

**CHAPTER 126****JUVENILE JUSTICE AND YOUTHFUL OFFENDERS****S.F. 515**

**AN ACT** relating to juvenile justice and youthful offenders, by making changes in provisions relating to illegal purchase or possession of alcohol by juveniles and youthful offenders, making changes relating to dramshop liability, providing for notification of possession of alcohol by persons under legal age, providing for the taking of fingerprints and photographs of certain juveniles, permitting victims to make oral victim impact statements in juvenile proceedings, making changes related to the supplying of alcohol to persons under the age of twenty-one, providing for sharing of information regarding delinquent juveniles and juveniles under the jurisdiction of various social services agencies, providing for shared jurisdiction between the adult and juvenile courts over youthful offenders, changing the criteria for placement in the state training school or other facility, making changes relating to state reimbursement for expenses of court-appointed attorneys in juvenile court, permitting the release of information relating to juveniles who have escaped from a detention facility, providing for notification of juvenile court authorities of unexcused absences or suspensions or expulsions of students who are on probation, providing for establishment of statewide peer review courts for youthful offenders, providing for bailiff and other law enforcement assistance to associate juvenile judges, including arrest or disposition or custody or adjudication data in criminal history data kept by the department of public safety, authorizing school officials to report possession or use of alcohol or controlled substances to law enforcement authorities, and providing for a legislative study.

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

Section 1. Section 123.3, subsection 19, Code 1997, is amended to read as follows:

19. "Legal age" means ~~nineteen~~ twenty-one years of age or more.

Sec. 2. Section 123.47, Code 1997, is amended to read as follows:

123.47 PERSONS UNDER ~~THE LEGAL AGE OF EIGHTEEN~~ — PENALTY.

1. A person shall not sell, give, or otherwise supply alcoholic liquor, wine, or beer to any person knowing or having reasonable cause to believe that person to be under the legal age of eighteen, ~~and a~~.

2. A person or persons under the legal age of eighteen shall not purchase or attempt to purchase, or individually or jointly have alcoholic liquor, wine, or beer in their possession or control; except in the case of liquor, wine, or beer given or dispensed to a person under the legal age of eighteen within a private home and with the knowledge, presence, and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under the legal age of eighteen may handle alcoholic beverages, wine, and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee under this chapter.

3. A person who is under legal age, other than a licensee or permittee, who violates this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer shall pay a twenty-five dollar penalty, or possessing or having control of alcoholic liquor, wine, or beer, commits a simple misdemeanor punishable by a fine of one hundred dollars for the first offense. A second or subsequent offense shall be a serious misdemeanor punishable by a fine of two hundred dollars and the suspension of the person's motor vehicle operating privileges for a period not to exceed one year. The court may, in its discretion, order the person who is under legal age to perform community service work under section 909.3A, of an equivalent value to the fine imposed under this section. However, if the person who commits the violation of this section is under the age of eighteen, the matter shall be disposed of in the manner provided in chapter 232.

4. Except as otherwise provided in subsections 5 and 6, a person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section commits a serious misdemeanor punishable by a minimum fine of five hundred dollars.

5. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in serious injury to any person commits an aggravated misdemeanor.

6. A person who is of legal age, other than a licensee or permittee, who sells, gives, or otherwise supplies alcoholic liquor, wine, or beer to a person who is under legal age in violation of this section which results in the death of any person commits a class "D" felony.

Sec. 3. Section 123.47B, Code 1997, is amended to read as follows:

**123.47B PARENTAL AND SCHOOL NOTIFICATION — PERSONS UNDER EIGHTEEN YEARS OF LEGAL AGE.**

1. A peace officer shall make a reasonable effort to identify a person under the age of eighteen discovered to be in possession of alcoholic liquor, wine, or beer in violation of section 123.47 and if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of such possession, whether or not the person is arrested or a citation is issued pursuant to section 805.16, unless the officer has reasonable grounds to believe that such notification is not in the best interests of the person or will endanger that person.

2. The peace officer shall also make a reasonable effort to identify the elementary or secondary school which the person attends if the person is enrolled in elementary or secondary school and to notify the superintendent or the superintendent's designee of the school which the person attends, or the authorities in charge of the nonpublic school which the person attends, of the possession. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school, of the taking into custody. A reasonable attempt to notify the person includes but is not limited to a telephone call or notice by first-class mail.

Sec. 4. Section 123.49, subsection 3, Code 1997, is amended to read as follows:

3. No A person under legal age shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to ~~minors~~ a person under legal age.

Sec. 5. Section 123.50, subsection 1, Code 1997, is amended to read as follows:

1. Any person who violates any of the provisions of section 123.49, except subsection 2, paragraph "h", shall be guilty of a simple misdemeanor. A person who violates section 123.49, subsection 2, paragraph "h", commits a simple serious misdemeanor punishable as a ~~scheduled violation under section 805.8, subsection 10, paragraph "b"~~ by a fine of one thousand five hundred dollars. If the violation is committed by a person who is employed by a licensee or permittee, the licensee or permittee and the individual shall each be deemed to have committed the violation and shall each be punished as provided in this subsection.

Sec. 6. Section 123.50, subsection 4, Code 1997, is amended by striking the subsection.

