

**Senate File 77 - Introduced**

SENATE FILE 77

BY WINCKLER

**A BILL FOR**

1 An Act relating to the jurisdiction of the juvenile court and  
2 juvenile pre-charge diversion programs.

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

1 Section 1. Section 216A.136, Code 2023, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 14. Juvenile pre-charge juvenile diversion  
4 program data maintained under section 232.14.

5 Sec. 2. Section 232.2, subsection 5, Code 2023, is amended  
6 to read as follows:

7 5. *“Child”* means a person under eighteen years of age. For  
8 the purposes of this subchapter and subchapter II, “child” also  
9 means a person under twenty-one years of age who is alleged  
10 to have committed an offense for which the juvenile court has  
11 exclusive original jurisdiction if the proceedings related to  
12 that offense began prior to the person attaining eighteen years  
13 of age.

14 Sec. 3. Section 232.2, Code 2023, is amended by adding the  
15 following new subsections:

16 NEW SUBSECTION. 20A. *“Division”* means the department  
17 of human rights division of criminal and juvenile justice  
18 planning.

19 NEW SUBSECTION. 37A. *“Juvenile pre-charge diversion program”*  
20 means a program certified by the division pursuant to section  
21 232.14 to coordinate services for a child who is alleged to  
22 have committed an offense that, if committed by an adult, would  
23 constitute a simple misdemeanor for the purpose of diverting  
24 the child from the jurisdiction of juvenile court.

25 Sec. 4. Section 232.8, subsection 1, paragraph c, Code 2023,  
26 is amended by striking the paragraph and inserting in lieu  
27 thereof the following:

28 c. (1) The juvenile court shall retain jurisdiction in  
29 proceedings concerning all of the following:

30 (a) A child if the alleged offense that, if committed by an  
31 adult, would constitute a misdemeanor.

32 (b) A person whose case was transferred to the jurisdiction  
33 of the juvenile court pursuant to an order under section 803.5.

34 (c) A child under the age of seventeen who allegedly  
35 committed an offense of animal torture as provided in section

1 717B.3A.

2 (2) Juvenile court jurisdiction of a child who is alleged to  
3 have committed an offense that, if committed by an adult, would  
4 constitute a felony shall be subject to section 232.45.

5 Sec. 5. NEW SECTION. **232.14 Juvenile pre-charge diversion**  
6 **programs.**

7 1. The division shall certify juvenile pre-charge diversion  
8 programs that offer rehabilitative services to a child who  
9 could be subject to the jurisdiction of the juvenile court.

10 2. To be eligible for participation in a certified juvenile  
11 pre-charge diversion program, a child must have allegedly  
12 committed an offense that, if committed by an adult, would  
13 constitute a simple misdemeanor and must not have been referred  
14 to a juvenile pre-charge diversion program within the twelve  
15 months prior to the date of the alleged offense.

16 3. The division shall determine by rule minimum standards  
17 for juvenile pre-charge diversion programs which shall require  
18 that a juvenile pre-charge diversion program be a short-term,  
19 community-based program that focuses on skill building and  
20 restorative justice principles. The division shall designate  
21 the types of activities that a juvenile pre-charge diversion  
22 program may include to meet minimum standards.

23 4. The department shall determine minimum requirements  
24 for a juvenile pre-charge diversion program participant's  
25 completion of a juvenile pre-charge diversion program.

26 5. Juvenile pre-charge diversion programs shall collect  
27 data on all children who participate in the program and submit  
28 the data to the division for recordkeeping, research, and  
29 evaluation purposes.

30 6. Prior to filing a complaint pursuant to section 232.28  
31 against a child who meets the requirements to participate in  
32 a juvenile pre-charge diversion program, a peace officer or  
33 law enforcement agency shall determine whether a juvenile  
34 pre-charge diversion program certified pursuant to subsection  
35 1 exists within the jurisdiction of the peace officer or law

1 enforcement agency. If the peace officer or law enforcement  
2 agency determines a juvenile pre-charge diversion program is  
3 available for a child, the peace officer or law enforcement  
4 agency shall refer the child to the juvenile pre-charge  
5 diversion program instead of filing a complaint against the  
6 child.

