juvenile court disposition of abuse, neglect, foster care, and adoption cases.

Under these grants, each participating state court system (a) conducted an assessment of court performance in abuse, neglect, and foster care litigation, (b) developed a plan to improve the administration of justice in foster care cases, and (c) will implement a three-year plan for improvement.

The Iowa Supreme Court appointed the Iowa Supreme Court Select Committee to Review State Court Practices in Child Welfare Matters to oversee Iowa's court improvement project. This committee will be referred to as "the Oversight Committee" throughout this report.

The report summarizing the findings of the initial study and the three year plan for improvement was submitted to the Iowa Supreme Court in September of 1996. The Supreme Court reviewed the report and accepted the plan for improvement. (*See Iowa Supreme Court Improvement Project for Child in Need of Assistance Cases: A Study of Iowa's Court Performance in Child Abuse and Neglect Cases and Plan for Improvement, September 1996.*)

Current Activities

In October of 1997, the Iowa Court Improvement Project completed the first year of the three year plan for improvement. During the past year, three task forces were formed by the Oversight Committee. Each task force was assigned to implement a recommendation listed in the plan for improvement.

As referenced in the report summarizing the findings of the initial study, the three recommendations for implementation during the first year of the plan for improvement were described as follows:

- Section 3.1 Judicial Oversight of the Permanency Process
- Section 3.2 Termination, Appeal, and Final Disposition
- Section 3.5 Code and Rules Review

Each task force was comprised of juvenile justice professionals representing a cross section of public and private entities interested in these issues. The members represented all geographic regions of Iowa. (*See Attachment 1.*)

The task force members convened over the course of one year and developed proposals for court improvement as defined by their role in the September 1996 report. These proposals were submitted for consideration by the Oversight Committee. The following policy recommendations are based on the Oversight Committee's assessment of the merits of each task force proposal and the probability of resulting public policy revisions.

Annual Report and Proposed Policy Revisions for Court Improvement

This report includes the consensus recommendations of the Oversight Committee. The Oversight Committee has included the task force proposals whether they were adopted or deferred for further consideration.

It is imperative in the consideration of court improvement that available resources be examined. There are court practices recommended by the Oversight Committee that are vital to the timely and permanent placement of children. However, there is an overwhelming need for the provision of resources to juvenile courts in order to accomplish these recommendations.

The Oversight Committee wishes to convey a sense of urgency to these initial recommendations and the need for additional resources. We also wish to alert the Supreme Court to other important issues that are under consideration for future recommendations.

Format of This Document

This document is divided in three sections corresponding to the three recommendations addressed by the task forces. Each section has recommendations adopted by the Oversight Committee from the proposals of the task forces.

Each recommendation is formatted in the following manner:

Problem: Description of the problem.

RECOMMENDATION: This section describes the specific recommendation of the Oversight Committee. The recommendations are in various forms. There are Iowa Code revisions, court rule changes, and a project proposal for the court improvement project to begin next year.

Task force proposals. This section includes all task force proposals, edited for clarity, comments by the Code and Rules Review Task Force, and comments by the Oversight Committee. There was not official committee action taken on all task force proposals. These proposals are included for informational purposes. Some issues will be deferred for consideration during the remainder of this project.

Judicial Oversight of the Permanency Process Task Force

Recommendation

Improve the effectiveness of judicial oversight of the permanency process to achieve more timely decisions and final resolution of cases.

Role

- 1) review current permanency statutes and procedures including time standards and rules,
- 2) develop recommendations for legislative and procedural changes to propose to the Supreme Court,
- 3) develop training recommendations to include in training plans,
- 4) investigate and propose new permanency options, and
- 5) review and recommend changes and training for reasonable efforts.

Problem

Children are left in temporary placement too long.

RECOMMENDATION #1:

AMEND IOWA CODE SECTION 232.95(4) AS FOLLOWS:

IF THE COURT ORDERS THE CHILD REMOVED FROM THE HOME PURSUANT TO SUBSECTION 2, PARAGRAPH "a", THE COURT SHALL HOLD A HEARING TO REVIEW THE REMOVAL ORDER WITHIN 30 DAYS OF REMOVAL AND EVERY 30 DAYS THEREAFTER UNLESS A DISPOSITIONAL HEARING PURSUANT TO SECTION 232.99 HAS BEEN HELD. THE REVIEW HEARING MAY BE HELD CONTEMPORANEOUSLY WITH THE ADJUDICATORY HEARING.

Note: The task force recommendation was to limit this change to shelter care placements. The oversight committee concluded it was necessary to include all temporary placements.

Judicial Oversight of the Permanency Process Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

232.xxx Shelter Care Hearing. [Placed after 232.102]

1. Pursuant to section 232.102 or 232.103, when the care, custody, and control of the child has been placed with the Department of Human Services and the child has been temporarily placed in a group shelter care facility, a hearing shall be held within thirty days of placement, and every subsequent thirty days until the child is removed from the group shelter care facility.
2. A juvenile shelter care facility shall not include a licensed foster home.
3. Reasonable notice of the hearing shall be given in the same manner as the adjudicatory hearings in cases of juvenile delinquency as provided in section 232.37. The hearing shall be conducted in accordance with the provisions of section 232.50.
4. When the shelter care hearing is concluded, the court shall make the least restrictive disposition appropriate considering all the circumstances of the case. The dispositions which may be entered are listed in section 232.100 to 232.102 in order from the least to the most restrictive.
5. Placement in a group shelter care facility shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6.
6. The court shall make and file written findings as to its reason for the disposition.

The Code and Rules Review Task Force members stated that the proposal was meritorious. However, the members were concerned that there were not adequate judicial resources to review cases on a thirty day basis. Two possible unintended consequences to this proposal were identified: 1) days in shelter care could be extended by increments of 30 days, and 2) hearings may be routinely waived.

The Oversight Committee addressed this proposal in Recommendation #1.

Amendment to Iowa Code 232.95

1. At any time. . . . Where the child is in the custody of a person other than the child's parent, guardian or custodian as the result of action taken pursuant to section 232.78 or 232.79, the court shall hold a hearing within seven days to determine whether the temporary removal should be continues.

The Code and Rules Review Task Force members did not support this proposal. Concern was expressed about the possible impact of this proposal on parents. Parents often need time to prepare for a removal hearing.

4. If the court orders the child removed from the home pursuant to subsection 2, paragraph "a", the court shall hold a hearing to review the removal order within ninety days unless a dispositional hearing pursuant to section 232.99 has been held.

