MAR 9 2004
Place On Calendar

HOUSE FILE 2524
BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 680)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to requiring certain persons to submit a DNA
2 sample for DNA profiling, authorizing a fee, providing a
3 penalty, and providing effective and contingent effective
4 dates.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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HF 2524

HOUSE FILE 2524

H-8251

1 Amend House File 2524 as follows:
2 1. Page 6, line 29, by inserting after the word
3 "case," the following: "or upon receipt of a written
4 request by a person who voluntarily submitted a DNA
5 sample under section 81.3, subsection 3, paragraph
6 "b",".

By EICHHORN of Hamilton

H-8251 FILED MARCH 16, 2004

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TLSB 5220HV 80
jm/sh/8

S.F. _____ H.F. 2524

1 DIVISION I
2 Section 1. NEW SECTION. 81.1 DEFINITIONS.
3 As used in this chapter, unless the context otherwise
4 requires:
5 1. "DNA" means deoxyribonucleic acid.
6 2. "DNA databank" means the repository for DNA samples
7 obtained pursuant to section 81.4.
8 3. "DNA database" means the collection of DNA profiles and
9 DNA records.
10 4. "DNA profile" means the objective form of the results
11 of DNA analysis performed on a DNA sample. The results of all
12 DNA identification analysis on an individual's DNA sample are
13 also collectively referred to as the DNA profile of an
14 individual.
15 5. "DNA profiling" means the procedure established by the
16 division of criminal investigation, department of public
17 safety, for determining a person's genetic identity.
18 6. "DNA record" means the DNA sample and DNA profile, and
19 other records in the DNA database and DNA data bank used to
20 identify a person.
21 7. "DNA sample" means a biological sample provided by any
22 person required to submit a DNA sample or a DNA sample
23 submitted for any other purpose under section 81.4.
24 8. "Person required to submit a DNA sample" means a person
25 convicted, adjudicated delinquent, or found not guilty by
26 reason of insanity of an offense requiring DNA profiling
27 pursuant to section 81.2. "Person required to submit a DNA
28 sample" also means a person determined to be a sexually
29 violent predator pursuant to section 229A.7.
30 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO SUBMIT A
31 DNA SAMPLE.
32 1. The attorney general shall adopt rules in consultation
33 with the division of criminal investigation, department of
34 public safety, for the purpose of classifying felonies and
35 indictable misdemeanors which shall require the offender to

1 submit a DNA sample for DNA profiling upon confinement in or
2 prior to release from a county jail, upon commitment to the
3 custody of the director of the department of corrections, or
4 prior to discharge of sentence, or as a condition of
5 probation. Factors to be considered shall include the
6 deterrent effect of DNA profiling, the likelihood of repeated
7 violations, and the seriousness of the offense. The offenses
8 that require the offender to submit a DNA sample for DNA
9 profiling shall include but are not limited to the following:
10 a. Murder in violation of section 707.2 or 707.3.
11 b. Attempt to commit murder in violation of section
12 707.11.
13 c. Kidnapping in violation of section 710.1, 710.2, or
14 710.3.
15 d. Sexual abuse in violation of section 709.2, 709.3, or
16 709.4.
17 e. Assault with intent to commit sexual abuse in violation
18 of section 709.11.
19 f. Assault while participating in a felony in violation of
20 section 708.3.
21 g. Burglary in the first degree in violation of section
22 713.3.
23 2. A person determined to be a sexually violent predator
24 pursuant to chapter 229A shall be required to submit a DNA
25 sample for DNA profiling pursuant to section 81.4 prior to
26 discharge or placement in a transitional release program.
27 3. A person found not guilty by reason of insanity of an
28 offense that requires DNA profiling shall be required to
29 submit a DNA sample for DNA profiling pursuant to section 81.4
30 as part of the person's treatment management program.
31 4. A juvenile adjudicated delinquent of an offense that
32 requires DNA profiling of an adult offender shall be required
33 to submit a DNA sample for DNA profiling pursuant to section
34 81.4 as part of the disposition of the juvenile's case.
35 5. An offender placed on probation shall immediately

1 report to the judicial district department of correctional
2 services after sentencing so it can be determined if the
3 offender has been convicted of an offense requiring DNA
4 profiling. If it is determined by the judicial district that
5 DNA profiling is required, the offender shall immediately
6 submit a DNA sample.
7 6. The division of criminal investigation shall carry out
8 DNA profiling of submitted DNA samples pursuant to this
9 chapter.
10 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA DATABASE
11 AND DNA DATABANK.
12 1. A state DNA database and a state DNA databank are
13 established under the control of the division of criminal
14 investigation, department of public safety. The division of
15 criminal investigation shall conduct DNA profiling of a DNA
16 sample submitted in accordance with this section.
17 2. A DNA sample shall be submitted, and the division of
18 criminal investigation shall store and maintain DNA records in
19 the DNA database and DNA databank for persons required to
20 submit a DNA sample.
21 3. A DNA sample may be submitted, and the division of
22 criminal investigation shall store and maintain DNA records in
23 the DNA database and DNA databank for any of the following:
24 a. Crime scene evidence and forensic casework.
25 b. A relative of a missing person.
26 c. An anonymous DNA profile used for forensic validation,
27 forensic protocol development, or quality control purposes, or
28 for the establishment of population statistics database.
29 4. A fingerprint record of a person required to submit a
30 DNA sample shall also be submitted to the division of criminal
31 investigation with the DNA sample to verify the identity of
32 the person required to submit a DNA sample.
33 Sec. 4. NEW SECTION. 81.4 COLLECTING, SUBMITTING,
34 ANALYZING, IDENTIFYING, AND STORING DNA SAMPLES AND DNA
35 RECORDS.

