FRIDAY, FEBRUARY 27, 2009

Events

February 28: Race and the Criminal Justice System: How the Criminal Justice System Impacts the Lives of American Minorities: 2:00 p.m.; Drake University, Meredith Hall, Room 101, 2621 Carpenter Avenue, Des Moines; Elected officials, lawyers, criminologists, distinguished professors, and students discuss and debate the legal and societal impact of the criminal justice system on minorities in America. Free event.

March 6-7: IFAPA Annual Spring Conference – Courtyard by Marriott Hotel, Ankeny, Iowa. The annual conference of the Iowa Foster and Adoptive Parent’s Association features keynote presentations by Marsha Ternus, Chief Justice of the Iowa Supreme Court and Eugene Gessow, Director of the Iowa Department of Human Services. For more information, go to IFAPA’s website at: www.ifapa.org

March 19: “Family and Juvenile Drug Courts in Polk County,” Polk County Model Court Training Academy; 12 noon, Room 209A, Polk County Courthouse, Des Moines. Free CLEs and CEUs.

State Legislative Update: As the Iowa General Assembly continues in session, we continue to report on the progress of bills of interest to child advocates.
New Bills: The following is a description of new bills that have been introduced in the Iowa legislature since the last edition of Child Views that may be of interest to child advocates:

HSB 220 (See also SSB 1172) – CHILD ABDUCTION ACT: This bill enacts the Uniform Child Abduction Act. It allows a person to file a petition seeking abduction prevention measures to prevent the abduction of a child, or allows the court to order such measures on its own. The bill also requires the petition to include information on child custody determinations, the risk factors for abduction and whether prior action has been needed to prevent an abduction or domestic abuse. The bill also allows the court to consider a number of factors, including the ties to Iowa and the US that the parties have. The bill allows an abduction prevention order to impose travel restrictions, have a visitation schedule, to require a party to post a bond, or require education classes. The bill also allows the court to issue ex parte warrants to take custody of a child or to order law enforcement to take custody. The bill makes the order enforceable until a child turns 18 or is emancipated.

HF 315 – YOUTH COUNCILS (Successor to HSB 8): This bill creates an “Iowa Collaboration for Youth Development Council” and an “Iowa Youth Advisory Council” in the Department of Human Resources. The bill defines youth to include persons through age 21, and establishes the duties, membership and reporting requirements of the councils, including that the members of the Youth Advisory Council be aged from 14-20.

HF 383 – STATE CHILD CARE ADVISORY COUNCIL: This bill requires one of the seven members of the Council on Human Services to be a member of the Child Care Advisory Council. It also makes changes to the membership on the council, including that a slot for an unregistered child care home provider be for a “family, friend, and neighbor child care” provider, and also identifies four additional slots for the advisory council (business, from nominees by the Chamber of Commerce executives, community empowerment office, and Iowa after-school alliance, the statewide preschool program for four-year-old children). The bill allows the council to advise DHS on additional matters, including the federal Child Care and Development Block Grant and other funding sources.

HF 406 – SHAKEN BABY SYNDROME (Successor to HF 65): This bill requires the Department of Public Health (DPH) to establish a statewide Shaken Baby Prevention program. The bill requires the DPH to work with experts to develop the plan and to use a collaborative approach in working with others to reduce the shaken baby syndrome, and requires the DPH to develop a methodology for tracking shaken baby syndrome.
HF 425 – GRANDPARENT VISITATION: This bill strikes current grandparent visitation provisions, and allows grandparents to file for visitation in certain conditions (during a divorce, if either parent is deceased, if the parents are unmarried and the grandparents are the parents of the father, during a proceeding to terminate parental rights.

SF 152 FOSTER TRANSITIONS (Successor to SSB 1104): This bill makes changes to provisions for the transition of children over the age of 16 from foster care to conform with recent federal changes. The bill strikes current local transition committees and replaces them with child centered transition teams, and requires the team to include persons selected by the child, persons who have knowledge of what the child will need, and persons who may be service providers or partially responsible for the costs. The bill also requires regular reviews of transition plans, requires the plan to include housing provisions and regular reviews including 90 days before the child turns 18, and requires case permanency plans to address educational requirements. The bill also includes provisions on notice to parents for a child declared to be a Child In Need of Assistance (CINA), on compulsory school attendance for the foster children and other matters, adds directives for schools to enroll foster children on transfers, and adds additional provisions of school enrollments.