Sec. 7. Section 123.92, Code 1997, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Notwithstanding section 123.49, subsection 1, any

person who is injured in person or property or means of support by an intoxicated person who is under legal age or resulting from the intoxication of a person who is under legal age, has a right of action for all damages actually sustained, severally or jointly, against a person who is not a licensee or permittee and who dispensed or gave any beer, wine, or intoxicating liquor to the intoxicated under-age person when the nonlicensee or nonpermittee who dispensed or gave the beer, wine, or intoxicating liquor to the under-age person knew or should have known the under-age person was intoxicated, or who dispensed or gave beer, wine, or intoxicating liquor to the under-age person to a point where the nonlicensee or nonpermittee knew or should have known that the under-age person would become intoxicated. If the injury was caused by an intoxicated person who is under legal age, a person who is not a licensee or permittee and who dispensed or gave beer, wine, or intoxicating liquor to the under-age person may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the under-age person. For purposes of this paragraph, "dispensed" or "gave" means the act of physically presenting a receptacle containing beer, wine, or intoxicating liquor to the under-age person whose actions or intoxication results in the sustaining of damages by another person. However, a person who dispenses or gives beer, wine, or intoxicating liquor to an underage person shall only be liable for any damages if the person knew or should have known that the underage person was under legal age.

Sec. 8. Section 137C.25C, subsection 3, Code 1997, is amended to read as follows:

3. The owner or operator reasonably believes that the individual is using the premises for an unlawful purpose including, but not limited to, the unlawful use or possession of controlled substances or the use of the premises for the consumption of alcohol by an individual in violation of section 123.47 ~~or 123.47A~~.

Sec. 9. Section 216A.138, Code 1997, is amended by adding the following new subsection:

**NEW SUBSECTION. 5A.** The plan shall include development of a resource guide outlining successful programs and practices established within this state which are designed to promote positive youth development and that assist delinquent and other at-risk youth in overcoming personal and social problems. The guide shall be made publicly available.

Sec. 10. Section 232.2, subsection 12, Code 1997, is amended by adding the following new paragraph:

**NEW PARAGRAPH. c.** The violation of section 123.47 which is committed by a child.

Sec. 11. Section 232.8, subsection 3, Code 1997, is amended to read as follows:

3. The juvenile court, after a hearing and in accordance with the provisions of section 232.45, may waive jurisdiction of a child alleged to have committed a public offense so that the child may be prosecuted as an adult or youthful offender for such offense in another court. If the child, except a child being prosecuted as a youthful offender, pleads guilty or is found guilty of a public offense in another court of this state that court may, with the consent of the child, defer judgment and without regard to restrictions placed upon deferred judgments for adults, place the child on probation for a period of not less than one year upon such conditions as it may require. Upon fulfillment of the conditions of probation the child shall be discharged without entry of judgment.

Sec. 12. Section 232.19, subsection 2, Code 1997, is amended to read as follows:

2. When a child is taken into custody as provided in subsection 1 the person taking the child into custody shall notify the child's parent, guardian, or custodian as soon as possible ~~and shall not~~. The person may place bodily restraints, such as handcuffs, on the child unless if the child physically resists; or threatens physical violence when being taken into custody; is being taken into custody for an alleged delinquent act of violence against a person; or when, in the reasonable judgment of the officer, the child presents a risk of injury

~~to the child or others. However, if the child is thirteen years of age or older, the child may be restrained by metal handcuffs only, for the purpose of transportation in a vehicle which is not equipped with a rear seat cage for prisoner transport and if the child is being taken into custody for an alleged delinquent act of violence against a person.~~ The child may also be restrained by handcuffs or other restraints at any time after the child is taken into custody if the child has a known history of physical violence to others. Unless the child is placed in shelter care or detention in accordance with the provisions of section 232.21 or 232.22, the child shall be released to the child's parent, guardian, custodian, responsible adult relative, or other adult approved by the court upon the promise of such person to produce the child in court at such time as the court may direct.

Sec. 13. Section 232.19, Code 1997, is amended by adding the following new subsection: **NEW SUBSECTION.** 4. Information pertaining to a child who is at least ten years of age and who is taken into custody for a delinquent act which would be a public offense is a public record and is not confidential under section 232.147.

Sec. 14. Section 232.22, Code 1997, is amended by adding the following new subsection: **NEW SUBSECTION.** 7. Notwithstanding any other provision of the Code to the contrary, a child shall not be placed in detention for a violation of section 123.47, or for failure to comply with a dispositional order which provides for performance of community service for a violation of section 123.47.

Sec. 15. **NEW SECTION.** 232.23 DETENTION — YOUTHFUL OFFENDERS.

1. After waiver of a child who will be prosecuted as a youthful offender, the child shall be held in a facility under section 232.22, subsection 2, paragraph "a" or "b", unless released in accordance with subsection 2.

2. a. The court shall determine, at the detention hearing under section 232.44, the amount of bail, appearance bond, or other conditions necessary for a child who has been waived for prosecution as a youthful offender to be released from detention or that the child should not be released from detention.

b. A child placed in detention or released under this subsection shall be supervised by a juvenile court officer or juvenile court services personnel.

c. An order under this section may be reviewed by the court upon motion of either party.

