

CHAPTER 1209
JUVENILE JUSTICE CODE AMENDMENTS
H.F. 2460

AN ACT amending the juvenile justice code to allow children sixteen years of age or older under certain circumstances to waive representation by legal counsel when initially taken into custody, to allow oral court orders for temporary placements in shelter care or detention facilities, to add a cross-reference to a code section containing conditions of release, to require a written record of any oral complaint received, to provide that complaints of serious offenses allegedly committed by children fourteen years of age or older are public records, to provide a penalty for false reports of child abuse, to provide for victim restitution under informal adjustments and consent decrees, to allow notice of shelter care or detention hearings to be other than personal notice, to clarify that shelter care and detention notice and hearing requirements do not apply to temporary and emergency removals of children in need of assistance, to allow termination of child abuse investigations by the department of social services, to authorize the presence of a parent, guardian or custodian at a child's counseling session, to delay the automatic termination beyond the age of eighteen of certain dispositional orders, to provide for the removal of an alleged sexual offender from a child's household, to provide for inpatient examination under certain conditions prior to adjudication as a child in need of assistance, to provide disclosure of certain information to the victim of the delinquent act, to allow the taking and filing of fingerprints and photographs of children in felony cases, to provide for the sealing of juvenile court and law enforcement records in certain cases involving serious offenses only if in the best interests of the child and the public, and to make nonsubstantive, technical changes in the juvenile justice code.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 232.2, subsection 7, Code 1981, is amended to read as follows:

7. "Complaint" means a ~~verbal~~ an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

Sec. 2. Section 232.11, subsection 2, Code 1981, is amended to read as follows:

2. The child's right to be represented by counsel under subsection 1, paragraphs "b" to "f" of this section shall not be waived by a child of any age. The child's right to be represented by counsel under subsection 1, paragraph "a" shall not be waived by ~~the~~ a child less than sixteen years of age without the written consent of the child's parent, guardian, or custodian. The waiver by a child who is at least sixteen years of age is valid only if a good faith effort has been made to notify the child's parent, guardian, or custodian that the child has been taken into custody and of the alleged delinquent act for which the child has been taken into custody, the location of the child, and the right of the parent, guardian, or custodian to visit and confer with the child.

Sec. 3. Section 232.21, subsection 4, Code 1981, is amended to read as follows:

4. A child placed in a shelter care facility under this section shall not be held for a period in excess of forty-eight hours without a an oral or written court order authorizing such the

shelter care. When the action 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. A child placed in shelter care pursuant to section 232.19, subsection 1, paragraph "c" shall not be held in excess of seventy-two hours in any event.

Sec. 4. Section 232.22, subsection 1, paragraph c, Code 1981, is amended to read as follows:

c. There is probable cause to believe that the child has violated conditions of release imposed under section ~~232.54~~ or 232.44, subsection 5, paragraph "b", ~~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; or

Sec. 5. Section 232.22, subsections 3 and 4, Code 1981, are amended to read as follows:

3. ~~No~~ A child shall not be held in a facility under subsection 2, paragraphs "a" ~~and~~ or "b" for a period in excess of twenty-four hours without a an oral or written court order authorizing ~~such~~ 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.

4. ~~No~~ A child shall not be detained in a facility under subsection 2, paragraph "c" for a period in excess of twelve hours without the oral or written order of a judge or a magistrate authorizing ~~such~~ 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.

Sec. 6. Section 232.28, subsections 1 and 2, Code 1981, are amended to read as follows:

1. Any person having knowledge of the facts may file a complaint with the court or its designee alleging that a child has committed a delinquent act. A written record shall be maintained of any oral complaint received.

2. The Court or its designee shall refer the complaint to an intake officer who shall consult with law enforcement authorities having knowledge of the facts and conduct a preliminary inquiry to determine what action should be taken.

Sec. 7. Section 232.28, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. A complaint filed with the court or its designee pursuant to this section which alleges that a child fourteen years of age or older has committed a delinquent act which if committed by an adult would be an aggravated misdemeanor or a felony shall be a public record and shall not be confidential under section 232.147.

Sec. 8. Section 232.29, Code 1981, is amended by adding the following new paragraph:

NEW PARAGRAPH. An informal adjustment agreement may require the child to perform a work assignment of value to the state or to the public or require the child to make restitution consisting of a monetary payment to the victim or a work assignment directly of value to the victim.