SSB 1216 – MINOR EMANCIPATION: This bill allows a minor who is at least 16, is a resident and not in the care of the state to petition for emancipation. It requires the petition to include facts to support that the minor is self-supporting and does not need assistance from the state, that the minor is capable of managing financial and personal affairs, and that the minor is committed to getting educational support and employment. The bill requires documentation of three months independent living, and a statement as to the reasons why the minor’s home is not safe, or consent from parents or guardians. The bill also allows the court to stay the proceedings and refer the parties to mediation or to request that DHS investigate, and also allows the court to end the emancipation hearing and to start a Child in Need of Assistance (CINA) proceeding. The bill allows the court to order emancipation if, by clear and convincing evidence, it finds that no remedy that would fix the family is available and the emancipation is in the best interests of the child. Under the bill, emancipation gives the child various rights, including to sue or be sued, to buy and sell real estate, to establish a legal residence, to incur debts, and to consent to medical care. Under the bill, emancipation does not end restrictions on tobacco or alcohol, or consider the child an adult for prosecutorial purposes. An emancipation order eliminates the support obligations, debt responsibility or the tort liability of the parents. This bill is sponsored by the Joan & Lyle Middleton Center for Children’s Rights at the Drake University Law School.
SF 179 – CHILD CARE: This bill creates a high-quality child care project for low-income children funded through federal block grants. The bill requires that a child care facility meet certain standards and have at least 60% of the children in the program receiving assistance.

SF 196 – JUVENILE SEX PREDATORS: This bill allows juveniles to be civilly committed as a sexual predator. It establishes provisions for commitment that are similar to those for adult sexual predators, except that a juvenile who is committed as a sexual predator must be segregated from adult predators.

Updates of Bills: The following is a report of updates as to the progress of bills previously noted in earlier editions of Child Views:

SF 27 – TRAFFICKING OFFENSES: This bill adds ‘forcing a minor to make sexually explicit performances’ to the human trafficking crimes, and gives child victims access to various services, including the appointment of a guardian ad litem to represent the child’s interests. The Bill has passed out of the House Judiciary Committee (19-2).

SF 38 – IOWACARE PAYMENTS II: This bill requires DHS to develop a process to pay nonparticipating providers under the IowaCare program for eligible services to expansion population members. Ti also requires the provider to show that it was not possible to postpone the treatment of transfer the member to an eligible provider, and creates a fund to be used to pay providers who are not in the IowaCare network and who offer covered services. The bill requires the provider to submit claims to the DHS in order to be paid and requires DHS to adopt rules on the format of the claim and for the claim to be submitted within 45 days of the service. This bill was Amended & Passed out of the Senate Human Resources Committee (13-0). It now appears as Senate File 231.

SF 236 (Successor to SSB 1200; See also HSB 213) – PMIC PAYMENTS: This bill directs DHS to work with PMIC providers on a new reimbursement system to begin July, 2010. The bill sets the PMIC reimbursement rate for FY 2010 as a percentage of average costs but allows the DHS to make exceptions. The bill also requires DHS to apply for authority to reimburse PMICs at 100% of costs. This bill was Amended & Passed out of the Senate Human Resources Committee (13-0).
HF 329 & SF 173 – FOSTER CARE & SCHOLARSHIPS: These bills increase the amount of the FY 2009 appropriation for FY 2009 for the All Iowa Opportunity Assistance Program that can be used by the College Student Aid Commission to for foster care grants and scholarships to $750,000. The House version has passed out of the House Education Committee (21-0), and the Senate version has passed out of the Senate Education Committee (13-0).