Sec. 16. Section 232.28, subsection 10, Code 1997, is amended to read as follows:

10. A complaint filed with the court or its designee pursuant to this section which alleges that a child ~~who is at least ten years of age and who~~ has committed a delinquent act which if committed by an adult would be ~~an aggravated misdemeanor or a felony~~ shall be a public offense is a public record and shall not be confidential under section 232.147. The court, its designee, or law enforcement officials are authorized to release the complaint, including the identity of the child named in the complaint.

Sec. 17. Section 232.28, subsection 11, Code 1997, is amended to read as follows:

11. If a complaint is filed under this section, alleging a child has committed a delinquent act, the alleged victim may file a signed victim impact statement with the juvenile court containing the information specified for a victim impact statement under section 910A.5. Unless the matter is disposed of at the preliminary inquiry conducted by the intake officer under section 232.28, the victim may also orally present a victim impact statement. The victim impact statement shall be considered by the court and the juvenile court officer handling the complaint in any proceeding or informal adjustment associated with the complaint.

Sec. 18. Section 232.28A, subsection 1, paragraph d, Code 1997, is amended to read as follows:

d. To be notified of the person's right to offer a written victim impact statement and to orally present the victim impact statement under sections 232.28 and 910A.5.

Sec. 19. Section 232.44, Code 1997, is amended to read as follows:

**232.44 DETENTION OR SHELTER CARE HEARING — RELEASE FROM DETENTION UPON CHANGE OF CIRCUMSTANCE.**

1. A hearing shall be held within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of the time of the child's admission to a shelter care facility, and within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, of the time of a child's admission to a detention facility. If the hearing is not held within the time specified, the child shall be released from shelter care or detention. Prior to the hearing a petition shall be filed, except where the child is already under the supervision of a juvenile court under a prior judgment.

If the child is placed in a detention facility in a county other than the county in which the child resides or in which the delinquent act allegedly occurred but which is within the same judicial district, the hearing may take place in the county in which the detention facility is located. The child shall appear in person at the hearing required by this subsection.

2. The county attorney or a juvenile court officer may apply for a hearing at any time after the petition is filed to determine whether the child who is the subject of the petition should be placed in detention or shelter care. The court may upon the application or upon its own motion order such hearing. The court shall order a detention hearing for a child waived under section 232.45, subsection 6A, at the time of waiver.

3. A notice shall be served upon the child, the child's attorney, the child's guardian ad litem if any, and the child's known parent, guardian, or custodian not less than twelve hours before the time the hearing is scheduled to begin and in a manner calculated fairly to apprise the parties of the time, place, and purpose of the hearing. In the case of a hearing for a child waived for prosecution as a youthful offender, this notice may accompany the waiver order. If the court finds that there has been reasonably diligent effort to give notice to a parent, guardian, or custodian and that the effort has been unavailing, the hearing may proceed without the notice having been served.

4. At the hearing to determine whether detention or shelter care is authorized under section 232.21 or 232.22 the court shall admit only testimony and other evidence relevant to the determination of whether there is probable cause to believe the child has committed the act as alleged in the petition and to the determination of whether the placement of the child in detention or shelter care is authorized under section 232.21 or 232.22. At the hearing to determine whether a child who has been waived for prosecution as a youthful offender should be released from detention the court shall also admit evidence of the kind admissible to determine bond or bail under chapter 811, notwithstanding section 811.1. Any written reports or records made available to the court at the hearing shall be made available to the parties. A copy of the petition or waiver order shall be given to each of the parties at or before the hearing.

5. The court shall find release to be proper under the following circumstances:

a. If the court finds that there is not probable cause to believe that the child is a child within the jurisdiction of the court under this chapter, it shall release the child and dismiss the petition.

b. If the court finds that detention or shelter care is not authorized under section 232.21 or 232.22, or is authorized but not warranted in a particular case, the court shall order the child's release, and in so doing, may impose one or more of the following conditions:

(1) Place the child in the custody of a parent, guardian or custodian under that person's supervision, or under the supervision of an organization which agrees to supervise the child.

(2) Place restrictions on the child's travel, association, or place of residence during the period of release.

(3) Impose any other condition deemed reasonably necessary and consistent with the grounds for detaining children specified in section 232.21 or 232.22, including a condition requiring that the child return to custody as required.

(4) In the case of a child waived for prosecution as a youthful offender, require bail, an

appearance bond, or set other conditions consistent with this section or section 811.2.

c. An order releasing a child on conditions specified in this section may be amended at any time to impose equally or less restrictive conditions. The order may be amended to impose additional or more restrictive conditions, or to revoke the release, if the child has failed to conform to the conditions originally imposed.

6. If the court finds that there is probable cause to believe that the child is within the jurisdiction of the court under this chapter and that full-time detention or shelter care is authorized under section 232.21 or 232.22 or that detention is authorized under section 232.23, it may issue an order authorizing either shelter care or detention until the adjudicatory hearing or trial is held or for a period not exceeding seven days, whichever is shorter. However, in the case of a child placed in detention under section 232.23, this period may be extended by agreement of the parties and the court.

