

Governor Kim Reynolds
Lt. Governor Adam Gregg
San Wong, Director

**Iowa Department of Human Rights/Division of Criminal and Juvenile Justice Planning
Bill Request, 2021 Legislative Session**

**Title:** Detention of a juvenile defendant who is in adult criminal court for an alleged crime.

**Summary:**

*Background (e.g. current law or status):*

In December 2018, Congress reauthorized the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974 [Public Law 93–415; 88 Stat. 1109, as amended through P.L. 115–385, enacted December 21, 2018]. One of the changes to this federal law addresses the treatment of juvenile offenders who are being treated as adults in the criminal justice system. The federal law requires states to enact legislation to comply with federal law within three years from the 2018 federal enactment, which means state legislation must be implemented in 2021. The portion of the Act with the relevant language is attached.

To be in compliance with this new federal law, changes to Iowa Code section 232.22 are needed. The changes need to include specific considerations by the court and periodic court reviews of those considerations, in order for a youth who is waived to adult court to be detained in a facility intended for the detention of adults (i.e. county jails).

The specific portion of 232.22 that needs amended is below, which currently reads:

 *If the court has waived its jurisdiction over the child for the alleged commission of a forcible felony offense pursuant to section 232.45 or 232.45A, and there is a serious risk that the child may commit an act which would inflict serious bodily harm on another person, the child may be held in the county jail, notwithstanding section 356.3. However, wherever possible the child shall be held in sight and sound separation from adult offenders. A child held in the county jail under this subsection shall have all the rights of adult postarrest or pretrial detainees.* Iowa Code section 232.22(7) (2019).

The purpose for the change is that the majority of juveniles awaiting trial in adult court are able to be safely detained in juvenile facilities, and the court has the authority to consider circumstances of each juvenile and determine that detention in a facility for adults is necessary.

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*Solution:*

Modify 232.22 (7) to include the specific considerations required by the federal statute. See the attached draft bill language.

*Goal:*

To ensure public safety and safety of the juveniles who are awaiting trial in adult court, along with the safety of offenders detained in juvenile detention centers.

*Fiscal and Jobs Impact:*

The cost of enacting this legislation will be the cost difference of detaining a youth in a juvenile facility rather than a county jail.

Zero jobs are impacted.

*Prior legislative history*

Senator Ragan filed SF2279 (attached) with these modifications along with changes to the Detention Home Fund. The bill was introduced on 2/27/20 and referred to the Appropriations Subcommittee on 2/28/20 with no other action indicated.

**232.22****Placement in detention.**

  1.  A child shall not be placed in detention unless one of the following conditions is met:

  *a.*  The child is being held under warrant for another jurisdiction.

  *b.*  The child is an escapee from a juvenile correctional or penal institution.

  *c.*  There is probable cause to believe that the child has violated conditions of release imposed under section 232.44, subsection 5, paragraph *“b”*, or section 232.52 or 232.54, and there is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance.

  *d.*  There is probable cause to believe the child has committed a delinquent act, and one of the following conditions is met:

  (1)  There is a substantial probability that the child will run away or otherwise be unavailable for subsequent court appearance.

  (2)  There is a serious risk that the child if released may commit an act which would inflict serious bodily harm on the child or on another.

  (3)  There is a serious risk that the child if released may commit serious damage to the property of others.

  *e.*  There is probable cause to believe that the child has committed a delinquent act involving possession with intent to deliver any of the following controlled substances:

  (1)  A mixture or substance containing cocaine base, also known as crack cocaine, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1, paragraph *“a”*, subparagraph (3), paragraph *“b”*, subparagraph (3), or paragraph *“c”*, subparagraph (3).

  (2)  A mixture or substance containing cocaine, its salts, optical and geometric isomers, and salts of isomers, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1, paragraph *“a”*, subparagraph (2), subparagraph division (b), paragraph *“b”*, subparagraph (2), subparagraph division (b), or paragraph *“c”*, subparagraph (2), subparagraph division (b).

  (3)  A mixture or substance containing methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, and if the act was committed by an adult, it would be a violation of section 124.401, subsection 1.

  *f.*  A dispositional order has been entered under section 232.52 placing the child in secure custody in a facility defined in subsection 3, paragraph *“a”* or *“b”*.

  *g.*  There is probable cause to believe that the child has committed a delinquent act which would be domestic abuse under chapter 236, sexual abuse under chapter 236A, or a domestic abuse assault under section 708.2A if committed by an adult.