1 1. The division of criminal investigation shall adopt
2 rules for the collection, submission, analysis,
3 identification, storage, and disposition of DNA records.
4 2. A supervising agency having control, custody, or
5 jurisdiction over a person shall collect a DNA sample from a
6 person required to submit a DNA sample. The supervising
7 agency shall collect a DNA sample, upon admittance to the
8 pertinent institution or facility, of the person required to
9 submit a DNA sample or at a determined date and time set by
10 the supervising agency. If a person required to submit a DNA
11 sample is confined at the time a DNA sample is required, the
12 person shall submit a DNA sample as soon as practicable. If a
13 person required to submit a DNA sample is not confined after
14 the person is required to submit a DNA sample, the supervising
15 agency shall determine the date and time to collect the DNA
16 sample.
17 3. A person required to submit a DNA sample who refuses to
18 submit a DNA sample may be subject to contempt proceedings
19 pursuant to chapter 665 until the DNA sample is submitted.
20 4. The division of criminal investigation shall conduct
21 DNA profiling on a DNA sample or may contract with a private
22 entity to conduct the DNA profiling.
23 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL LIABILITY
24 -- LIMITATION.
25 A person who collects a DNA sample shall not be civilly or
26 criminally liable for the collection of the DNA sample if the
27 person performs the person's duties in good faith and in a
28 reasonable manner according to generally accepted medical
29 practices or in accordance with the procedures set out in the
30 administrative rules of the department of public safety
31 adopted pursuant to section 81.4.
32 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.
33 1. A person who knowingly or intentionally does any of the
34 following commits an aggravated misdemeanor:
35 a. Discloses a DNA record to a person or agency that is

1 not authorized by the division of criminal investigation to
2 have access to the DNA record.
3 b. Uses or obtains a DNA record for a purpose other than
4 what is authorized under this chapter.
5 2. A person who knowingly or intentionally alters or
6 attempts to alter a DNA sample, falsifies the source of a DNA
7 sample, or materially alters a collection container used to
8 collect the DNA sample, commits a class "D" felony.
9 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST NOT
10 INVALIDATED.
11 The detention, arrest, or conviction of a person based upon
12 a DNA database match is not invalidated if it is determined
13 that the DNA sample or DNA profile was obtained or placed into
14 the DNA database by mistake or error.
15 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.
16 1. A DNA record shall be considered a confidential record
17 pursuant to section 22.7, subsection 9, unless disclosure is
18 authorized pursuant to this section.
19 2. Confidential DNA records under this section may be
20 released to the following agencies for official use:
21 a. Any criminal or juvenile justice agency as defined in
22 section 692.1.
23 b. The department of corrections.
24 c. Any criminal or juvenile justice agency in another
25 jurisdiction.
26 3. The division of criminal investigation shall share the
27 DNA record information with the appropriate federal agencies
28 for use in a national DNA database.
29 4. A criminal or juvenile justice agency as defined in
30 section 692.1 may publicly disclose a DNA profile match or
31 failed match. A criminal or juvenile justice agency may
32 publicly disclose the identity of the person whose DNA profile
33 matched or did not match, if consent of the person has been
34 received or upon the filing of a criminal complaint,
35 indictment, or trial information of the person.

1 5. A DNA record or other forensic information developed
2 pursuant to this chapter may be released to a grand jury or
3 other criminal, civil, or administrative proceeding in which
4 the DNA record or forensic information is relevant and
5 material to the subject of the proceeding. Such a record or
6 information may be released in the form of a document filed
7 with the court or administrative agency, or released as part
8 of a judicial or administrative proceeding. Such a record or
9 information may become part of a public transcript or other
10 public recording of such a proceeding.
11 6. A DNA record or other forensic information may be
12 released pursuant to a court order.
13 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA RECORDS.
14 1. A person whose DNA record has been included in the DNA
15 database or DNA databank established pursuant to section 81.3
16 may request, in writing to the division of criminal
17 investigation, expungement of the DNA record from the DNA
18 database and DNA databank based upon the person's conviction,
19 adjudication, or civil commitment which caused the submission
20 of the DNA sample being reversed on appeal and the case
21 dismissed. The written request shall contain a certified copy
22 of the final court order reversing the conviction,
23 adjudication, or civil commitment, and a certified copy of the
24 dismissal, and any other information necessary to ascertain
25 the validity of the request.
26 2. The division of criminal investigation, upon receipt of
27 a written request that validates reversal on appeal of a
28 person's conviction, adjudication, or commitment, and
29 subsequent dismissal of the case, shall expunge all of the DNA
30 records and identifiable information of the person in the DNA
31 database and DNA databank. However, if the division of
32 criminal investigation determines that the person is otherwise
33 obligated to submit a DNA sample, the DNA records shall not be
34 expunged. If the division of criminal investigation denies an
35 expungement request, the division shall notify the person

1 requesting the expungement of the decision not to expunge the
2 DNA record and the reason supporting its decision. The
3 division of criminal investigation decision is subject to
4 judicial review pursuant to chapter 17A. The division of
5 criminal investigation shall adopt rules governing the
6 expungement procedure and a review process.
7 3. The division of criminal investigation is not required
8 to expunge or destroy a DNA record pursuant to this section,
9 if expungement or destruction of the DNA record would destroy
10 evidence related to another person or crime.
11 Sec. 10. Section 229A.7, Code 2003, is amended by adding
12 the following new subsection:
13 NEW SUBSECTION. 5A. If the court or jury determines that
14 the respondent is a sexually violent predator, the court shall
15 order the respondent to submit a DNA sample for DNA profiling
16 pursuant to section 81.4.
17 Sec. 11. Section 232.52, Code Supplement 2003, is amended
18 by adding the following new subsection:
19 NEW SUBSECTION. 10. The court shall order a juvenile
20 adjudicated a delinquent for an offense that requires DNA
21 profiling under section 81.2 to submit a DNA sample for DNA
22 profiling pursuant to section 81.4.
23 Sec. 12. Section 669.14, Code Supplement 2003, is amended
24 by adding the following new subsection:
25 NEW SUBSECTION. 15. Any claim arising from or related to
26 the collection of a DNA sample for DNA profiling pursuant to
27 section 81.4 or a DNA profiling procedure performed by the
28 division of criminal investigation, department of public
29 safety.
30 Sec. 13. Section 802.2, Code 2003, is amended to read as
31 follows:
32 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD DEGREE.
33 1. An information or indictment for sexual abuse in the
34 first, second, or third degree committed on or with a person
35 who is under the age of eighteen years shall be found within