7 7. The department shall adopt rules for the implementation  
8 of this section.

9 Sec. 6. Section 232.22, subsection 7, paragraph a,  
10 unnumbered paragraph 1, Code 2023, is amended to read as  
11 follows:

12 If the juvenile court has waived its jurisdiction over the  
13 child pursuant to [section 232.45](#) or [232.45A](#) ~~or the child is~~  
14 ~~excluded from the jurisdiction of the juvenile court pursuant~~  
15 ~~to [section 232.8, subsection 1](#), paragraph "c",~~ and the child  
16 is awaiting trial or other legal process, the child shall  
17 not be detained in any facility intended for the detention  
18 of adults unless the district court determines that after a  
19 hearing and issuing written findings, that such detention  
20 is in the best interest of the child and the community. In  
21 determining whether it is in the best interest of the child and  
22 the community to permit a child to be detained in a facility  
23 intended for the detention of adults, the court shall consider  
24 all of the following:

25 Sec. 7. Section 232.45, subsection 1, Code 2023, is amended  
26 to read as follows:

27 1. After Subject to section 232.8, subsection 1, paragraph  
28 "c", subparagraph (1), after the filing of a petition which  
29 alleges that a child has committed a delinquent act on the  
30 basis of an alleged commission of a public offense that, if  
31 committed by an adult, would constitute a felony and before an  
32 adjudicatory hearing on the merits of the petition is held,  
33 the county attorney or the child may file a motion requesting  
34 the court to waive its jurisdiction over the child for the  
35 alleged commission of the ~~public offense~~ delinquent act or

1 for the purpose of prosecution of the child as an adult or a  
2 youthful offender. If the county attorney and the child agree,  
3 a motion for waiver for the purpose of being prosecuted as a  
4 youthful offender may be heard by the district court as part  
5 of the proceedings under [section 907.3A](#), or by the juvenile  
6 court as provided in [this section](#). If the motion for waiver  
7 for the purpose of being prosecuted as a youthful offender is  
8 made as a result of a conditional agreement between the county  
9 attorney and the child, the conditions of the agreement shall  
10 be disclosed to the court in the same manner as provided in  
[rules of criminal procedure 2.8](#) and [2.10](#).

12 Sec. 8. Section 232.45, subsection 6, paragraph b, Code  
13 2023, is amended to read as follows:

14 b. The court determines, or has previously determined in a  
15 detention hearing under [section 232.44](#), that there is probable  
16 cause to believe that the child has committed a delinquent act  
17 ~~which~~ that, if committed by an adult, would constitute the  
18 ~~public offense a felony~~.

19 Sec. 9. Section 232.45, subsection 7, paragraph a,  
20 subparagraph (2), Code 2023, is amended by striking the  
21 subparagraph.

22 Sec. 10. Section 232.149, subsection 3, Code 2023, is  
23 amended by striking the subsection.

24 Sec. 11. Section 803.6, Code 2023, is amended by striking  
25 the section.

26 Sec. 12. DEPARTMENT OF HUMAN RIGHTS — JUVENILE PROBATION  
27 — TECHNICAL VIOLATIONS — STUDY COMMITTEE. The department of  
28 human rights shall convene a study committee to meet during the  
29 2023 legislative interim to examine alternatives to placing  
30 juveniles in detention for probation or technical violations  
31 including community-based and residential rehabilitation  
32 alternatives for moderate and high-risk juvenile offenders.  
33 The membership of the committee shall, at a minimum, consist  
34 of a representative from the division of criminal and juvenile  
35 justice planning of the department of human rights, the

1 department of justice, and a member of the judicial branch.  
2 The department shall submit a report of the study committee  
3 detailing the committee's findings and recommendations to the  
4 general assembly and the governor no later than December 15,  
5 2023.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with  
8 the explanation's substance by the members of the general assembly.

