

SENATE/HOUSE FILE _____
BY (PROPOSED STATE PUBLIC
DEFENDER BILL)

A BILL FOR

1 An Act relating to postconviction DNA profiling procedure.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 81.1, Code 2019, is amended to read as
2 follows:

3 **81.1 Definitions.**

4 As used in this chapter, unless the context otherwise
5 requires:

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

10 a. A violation of chapter 321.

11 b. A second offense violation of section 321J.2, unless
12 the person has more than one previous revocation as determined
13 pursuant to section 321J.2, subsection 8, within the
14 twelve-year period immediately preceding the commission of the
15 offense in question.

16 c. A violation of chapter 716B.

17 d. A violation of chapter 717A.

18 e. A violation of section 725.7.

19 2. "Combined DNA index system" means a national, searchable
20 DNA database created and maintained by the federal bureau of
21 investigation where DNA profiles are stored and searched at a
22 local, state, or national level.

23 ~~2.~~ 3. "*DNA*" means deoxyribonucleic acid.

24 ~~3.~~ 4. "*DNA data bank*" means the repository for DNA samples
25 obtained pursuant to section 81.4.

26 ~~4.~~ 5. "*DNA database*" means the collection of DNA profiles
27 and DNA records.

28 ~~5.~~ 6. "*DNA profile*" means the objective form of the
29 results of DNA analysis performed on a forensic sample or an
30 individual's DNA sample. The results of all DNA identification
31 analysis on an individual's DNA sample are also collectively
32 referred to as the DNA profile of an individual. "DNA profile"
33 also means the objective form of the results of DNA analysis
34 performed on a forensic sample.

35 ~~6.~~ 7. "*DNA profiling*" means the procedure ~~established by~~

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

5 ~~7.~~ 8. "DNA record" means the DNA sample and DNA profile,
6 and other records in the DNA database and DNA data bank used to
7 identify a person.

8 ~~8.~~ 9. "DNA sample" means a biological sample provided by
9 any person required to submit a DNA sample or a DNA sample
10 submitted for any other purpose under section 81.4.

11 10. "Forensic sample" means an evidentiary item that may
12 contain DNA relevant to a crime.

13 11. "Keyboard search" means a manual keyboard search
14 conducted in accordance with the current version of the
15 national DNA index system operational procedures manual.

16 ~~9.~~ 12. "Person required to submit a DNA sample" means a
17 person convicted, adjudicated delinquent, receiving a deferred
18 judgment, or found not guilty by reason of insanity of an
19 offense requiring DNA profiling pursuant to section 81.2.
20 "Person required to submit a DNA sample" also means a person
21 determined to be a sexually violent predator pursuant to
22 section 229A.7.

23 Sec. 2. Section 81.10, Code 2019, is amended to read as
24 follows:

25 **81.10 DNA profiling after conviction.**

26 1. A defendant who has been convicted of a felony or
27 aggravated misdemeanor ~~and who has not been required to submit~~
28 ~~a DNA sample for DNA profiling~~ may make a motion an application
29 to the court for an order to require that DNA analysis
30 profiling be performed on ~~evidence~~ a forensic sample collected
31 in the case for which the person stands convicted.

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

33 a. The specific crimes for which the defendant stands
34 convicted in this case.

35 b. The facts of the underlying case, as proven at trial or

1 admitted to during a guilty plea proceeding.

2 *c.* Whether any of the charges include sexual abuse or
3 involve sexual assault, and if so, whether a sexual assault
4 examination was conducted and evidence forensic samples were
5 preserved, if known.

6 *d.* Whether identity was at issue or contested by the
7 defendant.

8 *e.* Whether the defendant offered an alibi, and if so,
9 testimony corroborating the alibi and, from whom.

10 *f.* Whether eyewitness testimony was offered, and if so from
11 whom.

12 *g.* Whether any issues of police or prosecutor misconduct
13 have been raised in the past or are being raised by the motion.

14 *h.* The type of inculpatory evidence admitted into evidence
15 at trial or admitted to during a guilty plea proceeding.