1 ten years after the person upon whom the offense is committed
2 attains eighteen years of age, or if the identity of the
3 person against whom the information or indictment is sought is
4 established through the use of a DNA profile, an information
5 or indictment shall be found within three years from the date
6 the identity of the person is identified by the person's DNA
7 profile, whichever is later.
8 2. An information or indictment for any other sexual abuse
9 in the first, second, or third degree shall be found within
10 ten years after its commission, or if the identity of the
11 person against whom the information or indictment is sought is
12 established through the use of a DNA profile, an information
13 or indictment shall be found within three years from the date
14 the identity of the person is identified by the person's DNA
15 profile, whichever is later.
16 Sec. 14. Section 901.5, subsection 8A, Code Supplement
17 2003, is amended to read as follows:
18 8A. a. The court shall order DNA profiling of a defendant
19 convicted of an offense that requires profiling under section
20 ~~13.10~~ 81.2.
21 b. Notwithstanding section ~~13.10~~ 81.2, the court may order
22 the defendant to provide a ~~physical specimen~~ DNA sample to be
23 submitted for DNA profiling if appropriate. In determining
24 the appropriateness of ordering DNA profiling, the court shall
25 consider the deterrent effect of DNA profiling, the likelihood
26 of repeated offenses by the defendant, and the seriousness of
27 the offense.
28 Sec. 15. Section 906.4, unnumbered paragraph 3, Code
29 Supplement 2003, is amended to read as follows:
30 Notwithstanding section ~~13.10~~ 81.2, the board may order the
31 defendant to provide a ~~physical specimen~~ DNA sample to be
32 submitted for DNA profiling as a condition of parole or work
33 release, if appropriate. In determining the appropriateness
34 of ordering DNA profiling, the board shall consider the
35 deterrent effect of DNA profiling, the likelihood of repeated

1 offenses by the defendant, and the seriousness of the offense.
2 Sec. 16. 2002 Iowa Acts, chapter 1080, is repealed.
3 Sec. 17. Section 13.10, Code 2003, is repealed.
4 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE PRIOR TO
5 EFFECTIVE DATE OF THIS DIVISION OF THIS ACT. A person
6 convicted, adjudicated a delinquent, civilly committed as a
7 sexually violent predator, or found not guilty by reason of
8 insanity, prior to the effective date of this division of this
9 Act, who would otherwise be required to submit a DNA sample
10 under this division of this Act, and who is under the custody,
11 control, or jurisdiction of a supervising agency, shall submit
12 a DNA sample prior to being released from the supervising
13 agency's custody, control, or jurisdiction.
14 Sec. 19. EFFECTIVE DATE. This division of this Act, being
15 deemed of immediate importance, takes effect upon enactment.
16 DIVISION II
17 Sec. 20. Section 81.2, subsection 1, as enacted in
18 division I of this Act, is amended by striking the subsection
19 and inserting in lieu thereof the following:
20 1. A person against whom a judgment or conviction for a
21 felony has been entered shall be required to submit a DNA
22 sample for DNA profiling pursuant to section 81.4.
23 Sec. 21. CONTINGENT EFFECTIVE DATE. The effective date of
24 this division of this Act shall be the later of July 1, 2004,
25 or on the date when sufficient funds have been appropriated or
26 are first received to pay the costs of conducting DNA
27 profiling on DNA samples submitted by all convicted felons.
28 The commissioner of public safety shall notify the Code editor
29 when sufficient funds have been appropriated or are first
30 received to pay the costs of complying with this division of
31 this Act.
32 EXPLANATION
33 This bill relates to requiring certain persons to submit a
34 DNA sample for DNA profiling.
35 DIVISION I - The division moves Code section 13.10 to new

1 Code section 81.2 and modifies the section. The division
2 requires a person civilly committed as a sexually violent
3 predator to provide a DNA sample for DNA profiling prior to
4 the person's discharge or placement in a transitional release
5 program. A juvenile who has been adjudicated a delinquent of
6 a criminal offense requiring a DNA sample under new Code
7 section 81.2 shall also submit a DNA sample for DNA profiling
8 under the division. The division also requires a DNA sample
9 from a person found not guilty by reason of insanity of a
10 criminal offense requiring a DNA sample under new Code section
11 81.2. Current law provides that only a person convicted of a
12 criminal offense listed in Code section 13.10 is required to
13 provide a DNA sample for DNA profiling.
14 The division establishes, in the division of criminal
15 investigation, department of public safety, a state DNA
16 database for storage of DNA profiles and records and a state
17 DNA databank for storage of DNA samples. The division defines
18 "DNA sample" to mean a biological sample provided by any
19 person required to submit a DNA sample or a biological sample
20 submitted for any other permissible purpose. The division
21 defines "DNA profile" to mean the objective form of the
22 results of the DNA analysis performed on the DNA sample.
23 The division provides that a supervising agency with
24 custody, control, or jurisdiction over a person required to
25 submit a DNA sample shall collect the sample. A person
26 required to submit a DNA sample who refuses to provide a
27 sample is subject to contempt proceedings. The division
28 provides that a person collecting the DNA sample is immune
29 from civil or criminal liability if the person collects the
30 sample in a reasonable manner according to generally accepted
31 medical practices or with the procedures set out in
32 administrative rules.
33 The division provides that the division of criminal
34 investigation shall perform the DNA profiling of the DNA
35 sample or may contract with a private entity to conduct such

