

House File 734 - Introduced

HOUSE FILE 734
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 142)

(COMPANION TO LSB 1258SV BY
COMMITTEE ON JUDICIARY)

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. "*DNA*" means deoxyribonucleic acid.
- 20 3. "*DNA data bank*" means the repository for DNA samples
21 obtained pursuant to [section 81.4](#).
- 22 4. "*DNA database*" means the collection of DNA profiles and
23 DNA records.
- 24 5. "*DNA profile*" means the objective form of the results of
25 DNA analysis performed on a forensic sample or an individual's
26 DNA sample. The results of all DNA identification analysis on
27 an individual's DNA sample are also collectively referred to
28 as the DNA profile of an individual. "*DNA profile*" also means
29 the objective form of the results of DNA analysis performed on
30 a forensic sample.
- 31 6. "*DNA profiling*" means the procedure ~~established by~~
32 ~~the division of criminal investigation, department of public~~
33 ~~safety,~~ for determining a person's genetic identity or for
34 testing a forensic sample, including analysis that might not
35 result in the establishment of a complete DNA profile.

1 7. "DNA record" means the DNA sample and DNA profile, and
2 other records in the DNA database and DNA data bank used to
3 identify a person.

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

7 9. "Forensic sample" means an evidentiary item that
8 potentially contains DNA relevant to a crime.

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

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

15 ~~9.~~ 12. "Person required to submit a DNA sample" means a
16 person convicted, adjudicated delinquent, receiving a deferred
17 judgment, or found not guilty by reason of insanity of an
18 offense requiring DNA profiling pursuant to [section 81.2](#).

19 "Person required to submit a DNA sample" also means a person
20 determined to be a sexually violent predator pursuant to
21 section 229A.7.

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

26 Sec. 2. Section 81.10, Code 2019, is amended to read as
27 follows:

28 **81.10 Application requirements for DNA profiling after**
29 **conviction.**

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

- 1 2. The ~~motion~~ application shall state the following:
- 2 *a.* The specific crimes for which the defendant stands
3 convicted in this case.
- 4 *b.* The facts of the underlying case, as proven at trial or
5 admitted to during a guilty plea proceeding.
- 6 *c.* Whether any of the charges include sexual abuse or
7 involve sexual assault, and if so, whether a sexual assault
8 examination was conducted and evidence forensic samples were
9 preserved, if known.
- 10 *d.* Whether identity was at issue or contested by the
11 defendant.
- 12 *e.* Whether the defendant offered an alibi, and if so,
13 testimony corroborating the alibi and, from whom.
- 14 *f.* Whether eyewitness testimony was offered, and if so from
15 whom.
- 16 *g.* Whether any issues of police or prosecutor misconduct
17 have been raised in the past or are being raised by the motion.
- 18 *h.* The type of inculpatory evidence admitted into evidence
19 at trial or admitted to during a guilty plea proceeding.
- 20 *i.* Whether blood testing or other biological evidence
21 testing was conducted previously in connection with the case
22 and, if so, by whom and the result, if known.
- 23 *j.* What biological evidence exists and, if known, the agency
24 or laboratory storing the evidence forensic sample that the
25 defendant seeks to have tested.
- 26 *k.* Why the requested ~~analysis of DNA evidence~~ DNA profiling
27 of the forensic sample is material to the issue in the case and
28 not merely cumulative or impeaching.
- 29 *l.* Why the DNA ~~evidence~~ profiling results would have
30 changed the outcome of the trial or invalidated a guilty plea
31 if the requested DNA profiling had been conducted prior to the
32 conviction.
- 33 3. *a.* A ~~motion~~ proceeding for relief filed under this
34 section shall be filed in the county where the defendant was
35 convicted, ~~and~~. The proceeding is commenced by filing an

1 application for relief with the district court in which the
2 conviction took place, without paying a filing fee. The notice
3 of the ~~motion~~ application shall be served by certified mail
4 upon the county attorney and, if known, upon the state, local
5 agency, or laboratory holding evidence described in subsection
6 2, paragraph "k". The county attorney shall have sixty days to
7 file an answer to the motion.