The Code and Rules Review Task Force suggested adding the following phrase following the word unless ... "an adjudicatory order has been entered". . . .

The oversight committee does not recommend action on this proposal at this time.

AMEND RULE OF JUVENILE PROCEDURE 31 AS FOLLOWS:

IN ALL ACTIONS THE JUVENILE COURT SHALL ORDER ALL PARTIES TO THE ACTION TO APPEAR FOR A PRETRIAL CONFERENCE TO CONSIDER SUCH MATTERS AS WILL PROMOTE A FAIR AND EXPEDITIOUS RESOLUTION OF ALL ADJUDICATORY, DISPOSITIONAL, AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. IN ALL OTHER PROCEEDINGS, THE JUVENILE COURT MAY ORDER AN APPROPRIATE PRETRIAL CONFERENCE.

Problem

Litigants and other interested parties rarely confer prior to the date set for juvenile court proceedings resulting in unnecessary delays.

RECOMMENDATION #2

AMEND RULE OF JUVENILE PROCEDURE 3.1 AS FOLLOWS:

IN ALL ACTIONS THE JUVENILE COURT SHALL ORDER ALL PARTIES TO THE ACTION TO APPEAR FOR A PRETRIAL CONFERENCE TO CONSIDER SUCH MATTERS AS WILL PROMOTE A FAIR AND EXPEDITIOUS RESOLUTION OF ALL ADJUDICATORY, DISPOSITIONAL, AND TERMINATION OF PARENTAL RIGHTS PROCEEDINGS. IN ALL OTHER PROCEEDINGS, THE JUVENILE COURT MAY ORDER AN APPROPRIATE PRETRIAL CONFERENCE.

Judicial Oversight of the Permanency Process Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

232.xxx Pretrial Conference [new section: possibly just before 232.96, 232.96(1), or 232.96(11):

1. Within twenty-one days after the petition is filed alleging a child to be a child in need of assistance, the court shall schedule a pre-trial conference to consider a stipulation regarding the allegations contained in the petition, or, in the alternative, consider such matters as will promote a fair and expeditious adjudicatory hearing pursuant to section 232.96.

The Code and Rules Review Task Force members did not support this proposal. It was recommended by the members to defer to the current rules of juvenile procedure and to allow local practice to dictate procedures regarding pretrial conference. There are inadequate juvenile court resources to meet this requirement.

The Oversight Committee addressed this proposal in Recommendation #2.

232.96 Adjudicatory Hearing.

2. The adjudicatory hearing on a child in need of assistance petition shall be held within forty-five days of the filing of said petition unless good cause to the contrary is shown.
7. After the hearing is concluded, the court shall file written findings as to the truth of allegations of the petition and as to whether the child is a child in need of assistance. The court shall enter such order within ten working days of the conclusion of the adjudicatory hearing.

The Code and Rules Review Task Force members did not support this proposal. It was stated that the current requirement of sixty days between filing and the adjudication hearing is adequate. The primary concern was for the court's inability to meet this requirement because of inadequate judicial resources.

The Oversight Committee does not recommend action on this proposal at this time.

232.97 Social investigation and report.

1. The court shall not make a disposition of the petition until four working days after a social report has been submitted to the court and counsel for the child and has been considered by the court.

The Code and Rules Review Task Force proposes the following words be added "unless waived by all parties".

The Oversight Committee does not recommend action on this proposal at this time.

232.99 Dispositional hearing — findings.

1. Following the entry of an order pursuant to section 232.96, the court shall hold a dispositional hearing within forty-five days unless good cause to the contrary is shown in order to determine what disposition should be made of the petition.

The Code and Rules Review Task Force members did not support this proposal. They stated that forty-five days between adjudication and disposition was an appropriate time frame.

The Oversight Committee does not recommend action on this proposal at this time.

3. The court shall review the parent or parents' or guardian's or custodian's understanding of the Case Permanency Plan as set forth in Section 232.2(4).

The Code and Rules Review Task Force members stated that a review of the case plan should be a training issue for attorneys and judges and not an item for code revision.

The Oversight Committee does not recommend action on this proposal at this time.

232.101 Retention of custody by parent.

2. The court shall conduct a dispositional review hearing every six months, within six months of disposition, and subsequent reviews every six months.

The Code and Rules Review Task Force does not recommend this proposal.

The Oversight Committee does not recommend action on this proposal at this time.

Problem

Review hearings in six month intervals for children placed outside their homes have resulted in undue delay in their permanent placement.

RECOMMENDATION #3

AMEND IOWA CODE CHAPTER 232.102 (8)(a) AND CHAPTER 232.102 (8)(b) AS FOLLOWS:

CHAPTER 232.102 (8)(a)

**THE INITIAL
DISPOSITIONAL REVIEW
HEARING SHALL NOT BE
WAIVED OR CONTINUED
BEYOND THREE (3)
MONTHS AFTER THE
DISPOSITIONAL REVIEW.**

CHAPTER 232.102 (8)(b)

**SUBSEQUENT
DISPOSITIONAL REVIEW
HEARINGS SHALL NOT BE
WAIVED OR CONTINUED
BEYOND SIX (6) MONTHS
AFTER THE DATE OF THE
MOST RECENT
DISPOSITIONAL REVIEW
HEARING.**

Judicial Oversight of the Permanency Process Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

232.10x Dispositional Review Hearing for Out-of-Home Placements. [New section; currently codified at 232.102(8). Could be placed at 232.103; 232.103 would become 232.104, etc.]

1. The court shall hold an initial dispositional review hearing within three months after the date of the dispositional hearing or, more often, at the discretion of the court, in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of parent-child relationship should be instituted. The hearing may not be continued unless there is good cause.
 - a. An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to section 232.102 shall file a written report with the court at least every three months concerning the status and progress of the child.
 - b. The court shall review on the record all of the following:
 - (1) the parent, guardian, or custodian's compliance with the case plan with respect to services provided or offered and whether such services have benefitted the parent, guardian, or custodian. The court shall specifically make inquiries with respect to each provision of the case plan and prior court orders.
 - (2) the child's compliance, as appropriate, with the case plan with respect to services provided or offered and whether such services have benefitted the child. The court shall specifically make inquiries with respect to each provision of the case plan and prior court orders.
 - (3) the parent, guardian, or custodian's compliance with respect to visitation with the child. If visitation has not occurred in

accordance with the case plan, the court shall determine why such visitation did not occur.