7. If a child held in shelter care or detention by court order has not been released after a detention hearing or has not appeared at an adjudicatory hearing before the expiration of the order of detention, an additional hearing shall automatically be scheduled for the next court day following the expiration of the order. The child, the child's counsel, the child's guardian ad litem, and the child's parent, guardian or custodian shall be notified of this hearing not less than twenty-four hours before the hearing is scheduled to take place. The hearing required by this subsection may be held by telephone conference call.

8. A child held in a detention or shelter care facility pursuant to section 232.21 or 232.22 under order of court after a hearing may be released upon a showing that a change of circumstances makes continued detention unnecessary.

9. A written request for the release of the child, setting forth the changed circumstances, may be filed by the child, by a responsible adult on the child's behalf, by the child's custodian, or by the juvenile court officer.

10. Based upon the facts stated in the request for release the court may grant or deny the request without a hearing, or may order that a hearing be held at a date, time and place determined by the court. Notice of the hearing shall be given to the child and the child's custodian or counsel. Upon receiving evidence at the hearing, the court may release the child to the child's custodian or other suitable person, or may deny the request and remand the child to the detention or shelter care facility.

11. This section does not apply to a child placed in accordance with section 232.78, 232.79, or 232.95.

Sec. 20. Section 232.45, subsection 1, Code 1997, is amended to read as follows:

1. After the filing of a petition which alleges that a child has committed a delinquent act on the basis of an alleged commission of a public offense and before an adjudicatory hearing on the merits of the petition is held, the county attorney or the child may file a motion requesting the court to waive its jurisdiction over the child for the alleged commission of the public offense or for purpose of prosecution of the child as an adult or a youthful offender. If the county attorney and the child agree, a motion for waiver for the purpose of being prosecuted as a youthful offender may be heard by the district court as part of the proceedings under section 907.3A, or by the juvenile court as provided in this section. If the motion for waiver for purpose of being prosecuted as a youthful offender is made as a result of a conditional agreement between the county attorney and the child, the conditions of the agreement shall be disclosed to the court in the same manner as provided in rules 8 and 9 of the Iowa rules of criminal procedure.

Sec. 21. Section 232.45, Code 1997, is amended by adding the following new subsection:  
NEW SUBSECTION. 6A. At the conclusion of the waiver hearing and after considering the best interests of the child and the best interests of the community the court may, in order that the child may be prosecuted as a youthful offender, waive its jurisdiction over the child if all of the following apply:

a. The child is fifteen years of age or younger.

b. The court determines, or has previously determined in a detention hearing under section 232.44, that there is probable cause to believe that the child has committed a delinquent act which would constitute a public offense under section 232.8, subsection 1, paragraph "c", notwithstanding the application of that paragraph to children aged sixteen or older.

c. The court determines that the state has established that there are not reasonable prospects for rehabilitating the child, prior to the child's eighteenth birthday, if the juvenile court retains jurisdiction over the child and the child enters into a plea agreement, is a party to a consent decree, or is adjudicated to have committed the delinquent act.

The court shall retain jurisdiction over the child for the purpose of determining whether the child should be released from detention under section 232.23. If the court has been apprised of conditions of an agreement between the county attorney and the child which resulted in a motion for waiver for purposes of the child being prosecuted as a youthful offender, and the court finds that the conditions are in the best interests of the child, the conditions of the agreement shall constitute conditions of the waiver order.

Sec. 22. Section 232.45, Code 1997, is amended by adding the following new subsection: **NEW SUBSECTION.** 7A. In making the determination required by subsection 6A, paragraph "c", the factors which the court shall consider include but are not limited to the following:

a. The nature of the alleged delinquent act and the circumstances under which it was committed.

b. The nature and extent of the child's prior contacts with juvenile authorities, including past efforts of such authorities to treat and rehabilitate the child and the response to such efforts.

c. The age of the child, the programs, facilities, and personnel available to the juvenile court for rehabilitation and treatment of the child, and the programs, facilities, and personnel which would be available to the district court after the child reaches the age of eighteen in the event the child is given youthful offender status.

Sec. 23. Section 232.45, subsection 10, Code 1997, is amended to read as follows:

10. If the court waives its jurisdiction over the child for the alleged commission of the public offense so that the child may be prosecuted as an adult or a youthful offender, the judge who made the waiver decision shall not preside at any subsequent proceedings in connection with that prosecution if the child objects.

Sec. 24. Section 232.45A, Code 1997, is amended by adding the following new subsection:

**NEW SUBSECTION.** 4. This section shall not apply to a child who was waived to the district court for the purpose of being prosecuted as a youthful offender.

Sec. 25. Section 232.50, subsection 1, Code 1997, is amended to read as follows:

1. As soon as practicable following the entry of an order of adjudication pursuant to section 232.47 or notification that the child has received a youthful offender deferred sentence pursuant to section 907.3A, the court shall hold a dispositional hearing in order to determine what disposition should be made of the matter.

Sec. 26. Section 232.52, subsection 1, Code 1997, is amended to read as follows:

1. Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child's culpability as indicated by the circumstances of the particular case, the age of the child, ~~and the child's prior record, or the fact that the child has received a youthful offender deferred sentence under section 907.3A.~~ The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department or facility in whom custody is vested. In the case of a child who has received a youthful offender deferred sentence, the initial duration of the dispositional order shall be until the child reaches the age of eighteen.

