

House File 2616

H-8289

1 Amend House File 2616 as follows:

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

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

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

11 Sec. 2. NEW SECTION. **821A.1 Defense subpoenas in criminal**
12 **actions.**

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

18 (1) There is a compelling need for the evidence sought and
19 that such evidence is material, necessary, exculpatory, and
20 admissible at trial.

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

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

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

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

35 2. Notwithstanding any rule of criminal procedure

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(amending this HF 2616 to CONFORM to SF 2349)

1 concerning the issuance of a subpoena, this section is the
2 exclusive mechanism for a criminal defendant or counsel acting
3 on the defendant's behalf to issue a subpoena for documents or
4 other evidence.

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

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

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

13 6. Upon application by a crime victim or the prosecuting
14 attorney, the court shall appoint an attorney to represent a
15 person or entity served with a defense subpoena if the person
16 or entity is determined to be indigent pursuant to section
17 815.9. Counsel appointed pursuant to this subsection shall be
18 paid from the indigent defense fund established pursuant to
19 section 815.11.

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

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

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

29 10. An applicant for postconviction relief shall not be
30 entitled to relief on a claim of ineffective assistance of
31 counsel as a result of evidence obtained through a defense
32 subpoena.>

COLLINS of Des Moines

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