16 *i.* Whether blood testing or other biological evidence
17 testing was conducted previously in connection with the case
18 and, if so, by whom and the result, if known.

19 *j.* What biological evidence exists and, if known, the agency
20 or laboratory storing the evidence forensic sample that the
21 defendant seeks to have tested.

22 *k.* Why the requested ~~analysis of DNA evidence~~ DNA profiling
23 of the forensic sample is material to the issue in the case and
24 not merely cumulative or impeaching.

25 *l.* Why the DNA evidence profiling results would have
26 changed the outcome of the trial or invalidated a guilty plea
27 if the requested DNA profiling had been conducted prior to the
28 conviction.

29 3. *a.* A ~~motion~~ proceeding for relief filed under this
30 section shall be filed in the county where the defendant was
31 convicted, ~~and~~. The proceeding is commenced by filing an
32 application for relief with the district court in which the
33 conviction took place, without paying a filing fee. The notice
34 of the ~~motion~~ application shall be served by certified mail
35 upon the county attorney and, if known, upon the state, local

1 agency, or laboratory holding evidence described in subsection
2 2, paragraph "k". The county attorney shall have sixty days to
3 file an answer to the motion.

4 b. The application shall be heard in, and before any
5 judge or the court in which the defendant's conviction or
6 sentence took place. A record of the proceedings shall be made
7 and preserved. All rules and statutes applicable in civil
8 proceedings including pretrial and discovery procedures shall
9 be available to the parties. The court may receive proof of
10 affidavits, depositions, oral testimony, or other evidence, and
11 may order the defendant brought before it for the hearing of
12 the application.

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

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

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

25 7. The court shall grant the motion application if all of
26 the following apply:

27 a. The evidence forensic sample subject to DNA testing
28 profiling is available and in a condition that will permit
29 analysis. any of the following apply:

30 (1) DNA profiling has not been performed on the forensic
31 sample.

32 (2) DNA profiling has been previously performed on
33 the forensic sample and the defendant is requesting DNA
34 profiling using a new method or technology approved by the
35 accrediting organization and authorized by the federal bureau

1 of investigation for DNA profiling that is substantially more
2 probative than the DNA profiling previously performed.

3 *b.* A sufficient chain of custody has been established for
4 the evidence forensic sample.

5 *c.* The identity of the person who committed the crime for
6 which the defendant was convicted was a significant issue in
7 the crime for which the defendant was convicted.

8 *d.* The evidence forensic sample subject to DNA analysis
9 profiling is material to, and not merely cumulative or
10 impeaching of, evidence included in the trial record or
11 admitted to at a guilty plea proceeding.

12 *e.* ~~DNA analysis of the evidence~~ The DNA profiling results
13 would raise a reasonable probability that the defendant would
14 not have been convicted if ~~DNA profiling had been available at~~
15 ~~the time of the conviction and had been conducted prior to the~~
16 ~~conviction~~ such results had been introduced at trial.

17 8. *a.* Upon the court granting ~~a motion~~ an application filed
18 pursuant to this section, DNA analysis profiling of evidence
19 a forensic sample shall be conducted within the guidelines
20 generally accepted by the scientific community. The defendant
21 shall provide DNA samples for testing if requested by the
22 state.

23 *b.* After proper notice to the parties, including the
24 department of public safety or other entity authorized to
25 perform the search, if a DNA profile complies with federal
26 bureau of investigation requirements or state requirements,
27 whichever are applicable, as such requirements are applied
28 to law enforcement agencies seeking such a comparison, and
29 the database meets combined DNA index system or state DNA
30 index system criteria, whichever is applicable, the court may
31 enter an order that authorizes the department of public safety
32 or other entity to access the DNA database to do any of the
33 following:

34 (1) Compare a DNA profile obtained from a DNA sample or
35 forensic sample collected in connection with an investigation

1 or prosecution of the defendant against the DNA database
2 through the use of a keyboard search or through a continuous
3 keyboard search method that involves uploading the DNA profile
4 to the DNA database.