Sec. 27. Section 232.52, subsection 2, paragraph g, Code 1997, is amended to read as follows:

g. An order placing a child, other than a child who has committed a violation of section 123.47, in secure custody for not more than two days in a facility under section 232.22, subsection 2, paragraph "a" or "b".

Sec. 28. Section 232.54, Code 1997, is amended by adding the following new subsections:

**NEW SUBSECTION. 7.** With respect to a juvenile court dispositional order entered regarding a child who has received a youthful offender deferred sentence under section 907.3A, the dispositional order may be terminated prior to the child reaching the age of eighteen upon motion of the child, the person or agency to whom custody of the child has been transferred, or the county attorney following a hearing before the juvenile court if it is shown by clear and convincing evidence that it is in the best interests of the child and the community to terminate the order. The hearing may be waived if all parties to the proceeding agree. The dispositional order regarding a child who has received a youthful offender deferred sentence may also be terminated prior to the child reaching the age of eighteen upon motion of the county attorney, if the waiver of the child to district court was conditioned upon the terms of an agreement between the county attorney and the child\* violates the terms of the agreement after the waiver order has been entered. The district court shall discharge the child's youthful offender status upon receiving a termination order under this section.

**NEW SUBSECTION. 8.** With respect to a dispositional order entered regarding a child who has received a youthful offender deferred sentence under section 907.3A, the juvenile court may, in the case of a child who violates the terms of the order, modify or terminate the order in accordance with the following:

a. After notice and hearing at which the facts of the child's violation of the terms of the order are found, the juvenile court may refuse to modify the order, modify the order and impose a more restrictive order, or, after an assessment of the child by a juvenile court officer in consultation with the judicial district department of correctional services and if the child is age fourteen or over, terminate the order and return the child to the supervision of the district court under chapter 907.

b. The juvenile court shall only terminate an order under this subsection if after considering the best interests of the child and the best interests of the community the court finds that the child should be returned to the supervision of the district court.

c. A youthful offender over whom the juvenile court has terminated the dispositional order under this subsection shall be treated in the manner of an adult who has been arrested for a violation of probation under section 908.11 for sentencing purposes only.

Sec. 29. Section 232.55, Code 1997, is amended by adding the following new unnumbered paragraph:

**NEW UNNUMBERED PARAGRAPH.** This section does not apply to dispositional orders entered regarding a child who has received a youthful offender deferred sentence under section 907.3A who is not discharged from probation before or upon the child's eighteenth birthday.

Sec. 30. **NEW SECTION. 232.56 YOUTHFUL OFFENDERS — TRANSFER TO DISTRICT COURT SUPERVISION.**

The juvenile court shall deliver a report, which includes an assessment of the child by a juvenile court officer after consulting with the judicial district department of correctional services, to the district court prior to the eighteenth birthday of a child who has received a youthful offender deferred sentence under section 907.3A. A hearing shall be held in the district court in accordance with section 907.3A to determine whether the child should be discharged from youthful offender status or whether the child shall continue under the supervision of the district court after the child's eighteenth birthday.

\* The additional words "and the child" probably intended



Sec. 31. Section 232.141, subsection 3, paragraph c, Code 1997, is amended to read as follows:

c. Costs incurred under subsection 2 which are not paid by the county under paragraphs "a" and "b" shall be reimbursed by the state. Reimbursement for the costs of compensation of an attorney appointed by the court to serve as counsel or guardian ad litem shall be made as provided in section 815.7. A county shall apply for reimbursement to the department of inspections and appeals which shall prescribe rules and forms to implement this subsection.

Sec. 32. Section 232.148, subsection 2, Code 1997, is amended to read as follows:

2. Fingerprints and photographs of a child who has been taken into custody ~~and who is fourteen years of age or older~~ may be taken and filed by a criminal or juvenile justice agency investigating the commission of a public offense other than a simple or serious misdemeanor. The criminal or juvenile justice agency shall forward the fingerprints to the department of public safety for inclusion in the automated fingerprint identification system and may also retain a copy of the fingerprint card for comparison with latent fingerprints and the identification of repeat offenders.

Sec. 33. Section 232.148, subsection 5, paragraph b, Code 1997, is amended to read as follows:

b. After a petition is filed, the petition is dismissed or the proceedings are suspended and the child has not entered into a consent decree, ~~and has not been adjudicated delinquent on the basis of a delinquent act other than one alleged in the petition in question, or has not been placed on youthful offender status.~~

Sec. 34. Section 232.149, subsection 2, Code 1997, is amended to read as follows:

2. Records and files of a criminal or juvenile justice agency concerning a child involved in a delinquent act are public records, except that ~~a criminal or juvenile justice agency shall not release the name of a child until a complaint is filed pursuant to section 232.28 and criminal history data is, intelligence data, and law enforcement investigatory files is~~ subject to the provisions of section 22.7 and chapter 692 and juvenile court social records, as defined in section 232.2, subsection 31, shall be deemed confidential criminal identification files under section 22.7, subsection 9. The records are subject to sealing under section 232.150 unless the juvenile court waives its jurisdiction over the child so that the child may be prosecuted as an adult for a public offense.