  2.  If deemed appropriate by the court, an order for placement of a child in detention may include a determination that continuation of the child in the child’s home is contrary to the child’s welfare and that reasonable efforts as defined in section 232.57 have been made. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may assist the department in obtaining federal funding for the child’s placement.

  3.  Except as provided in subsection 7, a child may be placed in detention as provided in this section in one of the following facilities only:

  *a.*  A juvenile detention home.

  *b.*  Any other suitable place designated by the court other than a facility under paragraph *“c”*.

  *c.*  (1)  A room in a facility intended or used for the detention of adults if there is probable cause to believe that the child has committed a delinquent act which if committed by an adult would be a felony, or aggravated misdemeanor under section 708.2 or 709.11, a serious or aggravated misdemeanor under section 321J.2, or a violation of section 123.46, and if all of the following apply:

  (a)  The child is at least fourteen years of age.

  (b)  The child has shown by the child’s conduct, habits, or condition that the child constitutes an immediate and serious danger to another or to the property of another, and a facility or place enumerated in paragraph *“a”* or *“b”* is unavailable, or the court determines that the child’s conduct or condition endangers the safety of others in the facility.

  (c)  The facility has an adequate staff to supervise and monitor the child’s activities at all times.

  (d)  The child is confined in a room entirely separated from detained adults, is confined in a manner which prohibits communication with detained adults, and is permitted to use common areas of the facility only when no contact with detained adults is possible.

  (2)  However, if the child is to be detained for a violation of section 123.46 or section 321J.2, placement in a facility pursuant to this paragraph *“c”* shall be made only after an attempt has been made to notify the parents or legal guardians of the child and request that the parents or legal guardians take custody of the child. If the parents or legal guardians cannot be contacted, or refuse to take custody of the child, an attempt shall be made to place the child in another facility, including but not limited to a local hospital or shelter care facility. Also, a child detained for a violation of section 123.46 or section 321J.2 pursuant to this paragraph *“c”* shall only be detained in a facility with adequate staff to provide continuous visual supervision of the child.

  *d.*  A place used for the detention of children prior to an adjudicatory hearing may also be used for the detention of a child awaiting disposition to a placement under section 232.52, subsection 2, paragraph *“e”*, while the adjudicated child is awaiting transfer to the disposition placement.

  4.  A child shall not be held in a facility under subsection 3, paragraph *“a”* or *“b”*, for a period in excess of twenty-four hours without an oral or written court order authorizing the detention. When the detention is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order.

  5.  *~~a.~~*  A child shall not be detained in a facility under subsection 3, paragraph *“c”*, for a period of time in excess of six hours without the oral or written order of a judge or a magistrate authorizing the detention. A judge or magistrate may authorize detention in a facility under subsection 3, paragraph *“c”*, for a period of time in excess of six hours but less than twenty-four hours, excluding weekends and legal holidays, but only if all of the following occur or exist:

  (1)  The facility serves a geographic area outside a standard metropolitan statistical area as determined by the United States ~~census bureau~~ office of management and budget.

  (2)  The court determines that an acceptable alternative placement does not exist pursuant to criteria developed by the department of human services.

  (3)  The facility has been certified by the department of corrections as being capable of sight and sound separation pursuant to this section and section 356.3.

  (4)  The child is awaiting an initial hearing before the court pursuant to section 232.44.

*~~b.~~*~~The restrictions contained in this subsection relating to the detention of a child in a facility under subsection 3, paragraph~~ *~~“c”~~*~~, do not apply if the court has waived its jurisdiction over the child for the alleged commission of a felony offense pursuant to section 232.45.~~

  6.  An adult within the jurisdiction of the court under section 232.8, subsection 1, who has been placed in detention, is not bailable under chapter 811. If such an adult is detained in a room in a facility intended or used for the detention of adults, the adult shall be confined in a room entirely separated from adults not within the jurisdiction of the court under section 232.8, subsection 1.