Sec. 9. Section 232.44, subsection 3, Code 1981, is amended to read as follows:

3. A notice ~~stating the time, place, and purpose of the hearing~~ shall be served ~~personally~~ upon the child, the child's attorney, the child's guardian ad litem if any, and the child's known parent, guardian, or custodian not less than twenty-four hours before the time the hearing is scheduled to begin and in a manner calculated fairly to apprise the parties of the time, place, and purpose of the hearing. If the court finds that there has been reasonably diligent effort to give notice to a parent, guardian, or custodian and that the effort has been unavailing, the hearing may proceed without ~~such~~ the notice having been served.

Sec. 10. Section 232.44, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. This section does not apply to a child placed in accordance with section 232.78, 232.79, or 232.95.

Sec. 11. Section 232.46, subsection 1, Code 1981, is amended to read as follows:

1. At any time after the filing of a petition and prior to entry of an order of adjudication pursuant to section 232.47, the court may suspend the proceedings on motion of the county attorney or the child's counsel, enter a consent decree, and continue the case under terms and conditions established by the court. These terms and conditions may include the supervision of the child by a juvenile probation officer or other agency or person designated by the court and may include the requirement that the child perform a work assignment of value to the state or to the public or make restitution consisting of a monetary payment to the victim or a work assignment directly of value to the victim.

Sec. 12. Section 232.53, subsection 2, Code 1981, is amended to read as follows:

2. All dispositional orders entered prior to the child attaining the age of seventeen years and six months shall automatically terminate when the child becomes eighteen years of age, except that in. Dispositional orders entered subsequent to the child attaining the age of seventeen years and six months and prior to the child's eighteenth birthday shall automatically terminate one year after the date of disposition. In the case of an adult within the jurisdiction of the court under the provisions of section 232.8, subsection 1, the dispositional order shall automatically terminate one year after the last date upon which jurisdiction could attach.

Sec. 13. Section 232.71, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. If a fourth report is received from the same person who made three earlier unsubstantiated reports which identified the same child as the abused child and the same person responsible for the child as the alleged abuser, the department may determine that the report is spurious, unfounded, or frivolous and may in its discretion terminate its investigation.

Sec. 14. Chapter 232, Code 1981, is amended by adding the following new section immediately after section 232.81:

NEW SECTION. REMOVAL OF SEXUAL OFFENDERS FROM THE RESIDENCE PURSUANT TO COURT ORDER.

1. Notwithstanding section 561.15, if it is alleged by a person authorized to file a petition under section 232.87, subsection 2, or by the court on its own motion that a parent, guardian, custodian, or an adult member of the household in which a child resides has committed a sexual offense with or against the child, pursuant to chapter 709 or section 726.2, the juvenile court may enter an ex parte order requiring the alleged sexual offender to vacate the child's residence upon a showing that probable cause exists to believe that the sexual offense has occurred and that the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health.

2. If an order is entered under subsection 1 and a petition has not yet been filed under this chapter, the petition shall be filed under section 232.87 by the county attorney, the department of social services, or a probation officer within three days of the entering of the order.

3. The juvenile court may order on its own motion, or shall order upon the request of the alleged sexual offender, a hearing to determine whether the order to vacate the residence should be upheld, modified, or vacated. The juvenile court may in any later child in need of assistance proceeding uphold, modify, or vacate the order to vacate the residence.

Sec. 15. Section 232.98, subsection 1, Code 1981, is amended to read as follows:

1. A physical or mental examination of the child may be ordered only after the filing of a petition pursuant to section 232.87 and after a hearing to determine whether ~~such~~ an examination is necessary to determine the child's physical or mental condition.

The hearing required by this section may be held simultaneously with the adjudicatory hearing.

An examination ordered prior to the adjudication shall be conducted on an outpatient basis when possible, but if necessary the court may be performed on an outpatient basis only. commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed fifteen days if all of the following are found to be present:

a. Probable cause exists to believe that the child is a child in need of assistance pursuant to section 232.2, subsection 5, paragraph e or f.

b. Commitment is necessary to determine whether there is clear and convincing evidence that the child is a child in need of assistance.

c. The child's attorney agrees to the commitment.

PARAGRAPH DIVIDED. An examination ordered after adjudication shall be conducted on an outpatient basis whenever when possible, but if necessary the court may commit the child to a suitable nonsecure hospital, facility, or institution for the purpose of examination for a period not to exceed thirty days. The civil commitment provisions of chapter 220 shall not apply to such commitments.

The child's parent, guardian, or custodian shall be included in counseling sessions offered during the child's stay in a hospital, facility, or institution when feasible, and when in the best interests of the child and the child's parent, guardian, or custodian. If separate counseling sessions are conducted for the child and the child's parent, guardian, or custodian, a joint counseling session shall be offered prior to the release of the child from the hospital, facility, or institution.