SF 101 – SHAKEN BABY SYNDROME: This bill requires the Department of Public Health (DPH) to establish a statewide Shaken Baby Prevention program. It requires the DPH to work with experts to develop the plan and to use a collaborative approach in working with others to reduce the shaken baby syndrome. The bill also requires the DPH to develop a methodology for tracking shaken baby syndrome. This bill passed out of the House (98-0). It now goes to the Governor.

HF 280 – GUARDIAN AD LITEM (Successor to HSB 30): This bill makes the pay to a guardian ad litem for a child witness recoverable as restitution in some situations, and establishes the order of priority for payment of a guardian ad litem compensation in a restitution plan as being subservient to the payment of victim restitution. The bill requires the clerk of courts in the county where the offense occurred to pay the guardian ad litem. The bill also allows child victims of enticement to get a guardian ad litem. The bill also limits notice to the guardian, and attendance by the guardian to depositions, hearings and proceedings affecting the child. This bill has now passed the House (98-0) after already passing in the Senate. It now goes to the Governor.

February Statistical Summary: During the month of February, the Iowa Supreme Court rendered no opinions in juvenile cases. During the month of February, the Iowa Court of Appeals rendered 15 opinions in juvenile cases. Of those 15 cases, 12 were Termination of Parental Rights (TPR) cases, 2 were Child in Need of Assistance (CINA) cases and 1 was an adoption case. Here are the results in those cases.

TPR Cases: In all 12 TPR cases, the parent(s) appealed the trial court’s order terminating parental rights. The Court of Appeals affirmed the termination of parental rights in 11 cases and reversed the TPR in 1 case (this case is discussed below).
**CINA Cases:** In one CINA case, the Court of Appeals affirmed the trial court’s permanency order continuing placement of the children for an additional six months and implementing a plan to transition the children to the mother’s home. In another CINA case, the Court of Appeals affirmed the trial court’s permanency order in spite of a parent’s claim that “the juvenile court abused its discretion by imposing rigid and unreasonable time constraints for hearing, thereby excluding the testimony of two important witnesses.”

**Adoption Case:** In the adoption case, the Court of Appeals affirmed the trial court’s order denying intervention by the ex-wife of the child’s father.

**Intervention Rights:** *In the Interest of N.S.*, *(Iowa Court of Appeals, February 19, 2009)*: In this case, the Iowa Court of Appeals affirmed the trial court’s order denying intervention by the ex-wife of the child’s father. In reviewing the case, the court first reviewed the general rules concerning intervention:

A person may intervene under Iowa Rule of Civil Procedure 1.407(1) when the person has “a legal right or liability that will be directly affected by the litigation.” *(citation omitted)* In considering a person’s legal interest, we examine the source of the person’s claimed right. *Id.* A person must have more than an indirect, speculative, or remote interest to intervene. *Id.* We consider statutory guidance in determining whether a person has a right to intervene. *(citation omitted)* Furthermore, intervention must be in the child’s best interests.

The court then examined the rule concerning who may be considered for placement of a child after a termination of parental rights:

A person seeking to intervene in CINA proceedings as a “suitable person” must show a sufficient interest “in light of the nature of the proceeding and the surrounding facts and circumstances.” *(citation omitted)* A critical factor to consider is the closeness of the relationship between the child and the person seeking to intervene. *(citation omitted)* In No. 08-0035 we concluded Linda had a sufficiently close relationship with Nathan to be considered a “suitable person” to seek guardianship of the child under section 232.117(3), and thus, she had the right to intervene in the CINA proceeding. . . If parental rights are terminated, the juvenile court must contemplate the placement for the child. *(citation omitted)* A person qualifying as a “suitable person” under section 232.117(3) has a legal right
to be considered as a guardian and custodian of the child. (citation omitted) The juvenile court has discretion to determine who is a “suitable person” under section 232.117(3). (citation omitted) A person seeking to intervene in CINA proceedings as a “suitable person” must show a sufficient interest “in light of the nature of the proceeding and the surrounding facts and circumstances.” (citation omitted) A critical factor to consider is the closeness of the relationship between the child and the person seeking to intervene. (citation omitted) In No. 08-0035 we concluded Linda had a sufficiently close relationship with Nathan to be considered a “suitable person” to seek guardianship of the child under section 232.117(3), and thus, she had the right to intervene in the CINA proceeding.

