

**House File 460 - Introduced**

HOUSE FILE 460  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 64)

**A BILL FOR**

1 An Act relating to the discovery of privileged medical records,  
2 including mental health records, in a criminal case and  
3 including effective date provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 228.6, subsection 4, Code 2011, is  
2 amended to read as follows:

3 4. a. Mental health information may be disclosed in a civil  
4 or administrative proceeding in which an individual eighteen  
5 years of age or older or an individual's legal representative  
6 or, in the case of a deceased individual, a party claiming or  
7 defending through a beneficiary of the individual, offers the  
8 individual's mental or emotional condition as an element of a  
9 claim or a defense.

10 b. Mental health information may be disclosed in a criminal  
11 proceeding pursuant to section 622.10, subsection 3A.

12 Sec. 2. Section 622.10, Code 2011, is amended by adding the  
13 following new subsection:

14 NEW SUBSECTION. 3A. a. Except as otherwise provided in  
15 this subsection, the confidentiality privilege under this  
16 section shall be absolute with regard to a criminal action and  
17 this section shall not be construed to authorize or require  
18 the disclosure of any privileged records to a defendant in a  
19 criminal action unless either of the following occur:

20 (1) The privilege holder voluntarily waives the  
21 confidentiality privilege.

22 (2) (a) The defendant seeking access to privileged records  
23 under this section files a motion demonstrating in good faith a  
24 reasonable probability that the information sought is likely  
25 to contain exculpatory information that is not available from  
26 any other source and for which there is a compelling need for  
27 the defendant to present a defense in the case. Such a motion  
28 shall be filed not later than forty days after arraignment  
29 under seal of the court. Failure of the defendant to timely  
30 file such a motion constitutes a waiver of the right to seek  
31 access to privileged records under this section, but the court,  
32 for good cause shown, may grant relief from such waiver.

33 (b) Upon a showing of a reasonable probability that the  
34 privileged records sought may likely contain exculpatory  
35 information that is not available from any other source, the

1 court shall conduct an in camera review of such records to  
2 determine whether exculpatory information is contained in such  
3 records.

4 (c) If exculpatory information is contained in such  
5 records, the court shall balance the need to disclose such  
6 information against the privacy interest of the privilege  
7 holder.

8 (d) Upon the court's determination, in writing, that the  
9 privileged information sought is exculpatory and that there  
10 is a compelling need for such information that outweighs the  
11 privacy interests of the privilege holder, the court shall  
12 issue an order allowing the disclosure of only those portions  
13 of the records that contain the exculpatory information. The  
14 court's order shall also prohibit any further dissemination  
15 of the information to any person, other than the defendant,  
16 the defendant's attorney, and the prosecutor, unless otherwise  
17 authorized by the court.

18 b. Privileged information obtained by any means other than  
19 as provided in paragraph "a" shall not be admissible in any  
20 criminal action.

21 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of  
22 immediate importance, takes effect upon enactment.

23 EXPLANATION

24 This bill relates to the discovery of privileged medical  
25 records, including mental health records, in a criminal case  
26 and includes effective date provisions.

27 Under Iowa Code section 622.10, certain health care  
28 professionals, including mental health professionals,  
29 are prohibited, in giving testimony, from disclosing any  
30 confidential communication that occurs between the health care  
31 professional and a patient during the course of the patient's  
32 course of treatment. In State v. Cashen, 789 N.W.2d 400  
33 (2010), the Iowa Supreme Court set forth certain protocol that  
34 must be followed to balance a patient's right to privacy with  
35 a defendant's right to present evidence to a jury that might

1 influence the jury's determination of guilt if privileged  
2 mental health records are made available in a criminal  
3 proceeding.

4 The bill amends Code section 622.10 to provide that,  
5 except as otherwise provided in the bill, the confidentiality  
6 privilege under Code section 622.10 shall be absolute in  
7 relation to a criminal action and that the bill shall not  
8 be construed to authorize or require the disclosure of  
9 any privileged records to a defendant in a criminal action  
10 unless either the privilege holder voluntarily waives the  
11 confidentiality privilege or the defendant seeking access to  
12 privileged records files a motion demonstrating in good faith a  
13 reasonable probability that the information sought is likely  
14 to contain exculpatory information that is not available from  
15 any other source and for which there is a compelling need for  
16 the defendant to present a defense in the case. Failure of the  
17 defendant to timely file a motion constitutes a waiver of the  
18 right to seek access to privileged records but the court, for  
19 good cause shown, may grant relief from such waiver.

20 The bill provides that if the defendant files such a motion,  
21 the court shall conduct an in camera review of such records  
22 to determine whether exculpatory information is contained in  
23 such records upon a showing of a reasonable probability that  
24 the privileged records sought may likely contain exculpatory  
25 information that is not available from any other source. If  
26 exculpatory information is contained in such records, the court  
27 is required to balance the need to disclose such information  
28 against the privacy interest of the privilege holder. If  
29 the court determines that the privileged information sought  
30 is exculpatory and that there is a compelling need for such  
31 information that outweighs the privacy interests of the  
32 privilege holder, the court shall issue an order allowing the  
33 disclosure of only those portions of the records that contain  
34 the exculpatory information. The court's order shall also  
35 prohibit any further dissemination of the information to any

1 person, other than the defendant, the defendant's attorney,  
2 and the prosecutor, unless otherwise authorized by the court.  
3 The bill provides that privileged information obtained by any  
4 means other than as provided in the bill is not admissible in  
5 a criminal action.

6 The bill makes a conforming amendment to Code section 228.6  
7 relating to the compulsory disclosure of mental health and  
8 psychological information.

9 The bill takes effect upon enactment.