Sec. 16. Section 232.147, subsection 5, Code 1981, is amended to read as follows:

5. Inspection of social records and disclosure of their contents shall not be permitted except pursuant to court order or unless otherwise provided in this subsection or chapter.

If an informal adjustment of a complaint is made pursuant to section 232.29, the intake officer shall disclose to the victim of the delinquent act, upon the request of the victim, the name and address of the child who committed the delinquent act.

Sec. 17. Section 232.148, Code 1981, is amended to read as follows:

232.148 FINGERPRINTS — PHOTOGRAPHS.

1. Except as provided in this section, a child shall not be fingerprinted or photographed by a criminal justice agency after ~~he or she~~ the child is taken into custody and fingerprint files of children shall not be inspected unless the juvenile court waives its jurisdiction over the child so that the child may be prosecuted as an adult for the commission of a public offense.

2. Fingerprints and photographs of a child who has been taken into custody and who is fourteen years of age or older may be taken and filed by a criminal justice agency investigating the commission of a public offense constituting a felony. However, fingerprint and photograph files of a child who enters into an informal adjustment or consent decree shall be retained only if the child is notified at the time of entering into the informal adjustment or consent decree that the files will be permanently retained by the criminal justice agency.

3. If a peace officer has reasonable grounds to believe that latent fingerprints found during the investigation of the commission of a public offense are those of a particular child, fingerprints of the child may be taken for immediate comparison with the latent fingerprints regardless of the age of the child or the nature of the offense. If the comparison is negative the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive and the child is referred to the court, the fingerprint card and other copies of the fingerprints taken shall be delivered to the court for disposition. If the child is not referred to the court, the fingerprint card and copies of the fingerprints shall be immediately destroyed.

4. Fingerprint and photograph files of children shall be kept separate from those of adults. Copies of fingerprints and photographs of a child shall not be placed in any data storage system established and maintained by the department of public safety pursuant to chapter 692, or in any federal depository for fingerprints.

5. Fingerprint and photograph files of children may be inspected by peace officers when necessary for the discharge of their official duties. The juvenile court may authorize other inspections of such files in individual cases upon a showing that inspection is necessary in the public interest.

6. Fingerprints and photographs of a child shall be removed from the file and destroyed if any of the following situations apply:

a. A petition alleging the child to be delinquent is not filed; ~~or and the child has not entered into an informal adjustment, admitting involvement in a delinquent act alleged in the complaint.~~

b. After a petition is filed, the petition is dismissed or the proceedings are suspended and the child is found by the court not to be delinquent; or has not entered into a consent decree and has not been adjudicated delinquent on the basis of a delinquent act other than one alleged in the petition in question.

c. Upon petition by the child when ~~he or she~~ the child reaches twenty-one years of age and ~~he or she the child~~ has not been adjudicated a delinquent nor convicted of committing an aggravated misdemeanor or a felony after reaching sixteen years of age.

7. ~~A child shall not be photographed by a criminal justice agency after he or she is taken into custody without the consent of the court unless the court waives jurisdiction over the child so that he or she may be prosecuted as an adult for the commission of a public offense.~~

Sec. 18. Section 232.150, subsection 1, Code 1981, is amended to read as follows:

1. Upon application of a person who was taken into custody for a delinquent act or was the subject of a complaint alleging delinquency or was the subject of a delinquency petition, or upon the court's own motion, the court, after hearing, shall order the records in the case including those specified in sections 232.147 and 232.149 sealed if the court finds that all of the following:

a. Two years have elapsed since the final discharge of ~~such the~~ the person or since the last official action in ~~his or her the~~ the person's case if there was no adjudication and disposition; ~~and.~~

b. ~~Such~~ The person has not been subsequently convicted of a felony or an aggravated or serious misdemeanor or adjudicated a delinquent child for an act which if committed by an adult would be a felony, an aggravated misdemeanor or a serious misdemeanor and no proceeding is pending seeking such conviction or adjudication.

However, if the person was adjudicated delinquent for an offense which if committed by an adult would be an aggravated misdemeanor or a felony, the court shall not order the records in the case sealed unless, upon application of the person or upon the court's own motion and after hearing, the court finds that paragraphs a and b apply and that the sealing is in the best interests of the person and the public.

Sec. 19. Section 708.7, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. Reports or causes to be reported false information to the department of social services, alleging that a person has abused a child, knowing that the information is false, or who reports the alleged occurrence of child abuse knowing that the child abuse did not occur.

Approved May 12, 1982