5 (2) Utilize a search method similar to a keyboard search
6 that does not involve uploading the DNA profile to the DNA
7 database.

8 9. Results of DNA analysis profiling conducted pursuant
9 to this section shall be reported to the parties and to the
10 court and may be provided to the board of parole, department
11 of corrections, and criminal and juvenile justice agencies,
12 as defined in section 692.1, for use in the course of
13 investigations and prosecutions, and for consideration in
14 connection with requests for parole, pardon, reprieve, and
15 commutation. DNA samples obtained pursuant to this section
16 may be included in the DNA data bank, and DNA profiles and DNA
17 records developed pursuant to this section may be included in
18 the DNA database.

19 10. A criminal or juvenile justice agency, as defined in
20 section 692.1, shall maintain DNA samples and evidence forensic
21 samples that could be tested for DNA for a period of three
22 years beyond the limitations for the commencement of criminal
23 actions as set forth in chapter 802. This section does not
24 create a cause of action for damages or a presumption of
25 spoliation in the event evidence a forensic sample is no longer
26 available for testing.

27 11. If the court determines a defendant who files a ~~motion~~
28 an application under this section is indigent, the defendant
29 shall be entitled to appointment of counsel as provided in
30 chapter 815.

31 12. If the court determines after DNA analysis profiling
32 ordered pursuant to this section that the results indicate
33 conclusively that the DNA profile of the defendant matches the
34 profile from the analyzed evidence used against the defendant,
35 the court may order the defendant to pay the costs of these

1 proceedings, including costs of all testing, court costs, and
2 costs of court-appointed counsel, if any.

3 13. a. If DNA profiling results ordered pursuant to this
4 section are favorable to the defendant, the defendant may
5 file a motion for release. The state shall file a response
6 consenting to or opposing the motion no later than thirty days
7 after the docketing of the motion, or within any further time
8 as determined by the court.

9 b. If the state does not oppose the motion and if the
10 court finds that the results of the DNA profiling indicate a
11 reasonable probability that the defendant would not have been
12 convicted if such DNA profiling results had been introduced
13 at trial, the court shall enter an appropriate order with
14 respect to the defendant's conviction or sentence in the former
15 criminal proceedings, and any supplementary orders as to
16 rearraignment, retrial, custody, bail, discharge, correction of
17 sentence, or other matters that may be necessary and proper.

18 c. If the state files a response opposing the defendant's
19 motion for release, the court shall conduct a hearing. The
20 defendant shall have the burden of proving the allegations of
21 the motion by a preponderance of the evidence. If the court
22 determines after a hearing that the results of DNA profiling
23 ordered pursuant to this section indicate a reasonable
24 probability the defendant would not have been convicted if
25 such DNA profiling results had been introduced at trial, the
26 court shall enter an appropriate order with respect to the
27 defendant's conviction or sentence in the former criminal
28 proceedings, and any supplementary orders as to rearraignment,
29 retrial, custody, bail, discharge, correction of sentence, or
30 other matters that may be necessary and proper.

31 d. The court shall make specific findings of fact, and
32 state expressly its conclusions of law, relating to each issue
33 presented. This order shall be considered a final judgment,
34 but the judgment shall not be given preclusive effect in a
35 subsequent action pursuant to chapter 822.

1 The bill requires the defendant's application for an order
2 to require DNA profiling be performed on a forensic sample
3 collected in the case to include a statement detailing why
4 the DNA profiling results would have changed the outcome of
5 the trial or invalidated a guilty plea if the requested DNA
6 profiling had been conducted prior to the conviction. Current
7 law requires such application to state why DNA evidence would
8 have changed the outcome of the trial or invalidated a guilty
9 plea if DNA profiling had been conducted prior to conviction.

10 The bill specifies that the defendant's application shall
11 be served upon the county attorney and upon the laboratory, if
12 known by the defendant, holding the biological evidence.