- (4) the likely harm to the child if the child continues to be separated from his or her parent, guardian, or custodian.
- (5) the likely harm to the child if the child is returned to his or her parent, guardian, or custodian.
- (6) whether the efforts made to prevent the removal of the child were reasonable.

The Code and Rules Review Task Force stated that a dispositional review hearing every three months may not be appropriate for children in group care.

The proposal to review on the record with the parents is acceptable for children in family foster care and for cases potentially leading to termination of parental rights. The task force members stated again that judicial resources are currently inadequate to meet this requirement. This proposal if enacted should be limited to cases where children are in family foster care and under the age of 12.

The Oversight Committee addressed this proposal in Recommendation #3.

2. During or subsequent to the conclusion of the hearing, the court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to be placed in out-of-home placement or that caused the child to remain in out-of-home placement.
 - a. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6.
 - b. If the court concludes that the placement should be extended, the court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to be placed in out-of-home care or that caused the child to remain in placement. The court may modify any part of the case plan including, but not limited to, the following:
 - (1) The court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services.

- (2) The court may prescribe additional actions to be taken by the parent, guardian, or custodian, or the child, as appropriate, to rectify the conditions that caused the child to be placed in out-of-home care or to remain in placement.

The Code and Rules Review Task Force members did not support this proposal.

The Oversight Committee does not recommend action on this proposal at this time.

232.104(1) If a child has been in foster care for a period of twelve months, or if the prior legal custodian of the child has abandoned efforts to regain custody of the child, or if a termination of parent-child relationship proceeding has been filed pursuant to division IV of this chapter, the court shall, on its own motion, hold a hearing to consider the issue of permanency for the child.

Such a permanency hearing may be held concurrently with a hearing to review, modify, substitute, vacate, or terminate a dispositional order and/or with a termination of parent-child relationship proceeding in accordance with division IV of this chapter.

232.117(2) If the court concludes that facts sufficient to terminate parental rights have not been established by clear and convincing evidence, the court shall dismiss the petition and may enter a permanency order in accordance with section 232.104(2).

The Code and Rules Review Task Force members accepted this proposal to file a permanency order if no termination order is entered after the hearing.

The Oversight Committee does not recommend action on this proposal at this time. Consideration to the issues associated with permanency hearings will continue to be addressed by the Oversight Committee.

Judicial Oversight of the Permanency Transition Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Clerk and Judge Review Task Force.

Comments in Bold are from the Oversight Committee.

Problem

The division of jurisdiction for termination of parental rights and subsequent adoptions results in unnecessary delays in the adoption of children, hardship for the parties, and a waste of financial and judicial resources.

The juvenile court should be granted custody and jurisdiction with the district court to create guardianships and legal parentships for children.

Statutory authority should be extended to allow the juvenile court to award permanent custody orders after the juvenile court phase. The juvenile court would retain continuing jurisdiction to terminate and modify the order if substantial changes in circumstances occurred.

RECOMMENDATION #4

The Oversight Committee addressed this issue in Recommendation #4. It is recommended that the jurisdiction of court be divided. However, the committee was unable to reach a consensus on the court of action at this time.

THE JURISDICTION OF THE JUVENILE COURT SHOULD BE ENLARGED TO INCLUDE ADOPTION PROCEEDINGS.

The Oversight Committee addressed this issue in Recommendation #4.

Judicial Oversight of the Permanency Process Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

Concurrent Jurisdiction Proposals:

The Iowa juvenile court should be given concurrent jurisdiction with the district court to enter orders affecting custody, support and visitation, and collection of support overriding previous district court orders, such as prior dissolution decrees. This would direct child support payments to the party having actual custody of the child.

The juvenile court should be granted concurrent jurisdiction with the district court to create guardianships and conservatorships for children.

Statutory authority should be extended to allow the juvenile court to enter permanent no contact orders after the juvenile case closes. The juvenile court would retain continuing jurisdiction to terminate or modify the order if substantial changes in circumstances occurred.

The Oversight Committee agreed that these issues need to be addressed in the ongoing discussion of court jurisdiction. However, the committee was unable to reach a consensus on the course of action at this time.

Where the juvenile court has entered an order terminating parental rights pursuant to its statutory authority, the same juvenile court should be granted statutory authority to complete the subsequent adoption of the child.

The Oversight Committee addressed this issue in Recommendation #4.

Judicial Oversight of the Permanency Program Task Force Proposals

Notes: Although the Oversight Committee did not approve all of our final proposals, they are included for informational purposes.

Comments in italics are from the Child and Family Justice Task Force.

Comments in bold are from the Oversight Committee.

Problem

Parents of children in need of assistance are not adequately informed that adjudication and transfer of legal custody from the parents may result in termination of their parental rights.

RECOMMENDATION #5

JUVENILE COURT ORDERS PROVIDING FOR THE REMOVAL AND OUT-OF-HOME PLACEMENT OF A CHILD SHALL INCLUDE A STATEMENT INFORMING THE PARENTS THAT THE CONSEQUENCES OF REMOVAL AND PLACEMENT MAY INCLUDE TERMINATION OF THEIR PARENTAL RIGHTS.

THE COMMITTEE ALSO RECOMMENDS THAT IOWA CODE SECTIONS 232.95, 232.96, AND 232.102 BE AMENDED TO ACCOMMODATE THIS RECOMMENDATION.

Judicial Oversight of the Permanency Process Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

Case Permanency Plan Proposals:

Statutorily require the case permanency plan be developed during a case staffing requiring attendance by: the parents, the child when appropriate, the Department of Human Services worker, counsel for all parties, service providers, and any persons recommended by the family. If any party does not attend this meeting, the reasons for the party's absence must be documented for the court. The plan must be written clearly and simply and signed by all parties.

The Oversight Committee defers this proposal to the Department of Human Services committee assigned to review the case permanency plan.

Statutorily require a disclosure statement in the Department of Human Services case plan describing the potential permanency options in a foster care case. This should include a statement informing parents that the failure to follow the plan could result in termination of parental rights.

The Oversight Committee has addressed this issue with a proposal for reform in the court system in Recommendation #5.

The Oversight Committee defers this proposal to the Department of Human Services committee assigned to review the case permanency plan.

Statutorily require that the case permanency plan include the visitation rights and obligations of the parent or parents, and the Department of Human Services during the period the child is in care. Visitation between the child and his siblings shall continue, and shall be incorporated into the case permanency plan for the child, unless the court finds it is not in the best interest of both the child and his siblings.