Sec. 35. Section 232.149, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 3. Notwithstanding subsection 2, if a juvenile who has been placed in detention under section 232.22, escapes from the facility, the criminal or juvenile justice agency may release the name of the juvenile, the facts surrounding the escape, and the offense or alleged offense which resulted in the placement of the juvenile in the facility.

Sec. 36. Section 232.150, subsection 1, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. The person was not placed on youthful offender status, transferred back to district court after the youthful offender's eighteenth birthday, and sentenced for the offense which precipitated the youthful offender placement.

Sec. 37. NEW SECTION. 279.9B REPORTS TO JUVENILE AUTHORITIES.

The rules adopted under section 279.8 shall require, once school officials have been notified by a juvenile court officer that a student attending the school is under supervision or has been placed on probation, that school officials shall notify the juvenile court of each unexcused absence or suspension or expulsion of the student.

Sec. 38. **NEW SECTION. 280.24 PROCEDURES FOR REPORTING DRUG OR ALCOHOL POSSESSION OR USE.**

The board of directors of each public school and the authorities in charge of each accredited nonpublic school shall prescribe procedures to report any use or possession of alcoholic liquor, wine, or beer or any controlled substance on school premises to local law enforcement agencies, if the use or possession is in violation of school policy or state law. The procedures may include a provision which does not require a report when the school officials have determined that a school at-risk or other student assistance program would be jeopardized if a student self reports.

Sec. 39. **NEW SECTION. 280.25 INFORMATION SHARING.**

The board of directors of each public school and the authorities in charge of each accredited nonpublic school shall adopt a policy and the superintendent of each public school shall adopt rules which provide that the school district or school may share information contained within a student's permanent record pursuant to an interagency agreement with state and local agencies that are part of the juvenile justice system including the juvenile court, the department of human services, and local law enforcement authorities. The disclosure of information shall be directly related to the juvenile justice system's ability to effectively serve, prior to adjudication, the student whose records are being released. The purpose of the agreement shall be to reduce juvenile crime by promoting cooperation and collaboration and the sharing of appropriate information between the parties in a joint effort to improve school safety, reduce alcohol and illegal drug use, reduce truancy, reduce in-school and out-of-school suspensions, and to support alternatives to in-school and out-of-school suspensions and expulsions which provide structured and well-supervised educational programs supplemented by coordinated and appropriate services designed to correct behaviors that lead to truancy, suspension, and expulsions and to support students in successfully completing their education. Information shared under the agreement shall be used solely for determining the programs and services appropriate to the needs of the juvenile or the juvenile's family, or coordinating the delivery of programs and services to the juvenile or the juvenile's family. Information shared under the agreement is not admissible in any court proceedings which take place prior to a disposition hearing, unless written consent is obtained from a student's parent, guardian, or legal or actual custodian. The interagency agreement shall provide, and each signatory agency to the agreement shall certify in the agreement, that confidential information shared between the parties to the agreement shall remain confidential and shall not be shared with any other person, unless otherwise provided by law.

A school or school district entering into an interagency agreement under this section shall adopt a policy implementing the provisions of the interagency agreement. The policy shall include, but not be limited to, the provisions of the interagency agreement and the procedures to be used by the school or school district to share information from the student's permanent record with participating agencies. The policy shall be published in the student handbook.

Sec. 40. Section 321.216B, Code 1997, is amended to read as follows:

**321.216B USE OF MOTOR VEHICLE LICENSE OR NONOPERATOR'S IDENTIFICATION CARD BY UNDERAGE PERSON TO OBTAIN ALCOHOL.**

A person who is under the age of twenty-one, who alters or displays or has in the person's possession a fictitious or fraudulently altered motor vehicle license or nonoperator's identification card and who uses the license to violate or attempt to violate section 123.47 ~~or 123.47A~~, commits a simple misdemeanor punishable by a fine of one hundred dollars. The court shall forward a copy of the conviction or order of adjudication under section 232.47 to the department.

Sec. 41. Section 331.653, subsection 4, Code 1997, is amended to read as follows:

4. Provide bailiff and other law enforcement service to the district judges, district associate judges, and associate juvenile judges, and judicial magistrates of the county upon request.

Sec. 42. Section 331.653, subsection 58, Code 1997, is amended to read as follows:

58. Report information on crimes committed and delinquent acts committed, which would be ~~an~~ a serious or aggravated misdemeanor or felony if committed by an adult, and furnish disposition reports on persons arrested and juveniles taken into custody, for a delinquent act which would be ~~an~~ a serious or aggravated misdemeanor or felony if committed by an adult, and criminal complaints or information or juvenile delinquency petitions, alleging a delinquent act which would be ~~an~~ a serious or aggravated misdemeanor or felony if committed by an adult, filed in any court as provided in section 692.15.

Sec. 43. Section 602.1211, subsection 4, Code 1997, is amended to read as follows:

4. A chief judge may designate other public officers to accept bond money or security under section 232.23 or 811.2 at times when the office of the clerk of court is not open.

Sec. 44. Section 602.6110, Code 1997, is amended to read as follows:

602.6110 PEER REVIEW COURT — ~~PILOT-PROJECTS~~.

1. A peer review court is may be established as a pilot program in each judicial district to divert certain youthful offenders from the criminal or juvenile justice systems. The court shall consist of a qualified adult to act as judge ~~with~~ while the duties of prosecutor, defense counsel, court attendant, clerk, and jury ~~composed of~~ shall be performed by persons ~~ten~~ twelve through seventeen years of age.