1 profiling.
2 The division provides that a DNA record is a confidential
3 record pursuant to Code section 22.7, subsection 9. However,
4 the division provides that a DNA record may be disclosed to a
5 criminal and juvenile justice agency, the department of
6 corrections, the federal government for a national database,
7 and any other agency using the confidential record in its
8 official capacity. A law enforcement agency may also publicly
9 disclose a DNA profile match or failed match if the agency has
10 permission from the person whose DNA profile was submitted or
11 upon the filing of an indictment, complaint, or a trial
12 information. The division provides that a DNA record may be
13 disclosed pursuant to a criminal, civil, or administrative
14 proceeding, or by court order.
15 The division provides that a person who knowingly or
16 intentionally discloses, uses, or obtains a DNA sample without
17 authorization commits an aggravated misdemeanor. The bill
18 also provides that any person who knowingly or intentionally
19 alters a DNA sample or sample collection container, or who
20 falsifies the source of a DNA sample, commits a class "D"
21 felony.
22 The division provides that any detention, arrest, or
23 conviction based upon a DNA database match is not invalidated
24 if it is later determined that the DNA profile was obtained or
25 placed into the DNA database by mistake or error.
26 The division provides that if a person who is required to
27 submit a DNA sample has the person's conviction, adjudication,
28 or civil commitment subsequently reversed on appeal, the
29 person may file a written request with the division of
30 criminal investigation requesting that all DNA records be
31 expunged. Upon receipt of a certified copy of the order
32 reversing the conviction, adjudication, or civil commitment,
33 and a certified copy of the order dismissing the case, the DNA
34 records shall be expunged unless the destruction of the
35 records would destroy DNA evidence related to another person

1 or crime.
2 If the division of criminal investigation denies the
3 request to expunge their DNA record, the division of criminal
4 investigation is required to notify the person in writing.
5 The bill provides that the denial may be appealed to district
6 court.
7 The division provides that any claim arising or related to
8 the collection of a DNA sample shall proceed under the state
9 tort claims Act in Code chapter 669.
10 The division also requires a person convicted, adjudicated
11 as delinquent, civilly committed as a sexually violent
12 predator, or found not guilty by reason of insanity, prior to
13 the effective date of the division, who would otherwise be
14 required to submit a DNA sample under the division, and who is
15 under the custody, control, or jurisdiction of a supervising
16 agency, to submit a DNA sample prior to being released from
17 the supervising agency's custody, control, or jurisdiction.
18 The division modifies the statute of limitations for any
19 sexual abuse in the first, second, or third degree by allowing
20 a case to be brought against a person within three years from
21 the date the identity of the person is identified by the
22 person's DNA profile. Current law provides that a sexual
23 abuse case must be prosecuted within 10 years of the
24 commission of the crime or within 10 years of the victim
25 attaining the age of 18.
26 The division repeals 2002 Acts, chapter 1080, which
27 requires all felons to submit a DNA sample for DNA profiling
28 upon sufficient funding because the law in the 2002 Acts does
29 not conform with the changes in this division and division II.
30 Division I, being deemed of immediate importance, takes
31 effect upon enactment.
32 Division II - The division provides that all convicted
33 felons shall submit a DNA sample for DNA profiling upon the
34 appropriation of sufficient funds to cover the expense of
35 collecting and conducting DNA profiling on all convicted

1 felons.
2 Division II becomes effective on the later of July 1, 2004,
3 or on the date when sufficient funds have been appropriated or
4 are first received to pay the costs of conducting DNA
5 profiling on DNA samples submitted by all convicted felons,
6 whichever is sooner.
7
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HOUSE FILE 2524

H-8263

1 Amend House File 2524 as follows:
2 1. Page 5, by striking lines 17 and 18, and
3 inserting the following: "and disclosure of a DNA
4 record is only authorized pursuant to this section."
5 2. Page 5, line 20, by striking the words
6 "official use" and inserting the following: "law
7 enforcement identification purposes".
8 3. Page 5, by striking line 23.
9 4. Page 5, line 24, by striking the letter "c."
10 and inserting the following: "b."
11 5. Page 5, by striking lines 29 through 35.
12 6. Page 6, line 1, by striking the figure "5."
13 and inserting the following: "4."
14 7. Page 6, by striking lines 2 through 8 and
15 inserting the following: "pursuant to this chapter
16 may be released for use in a criminal or juvenile
17 delinquency proceeding in which the state is a party
18 and where the DNA record or forensic information is
19 relevant and material to the subject of the
20 proceeding. Such a record or".
21 8. Page 6, line 11, by striking the figure "6."
22 and inserting the following: "5."
23 9. Page 6, line 12, by inserting after the word
24 "order" the following: "for criminal defense purposes
25 to a defendant, who shall have access to DNA samples
26 and DNA profiles related to the case in which the
27 defendant is charged".
28 10. Page 7, line 10, by striking the words "or
29 crime".
30 11. By renumbering as necessary.

By EICHHORN of Hamilton

H-8263 FILED MARCH 16, 2004

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Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 2524 - DNA Database (LSB 5220 HV)
Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)
Fiscal Note Version - New

Description

House File 2524 relates to requiring certain persons to submit a DNA sample for DNA profiling, authorizing a fee, providing a penalty, and providing an effective date and contingent effective dates.

Assumptions

1. Clarifies Chapter 13.10, Code of Iowa.
2. Adds sexual predators as defined in Chapter 229A, Code of Iowa, and adjudicated juveniles of the same offenses to the list of offenders who must provide DNA samples to the database. These additions would increase the number of samples that would be collected annually.
3. In calendar year 2003, there were 426 juveniles adjudicated under mandated offenses.
4. In calendar year 2003, there were 1,036 adult offenders convicted of these offenses and 1,809 individuals in prison as of June 30, 2003, with these offenses listed as the primary convicting offense.
5. Provides criminal penalties for misuse of DNA evidence.
6. Division I takes effect upon enactment and Division II takes effect when funds become available.

Correctional Impact

House File 2524 adds no new penalties for existing charges, therefore, no correctional impact is anticipated.

Fiscal Impact

The fiscal impact of House File 2524 cannot be determined but is expected to be minimal.