The oversight committee defers this proposal to the Department of Human Services committee assigned to review the case permanency plan.

Out-of-Home Placement Proposals:

Statutorily require that whenever a child is placed, or proposed to be placed in out-of-home care, the Department of Human Services shall provide the court with a written permanency plan. The plan shall identify one of the following outcomes as the primary goal, and may identify additional outcomes as alternative goals: return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care until the child is age 18.

The Oversight Committee does not recommend action on this proposal at this time.

Statutorily mandate case staffings for out-of-home placement cases to occur every three months until permanent placement is achieved for the child.

The Oversight Committee has addressed this issue with a proposal for reform in the court system in Recommendation #3.

Concurrent Planning Proposal:

Statutorily allow the Department of Human Services to do concurrent planning in appropriate cases. This would allow social workers to concurrently plan reunification and begin planning for termination when appropriate.

The oversight committee was unable to reach a consensus concerning recommended action on this proposal. However, it was agreed by the committee that there will be consideration given to concurrent planning in future court improvement recommendations.

Termination, Appeal, and Final Disposition Task Force

Recommendation

Improve the timeliness of the initiation and completion of termination of parental rights proceedings including the appellate process and increase the effectiveness of judicial oversight of post-termination proceedings to achieve timely and permanent homes for children.

Role

- 1) conduct a survey of statewide termination time lines and practices,
- 2) conduct termination case file reviews,
- 3) develop recommendations for legislative changes and procedure changes, and,
- 4) recommend training needs.

A study examining the time lines and practices from the point of filing the termination petition to the finalization of adoption was conducted between December 1996 - February 1997. The information obtained from this study was used by the task force to formulate recommendations.

Termination, Appeal, and Final Disposition Task Force Proposals

Note: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

Problem

Continuances and interruption of contested juvenile court proceedings, particularly termination of parental rights proceedings, necessitated by the lack of judicial time and resources have resulted in unacceptable delays in the permanent placement of children.

It was suggested that a commission project be completed in a rural area to test the ability of courts to implement this recommendation with available court resources.

The Court must issue a TFR order within 30 days of the completion of the TFR hearing. This proposal is also listed under Recommendation #7.

The Code and Rules Review Task Force agreed that having an achievable goal. However, it was stated that the current limits on court resources. The adoption of such a measure will require additional judicial resources. Further, courts should be added to the formula to determine the number of judges and the formula should

RECOMMENDATION #6

IT IS IMPERATIVE THAT THE NUMBER OF JUVENILE COURT JUDGES BE INCREASED IN PROPORTION TO THE EXISTING CASELOAD. THE COMMITTEE STRONGLY RECOMMENDS THAT APPROPRIATE JUVENILE COURT STATISTICS BE INCLUDED IN THE LEGISLATIVE FORMULA FOR THE DETERMINATION OF THE NUMBER OF JUDGES AUTHORIZED BY STATUTE TO HEAR JUVENILE COURT CASES.

The committee strongly supports the allocation of additional resources to the juvenile court.

The proposals and recommendations put forth in this report as best practices in the courts to achieve timely permanent placement for children are all contingent on the allocation of adequate resources to meet the minimum requirements.

It is the belief of the Oversight Committee that adequate resources in the juvenile court system are desperately needed to meet the growing demand of increased caseloads. In addition, the court improvement project is attempting efforts that will eventually lead to more efficient management of juvenile court cases.

Termination, Appeal, and Final Disposition Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

Termination hearings must be completed within 60 days after TPR petition is filed unless there is good cause for the delay, and any delay will not be detrimental to the best interest of the child. (This proposal also listed under Recommendation #7.)

The Code and Rules Review Task Force members supported this proposal. However, it was suggested that a demonstration project be completed in a rural areas to test the ability of courts to implement this recommendation with available court resources.

The Court must issue a TPR order within 30 days of the completion of the TPR hearing. (This proposal also listed under Recommendation #7.)

The Code and Rules Review Task Force members stated that this is an admirable goal. However, it was stated that this proposal was highly unrealistic given current limits on court resources. The adoption of such a measure will require additional judicial resources. Juvenile cases should be added to the formula to determine the number of judges and the formula should be set up to determine the appropriate number of juvenile judges assigned in a district.

All of the task forces were concerned with the delays resulting from continuances and interruptions in juvenile court proceedings.

Additionally, the task forces expressed concern for the implementation of all of their proposals due to the limited resources in juvenile court.

It was the uniform proposal of all the task forces that the resources allocated to the juvenile court be increased.

The Oversight Committee strongly supports the allocation of additional resources to the juvenile court.

The proposals and recommendations put forth in this report as best practices in the courts to achieve timely permanent placement for children are all contingent on the allocation of adequate resources to meet the minimum requirements.

It is the belief of the Oversight Committee that adequate resources in the juvenile court system are desperately needed to meet the growing demand of increased case loads. In addition, the court improvement project is attempting efforts that will eventually lead to more efficient management of juvenile court cases.

Problem

Time standards provided under present case processing guidelines and the absence of mandatory minimum time requirements for the completion and filing of written findings of fact, conclusions of law, and juvenile court orders unnecessarily delay the permanent placement of children.

RECOMMENDATION #7

THE TIME STANDARDS FOR CASE PROCESSING IN JUVENILE COURT BE AMENDED TO PROVIDE FOR THE DISPOSITION OF TERMINATION OF PARENTAL RIGHTS PETITIONS WITHIN 60 DAYS FROM THE DATE OF FILING.

ADDITIONALLY, THE COMMITTEE RECOMMENDS THAT IOWA COURT RULE 200 BE AMENDED TO PROVIDE THAT THE COURT SHALL FILE WRITTEN FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS WITHIN 30 DAYS OF THE COMPLETION OF ANY JUVENILE COURT PROCEEDING. ALL MATTERS TAKEN UNDER ADVISEMENT FOR LONGER THAN 30 DAYS SHALL BE INCLUDED IN A REQUIRED REPORT TO THE STATE COURT ADMINISTRATOR.

Termination, Appeal, and Final Disposition Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

Termination of Parental Rights Time Line Proposals:

Termination petition must be filed within thirty (30) days after the court has ordered the petition filed by the County Attorney or GAL (232.2(c)) unless the child can be returned home or other limited circumstances exist.

The Code and Rules Review Task Force members did not accept this proposal. It was stated that if a time limit is necessary in a permanency order, it can be in the order.

The Oversight Committee will defer this issue to the Training Task Force for consideration next year.

