

Senate File 2349 - Introduced

SENATE FILE 2349
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3025)

A BILL FOR

1 An Act relating to defense subpoenas in criminal cases, and
2 providing penalties.

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

1 Section 1. Section 815.9, subsection 1, unnumbered
2 paragraph 1, Code 2024, is amended to read as follows:

3 For purposes of **this chapter, chapters 13B, 229A, 232, 665,**
4 **812, 814, and 822,** and ~~section~~ sections 811.1A and 821A.1, and
5 the rules of criminal procedure, a person is indigent if the
6 person is entitled to an attorney appointed by the court as
7 follows:

8 Sec. 2. NEW SECTION. **821A.1 Defense subpoenas in criminal**
9 **actions.**

10 1. *a.* A criminal defendant or counsel acting on the
11 defendant's behalf shall not issue any subpoena for documents
12 or other evidence except upon application to the court. An
13 application shall not be granted unless a defendant proves by a
14 preponderance of the evidence all of the following:

15 (1) There is a compelling need for the evidence sought and
16 that such evidence is material, necessary, exculpatory, and
17 admissible at trial.

18 (2) The evidence sought does not include the private
19 information of a crime victim or any other person except for
20 the defendant's own private information.

21 *b.* For the purposes of this subsection:

22 (1) "*Exculpatory*" means information that tends to negate the
23 guilt of the defendant and not information that is unrelated to
24 the case and is merely impeaching or substantially cumulative
25 in nature.

26 (2) "*Private information*" means information for which
27 a person has a reasonable expectation of privacy including
28 but not limited to information the state would need a search
29 warrant to obtain, nonpublic electronic communications, and
30 information that would reveal personal information immaterial
31 to the prosecution.

32 2. Notwithstanding any rule of criminal procedure
33 concerning the issuance of a subpoena, this section is the
34 exclusive mechanism for a criminal defendant or counsel acting
35 on the defendant's behalf to issue a subpoena for documents or

1 other evidence.

2 3. An application for a defense subpoena shall not be filed
3 or reviewed ex parte.

4 4. The prosecuting attorney shall not be required to execute
5 or effectuate any order or subpoena issued pursuant to this
6 section.

7 5. A crime victim or other party who is the subject of
8 a subpoena shall not be required by the court to execute a
9 waiver.

10 6. Upon application by a crime victim or the prosecuting
11 attorney, the court shall appoint an attorney to represent a
12 person or entity served with a defense subpoena if the person
13 or entity is determined to be indigent pursuant to section
14 815.9. Counsel appointed pursuant to this subsection shall be
15 paid from the indigent defense fund established pursuant to
16 section 815.11.

17 7. Documents or other evidence obtained through a defense
18 subpoena must be provided to the prosecuting attorney within
19 five business days after the receipt of the documents or other
20 evidence.

21 8. Documents or other evidence obtained through a defense
22 subpoena that does not comply with this section shall not be
23 admissible in any criminal action if offered by the defendant.

24 9. The court may sanction an attorney for knowingly issuing
25 a defense subpoena in violation of this section.

26 10. An applicant for postconviction relief shall not be
27 entitled to relief on a claim of ineffective assistance of
28 counsel as a result of evidence obtained through a defense
29 subpoena.

30

EXPLANATION

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

33 This bill relates to defense subpoenas in criminal cases.

34 The bill provides that a criminal defendant or counsel
35 acting on the defendant's behalf shall not issue any subpoena

1 for documents or other evidence except upon application to the
2 court. An application shall not be granted unless a defendant
3 proves by a preponderance of the evidence there is a compelling
4 need for the evidence sought and that such evidence is
5 material, necessary, exculpatory, and admissible at trial; and
6 the evidence sought does not include the private information of
7 a crime victim or any other person except for the defendant's
8 own private information.

9 Notwithstanding any rule of criminal procedure concerning
10 the issuance of a subpoena, the bill provides that the
11 procedure set forth in the bill is the exclusive mechanism
12 for a criminal defendant or counsel acting on behalf of the
13 defendant to issue a subpoena for documents or other evidence.
14 Documents or other evidence obtained by a subpoena that does
15 not comply with the requirements of the bill shall not be
16 admissible in any criminal action if offered by the defendant,
17 and an attorney who knowingly issues a defense subpoena that
18 does not comply with the requirements of the bill may be
19 sanctioned by the court. An application for a defense subpoena
20 shall not be made or reviewed ex parte. Any documents or
21 evidence obtained by a defense subpoena must be provided to the
22 prosecuting attorney within five business days of obtaining the
23 documents or evidence.

24 The bill provides that upon application by a crime victim or
25 the prosecuting attorney, the court shall appoint an attorney
26 to represent a person or entity served with a defense subpoena,
27 if the person or entity is indigent.

28 The bill provides that an applicant for postconviction
29 relief shall not be entitled to relief on a claim of
30 ineffective assistance of counsel as a result of evidence
31 obtained through a defense subpoena.