

House Study Bill 604 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED STATE PUBLIC
DEFENDER BILL)

A BILL FOR

1 An Act relating to the confidentiality of juvenile court
2 records.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.19, subsection 4, Code 2016, is
2 amended by striking the subsection.

3 Sec. 2. Section 232.147, subsection 2, Code 2016, is amended
4 by striking the subsection.

5 Sec. 3. Section 232.147, subsection 3, unnumbered paragraph
6 1, Code 2016, is amended to read as follows:

7 Official juvenile court records in all cases ~~except those~~
8 ~~alleging delinquency~~ shall be confidential and are not public
9 records but may be inspected and their contents shall be
10 disclosed to the following without court order:

11 Sec. 4. Section 232.149, subsection 2, Code 2016, is amended
12 to read as follows:

13 2. Records and files of a criminal or juvenile justice
14 agency concerning a child involved in a delinquent act are
15 ~~public records, except that release of criminal history data,~~
16 ~~intelligence data, and law enforcement investigatory files is~~
17 ~~subject to the provisions of [section 22.7](#) and [chapter 692](#),~~
18 ~~and juvenile court social records, as defined in section~~
19 ~~232.2, subsection 31, shall be deemed confidential criminal~~
20 ~~identification files under section 22.7, subsection 9~~
21 confidential. The records are subject to sealing under section
22 232.150 unless the juvenile court waives its jurisdiction over
23 the child so that the child may be prosecuted as an adult for
24 a public offense.

25 Sec. 5. Section 232.149A, Code 2016, is amended to read as
26 follows:

27 **232.149A Confidentiality Public records orders.**

28 1. ~~Notwithstanding any other provision of the Code to~~
29 ~~the contrary~~ A rebuttable presumption exists that official
30 juvenile court records in delinquency proceedings shall remain
31 confidential. However, upon application of a any person who
32 ~~was taken into custody for a delinquent act or was the subject~~
33 ~~of a complaint alleging delinquency or was the subject of a~~
34 ~~delinquency petition, or upon the court's own motion, the court~~
35 after a hearing held prior to disposition, shall order official

1 juvenile court records in ~~the case~~ delinquency proceedings to
2 be ~~kept confidential and no longer~~ made public records under
3 sections 232.147 and 232.149, if the court finds ~~both of the~~
4 ~~following apply:~~

5 ~~a. The case has been dismissed and the person is no longer~~
6 ~~subject to the jurisdiction of the juvenile court.~~

7 ~~b. Making that making~~ the records ~~confidential~~ public is in
8 the best interests of the ~~person~~ child and the public.

9 2. The records subject to a ~~confidentiality~~ public records
10 order may be sealed at a later date if section 232.150 applies.

11 3. Official juvenile court records ~~subject to a~~
12 ~~confidentiality order~~ which are confidential under section
13 232.147 may be inspected and their contents shall be disclosed
14 to the following without court order:

15 a. The judge and professional court staff, including
16 juvenile court officers.

17 b. The child and the child's counsel.

18 c. The child's parent, guardian, or custodian, court
19 appointed special advocate, and guardian ad litem, and
20 the members of the child advocacy board created in section
21 237.16 or a local citizen foster care review board created in
22 accordance with section 237.19 who are assigning or reviewing
23 the child's case.

24 d. The county attorney and the county attorney's assistants.

25 e. An agency, association, facility, or institution which
26 has custody of the child, or is legally responsible for the
27 care, treatment, or supervision of the child, including but not
28 limited to the department of human services.

29 f. A court, court professional staff, and adult probation
30 officers in connection with the preparation of a presentence
31 report concerning a person who had been the subject of a
32 juvenile court proceeding.

33 g. The child's foster parent or an individual providing
34 preadoptive care to the child.

35 h. A state or local law enforcement agency.

1 *i.* The state public defender.

2 4. If the child has been discharged from the jurisdiction
3 of the juvenile court due to reaching the age of eighteen and
4 restitution remains unpaid, the name of the court, the title
5 of the action, and the court's file number shall not be kept
6 confidential, and the restitution amount shall be a judgment
7 and lien as provided in sections 910.7A, 910.8, 910.10, and
8 915.28 until the restitution is paid.

9 5. Pursuant to court order, official juvenile court records
10 ~~subject to a confidentiality order~~ which are confidential under
11 section 232.147 may be inspected by and their contents may be
12 disclosed to:

13 *a.* A person conducting bona fide research for research
14 purposes under whatever conditions the court may deem proper,
15 provided that no personal identifying data shall be disclosed
16 to such a person.

17 *b.* Persons who have a direct interest in a proceeding or in
18 the work of the court.

19 6. Notwithstanding any other provision of this section,
20 upon application of any person and order of the court at any
21 time prior to the termination of juvenile court jurisdiction
22 over the child, the court, after a hearing, may order the
23 official juvenile court records in delinquency proceedings to
24 be public records if any of the following apply:

25 *a.* The child has been subsequently convicted of a felony
26 or an aggravated or serious misdemeanor or adjudicated a
27 delinquent child for an act which if committed by an adult
28 would be a felony or an aggravated or serious misdemeanor.

29 *b.* The child was placed on youthful offender status,
30 transferred back to the district court after the youthful
31 offender's eighteenth birthday, and sentenced for the offense
32 which precipitated the youthful offender placement.

33 Sec. 6. NEW SECTION. 232.149B Right to counsel in a public
34 records order hearing.

35 1. A person who is or is not a child shall have the right

1 to be represented by counsel at a public records order hearing
2 held under section 232.149A.

