

Senate File 594

S-3217

1 Amend Senate File 594 as follows:

2 1. By striking everything after the enacting clause and  
3 inserting:

4 <Section 1. Section 81.1, Code 2019, is amended to read as  
5 follows:

6 **81.1 Definitions.**

7 As used in [this chapter](#), unless the context otherwise  
8 requires:

9 1. "*Aggravated misdemeanor*" means an offense classified as  
10 an aggravated misdemeanor committed by a person eighteen years  
11 of age or older on or after July 1, 2014, other than any of the  
12 following offenses:

13 a. A violation of [chapter 321](#).

14 b. A second offense violation of [section 321J.2](#), unless  
15 the person has more than one previous revocation as determined  
16 pursuant to [section 321J.2](#), subsection 8, within the  
17 twelve-year period immediately preceding the commission of the  
18 offense in question.

19 c. A violation of [chapter 716B](#).

20 d. A violation of [chapter 717A](#).

21 e. A violation of [section 725.7](#).

22 2. "*DNA*" means deoxyribonucleic acid.

23 3. "*DNA data bank*" means the repository for DNA samples  
24 obtained pursuant to [section 81.4](#).

25 4. "*DNA database*" means the collection of DNA profiles and  
26 DNA records.

27 5. "*DNA profile*" means the objective form of the results of  
28 DNA analysis performed on a forensic sample or an individual's  
29 DNA sample. The results of all DNA identification analysis on  
30 an individual's DNA sample are also collectively referred to  
31 as the DNA profile of an individual. "*DNA profile*" also means  
32 the objective form of the results of DNA analysis performed on  
33 a forensic sample.

34 6. "*DNA profiling*" means the procedure ~~established by~~  
35 ~~the division of criminal investigation, department of public~~

1 ~~safety~~, for determining a person's genetic identity or for  
2 testing a forensic sample, including analysis that might not  
3 result in the establishment of a complete DNA profile.

4 7. *"DNA record"* means the DNA sample and DNA profile, and  
5 other records in the DNA database and DNA data bank used to  
6 identify a person.

7 8. *"DNA sample"* means a biological sample provided by  
8 any person required to submit a DNA sample or a DNA sample  
9 submitted for any other purpose under [section 81.4](#).

10 9. *"Forensic sample"* means an evidentiary item that  
11 potentially contains DNA relevant to a crime.

12 10. *"Keyboard search"* means a keyboard search as defined in  
13 the national DNA index system operational procedures manual.

14 11. *"National DNA index system"* means a national, searchable  
15 DNA database created and maintained by the federal bureau of  
16 investigation where DNA profiles are stored and searched at a  
17 local, state, or national level.

18 9. 12. *"Person required to submit a DNA sample"* means a  
19 person convicted, adjudicated delinquent, receiving a deferred  
20 judgment, or found not guilty by reason of insanity of an  
21 offense requiring DNA profiling pursuant to [section 81.2](#).

22 *"Person required to submit a DNA sample"* also means a person  
23 determined to be a sexually violent predator pursuant to  
24 section 229A.7.

25 13. *"State DNA index system"* means a state searchable DNA  
26 database created and maintained by the department of public  
27 safety where DNA profiles are stored and searched at the state  
28 level.

29 Sec. 2. Section 81.10, Code 2019, is amended to read as  
30 follows:

31 81.10 Application requirements for DNA profiling after  
32 conviction.

33 1. A defendant who has been convicted of a felony or  
34 aggravated misdemeanor ~~and who has not been required to submit~~  
35 ~~a DNA sample for DNA profiling~~ may make a motion an application

1 to the court for an order to require that DNA ~~analysis~~  
2 profiling be performed on ~~evidence~~ a forensic sample collected  
3 in the case for which the person stands convicted.

4 2. The ~~motion~~ application shall state the following:

5 a. The specific crimes for which the defendant stands  
6 convicted in this case.

7 b. The facts of the underlying case, as proven at trial or  
8 admitted to during a guilty plea proceeding.

