

**Senate Study Bill 1094 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON FRAISE)

**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.

30 (b) Upon a showing of a reasonable probability that the  
31 privileged records sought may likely contain exculpatory  
32 information that is not available from any other source, the  
33 court shall conduct an in camera review of such records to  
34 determine whether exculpatory information is contained in such  
35 records.

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

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

15 b. Privileged information obtained by any means other than  
16 as provided in paragraph "a" shall not be admissible in any  
17 criminal action.

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

20 EXPLANATION

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

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

1 The bill amends Code section 622.10 to provide that,  
2 except as otherwise provided in the bill, the confidentiality  
3 privilege under Code section 622.10 shall be absolute in  
4 relation to a criminal action and that the bill shall not  
5 be construed to authorize or require the disclosure of  
6 any privileged records to a defendant in a criminal action  
7 unless either the privilege holder voluntarily waives the  
8 confidentiality privilege or the defendant seeking access to  
9 privileged records files a motion demonstrating in good faith a  
10 reasonable probability that the information sought is likely to  
11 contain exculpatory information that is not available from any  
12 other source and for which there is a compelling need for the  
13 defendant to present a defense in the case.

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

35 The bill makes a conforming amendment to Code section 228.6

S.F. \_\_\_\_\_

1 relating to the compulsory disclosure of mental health and  
2 psychological information.

3 The bill takes effect upon enactment.