3 2. Such person's right to be represented by counsel under
4 subsection 1 shall not be waived by the person if the person
5 is a child less than sixteen years of age without the written
6 consent of such child's parent, guardian, or custodian.

7 3. If the person is a child and is not represented by
8 counsel as required under subsection 1, counsel shall be
9 provided as follows:

10 a. If the court determines, after giving the child's parent,
11 guardian, or custodian an opportunity to be heard, that such
12 person has the ability in whole or in part to pay for the
13 employment of counsel, the court shall either order that person
14 to retain an attorney to represent the child or shall appoint
15 counsel for the child and order the parent, guardian, or
16 custodian to pay for that counsel as provided in subsection 5.

17 b. If the court determines that the parent, guardian, or
18 custodian cannot pay any part of the expenses of counsel to
19 represent the child, the court shall appoint counsel, who
20 shall be reimbursed according to section 232.141, subsection
21 2, paragraph "b".

22 c. The court may appoint counsel to represent the child
23 and reserve the determination of payment until the parent,
24 guardian, or custodian has an opportunity to be heard.

25 4. If the person is a child and is represented by counsel
26 and the court determines that there is a conflict of interest
27 between the child and the child's parent, guardian, or
28 custodian and that the retained counsel could not properly
29 represent the child as a result of the conflict, the court
30 shall appoint other counsel to represent the child and order
31 the parent, guardian, or custodian to pay for such counsel as
32 provided in subsection 5.

33 5. If the person is a child and the court determines, after
34 an inquiry which includes notice and reasonable opportunity
35 to be heard, that the parent, guardian, or custodian has the

1 ability to pay in whole or in part for the attorney appointed
2 for the child, the court may order that person to pay such sums
3 as the court finds appropriate in the manner and to whom the
4 court directs. If that person so ordered fails to comply with
5 the order without good reason, the court shall enter judgment
6 against the person.

7 6. If the person is not a child and is not represented
8 by counsel as required under subsection 1, counsel shall be
9 provided as follows:

10 a. If the court determines, after giving the person an
11 opportunity to be heard, that such person has the ability in
12 whole or in part to pay for the employment of counsel, the
13 court shall either allow the person to retain an attorney or
14 shall appoint counsel for the person and order the person to
15 pay such sums as the court finds appropriate in the manner and
16 to whom the court directs. If the person so ordered fails to
17 comply with the order without good reason, the court shall
18 enter judgment against the person.

19 b. If the court determines that the person cannot pay
20 any part of the expenses of counsel, the court shall appoint
21 counsel, who shall be reimbursed according to section 232.141,
22 subsection 2, paragraph "b".

23 c. The court may appoint counsel to represent the person and
24 reserve the determination of payment until the person has an
25 opportunity to be heard.

26 Sec. 7. Section 815.9, subsection 9, Code 2016, is amended
27 to read as follows:

28 9. Notwithstanding subsections 3 and 6, a minor granted
29 a court-appointed attorney or guardian ad litem under
30 section 232.11 in a juvenile proceeding or a person granted a
31 court-appointed attorney under section 232.149B in a public
32 records order hearing shall not be ordered to reimburse costs
33 and fees incurred for legal assistance except as otherwise
34 provided in chapter 232.

35 Sec. 8. REPEAL. Section 915.25, Code 2016, is repealed.

1 Code section 232.150.

2 The bill provides that juvenile court records in cases
3 alleging delinquency may be, without a court order, inspected
4 by and disclosed to the judge and professional court staff, the
5 child and the child's counsel, the child's parent, guardian, or
6 custodian, court-appointed special advocate, and guardian ad
7 litem, and the members of the child advocacy board created in
8 Code section 237.16 or a local citizen foster care review board
9 created in accordance with Code section 237.19, the county
10 attorney and the county attorney's assistants, an agency,
11 association, facility, or institution which has custody of the
12 child, or is legally responsible for the care, treatment, or
13 supervision of the child, a court, court professional staff,
14 and adult probation officers in connection with the preparation
15 of a presentence report concerning a person who prior thereto
16 had been the subject of a juvenile court proceeding, the
17 child's foster parent or an individual providing preadoptive
18 care to the child, a law enforcement agency, and the state
19 public defender.

20 Under current law, records and files of a criminal or
21 juvenile justice agency concerning a child involved in
22 a delinquent act are public records, subject to certain
23 exemptions. The bill provides that such records and files are
24 confidential.

25 Under current law, a complaint which alleges that a child
26 who is at least 10 years of age has committed a delinquent
27 act, which if committed by an adult would be a public offense,
28 is a public record and is not confidential under Code section
29 232.147. The bill repeals Code section 915.25 and provides
30 that such a complaint is subject to Code section 232.147, and
31 therefore is confidential.

32 The bill retains certain existing exemptions to
33 confidentiality of juvenile court records. Pursuant to Code
34 section 692A.121(8), records concerning sex offense convictions
35 which are committed by minors may be released in the same

1 manner as records of convictions of adults. Pursuant to Code
2 section 915.10A, information concerning a juvenile charged
3 with a felony offense may be released pursuant to an automated
4 victim notification system. Under the bill, these exemptions
5 to confidentiality are not amended and therefore still apply to
6 juvenile court records.

7 The bill applies to juvenile delinquency proceedings which
8 are pending or arise on or after July 1, 2016.