  7. a. If the court has waived its jurisdiction over the child ~~for the alleged commission of a forcible felony offense~~ pursuant to section 232.45 or ~~232.45A~~, a child aged 16 or older and is excluded from the jurisdiction of juvenile court pursuant to section 232.8, subsection1, paragraph “c”, and is awaiting trial or other legal process, ~~and there is a serious risk that the child may commit an act which would inflict serious bodily harm on another person, the child may be held in the county jail, notwithstanding section 356.3. However, wherever possible the child shall be held in sight and sound separation from adult offenders.~~ the child shall not be detained in any facility intended for the detention of adults unless the court determines that after a hearing and issuing written findings it is in the best interests of the juvenile and the community. In determining whether it is in the best interests of the juvenile and the community to permit a child to be detained in a facility intended for the detention of adults, the court shall consider:

1. The age of the child, including the child’s physical and mental maturity.
2. The present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the child’s self.
3. The nature and circumstances of the alleged offense.
4. The child’s history of prior delinquent acts.
5. The relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the child but also to protect the safety of the public as well as other detained child.
6. Any other relevant factor.

b. If a court determines pursuant to subsection 7, paragraph “a” that it is in the best interests of the child and the community to permit a child to be detained in a facility intended for the detention of adults, the following conditions shall apply:

(1) The child shall not have sight or sound contact with adult inmates.

(2) The court shall hold a hearing not less frequently than once every 30 days, or in the case of a non-metropolitan statistical area jurisdiction, as determined by the United States office of management and budget, not less frequently than once every 45 days, to review whether it is still in the best interests of the child and the community to permit the child to be so detained in a facility intended for the detention of adults.

(3) The child shall not be detained in a facility intended for the detention of adults for more than one hundred eighty days, unless the court, in writing, determines there is good cause for an extension or the child expressly waives the limitation.

 (4) A child ~~held in the county jail~~ detained in a facility intended for the detention of adults under this subsection shall have all the rights of adult postarrest or pretrial detainees.

**Excerpt of: JUVENILE JUSTICE AND DELINQUENCY PREVENTION**

**ACT OF 1974**

[Public Law 93–415; 88 Stat. 1109]

[As Amended Through P.L. 115–385, Enacted December 21, 2018]

AN ACT To provide a comprehensive, coordinated approach to the problems of juvenile delinquency, and for other purposes.

STATE PLANS

SEC. 223. [34 U.S.C. 11133] (a) In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, projects, and activities. The State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe how the State plan is supported by or takes account of scientific knowledge regarding adolescent development and behavior and regarding the effects of delinquency prevention programs and juvenile justice interventions on adolescents. Not later than 60 days after the date on which a plan or amended plan submitted under this subsection is finalized, a State shall make the plan or amended plan publicly available by posting the plan or amended plan on the State’s publicly available website. In accordance with regulations which the Administrator shall prescribe, such plan shall—

(1) designate the State agency as designated by the chief executive officer of the State as the sole agency for supervising the preparation and administration of the plan;

(2) contain satisfactory evidence that the state agency designated in accordance with paragraph (1) has or will have authority, by legislation if necessary, to implement such plan in conformity with this part;

(3) provide for an advisory group that—

 (A) shall consist of not less than 15 and not more than 33 members appointed by the chief executive officer of the State—

…

(11)(A) in accordance with rules issued by the Administrator, provide that a juvenile shall not be placed in a secure detention facility or a secure correctional facility, if—

 (i) the juvenile is charged with or has committed an offense that would not be criminal if committed by an adult, excluding—

 (I) a juvenile who is charged with or has committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar State law;

 (II) a juvenile who is charged with or has committed a violation of a valid court order issued and reviewed in accordance with paragraph (23); and

 (III) a juvenile who is held in accordance with the Interstate Compact on Juveniles as enacted by the State; or

 (ii) the juvenile—

 (I) is not charged with any offense; and

 (II)(aa) is an alien; or

 (bb) is alleged to be dependent, neglected, or abused; and

(B) require that—

 (i) not later than 3 years after the date of enactment of the Juvenile Justice Reform Act of 2018, unless a court finds, after a hearing and in writing, that it is in the interest of justice, juveniles awaiting trial or other legal process who are treated as adults for purposes of prosecution in criminal court and housed in a secure facility—

 (I) shall not have sight or sound contact with adult inmates; and

 (II) except as provided in paragraph (13), may not be held in any jail or lockup for adults;

 (ii) in determining under clause (i) whether it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults, or have sight or sound contact with adult inmates, a court shall consider—

 (I) the age of the juvenile;

 (II) the physical and mental maturity of the juvenile;

 (III) the present mental state of the juvenile, including whether the juvenile presents an imminent risk of harm to the juvenile;

 (IV) the nature and circumstances of the alleged offense;