9 c. Whether any of the charges include sexual abuse or  
10 involve sexual assault, and if so, whether a sexual assault  
11 examination was conducted and ~~evidence~~ forensic samples were  
12 preserved, if known.

13 d. Whether identity was at issue or contested by the  
14 defendant.

15 e. Whether the defendant offered an alibi, and if so,  
16 testimony corroborating the alibi and, from whom.

17 f. Whether eyewitness testimony was offered, and if so from  
18 whom.

19 g. Whether any issues of police or prosecutor misconduct  
20 have been raised in the past or are being raised by the ~~motion~~  
21 application.

22 h. The type of inculpatory evidence admitted into evidence  
23 at trial or admitted to during a guilty plea proceeding.

24 i. Whether blood testing or other biological evidence  
25 testing was conducted previously in connection with the case  
26 and, if so, by whom and the result, if known.

27 j. What biological evidence exists and, if known, the agency  
28 or laboratory storing the ~~evidence~~ forensic sample that the  
29 defendant seeks to have tested.

30 k. Why the requested ~~analysis of DNA evidence~~ DNA profiling  
31 of the forensic sample is material to the issue in the case and  
32 not merely cumulative or impeaching.

33 l. Why the DNA ~~evidence~~ profiling results would have  
34 changed the outcome of the trial or invalidated a guilty plea  
35 if the requested DNA profiling had been conducted prior to the

1 conviction.

2 3. a. A ~~motion~~ proceeding for relief filed under this  
3 section shall be filed in the county where the defendant was  
4 convicted, ~~and~~. The proceeding is commenced by filing an  
5 application for relief with the district court in which the  
6 conviction took place, without paying a filing fee. The notice  
7 of the ~~motion~~ application shall be served by certified mail  
8 upon the county attorney and, if known, upon the state, local  
9 agency, or laboratory holding evidence described in subsection  
10 2, paragraph "k". The county attorney shall have sixty days to  
11 file an answer to the ~~motion~~ application.

12 b. The application shall be heard in, and before any judge  
13 or the court in which the defendant's conviction or sentence  
14 took place. A record of the proceedings shall be made.

15 4. Any DNA profiling of the defendant or other biological  
16 evidence testing conducted by the state or by the defendant  
17 shall be disclosed and the results of such profiling or testing  
18 described in the ~~motion~~ application or answer.

19 5. If the evidence forensic sample requested to be tested  
20 was previously subjected to DNA or other biological analysis  
21 by either party, the court may order the disclosure of the  
22 results of such testing, including laboratory reports, notes,  
23 and underlying data, to the court and the parties.

24 6. The court may order a hearing on the ~~motion~~ application  
25 to determine if evidence the forensic sample should be  
26 subjected to DNA analysis profiling.

27 ~~7. The court shall grant the motion if all of the following~~  
28 ~~apply:~~

29 ~~a. The evidence subject to DNA testing is available and in a~~  
30 ~~condition that will permit analysis.~~

31 ~~b. A sufficient chain of custody has been established for~~  
32 ~~the evidence.~~

33 ~~c. The identity of the person who committed the crime for~~  
34 ~~which the defendant was convicted was a significant issue in~~  
35 ~~the crime for which the defendant was convicted.~~