Termination hearings must be completed within 60 days after termination of parental rights petition is filed unless there is good cause for the delay, and any delay will not be detrimental to the best interest of the child. (This proposal also listed under Recommendation #6.)

The Code and Rules Review Task Force members supported this proposal. However, it was suggested that a demonstration project be completed in a rural areas to test the ability of courts to implement this recommendation with available court resources.

The Oversight Committee addressed these issues in Recommendations #6 and #7.

The Court must issue a TPR order within 30 days of the completion of the TPR hearing. (This proposal also listed under Recommendation #6.)

The Code and Rules Review Task Force members stated that this is an admirable goal. However, it was believed that this proposal was highly unrealistic given current limits on court resources. The adoption of such a measure will require additional judicial resources. Juvenile cases should be added to the formula to determine the number of judges and the formula should be set up to determine the appropriate number of juvenile judges assigned in a district.

The Oversight Committee addressed these issues in Recommendations #6 and #7.

Adjudicatory hearings for termination of parental rights petitions should be afforded the highest priorities of the court. Continuances should be granted only upon a showing that substantial justice will be more nearly obtained. The effect of any delay on the best interest of the child will be considered in determining substantial justice.

The Oversight Committee does not recommend action on this proposal at this time.

Parents will be informed at the beginning of a case that termination of their parental rights could occur if they fail to take necessary rehabilitative steps. Notice should be provided to parents verbally by the court at disposition and review hearings, written in the case permanency plan, and/or in the original notice of the CINA petition. (Note: This notice by the court may or may not apply to the family but never the less should still be given.)

The Code and Rules Review Task Force members did not support this proposal. Concern was expressed as to the consequences to a judge if they neglected to inform the parents. The members suggested that these admonitions be included in the Case Permanency Plan and/or the bench book for judges.

The Oversight Committee addressed this issue under Recommendation #5.

Allow the court to waive reunification services at the disposition hearing when the grounds for early termination as listed in Iowa Code Section 232.116 (b), (f), (h), (i), (j), (k), and (l) are met.

The Code and Rules Review Task Force members did not support this proposal. Grounds currently exist in the code to allow for immediate/early termination.

The Oversight Committee does not recommend action on this proposal.

Allow termination of parental rights to occur after adjudication pursuant to the following statutory language: The severe and chronic mental illness, severe and chronic emotional illness, severe mental retardation, severe physical disability or chemical dependency of the parent, makes the parent unable to provide an adequate permanent home for the child at the present time and for the foreseeable future. (If the foregoing language is added to Iowa Code Section 232.116, the following sections should be deleted: 232.116(j) and 232.116(k)).

The Code and Rules Review Task Force members did not support this proposal. It was stated that the proposal raises issues of discrimination.

The Oversight Committee does not recommend action on this proposal.

Allow TPR to occur after adjudication pursuant to the following language:

1. The parent is incarcerated and will not be able to care for the child for at least eighteen months or,
2. The parent is repeatedly incarcerated and the repeated incarceration prevents the parent from providing care for the child.
3. If the foregoing language is added to Iowa Code Section 232.116, the following Section should be deleted: 232.116 (I)(2) where it reads "...or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years."

The Code and Rules Review Task Force members suggested that in paragraph number one that the following be added to the sentence: "so long as no other parent is available to care for the child."

The oversight committee does not recommend action on this proposal.

Permanency Proposals:

Amend Iowa Code 232.104(d)(1) and 232.104(d)(2) to allow that permanency orders after one year of stable placement shall have the same force and effect of a district court guardianship/custody order. In addition, the Department of Human Services should be able to close its case after one year of stable placement following a permanency order.

The Code and Rules Review Task Force members stated that the permanency order for guardianship should be a paper review as opposed to an in-court review. Additionally, the Department of Human Services should be completed with these cases after one year of stability if no further services are needed. The guardian could be required to file an annual report.

The oversight committee will defer this issue to the Training Task Force to be formed next year.

Return of a child to the parent after a permanency hearing is by a "preponderance of the evidence". Once a child has been placed pursuant to a permanency order for one or more years, change this standard to "clear and convincing".

The Code and Rules Review Task Force members accepted this proposal.

The Oversight Committee does not recommend action on this proposal at this time. This proposal will be considered for future recommendations.

AMEND IOWA RULE OF APPELLATE PROCEDURE 104 AS
FOLLOWS:

(b) ALL APPELLATE PROCEEDINGS SHALL BE FILED
IN THE OFFICE OF THE SUPREME COURT CLERK,
EXCEPT AS OTHERWISE DIRECTED BY A

Problem

The remedial effect of final juvenile court orders is diminished and the time for permanent placement of children is delayed by the length and complexity of the appellate process.

RECOMMENDATION #8

**AMEND IOWA RULE OF APPELLATE PROCEDURE 23(e) AS
FOLLOWS:**

(e) *FRIVOLOUS APPEALS IN JUVENILE CASES.* ANY APPELLEE IN A JUVENILE CASES MAY MOVE THE SUPREME COURT TO AFFIRM A FINAL RULING OF THE JUVENILE COURT WHERE SUCH A MOTION IS APPROPRIATE UNDER SUBSECTION "b," AND THE INTERESTS OF THE CHILD AND THE CHILD'S NEED FOR PERMANENCY SUGGESTS THAT AN EXPEDITED RESOLUTION OF THE APPEAL WOULD BE PROPER. ADDITIONALLY, IOWA RULE OF APPELLATE PROCEDURE 104 APPLIES TO APPEALS TO THE SUPREME COURT UNDER IOWA CODE SECTION 232.133.

(CONTINUED ON NEXT PAGE)

AMEND IOWA RULE OF APPELLATE PROCEDURE 4(a) AS FOLLOWS:

- (a) ALL APPELLATE PROCEEDINGS SHALL BE FILED IN THE OFFICE OF THE SUPREME COURT CLERK. EXCEPT AS OTHERWISE DIRECTED BY A SUPERVISORY ORDER OF THE CHIEF JUSTICE, [A]N INITIAL SCREENING AND EVALUATION OF ALL CASES SHALL BE UNDERTAKEN BY CENTRAL STAFF RESEARCH ATTORNEYS OF THE SUPREME COURT.**

AMEND SUPERVISORY DIRECTIVE (EFFECTIVE JULY 1, 1988), AND IOWA RULE OF COURT, P. 273 (1996) AS FOLLOWS:

[A]LL APPEALS INVOLVING THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP WILL BE EXEMPT FROM SCREENING BY THE CENTRAL STAFF RESEARCH ATTORNEYS AS OUTLINED BY SUPREME COURT OF IOWA RULE 4(a) AND SCREENING REVIEW BY A ROTATING PANEL OF THREE JUSTICES AS OUTLINED BY THE SUPREME COURT OF IOWA RULE 4(b). THESE APPEALS SHALL BE TRANSFERRED BY SUPREME COURT CLERK DIRECTLY TO THE IOWA COURT OF APPEALS.