 (V) the juvenile’s history of prior delinquent acts;

 (VI) the relative ability of the available adult and juvenile detention facilities to not only meet the specific needs of the juvenile but also to protect the safety of the public as well as other detained youth; and

 (VII) any other relevant factor; and

 (iii) if a court determines under clause (i) that it is in the interest of justice to permit a juvenile to be held in any jail or lockup for adults—

 (I) the court shall hold a hearing not less frequently than once every 30 days, or in the case of a rural jurisdiction, not less frequently than once every 45 days, to review whether it is still in the interest of justice to permit the juvenile to be so held or have such sight or sound contact; and

 (II) the juvenile shall not be held in any jail or lockup for adults, or permitted to have sight or sound contact with adult inmates, for more than 180 days, unless the court, in writing, determines there is good cause for cause for an extension or the juvenile expressly waives this limitation;

(12) provide that—

(A) juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have sight or sound contact with adult inmates; …

SF 2279 (LSB 6127XS (4) 88)

SENATE FILE 2279

BY  RAGAN

**A BILL FOR**

An Act relating to the placement of a child in detention and the juvenile detention home fund, and making appropriations.

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

Section 1.  Section 232.22, subsection 5, paragraph a, subparagraph (1), Code 2020, is amended to read as follows:
   (1)  The facility serves a geographic area outside a standard metropolitan statistical area as determined by the United States ~~census bureau~~ office of management and budget.

Sec. 2.  Section 232.22, subsection 7, Code 2020, is amended to read as follows:

7.  *a.*  If the court has waived its jurisdiction over the child ~~for the alleged commission of a forcible felony offense~~ pursuant to section 232.45 or ~~232.45A~~ a child age sixteen years or older is excluded from the jurisdiction of the juvenile court pursuant to section 232.8, subsection 1, paragraph *“c”*, who is awaiting trial or other legal process, and for whom there is a serious risk that the child may commit an act which would inflict serious bodily harm on another person, the child may be held in the county jail, notwithstanding section 356.3. However, wherever possible the child shall be held in sight and sound separation from adult offenders. ~~A child held in the county jail under this subsection shall have all the rights of adult postarrest or pretrial detainees.~~ A child shall not be detained in any facility intended for the detention of adults unless the court determines that after a hearing and issuing written findings, such detention is in the best interest of the child and the community. In determining whether it is in the best interest of the child and the community to permit a child to be detained in a facility intended for the detention of adults, the court shall consider all of the following:
   (1)  The age of the child, including the child’s physical and mental maturity.
   (2)  The present mental state of the child, including whether the child presents an imminent risk of harm to the child’s self.
   (3)  The nature and circumstances of the alleged offense.
   (4)  The child’s history of prior delinquent acts.
   (5)  The relative ability of available adult and juvenile detention facilities to not only meet the specific needs of the child but also to protect the safety of the public as well as other detained children.
   (6)  Any other relevant factor.
   *b.*  If a court determines pursuant to paragraph *“a”* that it is in the best interest of the child and the community to permit a child to be detained in a facility intended for the detention of adults, the following conditions shall apply:
   (1)  The child shall not have sight or sound contact with adult inmates.
   (2)  The court shall hold a hearing, not less than once every thirty days, or in the case of a rural, nonmetropolitan jurisdiction as determined by the United States office of management and budget, not less than once every forty-five days, to review whether it is still in the best interest of the child and the community to permit a child to be detained in a facility intended for the detention of adults.
   (3)  The child shall not be detained in a facility intended for the detention of adults for more than one hundred eighty days unless the court, in writing, determines there is good cause for an extension or the child expressly waives this limitation.
   (4)  A child held in a county jail in a facility intended for the detention of adults under this subsection shall have all the rights of adult postarrest or pretrial detainees.

    Sec. 3.  Section 232.142, subsections 3 and 6, Code 2020, are amended to read as follows:
   3.  A county or multicounty juvenile detention home approved pursuant to this section shall receive financial aid from the state in a manner approved by the director of the department of human rights. Aid paid by the state shall be at least ten percent and not more than fifty percent of the total cost of the establishment, improvements, operation, and maintenance of the home.
   6.  A juvenile detention home fund is created in the state treasury under the authority of the criminal and juvenile justice planning division of the department of human rights. The fund shall consist of moneys deposited in the fund pursuant to sections 321.218A and 321A.32A. The moneys in the fund shall be used for the costs of the establishment, improvement, operation, and maintenance of county or multicounty juvenile detention homes in accordance with annual appropriations made by the general assembly from the fund for these purposes.