The cost to the State General Fund for one Class D Felony ranges from $1,700 to $8,100. The cost to the State General Fund for one Aggravated Misdemeanor ranges from $1,100 to $4,700.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Judicial Branch
State Public Defender
Department of Human Services

Dennis C Prouty

March 16, 2004

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

Succeeded F
SF/2524

HSB 680

PUBLIC SAFETY

Alons - C
Klemme
McCarthy

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to requiring certain persons to submit a DNA
2 sample for DNA profiling, authorizing a fee, providing a
3 penalty, and providing effective and contingent effective
4 dates.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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S.F. _____ H.F. _____

1 DIVISION I

2 Section 1. NEW SECTION. 81.1 DEFINITIONS.

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

5 1. "DNA" means deoxyribonucleic acid.

6 2. "DNA databank" means the repository for DNA samples
7 obtained pursuant to section 81.4.

8 3. "DNA database" means the collection of DNA profiles and
9 DNA records.

10 4. "DNA profile" means the objective form of the results
11 of DNA analysis performed on a DNA sample. The results of all
12 DNA identification analysis on an individual's DNA sample are
13 also collectively referred to as the DNA profile of an
14 individual.

15 5. "DNA profiling" means the procedure established by the
16 division of criminal investigation, department of public
17 safety, for determining a person's genetic identity.

18 6. "DNA record" means the objective form of the results
19 obtained from the DNA analysis.

20 7. "DNA sample" means a biological sample provided by any
21 person required to submit a DNA sample or a DNA sample
22 submitted for any other purpose under section 81.4.

23 8. "Person required to submit a DNA sample" means a person
24 convicted, adjudicated delinquent, or found not guilty by
25 reason of insanity of an offense requiring DNA profiling
26 pursuant to section 81.2. "Person required to submit a DNA
27 sample" also means a person determined to be a sexually
28 violent predator pursuant to section 229A.7.

29 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO SUBMIT A
30 DNA SAMPLE.

31 1. The attorney general shall adopt rules in consultation
32 with the division of criminal investigation, department of
33 public safety, for the purpose of classifying felonies and
34 indictable misdemeanors which shall require the offender to
35 submit a DNA sample for DNA profiling upon confinement in or

1 prior to release from a county jail, upon commitment to the
2 custody of the director of the department of corrections, or
3 prior to discharge of sentence, or as a condition of
4 probation. Factors to be considered shall include the
5 deterrent effect of DNA profiling, the likelihood of repeated
6 violations, and the seriousness of the offense. The offenses
7 that require the offender to submit a DNA sample for DNA
8 profiling shall include but are not limited to the following:
9 a. Murder in violation of section 707.2 or 707.3.
10 b. Attempt to commit murder in violation of section
11 707.11.
12 c. Kidnapping in violation of section 710.1, 710.2, or
13 710.3.
14 d. Sexual abuse in violation of section 709.2, 709.3, or
15 709.4.
16 e. Assault with intent to commit sexual abuse in violation
17 of section 709.11.
18 f. Assault while participating in a felony in violation of
19 section 708.3.
20 g. Burglary in the first degree in violation of section
21 713.3.
22 2. A person determined to be a sexually violent predator
23 pursuant to chapter 229A shall be required to submit a DNA
24 sample for DNA profiling pursuant to section 81.4 prior to
25 discharge or placement in a transitional release program.
26 3. A person found not guilty by reason of insanity of an
27 offense that requires DNA profiling shall be required to
28 submit a DNA sample for DNA profiling pursuant to section 81.4
29 as part of the person's treatment management program.
30 4. A juvenile adjudicated delinquent of an offense that
31 requires DNA profiling of an adult offender shall be required
32 to submit a DNA sample for DNA profiling pursuant to section
33 81.4 as part of the disposition of the juvenile's case.
34 5. An offender placed on probation and assigned to a
35 judicial district department of correctional services shall

1 immediately report to the judicial district after sentencing
2 so it can be determined if the offender has been convicted of
3 an offense requiring DNA profiling. If it is determined by
4 the judicial district that DNA profiling is required, the
5 offender shall immediately submit a DNA sample.
6 6. The division of criminal investigation shall carry out
7 DNA profiling of submitted DNA samples pursuant to this
8 chapter.
9 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA DATABASE
10 AND DNA DATABANK.
11 1. A state DNA database and a state DNA databank are
12 established under the control of the division of criminal
13 investigation, department of public safety. The division of
14 criminal investigation shall conduct DNA profiling of a DNA
15 sample submitted in accordance with this section.
16 2. A DNA sample shall be submitted, and the division of
17 criminal investigation shall store and maintain DNA records in
18 the DNA database and DNA databank for persons required to
19 submit a DNA sample.
20 3. A DNA sample may be submitted, and the division of
21 criminal investigation shall store and maintain DNA records in
22 the DNA database and DNA databank for any of the following:
23 a. Crime scene evidence and forensic casework.
24 b. A relative of a missing person.
25 c. An anonymous DNA profile used for forensic validation,
26 forensic protocol development, or quality control purposes, or
27 for the establishment of population statistics database.
28 4. A fingerprint record of a person required to submit a
29 DNA sample shall also be submitted to the division of criminal
30 investigation with the DNA sample to verify the identity of
31 the person required to submit a DNA sample.
32 Sec. 4. NEW SECTION. 81.4 COLLECTING, SUBMITTING,
33 ANALYZING, IDENTIFYING, AND STORING DNA SAMPLES AND DNA
34 RECORDS.
35 1. The division of criminal investigation shall adopt