Termination, Appeal, and Final Disposition Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

Proposed Iowa Rule of Appellate Procedure 23(e)

(e)Frivolous appeals in juvenile cases. Any appellee in a juvenile case may move the Supreme Court to affirm a final ruling of the juvenile court where such a motion is appropriate under subsection "b," and the interests of the child and the child's need for permanency suggests that an expedited resolution of the appeal would be proper. Additionally, Iowa Rule of Appellate Procedure 104 applies to appeals to the Supreme Court under Iowa code section 232.133.

Proposed Iowa Rule of Juvenile Procedure 4.7 (new)

In all parent-child termination hearings under Iowa Code section 232.117, the juvenile court shall file its written ruling within thirty days after submission, unless it extends the time for reasons set forth in a written order filed within the time required for filing the written ruling.

Proposed amendment to Iowa Rule of Appellate Procedure 4(a)

- (a) All appellate proceedings shall be filed in the office of the supreme court clerk. Except as otherwise directed by a supervisory order of the chief justice, [a]n initial screening and evaluation of all cases shall be undertaken by central staff research attorneys of the supreme court.

Proposed amendment to Supervisory Directive (effective July 1, 1988), Iowa Rule of Court, p. 273 (1996).

[A]ll appeals involving the termination of the parent-child relationship will be exempt from screening by the central staff research attorneys as outlined by Supreme Court of Iowa Rule 4(a) and screening review by a rotating panel of three justices as outlined by the Supreme Court of Iowa Rule 4(b). These appeals shall be transferred by Supreme Court Clerk directly to the Iowa Court of Appeals.

The Code and Rules Review Task Force accepted all proposals listed above.

The Oversight Committee addressed these proposals in Recommendation #8.

Problem

The juvenile court does not have immediate access to information concerning the number of children subject to its supervision and their current custodial status. As a result, the court is unable to reliably determine whether a child is receiving the intended remedial benefits of the court's order or if their case is progressing in a timely manner.

RECOMMENDATION #9

THE IOWA COURT IMPROVEMENT PROJECT SHOULD INITIATE THE DEVELOPMENT OF A DATABASE TO DEPOSIT INFORMATION CONCERNING JUVENILE COURT CASES. A SYSTEM FOR STATEWIDE DATA COLLECTION SHOULD BE DEVELOPED AND IMPLEMENTED. THIS SYSTEM SHOULD BE COMPATIBLE WITH EXISTING RESOURCES AND PROCEDURES TO MINIMIZE ANY RESULTING DISRUPTIONS.

THE COMMITTEE RECOMMENDS THAT THE SUPREME COURT AUTHORIZE THE USE OF APPROPRIATE JUDICIAL DEPARTMENT RESOURCES TO ACCOMPLISH THESE OBJECTIVES.

Termination, Appeal, and Final Disposition Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

The next hearing must be scheduled at the conclusion of the current hearing with all parties present for all juvenile proceedings.

The Oversight Committee will defer this issue to the Training Task Force to be formed next year.

There needs to be development of training for professionals in juvenile court. Topics for training should include court rules, time standards, and court management practices. Form orders should be made available to judges for use on personal laptop computers.

The Code and Rules Review Task Force accepted this proposal. It was stated that each profession within the system should be responsible for the training in their area.

The Oversight Committee will defer this issue to the Training Task Force to be formed next year.

Judicial districts should track and account for all children placed out-of-home by court order. The information collected should include: length of stay in each placement, number of children in care, and whether children have received a permanency hearing.

The Code and Rules Review Task Force members stated that it was the responsibility of the Department of Human Services to track children in out-of-home care.

The Oversight Committee addressed this proposal in Recommendation #9.

Code and Rules Review Task Force

Recommendation

Improve the clarity and utility of the statutory law and court rules concerning child abuse and neglect cases that affect permanence, termination, and appeals.

Role

- 1) review the Iowa Code - Ch. 232, Div. I, III, and IV, and
- 2) recommend legislative changes.

The final recommendations of this task force include changes concerning temporary removals and editorial changes to the code. Task force members conducted a review of the definitions of a child in need of assistance. The recommendation is to make no changes to the definitions.

The code and rules review task force reviewed the proposals of the other two task forces and provided comments to the oversight committee. Their comments have been inserted in the text of this document previously in *italic print*.

Problem

There is not timely compliance with the statutory duty to inform the court of a child's removal from parental custody.

RECOMMENDATION #10

AMEND IOWA CODE SECTION 232.79 (2)(c) AS FOLLOWS:

DELETE THE WORDS "IN ACCORDANCE WITH COURT ESTABLISHED PROCEDURES" AND INSERT "IMMEDIATELY, BUT IN NO EVENT LATER THAN TWENTY-FOUR (24) HOURS AFTER REMOVAL."

AMEND IOWA CODE SECTION 232.79 (2) (d) AS FOLLOWS:

WITHIN TWENTY-FOUR HOURS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, OF ORALLY INFORMING THE COURT OF THE EMERGENCY REMOVAL IN ACCORDANCE WITH PARAGRAPH "c", INFORM THE COURT IN WRITING OF THE EMERGENCY REMOVAL AND THE CIRCUMSTANCES SURROUNDING THE REMOVAL.

Code and Rules Review Task Force Proposals

Notes: Although the Oversight Committee did not approve all the task force proposals, they are included for informational purposes.

Comments in Italics are from the Code and Rules Review Task Force.

Comments in bold are from the Oversight Committee.

Temporary Removal Proposals:

Regarding 232.78(1) it is recommended that the Department of Human Services be added to this list of persons authorized to remove children with a court order.

The Oversight Committee does not recommend action on this proposal.

Regarding 232.79 removal without a court order - it is recommended that the following language be added to the statute: "A peace officer, "employee of the Department of Human Services designated by the Regional Director, or a Juvenile Court Officer". It was stated that the Department of Human Services would need to promulgate an administrative rule detailing those employees who should be designated to perform removals without a court order.

