

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

A BILL FOR

1 An Act relating to DNA testing of certain criminal offenders.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 81.1, Code 2018, is amended by adding the
2 following new subsections:

3 NEW SUBSECTION. 1A. "*Combined DNA index system*" means a
4 national, searchable DNA database created and maintained by the
5 federal bureau of investigation where DNA profiles are stored
6 and searched at a local, state, or national level.

7 NEW SUBSECTION. 8A. "*DNA testing*" means a test to analyze
8 physical and biological evidence from a DNA sample including
9 analysis that might not result in the establishment of a
10 complete DNA profile.

11 NEW SUBSECTION. 8B. "*Keyboard search*" means a search under
12 which information obtained from a DNA sample is compared with
13 information in the combined DNA index system without resulting
14 in the information obtained from the DNA sample being included
15 in the combined DNA index system.

16 Sec. 2. Section 81.10, subsection 1, Code 2018, is amended
17 to read as follows:

18 1. A defendant who has been convicted of a felony or
19 aggravated misdemeanor ~~and who has not been required to submit~~
20 ~~a DNA sample for DNA profiling~~ may make a motion to the court
21 for an order to require that DNA analysis be performed on
22 evidence collected in the case for which the person stands
23 convicted.

24 Sec. 3. Section 81.10, subsection 2, paragraph 1, Code 2018,
25 is amended to read as follows:

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

29 Sec. 4. Section 81.10, subsections 3 and 4, Code 2018, are
30 amended to read as follows:

31 3. A motion filed under this section shall be filed in
32 the county where the defendant was convicted, and notice
33 of the motion shall be served by certified mail upon the
34 county attorney and, if known, upon the state, local agency,
35 or laboratory holding evidence described in subsection 2,

1 paragraph ~~"k"~~ "j". The county attorney shall have sixty days to
2 file an answer to the motion.

3 4. Any DNA ~~profiling~~ testing that results in a profile
4 of the defendant, an unknown person, or other biological
5 evidence testing conducted by the state or by the defendant
6 shall be disclosed and the results of such ~~profiling or~~ testing
7 described in the motion or answer.

8 Sec. 5. Section 81.10, subsection 7, paragraph a, Code 2018,
9 is amended to read as follows:

10 a. The evidence subject to DNA testing is available ~~and in~~
11 ~~a condition that will permit analysis.~~ and any of the following
12 apply:

13 (1) DNA testing has not been performed on the evidence.

14 (2) DNA testing has been previously performed on the
15 evidence and the defendant is requesting DNA testing using a
16 new method or technology that is substantially more probative
17 than the DNA testing previously performed.

18 Sec. 6. Section 81.10, subsection 7, paragraph e, Code 2018,
19 is amended to read as follows:

20 e. ~~DNA analysis of the evidence~~ The DNA testing results
21 would raise a reasonable probability that the defendant would
22 not have been convicted if ~~DNA profiling had been available at~~
23 ~~the time of the conviction and had been conducted prior to the~~
24 ~~conviction~~ such results have been introduced at trial.

25 Sec. 7. Section 81.10, subsection 8, Code 2018, is amended
26 to read as follows:

27 8. a. Upon the court granting a motion filed pursuant
28 to this section, DNA analysis of evidence shall be conducted
29 within the guidelines generally accepted by the scientific
30 community. The defendant shall provide DNA samples for testing
31 if requested by the state.

32 b. In response to a motion filed pursuant to this section,
33 and after proper notice to the parties including an entity
34 required to perform the search, the court may order the entity
35 that has access to the combined DNA index system to do any of

1 the following:

2 (1) Compare a DNA profile obtained from a DNA sample
3 gathered in connection with the investigation or prosecution
4 of a defendant against DNA data banks contained within the
5 combined DNA index system through the use of a keyboard search.

6 (2) Utilize a search method similar to a keyboard search
7 that does not involve uploading the DNA profile to the DNA data
8 bank if the court determines all of the following apply:

9 (a) The DNA profile complies with federal bureau of
10 investigation requirements or state requirements, whichever are
11 applicable, as such requirements are applied to law enforcement
12 agencies seeking such a comparison, and the data bank meets
13 national DNA index system or state DNA index system criteria,
14 whichever is applicable.

15 (b) If a comparison of the DNA profile had been conducted
16 and if the results had been admitted at trial resulting in
17 a verdict of guilty, a reasonable probability exists that
18 the verdict would have been more favorable to the defendant,
19 or in a case involving a plea of guilty, if the results had
20 been available to the defendant prior to the guilty plea, a
21 reasonable probability exists that a conviction would not have
22 resulted.

23 Sec. 8. Section 669.14, subsection 14, Code 2018, is amended
24 to read as follows:

25 14. Any claim arising from or related to the collection of
26 a DNA sample for DNA profiling pursuant to section 81.4 or a
27 DNA profiling or testing procedure performed by the division of
28 criminal investigation, department of public safety.