1 ~~d. The evidence subject to DNA analysis is material to, and~~  
2 ~~not merely cumulative or impeaching of, evidence included in~~  
3 ~~the trial record or admitted to at a guilty plea proceeding.~~  
4 ~~e. DNA analysis of the evidence would raise a reasonable~~  
5 ~~probability that the defendant would not have been convicted if~~  
6 ~~DNA profiling had been available at the time of the conviction~~  
7 ~~and had been conducted prior to the conviction.~~  
8 ~~8. Upon the court granting a motion filed pursuant to this~~  
9 ~~section, DNA analysis of evidence shall be conducted within the~~  
10 ~~guidelines generally accepted by the scientific community. The~~  
11 ~~defendant shall provide DNA samples for testing if requested~~  
12 ~~by the state.~~  
13 ~~9. Results of DNA analysis conducted pursuant to this~~  
14 ~~section shall be reported to the parties and to the court~~  
15 ~~and may be provided to the board of parole, department of~~  
16 ~~corrections, and criminal and juvenile justice agencies,~~  
17 ~~as defined in [section 692.1](#), for use in the course of~~  
18 ~~investigations and prosecutions, and for consideration in~~  
19 ~~connection with requests for parole, pardon, reprieve, and~~  
20 ~~commutation. DNA samples obtained pursuant to this section~~  
21 ~~may be included in the DNA data bank, and DNA profiles and DNA~~  
22 ~~records developed pursuant to [this section](#) may be included in~~  
23 ~~the DNA database.~~  
24 ~~10. A criminal or juvenile justice agency, as defined in~~  
25 ~~[section 692.1](#), shall maintain DNA samples and evidence that~~  
26 ~~could be tested for DNA for a period of three years beyond the~~  
27 ~~limitations for the commencement of criminal actions as set~~  
28 ~~forth in [chapter 802](#). [This section](#) does not create a cause of~~  
29 ~~action for damages or a presumption of spoliation in the event~~  
30 ~~evidence is no longer available for testing.~~  
31 ~~11. If the court determines a defendant who files a motion~~  
32 ~~under [this section](#) is indigent, the defendant shall be entitled~~  
33 ~~to appointment of counsel as provided in [chapter 815](#).~~  
34 ~~12. If the court determines after DNA analysis ordered~~  
35 ~~pursuant to [this section](#) that the results indicate conclusively~~

~~1 that the DNA profile of the defendant matches the profile from  
2 the analyzed evidence used against the defendant, the court  
3 may order the defendant to pay the costs of these proceedings,  
4 including costs of all testing, court costs, and costs of  
5 court-appointed counsel, if any.~~

6 Sec. 3. NEW SECTION. 81.11 **Application for DNA profiling.**

7 1. The court shall grant an application for DNA profiling  
8 if all of the following apply:

9 a. The forensic sample subject to DNA profiling is available  
10 and either DNA profiling has not been performed on the forensic  
11 sample or DNA profiling has been previously performed on the  
12 forensic sample and the defendant is requesting DNA profiling  
13 using a new method or technology that is substantially more  
14 probative than the DNA profiling previously performed.

15 b. A sufficient chain of custody has been established for  
16 the forensic sample.

17 c. The identity of the person who committed the crime for  
18 which the defendant was convicted was a significant issue in  
19 the crime for which the defendant was convicted.

20 d. The forensic sample subject to DNA profiling is material  
21 to, and not merely cumulative or impeaching of, evidence  
22 included in the trial record or admitted to at a guilty plea  
23 proceeding.

24 e. The DNA profiling results would raise a reasonable  
25 probability that the defendant would not have been convicted if  
26 such results had been introduced at trial.

27 2. Upon the court granting an application filed pursuant  
28 to this section, DNA profiling of a forensic sample shall be  
29 conducted within the guidelines generally accepted by the  
30 scientific community if the testing type or resulting profile  
31 is not eligible to be uploaded or searched in the national DNA  
32 index system database. The defendant shall provide DNA samples  
33 for testing if requested by the state.

34 Sec. 4. NEW SECTION. 81.12 **When DNA database comparisons**  
35 **may be ordered.**

1 1. If DNA profiling ordered under section 81.11 produces  
2 an unidentified DNA profile, after notice to the parties,  
3 including the department of public safety, the court may order  
4 the department of public safety to do any of the following:

5 a. Compare the DNA profile to the national DNA index  
6 system. The profile shall only be compared to the national DNA  
7 index system if the combined DNA index system administrator  
8 determines all of the following:

9 (1) The forensic sample is collected contemporaneously from  
10 the crime scene, has a nexus to the crime scene, is probative,  
11 and is suitable for analysis.

12 (2) The DNA profile was generated through a technology that  
13 complies with all requirements in the national DNA index system  
14 operational procedures manual.