The Oversight Committee does not recommend action on this proposal.

In Iowa Code Section 232.79(2)(c) delete the words "in accordance with court established procedures" and in substitution insert "immediately, but in no event later than twenty-four (24) hours after removal."

The Oversight Committee addressed this proposal in Recommendation #10.

It is recommended that Iowa Code Section 232.79 (2) (d) be amended to add "on the next business day after" orally inform the Court of the emergency removal in accordance with paragraph c ...

The Oversight Committee addressed this proposal in Recommendation #10.

It is recommended that an addition to Iowa Code Section 232.95(1) which would provide: "where the child is in the custody of a person other than the child's parent, guardian or custodian as a result of action taken pursuant to Section 232.78 or 232.79 and the child is currently not subject to a dispositional order entered pursuant to section 232. 102, the Court shall hold a hearing within ten days to determine whether the temporary removal should be continued."

The Oversight Committee addressed this proposal in Recommendation #1.

It is recommended that in Section 232.95(2)(a) the use of the word "substantial" as the standard of proof following a removal hearing.

The Oversight Committee does not recommend action on this proposal.

Section 232.95(3) should be amended to include a statement that "all relevant evidence shall be considered by the Court in making said findings".

The Oversight Committee does not recommend action on this proposal.

Attachment One
Iowa Supreme Court Select Committee
to Review State Court Practices in Child Welfare Matters

Co-Chairs

Terry Huitink
Judge
Iowa Court of Appeals
Des Moines, Iowa

Stephen C. Clarke
Associate Juvenile Court Judge
1st Judicial District
Waterloo, Iowa

Committee Members

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George Boykin
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District Judge
7th Judicial District
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Constance Cohen
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5th Judicial District
Des Moines, Iowa

Ralph Rosenberg
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Coalition for Family & Children's Services
Des Moines, Iowa

Melba Dibble
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Polk City, Iowa

Carol Thompson
Chief Juvenile Court Officer
6th Judicial District
Cedar Rapids, Iowa

Dwight Dinkla
State Representative
Guthrie Center, Iowa

Tom Vilsack
State Senator
Mt. Pleasant, Iowa

Phillip Douglas
Executive Director
State CASA Program
Des Moines, Iowa

Ginger Wolfe
Mental Health Patient Advocate, Ret.
-Davenport, Iowa

DeAnn Jones
Citizens Foster Care Review Board
Des Moines, Iowa

Judicial Oversight of the Permanency Process Task Force Members

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Gil Caldwell, III, Newton

Task Force Members

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Tamra Bench, Des Moines
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Mike Mayer, Des Moines
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Sally Oordt, Waterloo
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Committee Liasons

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Task Force Members

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Task Force Members

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Peg DeArmond, New Providence
Judge Larry Eisenhauer, Des Moines
Judge Patrick Grady, Cedar Rapids
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Marilyn Lantz, Des Moines
Leesa McNeil, Sioux City
Mary Nelson, Des Moines
Melissa Schoenoben, Iowa City
Elaine Szymoniak, Des Moines
Judge James Weaver, Muscatine
Ta Yu Yang, Des Moines

Committee Liasons

Deb Lulf, Sioux City
Ralph Rosenberg, Des Moines

Attachment Two

Additional Proposals by: Termination, Appeal, and Final Disposition Task Force

Additional proposals made by the Termination, Appeal, and Final Disposition Task Force were considered by the oversight committee. These proposals include a pilot mediation project and the introduction of communication agreements, otherwise referred to as open adoption agreements. More time and study are required to formulate appropriate policy recommendations. Any formal action by the Oversight Committee on these proposals will be included in a subsequent report.

JUVENILE COURT MEDIATION PILOT PROJECTS

The Iowa Supreme Court shall designate counties or clusters of counties to implement pilot juvenile court mediation projects. The pilot projects shall be selected in a manner that will represent different areas of the state and both rural and urban populations.

A juvenile court judge on its own motion or the motion of any party may refer to mediation any contested matter in a child in need of assistance or termination of parental rights proceeding. A judge may only refer a juvenile court case to mediation if it is in the best interests of the child(ren). Contested matters that may be referred to mediation include, but are not limited to, removal of a child(ren) from their parent's custody, adjudications, dispositions, visitation, permanency and termination of parental rights.

The juvenile court, having jurisdiction over those counties where juvenile court mediation is piloted, shall designate individuals as mediators who possess neutrality, a knowledge of the child welfare system and training in mediation services. Alternatively, the chief juvenile court officer may designate a system for the selection and retention of mediators who possess the necessary qualifications.

The mediator is to be a neutral third party whose role is to encourage and facilitate resolution of the contested issue(s). Mediation is to be an informal and non-adversarial process with the goal of helping the disputing parties reach a mutually acceptable and voluntary agreement. The decision making authority in mediation rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, facilitating joint problem solving and exploring settlement alternatives.

Mediation shall be participated in primarily by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required, and, in the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court. The juvenile judge may exclude a child from the mediation process if it is in the best interests of the child; however, if the child is excluded, the child's guardian ad litem must be present at the mediation conference. Each party involved in a court ordered mediation proceeding has a privilege to refuse to disclose communications made at such proceeding. All communications made by parties at a mediation conference are inadmissible in a juvenile court proceeding.

The pilot mediation projects shall be funded by allocations made to juvenile court services.

The Code and Rules Review Task Force members approve of the concept of piloting mediation in juvenile court. Several concerns about the proposal were reviewed, including 1) additional funding will need to be added to the court ordered services budget to make this proposal feasible, 2) members questioned the utility of mediation at the temporary removal stage of the court process, currently intake personnel attempt to locate alternatives to foster care with

appropriate family members or other suitable persons, 3) there were concerns about using mediation at the removal stage of severe physical abuse cases and/or sexual abuse cases, 4) it was questioned as to whether or not the mediator would be a mandatory reporter under Chapter 232.69, 5) the appropriateness of not mandating the parents attorneys to participate in the mediation was discussed, and 6) in some counties "staffings" with parties/attorneys and service providers already occur. This process should not be duplicated through mediation.

232.117A Communication Agreement

1. Prior to issuance of an order pursuant to Section 232.117, subsection 3, the court may approve in limited cases inclusion in the order of an agreement regarding communication, information or contact after the termination of parental rights among a biological parent, the child, and a prospective adoptive parent if the child had previously received child foster care.