29 EXPLANATION

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

32 This bill relates to a defendant filing a motion for an order
33 to require that DNA analysis be performed on evidence after
34 conviction.

35 The bill replaces the term "DNA profiling" with "DNA

1 testing" for purposes of Code section 81.10 (DNA profiling
2 after conviction) and makes other changes to Code section
3 81.10. The bill defines "DNA testing" to mean a test to
4 analyze physical and biological evidence from a DNA sample
5 including analysis that might not result in the establishment
6 of a complete DNA profile. Under current law, "DNA profiling"
7 is defined to mean the procedure established by the division
8 of criminal investigation, department of public safety, for
9 determining a person's genetic identity.

10 The bill also defines "combined DNA index system" to mean a
11 national, searchable DNA database created and maintained by the
12 federal bureau of investigation where DNA profiles are stored
13 and searched at a local, state, or national level.

14 The bill defines "keyboard search" to mean a search under
15 which information obtained from a DNA sample is compared with
16 information in the combined DNA index system without resulting
17 in the information obtained from the DNA sample being included
18 in the combined DNA index system.

19 The bill provides that a defendant who has been convicted
20 of a felony or an aggravated misdemeanor may make a motion for
21 an order to require that DNA analysis be performed on evidence
22 collected in the case for which the defendant stands convicted.
23 Current law requires such a defendant to have not previously
24 submitted a DNA sample for DNA profiling prior to the filing
25 of such a motion.

26 The bill requires the defendant's motion for an order to
27 require DNA analysis be performed on evidence collected in the
28 case to include a statement detailing why the DNA evidence
29 would have changed the outcome of the trial or invalidated a
30 guilty plea if the requested DNA testing had been conducted
31 prior to the conviction. Current law requires such motion to
32 state why the DNA evidence would have changed the outcome of
33 the trial or invalidated a guilty plea if DNA profiling had
34 been conducted prior to conviction.

35 The bill specifies that the defendant's motion shall be

1 served upon the laboratory, if known by the defendant, holding
2 the biological evidence.

3 The bill requires that any DNA testing that results in a
4 DNA profile of the defendant or an unknown person, or other
5 biological evidence conducted by the state or by the defendant
6 shall be disclosed and the results of such testing be described
7 in the motion or answer. Current law requires DNA profiling,
8 not DNA testing results, be disclosed and does not require
9 disclosure when the DNA profiling results in the DNA profile of
10 an unknown person.

11 The bill specifies that the court shall grant the
12 defendant's motion for an order to require that DNA analysis
13 be performed on evidence collected in the case for which
14 the person stands convicted when either DNA testing has not
15 been performed on the evidence or when DNA testing has been
16 previously performed on the evidence and the defendant is
17 requesting DNA testing using a new method or technology that is
18 substantially more probative than prior DNA testing, and when
19 the other conditions under Code section 81.10(7) have been met.

20 Additionally, the bill specifies that the defendant's motion
21 shall be granted when the DNA testing results would raise a
22 reasonable probability that the defendant would not have been
23 convicted if such results had been introduced at trial, and
24 additional conditions under Code section 81.10(7) have been
25 met.

26 Upon the court granting a defendant's motion under the
27 bill, DNA analysis of evidence shall be conducted within the
28 guidelines generally accepted by the scientific community,
29 and the court may order an entity that has access to the
30 combined DNA index system to do the following: compare a DNA
31 profile obtained from a DNA sample gathered in connection
32 with the prosecution of the defendant against the DNA data
33 banks contained within the combined DNA index system by using
34 a keyboard search; or utilize a search method similar to a
35 keyboard search that does not involve uploading the DNA profile

1 to the DNA data bank.

2 The court may order another comparison search method
3 other than a keyboard search of the DNA data bank if all of
4 the following apply: the DNA profile complies with federal
5 bureau of investigation requirements or state requirements,
6 whichever are applicable, as such requirements are applied to
7 law enforcement agencies seeking such a comparison, and the
8 data bank meets national DNA index system criteria or state
9 DNA index system criteria, whichever is applicable; and if a
10 comparison of the DNA profile had been conducted and if the
11 results had been admitted at trial resulting in a verdict
12 of guilty, a reasonable probability exists that the verdict
13 would have been more favorable to the defendant, or in a case
14 involving a plea of guilty, if the results had been available
15 to the defendant prior to the guilty plea, a reasonable
16 probability exists that a conviction would not have resulted.

17 The bill provides that Code chapter 669 (state tort claims)
18 does not apply to any claim arising from or related to the
19 collection of a DNA sample for DNA testing performed by the
20 division of criminal investigation of the department of public
21 safety. Under current law, Code chapter 669 does not apply to
22 any claim arising from or related to the collection of a DNA
23 sample for DNA profiling performed by the division of criminal
24 investigation of the department of public safety.