1 rules for the collection, submission, analysis,
2 identification, storage, and disposition of DNA records.
3 2. A supervising agency having control, custody, or
4 jurisdiction over a person shall collect a DNA sample from a
5 person required to submit a DNA sample. The supervising
6 agency shall collect a DNA sample, upon admittance to the
7 pertinent institution or facility, of the person required to
8 submit a DNA sample or at a determined date and time set by
9 the supervising agency. If a person required to submit a DNA
10 sample is confined at the time a DNA sample is required, the
11 person shall submit a DNA sample as soon as practicable. If a
12 person required to submit a DNA sample is not confined after
13 the person is required to submit a DNA sample, the supervising
14 agency shall determine the date and time to collect the DNA
15 sample.
16 3. A person required to submit a DNA sample who refuses to
17 submit a DNA sample may be subject to contempt proceedings
18 pursuant to chapter 665 until the DNA sample is submitted.
19 4. The division of criminal investigation shall conduct
20 DNA profiling on a DNA sample or may contract with a private
21 entity to conduct the DNA profiling.
22 5. A supervising agency may assess a fee or surcharge
23 against a person required to submit a DNA sample.
24 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL LIABILITY
25 -- LIMITATION.
26 A person who collects a DNA sample shall not be civilly or
27 criminally liable for the collection of the DNA sample if the
28 person performs the person's duties in good faith and in a
29 reasonable manner according to generally accepted medical or
30 other professional practices.
31 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.
32 A person who knowingly or intentionally does any of the
33 following commits an aggravated misdemeanor:
34 1. Discloses a DNA record to a person or agency that is
35 not authorized by the division of criminal investigation to

1 have access to the DNA record.
2 2. Uses or obtains a DNA record for a purpose other than
3 what is authorized under this chapter.
4 3. Alters or attempts to alter a DNA sample, falsifies the
5 source of a DNA sample, or materially alters a collection
6 container used to collect the DNA sample.
7 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST NOT
8 INVALIDATED.
9 The detention, arrest, or conviction of a person based upon
10 a DNA database match is not invalidated if it is determined
11 that the DNA sample or DNA profile was obtained or placed into
12 the DNA database by mistake or error.
13 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.
14 1. A DNA record shall be considered a confidential record
15 pursuant to section 22.7, subsection 9, unless disclosure is
16 authorized pursuant to this section.
17 2. Confidential DNA records under this section may be
18 released to the following agencies for official use:
19 a. Any criminal or juvenile justice agency as defined in
20 section 692.1.
21 b. The department of corrections.
22 c. Any other agency using the confidential record in its
23 official capacity.
24 3. The division of criminal investigation shall share the
25 DNA profile information with the appropriate federal agencies
26 for use in a national DNA database.
27 4. A criminal or juvenile justice agency as defined in
28 section 692.1 may publicly disclose a DNA profile match or
29 failed match.
30 5. A DNA record or other forensic information developed
31 pursuant to this chapter may be released to a grand jury or
32 other criminal, civil, or administrative proceeding. Such a
33 record or information may be released in the form of a
34 document filed with the court or administrative agency, or
35 released as part of a judicial or administrative proceeding.

1 Such a record or information may become part of a public
2 transcript or other public recording of such a proceeding.
3 6. A DNA record or other forensic information may be
4 released pursuant to a court order.
5 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA RECORDS.
6 1. A person whose DNA record has been included in the DNA
7 database or DNA databank established pursuant to section 81.3
8 may request, in writing to the division of criminal
9 investigation, expungement of the DNA record from the DNA
10 database and DNA databank based upon the person's conviction,
11 adjudication, or civil commitment which caused the submission
12 of the DNA sample being reversed on appeal and the case
13 dismissed. The written request shall contain a certified copy
14 of the final court order reversing the conviction,
15 adjudication, or civil commitment, and a certified copy of the
16 dismissal, and any other information necessary to ascertain
17 the validity of the request.
18 2. The division of criminal investigation, upon receipt of
19 a written request that validates reversal on appeal of a
20 person's conviction, adjudication, or commitment, and
21 subsequent dismissal of the case, shall expunge all of the DNA
22 records and identifiable information of the person in the DNA
23 database and DNA databank. However, if the division of
24 criminal investigation determines that the person is otherwise
25 obligated to submit a DNA sample, the DNA records shall not be
26 expunged.
27 3. The division of criminal investigation is not required
28 to expunge or destroy a DNA record pursuant to this section,
29 if expungement or destruction of the DNA record would destroy
30 evidence related to another person.
31 Sec. 10. Section 229A.7, Code 2003, is amended by adding
32 the following new subsection:
33 NEW SUBSECTION. 5A. If the court or jury determines that
34 the respondent is a sexually violent predator, the court shall
35 order the respondent to submit a DNA sample for DNA profiling

1 pursuant to section 81.4.
2 Sec. 11. Section 232.52, Code Supplement 2003, is amended
3 by adding the following new subsection:
4 NEW SUBSECTION. 10. The court shall order a juvenile
5 adjudicated a delinquent for an offense that requires DNA
6 profiling under section 81.2 to submit a DNA sample for DNA
7 profiling pursuant to section 81.4.
8 Sec. 12. Section 669.14, Code Supplement 2003, is amended
9 by adding the following new subsection:
10 NEW SUBSECTION. 15. Any claim arising from or related to
11 the collection of a DNA sample for DNA profiling pursuant to
12 section 81.4 or a DNA profiling procedure performed by the
13 division of criminal investigation, department of public
14 safety.
15 Sec. 13. Section 802.2, Code 2003, is amended to read as
16 follows:
17 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD DEGREE.
18 1. An information or indictment for sexual abuse in the
19 first, second, or third degree committed on or with a person
20 who is under the age of eighteen years shall be found within
21 ten years after the person upon whom the offense is committed
22 attains eighteen years of age, or if the identity of the
23 person against whom the information or indictment is sought is
24 established through the use of a DNA profile, an information
25 or indictment shall be found within three years from the date
26 the identity of the person is identified by the person's DNA
27 profile, whichever is later.
28 2. An information or indictment for any other sexual abuse
29 in the first, second, or third degree shall be found within
30 ten years after its commission, or if the identity of the
31 person against whom the information or indictment is sought is
32 established through the use of a DNA profile, an information
33 or indictment shall be found within three years from the date
34 the identity of the person is identified by the person's DNA
35 profile, whichever is later.