2. The jurisdiction of the peer review court extends to those persons ten through seventeen years of age who have committed misdemeanor offenses, or delinquent acts which would be misdemeanor offenses if committed by an adult, ~~and who have entered a plea of guilty who have admitted involvement in the misdemeanor or delinquent act, entered and who meet the criteria established for entering into an informal adjustment agreement, or agreed to the entry of a consent decree to for~~ those offenses ~~in district or juvenile court~~. Those persons may ~~then~~ elect to appear before the peer review court ~~to receive sentence for a determination of the terms and conditions of the informal adjustment or may elect to proceed with the informal or formal procedures established in chapter 232~~.

3. The peer review court shall not determine guilt or innocence and any statements or admissions made by the person before the peer review court are not admissible in any formal proceedings involving the same person. The peer review court shall only determine the ~~sentence for~~ terms and conditions of the informal adjustment for the offense. The ~~sentence~~ terms and conditions may consist of fines, restrictions for damages, attendance at treatment programs, or community service work or any combination of these penalties as appropriate to the offense or delinquent act committed. A person appearing before the peer review court may also be required to serve as a juror on the court as a part of the person's sentence.

~~3. 4. Subject to the agreement of the chief judge of the judicial district, the supreme court shall designate two judicial districts in which to locate a peer review court pilot project. The chief judge of the each judicial district which establishes a peer review court shall appoint a peer review court advisory board. The advisory board shall adopt rules for the peer review court advisory program, shall appoint persons to serve on the peer review court, and shall supervise the expenditure of funds appropriated to the program. Rules adopted shall include procedures which are designed to eliminate the influence of prejudice and racial and economic discrimination in the procedures and decisions of the peer review court.~~

Sec. 45. Section 602.8102, subsection 125, Code 1997, is amended to read as follows:

125. Furnish a disposition of each criminal complaint or information or juvenile delinquency petition, alleging a delinquent act which would be ~~an~~ a serious or aggravated misdemeanor or felony if committed by an adult, filed in the district or juvenile court to the department of public safety as provided in section 692.15.

Sec. 46. Section 692.1, subsections 1 and 9, Code 1997, are amended to read as follows:

1. "Adjudication data" means information that an adjudication of delinquency for an act which would be ~~an~~ a serious or aggravated misdemeanor or felony if committed by an adult was entered against a juvenile and includes the date and location of the delinquent act and the place and court of adjudication.

9. "Custody data" means information pertaining to the taking into custody, pursuant to section 232.19, of a juvenile for a delinquent act which would be ~~an~~ a serious or aggravated misdemeanor or felony if committed by an adult, and includes the date, time, place, and facts and circumstances of the delinquent act. Custody data includes warrants for the taking into custody for all delinquent acts outstanding and not served and includes the filing of a petition pursuant to section 232.35, the date and place of the alleged delinquent act, and the county of jurisdiction.

Sec. 47. Section 724.26, Code 1997, is amended to read as follows:

724.26 RECEIPT, TRANSPORTATION, AND DOMINION AND CONTROL OF FIRE-ARMS AND OFFENSIVE WEAPONS BY FELONS.

A person who is convicted of a felony in a state or federal court, or who is adjudicated delinquent on the basis of conduct that would constitute a felony if committed by an adult, and who knowingly has under the person's dominion and control, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class "D" felony.

Sec. 48. Section 805.8, subsection 10, paragraphs a and b, Code 1997, are amended by striking the paragraphs.

Sec. 49. Section 805.16, subsection 1, Code 1997, is amended to read as follows:

1. Except as provided in subsection 2 of this section, a peace officer shall issue a police citation or uniform citation and complaint, in lieu of making a warrantless arrest, to a person under eighteen years of age accused of committing a simple misdemeanor under chapter 321, 321G, 461A, 461B, 462A, 481A, 481B, 483A, 484A, 484B, ~~section 123.47~~, or a local ordinance not subject to the jurisdiction of the juvenile court, and shall not detain or confine the person in a facility regulated under chapter 356 or 356A.

Sec. 50. Section 815.7, Code 1997, is amended to read as follows:

815.7 FEES TO ATTORNEYS.

An attorney who has not entered into a contract authorized under section 13B.4 and who is appointed by the court to represent any person charged with a crime in this state or to serve as counsel or guardian ad litem to a person in juvenile court in this state shall be entitled to a reasonable compensation which shall be the ordinary and customary charges for like services in the community to be decided in each case by a judge of the district court or of the juvenile court, as applicable, including such sum or sums as the court may determine are necessary for investigation in the interests of justice and in the event of appeal the cost of obtaining the transcript of the trial and the printing of the trial record and necessary briefs in behalf of the defendant. However, the reasonable compensation awarded an attorney shall not be calculated based upon an hourly rate that exceeds the rate a contract attorney as provided in section 13B.4 would receive in a similar case. Such attorney need not follow the case into another county or into the appellate court unless so directed by the court at the request of the defendant, where grounds for further litigation are not capricious or unreasonable, but if such attorney does so, the attorney's fee shall be determined accordingly. Only one attorney fee shall be so awarded in any one case except that in class "A" felony cases, two may be authorized.