13 Subject to the confidentiality provisions of Code section
14 81.8, the bill requires that any DNA profiling of the defendant
15 or an unknown person, or other biological evidence conducted
16 by the state or by the defendant shall be disclosed and the
17 results of such profiling or other testing be described in
18 the motion or answer. Current law requires DNA profiling,
19 not DNA testing results, to be disclosed and does not require
20 disclosure when the DNA profiling results in the DNA profile of
21 an unknown person.

22 The bill specifies that the court shall grant the
23 defendant's application for an order to require that DNA
24 profiling be performed on a forensic sample collected in
25 the case for which the person stands convicted when either
26 DNA profiling has not been performed on the forensic sample
27 or when DNA profiling has been previously performed on
28 the forensic sample and the defendant is requesting DNA
29 profiling using a new method or technology approved by the
30 accrediting organization and authorized by the federal bureau
31 of investigation for DNA profiling that is substantially more
32 probative than prior DNA profiling.

33 Additionally, the bill specifies that the defendant's
34 application shall be granted if a sufficient chain of custody
35 has been established for the forensic sample; the identity of

1 the person who committed the crime for which the defendant
2 was convicted was a significant issue in the crime for which
3 the defendant was convicted; the forensic sample is material
4 to evidence included in the trial record or admitted to at a
5 guilty plea proceeding; and the DNA profiling results would
6 raise a reasonable probability that the defendant would not
7 have been convicted if such results had been introduced at
8 trial.

9 Upon the court granting a defendant's application under the
10 bill, DNA profiling of a forensic sample shall be conducted
11 within the guidelines generally accepted by the scientific
12 community. The court may enter an order that authorizes the
13 department of public safety or other entity to access the DNA
14 database and either compare a DNA profile obtained from a DNA
15 sample or forensic sample collected in connection with an
16 investigation or prosecution of the defendant against the DNA
17 database by using a keyboard search or using a search method
18 similar to a keyboard search that does not involve uploading
19 the DNA profile to the DNA database.

20 The court may enter an order authorizing the department
21 of public safety or other entity to utilize a search method
22 similar to the keyboard search that does not involve uploading
23 the DNA profile to the DNA database if the DNA profile complies
24 with federal bureau of investigation requirements or state
25 requirements, whichever are applicable, as such requirements
26 are applied to law enforcement agencies seeking such a
27 comparison, and the database meets combined DNA index system
28 criteria or state DNA index system criteria, whichever is
29 applicable.

30 The bill provides that if the results of a DNA profile are
31 favorable to the defendant, the defendant may file a motion
32 for release. The state shall file a response consenting to or
33 opposing the motion no later than 30 days after the docketing
34 of the motion, or within any further time as determined by the
35 court. If the state does not oppose the motion and if the

1 court finds that the results of such DNA profiling indicate a
2 reasonable probability that the defendant would not have been
3 convicted if such DNA profiling results had been introduced
4 at trial, the court shall enter an appropriate order with
5 respect to the defendant's conviction or sentence in the former
6 criminal proceedings, and any supplementary orders as to
7 arraignment, retrial, custody, bail, discharge, correction of
8 sentence, or other matters that may be necessary and proper.

9 The bill provides that if the state files a response opposing
10 the defendant's motion for release, the court shall conduct a
11 hearing. The defendant shall have the burden of proving the
12 allegations of the motion by a preponderance of the evidence.
13 If the court determines after a hearing that the results of DNA
14 profiling ordered pursuant to the bill indicate a reasonable
15 probability the defendant would not have been convicted if
16 such DNA profiling results had been introduced at trial, the
17 court shall enter an appropriate order with respect to the
18 defendant's conviction or sentence in the former criminal
19 proceedings, and any supplementary orders as to arraignment,
20 retrial, custody, bail, discharge, correction of sentence, or
21 other matters that may be necessary and proper. The court
22 shall make specific findings of fact, and state expressly its
23 conclusions of law, relating to each issue presented. This
24 order shall be considered a final judgment, but the judgment
25 shall not be given preclusive effect to a subsequent action
26 pursuant to Code chapter 822 (postconviction procedure).

27 The bill also specifies that a court shall not enter an order
28 that would result in a violation of state or federal law or
29 loss of access to a federal system or database.