    Sec. 4.  JUVENILE DETENTION HOME FUND —— TRANSFER OF ADMINISTRATION.  Moneys deposited in the juvenile detention home fund created in section 232.142 during the fiscal year beginning July 1, 2020, and ending June 30, 2021, are appropriated to the criminal and juvenile justice planning division of the department of human rights for the fiscal year beginning July 1, 2020, and ending June 30, 2021, for distribution as follows:
   1.  One hundred thousand dollars to each eligible county or multicounty juvenile detention home.
   2.  Any remaining funds shall be distributed in an amount equal to a percentage of the costs of the establishment, improvement, operation, and maintenance of county or multicounty juvenile detention homes in the fiscal year beginning July 1, 2019. Moneys appropriated for distribution in accordance with this section shall be allocated among eligible juvenile detention homes, prorated on the basis of an eligible juvenile detention home’s proportion of the costs of all eligible detention homes in the fiscal year beginning July 1, 2019. The percentage figure shall be determined by the department based on the amount available for distribution for the fund. Notwithstanding section 232.142, subsection 3, the financial aid payable by the state under that provision for the fiscal year beginning July 1, 2020, shall be limited to the amount appropriated for the purposes of this section.

    Sec. 5.  CRIMINAL AND JUVENILE JUSTICE PLANNING DIVISION —— DEPARTMENT OF HUMAN RIGHTS —— APPROPRIATION.  There is appropriated from the general fund of the state to the criminal and juvenile justice planning division of the department of human rights for the fiscal year beginning July 1, 2020, and ending June 30, 2021, the following amount, or so much thereof as is necessary, to be used for the purpose designated:
   For the management and administration of the juvenile detention home fund created in section 232.142:

   .............................................................$     20,000

EXPLANATION

**The inclusion of this explanation does not constitute agreement with
the explanation’s substance by the members of the general assembly.**

   This bill relates to the placement of a child (person under the age of 18) in detention and the juvenile detention home fund, and makes appropriations.

   The bill provides that if the court has waived its jurisdiction over a child pursuant to Code section 232.45 or a child age 16 or older is excluded from the jurisdiction of the juvenile court for offenses that involve the manufacture, delivery, or possession of controlled substances while in the immediate possession or control of a firearm or offensive weapon; gang activity involving firearms or offensive weapons; felonious possession of an offensive weapon; or any forcible felony, and who is awaiting trial or other legal process, and there is a serious risk that the child may commit an act which would inflict serious bodily harm on another person, the child may be held in the county jail. However, wherever possible, the child shall be held in sight and sound separation from adult offenders. A child shall not be detained in any facility intended for the detention of adults unless the court determines that after a hearing and issuing written findings it is in the best interest of the child and the community. The court shall consider the age of the child, including the child’s physical and mental maturity; the present mental state of the child, including whether the child presents an imminent risk of harm to the child’s self; the nature and circumstances of the alleged offense; the child’s history of prior delinquent acts; the relative ability of available adult and juvenile detention facilities to not only meet the specific needs of the child but also to protect the safety of the public as well as other detained children; and any other relevant factor.

   The bill provides that if a court determines that it is in the best interest of the child and the community to permit a child to be detained in a facility intended for the detention of adults, the following conditions shall apply: the child shall not have sight or sound contact with adult inmates; the court shall hold a hearing not less than once every 30 days, or in the case of a rural, nonmetropolitan jurisdiction, not less than once every 45 days, to review whether it is still in the best interest of the child and the community to permit a child to be detained in a facility intended for the detention of adults; the child shall not be detained in a facility intended for the detention of adults for more than 180 days unless the court, in writing, determines there is good cause for an extension or the child expressly waives this limitation; and a child held in a county jail in a facility intended for the detention of adults shall have all the rights of adult postarrest or pretrial detainees.

   The bill transfers the management and administration of the juvenile detention home fund created in Code section 232.142 from the department of human services to the criminal and juvenile justice planning division of the department of human rights, and provides that a juvenile detention home shall receive financial aid from the state in a manner approved by the director of the department of human rights.

   The bill appropriates moneys from the general fund of the state for fiscal year 2020-2021 to the criminal and juvenile justice planning division of the department of human rights for the management and administration of the juvenile detention home fund.