Finally, the Iowa Court of Appeals ruled that the rules set forth above change in the context of an adoption hearing:

The statutory provisions concerning who may be involved in adoption proceedings are very different than the statutory provision concerning who may be considered as a guardian for a child after termination of parental rights. . . Those who are not specifically listed in section 600.11(2) are not entitled to notice of the adoption hearing, and therefore, do not have the ability to participate in the hearing. . . Furthermore, where a person does not have any legal rights in the proceedings, the person has been found not to have the right to intervene in the proceedings. (citation omitted) A party’s “mere interest or desire to adopt a child will not qualify as a sufficient interest.” (citation omitted) We additionally note that a juvenile court should be reluctant to grant a petition to intervene “if it will delay a child’s adoption and/or chance for permanency.” (citation omitted) In considering a petition to intervene in an adoption proceeding, a court should seek to avoid delay and disruption of the adoption process. (citation omitted) In all instances, “intervention must be compatible with the child’s best interests.” We conclude the district court did not err in denying Linda’s petition to intervene in the adoption proceedings. Although Linda was a “suitable person” to be considered for guardianship of the child under section 232.117(3), and could intervene in the CINA proceeding, she had no legal interest in the adoption proceeding under the statutory provisions of chapter 600, and therefore did not have a sufficient interest in the proceedings to intervene.
TPR: Parents Can Still Need Help: In the Interest of K.R.M., (Iowa Court of Appeals, February 19, 2009): In this case, the Iowa Court of Appeals affirmed the trial court’s order terminating parental rights in a very split decision (1 judge wrote the court’s decision, 1 judge wrote a concurring decision, and 1 judge wrote a dissenting opinion). In this case, the mother requested the judge to allow her to admit herself into the “lighthouse” program with her child (an inpatient substance abuse center allowing children to join their mother while the mother is in treatment). The court held that the mere factor that the mother was not able to “go it alone” yet, was not enough to warrant a termination of her rights:

The parent-child relationship is constitutionally protected. (citation omitted) There is a rebuttable presumption that a child’s interests are best served by leaving the child in the care of the child’s parents. (citation omitted) Our cases have emphasized that in times of need parents should be encouraged to look for help in caring for their children without risking loss of custody. (citation omitted) It has been said that “[t]he presumption preferring parental custody is not overcome by a mere showing that such assistance has been obtained.” (citation omitted) Even less so by a showing that such assistance is sought.

In her concurring opinion, Judge Sackett raised the issue of support obligations and termination of parental rights:

Secondly, though the issue of the father’s rights and responsibilities is not before us, I am frustrated that in terminating the father’s rights the juvenile court has released him from any responsibility to support this child. I question whether terminating his parental rights and his support obligation for the child was prudent and in the child’s best interests when the issue of the mother’s rights had not been fully litigated and restoring her rights will leave her as the only parent responsible for the child’s support. (citation omitted) Furthermore, the child appears to be receiving state support. Therefore, the public interest is also involved. Parents are legally obligated to support their children and courts should be slow in making children wards of the state, particularly where, as here, the current foster parents are not interested in adopting the child, so it is doubtful that even if the juvenile court was or would be affirmed there would be an adoption in the immediate future.
**Child Homicide and Suicide by Race and Ethnicity:** The following statistical analysis comes from *Child Trends*:

- Black infants are more than four times as likely as Hispanic and non-Hispanic white infants to be murdered. Black teens between the ages of 15 and 19 are nearly twice as likely to be murdered as Hispanic teens and about 12.5 times as likely to be murdered as non-Hispanic white teens.

- Suicide now claims nearly the same number of teen lives as homicide.

- Native American male youth between the ages of 15 and 19 are nearly twice as likely as their non-Hispanic white counterparts to commit suicide, and about three times as likely as their black, Hispanic, or Asian counterparts to do so.

*“Children need love, especially when they do not deserve it.”* – Harold S. Hulbert