15 (3) The DNA profile meets all the requirements in the  
16 national DNA index system operational procedures manual for  
17 either uploading the profile or conducting a keyboard search.

18 b. Compare the DNA profile to the state DNA index system if  
19 the profile meets all applicable state requirements.

20 2. If any provision of a court order under this section  
21 results in a violation of federal law, the federal bureau  
22 of investigation's national DNA index system operational  
23 procedures manual, or the memorandum of understanding between  
24 the federal bureau of investigation laboratory division and  
25 the Iowa division of criminal investigation criminalistics  
26 laboratory for participation in the national DNA index system,  
27 that portion of the order shall be considered unenforceable.  
28 The remaining provisions of the order shall remain in effect.

29 **Sec. 5. NEW SECTION. 81.13 Additional DNA profiling**  
30 **provisions.**

31 1. The results of DNA profiling conducted pursuant to this  
32 section shall be provided to the court, the defendant, the  
33 state, and the federal bureau of investigation. DNA samples  
34 obtained pursuant to this section may be included in the DNA  
35 data bank, and DNA profiles and DNA records developed pursuant

1 to this section may be included in the DNA database.

2 2. A criminal or juvenile justice agency, as defined in  
3 section 692.1, shall maintain DNA samples and forensic samples  
4 that could be tested for DNA for a period of three years beyond  
5 the limitations for the commencement of criminal actions as set  
6 forth in chapter 802. This section does not create a cause of  
7 action for damages or a presumption of spoliation in the event  
8 a forensic sample is no longer available for testing.

9 3. If the court determines a defendant who files an  
10 application under this section is indigent, the defendant shall  
11 be entitled to appointment of counsel as provided in chapter  
12 815.

13 4. If the court determines after DNA profiling ordered  
14 pursuant to the application filed under section 81.10 that  
15 the results indicate conclusively that the DNA profile of the  
16 defendant matches the profile from the analyzed evidence used  
17 against the defendant, the court may order the defendant to pay  
18 the costs of these proceedings, including costs of all testing,  
19 court costs, and costs of court-appointed counsel, if any.

20 **Sec. 6. NEW SECTION. 81.14 Compliance with applicable laws.**

21 A court shall not enter an order under this chapter that  
22 would result in a violation of state or federal law or loss of  
23 access to a federal system or database.

24 **Sec. 7.** Section 822.2, subsection 1, Code 2019, is amended  
25 by adding the following new paragraph:

26 **NEW PARAGRAPH. h.** The results of DNA profiling ordered  
27 pursuant to an application filed under section 81.10 would have  
28 changed the outcome of the trial or void the factual basis of  
29 a guilty plea had the profiling been conducted prior to the  
30 conviction.

31 **Sec. 8.** Section 822.3, Code 2019, is amended to read as  
32 follows:

33 **822.3 How to commence proceeding — limitation.**

34 A proceeding is commenced by filing an application verified  
35 by the applicant with the clerk of the district court in

1 which the conviction or sentence took place. However, if the  
2 applicant is seeking relief under [section 822.2, subsection 1,](#)  
3 paragraph "f", the application shall be filed with the clerk  
4 of the district court of the county in which the applicant  
5 is being confined within ninety days from the date the  
6 disciplinary decision is final. All other applications must  
7 be filed within three years from the date the conviction or  
8 decision is final or, in the event of an appeal, from the date  
9 the writ of procedendo is issued. However, this limitation  
10 does not apply to a ground of fact or law that could not have  
11 been raised within the applicable time period. For purposes  
12 of this section, a ground of fact includes the results of  
13 DNA profiling ordered pursuant to an application filed under  
14 section 81.10. Facts within the personal knowledge of the  
15 applicant and the authenticity of all documents and exhibits  
16 included in or attached to the application must be sworn to  
17 affirmatively as true and correct. The supreme court may  
18 prescribe the form of the application and verification. The  
19 clerk shall docket the application upon its receipt and  
20 promptly bring it to the attention of the court and deliver a  
21 copy to the county attorney and the attorney general.>

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DAN DAWSON