Sec. 51. NEW SECTION. 907.3A YOUTHFUL OFFENDER DEFERRED SENTENCE — YOUTHFUL OFFENDER STATUS.

1. Notwithstanding section 907.3 but subject to any conditions of the waiver order, the trial court shall, upon a plea of guilty or a verdict of guilty, defer sentence of a youthful offender over whom the juvenile court has waived jurisdiction pursuant to section 232.45,

subsection 6A, and place the juvenile on youthful offender status. The court shall transfer supervision of the youthful offender to the juvenile court for disposition in accordance with section 232.52. The court shall require supervision of the youthful offender in accordance with section 232.54, subsection 8 or subsection 2, of this section. Notwithstanding section 901.2, a presentence investigation shall not be ordered by the court subsequent to an entry of a plea of guilty or verdict of guilty or prior to deferral of sentence of a youthful offender under this section.

2. The court shall hold a hearing prior to a youthful offender's eighteenth birthday to determine whether the youthful offender shall continue on youthful offender status after the youthful offender's eighteenth birthday under the supervision of the court or be discharged. The court shall review the report of the juvenile court regarding the youthful offender and shall hear evidence by or on behalf of the youthful offender, by the county attorney, and by the person or agency to whom custody of the youthful offender was transferred. The court shall make its decision after considering the services available to the youthful offender, the evidence presented, the juvenile court's report, the interests of the youthful offender, and interests of the community.

3. Notwithstanding any provision of the Code which prescribes a mandatory minimum sentence for the offense committed by the youthful offender, following transfer of the youthful offender from the juvenile court back to the court having jurisdiction over the criminal proceedings involving the youthful offender, the court may continue the youthful offender deferred sentence or enter a sentence, which may be a suspended sentence. Notwithstanding anything in section 907.7 to the contrary, if the district court either continues the youthful offender deferred sentence or enters a sentence, suspends the sentence, and places the youthful offender on probation, the term of formal supervision shall commence upon entry of the order by the district court and may continue for a period not to exceed five years. If the district court enters a sentence of confinement, and the youthful offender was previously placed in secure confinement by the juvenile court under the terms of the initial disposition order or any modification to the initial disposition order, the person shall receive credit for any time spent in secure confinement. During any period of probation imposed by the district court, a youthful offender who violates the terms of probation is subject to section 908.11.

Sec. 52. Section 908.11, Code 1997, is amended to read as follows:

#### 908.11 VIOLATION OF PROBATION.

A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation. The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense. If the probation officer proceeds by arrest, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced thereby. If the violation is established, the court may continue the probation or youthful offender status with or without an alteration of the conditions of probation or a youthful offender status. If the defendant is an adult or a youthful offender the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation or youthful offender status, order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation or youthful offender status, or revoke the probation or youthful offender status and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

Sec. 53. Section 910A.5, subsection 3, Code 1997, is amended to read as follows:

3. If a complaint is filed under section 232.28, alleging a child has committed a delinquent act, the alleged victim may file a signed victim impact statement with the juvenile court as provided by section 232.28. The victim impact statement shall be considered by the court and the juvenile court officer handling the complaint in any proceeding or informal adjustment associated with the complaint. Unless the matter is disposed of at the preliminary inquiry conducted by the intake officer under section 232.28, the victim may also be allowed to orally present the victim impact statement.

Sec. 54. Section 123.47A, Code 1997, is repealed.

Sec. 55. JUVENILE JUSTICE INTERIM STUDY. The legislative council is requested to establish an interim study committee consisting of members of both political parties from both houses of the general assembly to review and consider the need for improvements in the laws and programs established to reform juvenile delinquents and reduce juvenile crime. The study may include but is not limited to the review of the need for improvements in the current juvenile justice system, the youthful offender program, the programs established to combat substance abuse by juveniles, and the coordination of programs and information between the juvenile and adult criminal justice systems. The committee shall submit its findings, together with any recommendations, in a report to the general assembly which convenes in January 1998.

Approved May 7, 1997

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## CHAPTER 127

### LAND RECYCLING AND ENVIRONMENTAL REMEDIATION STANDARDS

S.F. 528

**AN ACT** relating to the cleanup and reuse of contaminated property, environmental remediation standards and review procedures, participation in the remediation of contaminated property, liability for the voluntary cleanup of contaminated property, liability protections, and establishing a land recycling fund.

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

#### SUBCHAPTER 1 GENERAL PROVISIONS

Section 1. NEW SECTION. 455H.101 SHORT TITLE.

This chapter shall be known and may be cited as the "Iowa Land Recycling and Environmental Remediation Standards Act".

Sec. 2. NEW SECTION. 455H.102 SCOPE.

The environmental remediation standards established under this chapter shall be used for any response action or other site assessment or remediation that is conducted at a site enrolled pursuant to this chapter notwithstanding provisions regarding water quality in chapter 455B, division III; hazardous conditions in chapter 455B, division IV, part 4; hazardous waste and substance management in chapter 455B, division IV, part 5; underground storage tanks, other than petroleum underground storage tanks, in chapter 455B, division IV, part 8; contaminated sites in chapter 455B, division VIII; and groundwater protection in chapter 455E.