1 Sec. 14. Section 901.5, subsection 8A, Code Supplement
2 2003, is amended to read as follows:
3 8A. a. The court shall order DNA profiling of a defendant
4 convicted of an offense that requires profiling under section
5 ~~13.10~~ 81.2.
6 b. Notwithstanding section ~~13.10~~ 81.2, the court may order
7 the defendant to provide a ~~physical specimen~~ DNA sample to be
8 submitted for DNA profiling if appropriate. In determining
9 the appropriateness of ordering DNA profiling, the court shall
10 consider the deterrent effect of DNA profiling, the likelihood
11 of repeated offenses by the defendant, and the seriousness of
12 the offense.
13 Sec. 15. Section 906.4, unnumbered paragraph 3, Code
14 Supplement 2003, is amended to read as follows:
15 Notwithstanding section ~~13.10~~ 81.2, the board may order the
16 defendant to provide a ~~physical specimen~~ DNA sample to be
17 submitted for DNA profiling as a condition of parole or work
18 release, if appropriate. In determining the appropriateness
19 of ordering DNA profiling, the board shall consider the
20 deterrent effect of DNA profiling, the likelihood of repeated
21 offenses by the defendant, and the seriousness of the offense.
22 Sec. 16. 2002 Iowa Acts, chapter 1080, is repealed.
23 Sec. 17. Section 13.10, Code 2003, is repealed.
24 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE PRIOR TO
25 EFFECTIVE DATE OF THIS DIVISION OF THIS ACT. A person
26 convicted, adjudicated a delinquent, civilly committed as a
27 sexually violent predator, or found not guilty by reason of
28 insanity, prior to the effective date of this division of this
29 Act, who would otherwise be required to submit a DNA sample
30 under this division of this Act, and who is under the custody,
31 control, or jurisdiction of a supervising agency, shall submit
32 a DNA sample prior to being released from the supervising
33 agency's custody, control, or jurisdiction.
34 Sec. 19. EFFECTIVE DATE. This division of this Act, being
35 deemed of immediate importance, takes effect upon enactment.

1 DIVISION II

2 Sec. 20. Section 81.2, subsection 1, as enacted in
3 division I of this Act, is amended by striking the subsection
4 and inserting in lieu thereof the following:
5 1. A person against whom a judgment or conviction for a
6 felony has been entered shall be required to submit a DNA
7 sample for DNA profiling pursuant to section 81.4.
8 Sec. 21. CONTINGENT EFFECTIVE DATE. The effective date of
9 this division of this Act shall be the later of July 1, 2004,
10 or on the date when sufficient funds have been appropriated or
11 are first received to pay the costs of conducting DNA
12 profiling on DNA samples submitted by all convicted felons.
13 The commissioner of public safety shall notify the Code editor
14 when sufficient funds have been appropriated or are first
15 received to pay the costs of complying with this division of
16 this Act.

17 EXPLANATION

18 This bill relates to requiring certain persons to submit a
19 DNA sample for DNA profiling.
20 DIVISION I - The division moves Code section 13.10 to new
21 Code section 81.2 and modifies the section. The division
22 requires a person civilly committed as a sexually violent
23 predator to provide a DNA sample for DNA profiling prior to
24 the person's discharge or placement in a transitional release
25 program. A juvenile who has been adjudicated a delinquent of
26 a criminal offense requiring a DNA sample under new Code
27 section 81.2 shall also submit a DNA sample for DNA profiling
28 under the division. The division also requires a DNA sample
29 from a person found not guilty by reason of insanity of a
30 criminal offense requiring a DNA sample under new Code section
31 81.2. Current law provides that only a person convicted of a
32 criminal offense listed in Code section 13.10 is required to
33 provide a DNA sample for DNA profiling.
34 The division establishes, in the division of criminal
35 investigation, department of public safety, a state DNA

1 database for storage of DNA profiles and records and a state
2 DNA databank for storage of DNA samples. The division defines
3 "DNA sample" to mean a biological sample provided by any
4 person required to submit a DNA sample or a biological sample
5 submitted for any other permissible purpose. The division
6 defines "DNA profile" to mean the objective form of the
7 results of the DNA analysis performed on the DNA sample.
8 The division provides that a supervising agency with
9 custody, control, or jurisdiction over a person required to
10 submit a DNA sample shall collect the sample. The division
11 provides that the supervising agency may charge a collection
12 fee against the person giving the DNA sample. A person
13 required to submit a DNA sample who refuses to provide a
14 sample is subject to contempt proceedings. The division
15 provides that a person collecting the DNA sample is immune
16 from civil or criminal liability if the person collects the
17 sample in a reasonable manner according to generally accepted
18 medical or other professional practices.
19 The division provides that the division of criminal
20 investigation shall perform the DNA profiling of the DNA
21 sample or may contract with a private entity to conduct such
22 profiling.
23 The division provides that a DNA record is a confidential
24 record pursuant to Code section 22.7, subsection 9. However,
25 the division provides that a DNA record may be disclosed to a
26 criminal and juvenile justice agency, the department of
27 corrections, the federal government for a national database,
28 and any other agency using the confidential record in its
29 official capacity. A law enforcement agency may also publicly
30 disclose a DNA profile match or failed match. The division
31 provides that a DNA record may be disclosed pursuant to a
32 criminal, civil, or administrative proceeding, or by court
33 order.
34 The division provides that a person who knowingly or
35 intentionally discloses, uses, or obtains a DNA sample without