9 This bill relates to the jurisdiction of the juvenile court  
10 and juvenile pre-charge diversion programs.

11 The bill defines "child" for the purposes of Code chapter  
12 232 (juvenile justice), subchapters I (construction and  
13 definitions) and II (juvenile delinquency proceedings), as a  
14 person under 21 years of age who is alleged to have committed  
15 an offense for which the juvenile court has exclusive original  
16 jurisdiction if the proceedings related to that offense began  
17 prior to the person attaining 18 years of age.

18 The bill defines "division" as the department of human  
19 rights division of criminal and juvenile justice planning  
20 (CJJP).

21 The bill defines "juvenile pre-charge diversion program" as  
22 a program certified by CJJP to coordinate services for a child  
23 who is alleged to have committed an offense that, if committed  
24 by an adult, would constitute a simple misdemeanor for the  
25 purpose of diverting the child from juvenile court proceedings.

26 The bill provides that the juvenile court shall retain  
27 jurisdiction in proceedings concerning a child if the alleged  
28 offense would constitute a misdemeanor if committed by an  
29 adult, if the child's case was transferred to the jurisdiction  
30 of the juvenile court from a district court because the child  
31 allegedly committed the offense prior to reaching 18 years  
32 of age, and in a proceeding concerning an offense of animal  
33 torture alleged to have been committed by a child under 17  
34 years of age. Juvenile court jurisdiction of a child who  
35 allegedly commits an offense that, if committed by an adult,

1 would constitute a felony may be waived upon a juvenile court  
2 making certain findings pursuant to a hearing held on a motion  
3 by a county attorney or the person.

4 JUVENILE PRE-CHARGE DIVERSION PROGRAMS. The bill provides  
5 that CJJP shall certify juvenile pre-charge diversion programs  
6 that offer rehabilitative services to a child who could be  
7 subject to the jurisdiction of the juvenile court for the  
8 purpose of diverting the child from a formal adjudication  
9 in juvenile court. To be eligible for participation in a  
10 certified juvenile pre-charge diversion program, the child must  
11 have allegedly committed an offense that, if committed by an  
12 adult, would constitute a simple misdemeanor and must not have  
13 been referred to a juvenile pre-charge diversion program within  
14 the 12 months prior to the date of the alleged offense.

15 The bill requires CJJP to determine by rule minimum  
16 standards for juvenile pre-charge diversion programs. Minimum  
17 standards shall require that a juvenile pre-charge diversion  
18 program be a short-term, community-based program that focuses  
19 on skill building and restorative justice principles, and  
20 CJJP shall designate the types of activities that a juvenile  
21 pre-charge diversion program may include to meet minimum  
22 standards. The bill requires CJJP to determine minimum  
23 requirements for a juvenile pre-charge diversion program  
24 participant's completion of a juvenile pre-charge diversion  
25 program and requires CJJP to adopt rules for the implementation  
26 of certified juvenile pre-charge diversion programs.

27 The bill requires a juvenile court to make a finding that  
28 there is probable cause to believe that a child has committed a  
29 delinquent act that, if committed by an adult, would constitute  
30 a felony before the court is allowed to waive its jurisdiction  
31 over the child to allow the child to be tried as an adult.  
32 Under current law, the juvenile court is only required to find  
33 there is probable cause to believe the child has committed  
34 a delinquent act before the court is allowed to waive its  
35 jurisdiction to allow the child to be tried as an adult.

1 The bill directs the department of human rights to convene a  
2 study committee during the 2023 legislative interim to examine  
3 alternatives to placing juveniles in detention for probation  
4 or technical violations. The committee's examination shall  
5 include but not be limited to community-based and residential  
6 rehabilitation alternatives for moderate and high-risk juvenile  
7 offenders. The bill requires committee membership to consist  
8 of, at a minimum, a representative from CJJP, the department  
9 of justice, and a member of the judicial branch. The bill  
10 requires the department of human rights to submit a report of  
11 the study committee detailing the committee's findings and  
12 recommendations to the general assembly and the governor no  
13 later than December 15, 2023.

14 The bill makes conforming Code changes to Code sections  
15 232.22 (placement in detention), 232.45 (waiver hearing and  
16 waiver of jurisdiction), 232.149 (records of criminal or  
17 juvenile agencies), and 803.6 (transfer of jurisdiction —  
18 juvenile).