The Code and Rules Review Task Force members recommended that the last sentence of paragraph #1 includes the following: "if the child had previously received child foster care. The result of that requirement would be that only children who had been in foster care could be part of an adoption communication agreement. Children who have been placed with relatives have not been in foster care. However, it is often children who have been in relative placements who would be the best candidates for continuing contact with a biological parent.

2. Prior to approval of such an agreement, the court shall appoint a guardian ad litem for the child, if the child is not already represented by a guardian ad litem, and the guardian ad litem shall represent the best interests of the child relating to the proposed agreement.

The Code and Rules Review Task Force members stated that a difficult issue discussed is whether the juvenile court has the jurisdiction to recognize these agreements for purposes of adoptions and resolve disputes related to the agreements down the road. The juvenile court issues termination of parental rights orders. However, the district court enters adoption orders and would almost certainly be the only court that would have jurisdiction to resolve disputes related to adoption agreements after the entry of an adoption order.

If the proposed language was passed into legislation, there would need to be an accompanying provision in Section 600 of the Iowa Code so that the district court in the adoption proceeding could recognize the agreement. Further, the proposed Iowa code section should state in paragraphs #6 and #7, that the district court shall hear all motions to modify or enforce these agreements.

3. The Court may approve inclusion of such agreement in the order upon the motion of a biological parent or a prospective adoptive parent or the Department of Human Services if all of the following conditions are met:
 - a. The terms of the agreement are agreed to, in writing, by the biological parent and the prospective adoptive parent or the Department of Human Services.
 - b. That court finds that, based upon the recommendations of the guardian ad litem and the court's own review, approval of the agreement is in the best interests of the child.
4. In determining whether the agreement is in the best interests of the child, the guardian ad litem and the court shall consider all of the following, as applicable:
 - a. Whether the child and the biological parent lived together for a substantial period of time.
 - b. Whether the child exhibits attachment to or bonding with the biological parent.
 - c. Whether the biological parent is unable to provide adequate parenting due to certain circumstances including but not limited to a terminal condition or mental illness. For purposes of this paragraph, "mental illness" means mental illness as defined in Section 229.1, and "terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, within reasonable medical judgment, result in death within two years.
 - d. Whether the child has been the victim of sexual or physical abuse.
 - e. The age of the child.
5. Subsequent to the issuance of an order pursuant to Section 232.117, subsection 3, failure to comply with an agreement approved under this section shall not be grounds for appeal of a termination of parental rights order or appeal of an adoption decree.
6. The court shall retain jurisdiction after the decree of adoption is entered for the purpose of hearing notions brought to enforce or modify an agreement entered into pursuant to the provisions of this section. If a motion to enforce or modify the agreement is filed with the court, the court on its own motion or the motion of any party may refer the matter to mediation, if mediation services are available and the court concludes that mediation is the best avenue to seek resolution of the dispute. The court shall not grant a motion to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the adoptee's best interests.

7. An agreement included in an order issued pursuant to Section 232.1170 subsection 3, shall not be modified unless the court finds any of the following:
 - a. That modification is in the best interests of the child and the modification is agreed to by the adoptive parent and the biological parent.
 - b. Circumstances have arisen subsequent to the issuance of the order which justify modification of the agreement.
 - c. If the agreement for contact was reached between the biological parent and the Department of Human Services pursuant to paragraph 3(a) of this code section at a time when a prospective adoptive parent had not yet been identified, and is subsequent to the entry of the agreement, a prospective adoptive parent is identified who will adopt the child but is unwilling to abide by the adoption agreement, the court may void the agreement if the agreement is the sole barrier to the completion of the adoption.

The task force members recommended that the language in paragraph 7c "the court may void the agreement" should be changed to "the court shall void the agreement."

Comments concerning the communications agreement, overall:

The Code and Rules Review Task Force members did not unanimously support this proposal. They did not believe that this should be enacted into law but would encourage the development of different avenues to promote communication in appropriate cases. Another solution could be a repository for the exchange of photographs and information between biological parents and adoptive parents.

Other concerns about this proposal expressed by the Code and Rules Review include: 1) implementation of this proposal would have a chilling effect upon adoptions, 2) potential adoptive parents may be in a dilemma if they did not agree to the Communication Agreement because the child may not be available for adoption without the agreement, and 3) if this proposal were enacted it might be used as a bargaining tool to avoid contested cases.

Attachment 3

Code Editorial Proposals from the Code and Rules Review Task Force

In Iowa Code Section 232.2(4), definition of Case Permanency Plan, delete the words "mandated by public law number 96-27211, and in line 4 the words beginning "which is designed to achieve placement in the least restrictive, most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement proximity to the school in which the child is enrolled at the time of placement".

The Oversight Committee does not recommend action on this proposal.

Sections 232.2(6)(g-k-I and n) should be deleted or eliminated from the Code.

The Oversight Committee does not recommend action on this proposal.

Repeal Code Section 232.93 "other issues adjudicated".

The Oversight Committee does not recommend action on this proposal.

Amend Iowa Code Section 232-99 to include specifically when the Department of Human Services should be required to submit the social history and investigation prior to disposition.

The Oversight Committee does not recommend action on this proposal.

Iowa Code Section 232.100 should be repealed or eliminated.

This editorial change is supported by the Oversight Committee

The language contained in Iowa Code Section 232.102(5) should be transferred to Iowa Code Section 232.99(3). Regarding Iowa Code Section 232.102(g)(b), for children in out of home placements there should be a review every six months and the hearing scheduled for the 12 month review should be automatically scheduled as a permanency hearing by statute.

The Oversight Committee addressed this proposal in Recommendation #3.

Repeal the definition of reasonable efforts in Iowa Code Section 232.102(9).

The Oversight Committee does not recommend action on this proposal.

Repeal Iowa Code Section 232.103(2)(9), which would eliminate the ability of a private agency or facility to petition the Court for termination or modification of a dispositional order.

This proposal was accepted by the Oversight Committee through a code editor recommendation.

Repeal or eliminate Iowa Code Section 232-103(6).

Repeal or eliminate Iowa Code Section 232.103(7)

Repeal Iowa Code Section 232.103(5) with the exception of words "the Court may modify or vacate an order for good cause shown."

Regarding Section 232.2(22) the duties of the guardian ad litem, in subparagraph (a) eliminate the words "and each parent, guardian or other person having custody of the child." The rationale for eliminating this section was that to require an attorney who is serving as the guardian ad litem for a child to interview a parent or other person who is represented by counsel would be an ethical violation.

The Oversight Committee will consider these issues in future recommendations.