1 authorization, or who alters a DNA sample or sample collection
2 container, or who falsifies the source of a DNA sample commits
3 an aggravated misdemeanor.
4 The division provides that any detention, arrest, or
5 conviction based upon a DNA database match is not invalidated
6 if it is later determined that the DNA profile was obtained or
7 placed into the DNA database by mistake or error.
8 The division provides that if a person who is required to
9 submit a DNA sample has the person's conviction, adjudication,
10 or civil commitment subsequently reversed on appeal, the
11 person may file a written request with the division of
12 criminal investigation requesting that all DNA records be
13 expunged. Upon receipt of a certified copy of the order
14 reversing the conviction, adjudication, or civil commitment,
15 and a certified copy of the order dismissing the case, the DNA
16 records shall be expunged unless the destruction of the
17 records would destroy DNA evidence related to another person.
18 The division provides that any claim arising or related to
19 the collection of a DNA sample shall proceed under the state
20 tort claims Act in Code chapter 669.
21 The division also requires a person convicted, adjudicated
22 as delinquent, civilly committed as a sexually violent
23 predator, or found not guilty by reason of insanity, prior to
24 the effective date of the division, who would otherwise be
25 required to submit a DNA sample under the division, and who is
26 under the custody, control, or jurisdiction of a supervising
27 agency, to submit a DNA sample prior to being released from
28 the supervising agency's custody, control, or jurisdiction.
29 The division modifies the statute of limitations for any
30 sexual abuse in the first, second, or third degree by allowing
31 a case to be brought against a person within three years from
32 the date the identity of the person is identified by the
33 person's DNA profile. Current law provides that a sexual
34 abuse case must be prosecuted within 10 years of the
35 commission of the crime or within 10 years of the victim

1 attaining the age of 18.
2 The division repeals 2002 Acts, chapter 1080, which
3 requires all felons to submit a DNA sample for DNA profiling
4 upon sufficient funding because the law in the 2002 Acts does
5 not conform with the changes in this division and division II.
6 Division I, being deemed of immediate importance, takes
7 effect upon enactment.
8 Division II - The division provides that all convicted
9 felons shall submit a DNA sample for DNA profiling upon the
10 appropriation of sufficient funds to cover the expense of
11 collecting and conducting DNA profiling on all convicted
12 felons.
13 Division II becomes effective on the later of July 1, 2004,
14 or on the date when sufficient funds have been appropriated or
15 are first received to pay the costs of conducting DNA
16 profiling on DNA samples submitted by all convicted felons,
17 whichever is sooner.
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THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice

ADDRESS REPLY TO:
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MEMORANDUM

TO: Members of the General Assembly
FROM: Brian Meyer, Legislative Liaison
DATE: January 2, 2004
SUBJECT: DNA Database and Databank Technical Changes

Overview

DNA profiling is recognized around the world as one of the most effective ways to pinpoint suspects, identify victims and exonerate the innocent. DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system. As technology changes, federal and state laws need to adapt. This bill makes corrective technical changes to HF 2201 that was passed in 2002. 2002 Iowa Acts ch. 1080. HF 2201 creates an "all felons" database with an effective date that is contingent on adequate funding for the Department of Public Safety (DPS). These changes are based on the DNA model act which was proposed by the United States Department of Justice. The Model Act is an attempt to make state DNA law consistent with the provisions of the DNA Identification Act of 1994 (42 U.S.C.A. §14132) and the DNA Analysis Backlog Elimination Act of 2000 (P.L. 106-546) as well as current policies and procedures for participation in the National DNA Index System (NDIS). The Department of Public Safety and Department of Corrections support the change.

Current law

Since 1989, Iowa law has provided for DNA profiling as a condition of probation, parole, or work release for individuals convicted of the following offenses: (1) Murder; (2) Attempt to commit murder; (3) Kidnapping; (4) Sexual Abuse; (5) Assault with intent to commit sexual abuse; (6) Assault while participating in a felony; and (7) Burglary. See Iowa Code section 13.10. Collection of DNA did not begin until 2002 because collection was dependent on adequate funding. In 2002, HF 2201 created the authority for the DNA profiling of all felons. However, the requisite funds were not appropriated. DNA profiling of all felons will begin in Iowa when the legislature appropriates sufficient funds for DPS.

The collections of these samples are entered into a DNA database that is maintained by the DPS's Division of Criminal Investigation (DCI). Currently, DCI collects DNA samples from individuals and logs them into the state's DNA database and then forwards samples to the national Combined DNA Index System (CODIS) database. CODIS maintains DNA profiles obtained under the federal, state, and local systems in a set of databases that are available to law enforcement agencies across the country for law enforcement purposes. CODIS can compare

crime scene evidence to a database of DNA profiles obtained from convicted offenders. CODIS can also link DNA evidence obtained from different crime scenes, thereby identifying serial criminals.

Proposed change

The changes, based on model DNA legislation, are as follows:

1. Codifies the Establishment of the DNA Database and Databank. Although DCI currently logs the samples into a database and stores samples in a databank, the current law refers only to DNA "profiling."

2. Specifies Which DNA Samples May be Stored. Under the bill, DCI is tasked with storing specific DNA records relating to the following: (a) Convicted offenders, juveniles adjudicated delinquent, and individuals found not guilty by reason of insanity; (b) Persons found to be sexually violent predators pursuant to Iowa Code section 229A.7 (c) Crime scene evidence; (d) Relatives of missing persons; and (e) Anonymous DNA profiles used for quality control and validation procedures.

3. Creates a Procedure to Collect DNA Samples. DCI is tasked with creating uniform procedures for the collection, submission, identification, analysis and storage of DNA samples. This legislation also: (a) Limits civil liability of those taking samples; (b) Creates authority for the use of reasonable force to obtain a sample; (c) Creates a class "D" felony for individuals who refuse to provide a sample; (d) Authorizes supervising agencies to assess fees, costs or surcharges to offenders.

4. Provides for Confidentiality Procedures and Expungement of Certain Records. Confidential DNA information may be released to local, county, state or federal agency only for official duties related to law enforcement. Expungement of DNA records is possible if the conviction or adjudication from which the sample was based has been reversed and the case dismissed.

5. Retroactivity. The changes in the bill are retroactive for qualifying offenses if individuals were convicted or adjudicated prior to the effective date and are still incarcerated or on supervised release.

6. Extension of the statute of limitations for sexual abuse when DNA identifies a suspect. This change requires that an information or indictment be filed within ten years after the commission of the crime; or if a suspect is identified by DNA, 3 years from that date.