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

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

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

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

23 ~~7. The court shall grant the motion if all of the following~~
24 ~~apply:~~

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

27 ~~b. A sufficient chain of custody has been established for~~
28 ~~the evidence.~~

29 ~~c. The identity of the person who committed the crime for~~
30 ~~which the defendant was convicted was a significant issue in~~
31 ~~the crime for which the defendant was convicted.~~

32 ~~d. The evidence subject to DNA analysis is material to, and~~
33 ~~not merely cumulative or impeaching of, evidence included in~~
34 ~~the trial record or admitted to at a guilty plea proceeding.~~

35 ~~e. DNA analysis of the evidence would raise a reasonable~~

1 ~~probability that the defendant would not have been convicted if~~
2 ~~DNA profiling had been available at the time of the conviction~~
3 ~~and had been conducted prior to the conviction.~~

4 ~~8. Upon the court granting a motion filed pursuant to this~~
5 ~~section, DNA analysis of evidence shall be conducted within the~~
6 ~~guidelines generally accepted by the scientific community. The~~
7 ~~defendant shall provide DNA samples for testing if requested~~
8 ~~by the state.~~

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

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

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

30 ~~12. If the court determines after DNA analysis ordered~~
31 ~~pursuant to [this section](#) that the results indicate conclusively~~
32 ~~that the DNA profile of the defendant matches the profile from~~
33 ~~the analyzed evidence used against the defendant, the court~~
34 ~~may order the defendant to pay the costs of these proceedings,~~
35 ~~including costs of all testing, court costs, and costs of~~

1 ~~court-appointed counsel, if any.~~

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

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

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

11 b. A sufficient chain of custody has been established for
12 the forensic sample.

13 c. The identity of the person who committed the crime for
14 which the defendant was convicted was a significant issue in
15 the crime for which the defendant was convicted.

16 d. The forensic sample subject to DNA profiling is material
17 to, and not merely cumulative or impeaching of, evidence
18 included in the trial record or admitted to at a guilty plea
19 proceeding.

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

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

30 Sec. 4. NEW SECTION. 81.12 **When DNA database comparisons
31 may be ordered.**

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

1 a. Compare the DNA profile to the national DNA index
2 system. The profile shall only be compared to the national DNA
3 index system if the combined DNA index system administrator
4 determines all of the following:

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

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

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

14 b. Compare the DNA profile to the state DNA index system if
15 the profile meets all applicable state requirements.

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

25 Sec. 5. NEW SECTION. 81.13 **Additional DNA profiling**
26 **provisions.**

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

33 2. A criminal or juvenile justice agency, as defined in
34 section 692.1, shall maintain DNA samples and forensic samples
35 that could be tested for DNA for a period of three years beyond

1 the limitations for the commencement of criminal actions as set
2 forth in chapter 802. This section does not create a cause of
3 action for damages or a presumption of spoliation in the event
4 a forensic sample is no longer available for testing.

5 3. If the court determines a defendant who files an
6 application under this section is indigent, the defendant shall
7 be entitled to appointment of counsel as provided in chapter
8 815.

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

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

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

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

22 **NEW PARAGRAPH. h.** The results of DNA profiling ordered
23 pursuant to a motion filed under section 81.10 would have
24 changed the outcome of the trial or void the factual basis of
25 a guilty plea had the profiling been conducted prior to the
26 conviction.

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

29 **822.3 How to commence proceeding — limitation.**

30 A proceeding is commenced by filing an application verified
31 by the applicant with the clerk of the district court in
32 which the conviction or sentence took place. However, if the
33 applicant is seeking relief under [section 822.2, subsection 1,](#)
34 paragraph "f", the application shall be filed with the clerk
35 of the district court of the county in which the applicant

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

18 EXPLANATION

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

21 This bill relates to a defendant filing an application for
22 an order to require that DNA analysis be performed on evidence
23 after conviction.

24 The bill modifies or adds numerous definitions under Code
25 chapter 81 (DNA profiling).

26 The bill defines "national DNA index system" to mean a
27 national, searchable DNA database created and maintained by the
28 federal bureau of investigation where DNA profiles are stored
29 and searched at a local, state, or national level.

30 The bill expands the definition of "DNA profile" to include
31 the objective form of the results of DNA analysis performed on
32 a forensic sample or an individual's DNA sample. Currently,
33 "DNA profile" means the objective form of the results of DNA
34 analysis performed on a DNA sample, and the results of all DNA
35 identification analysis on an individual's DNA sample are also

1 collectively referred to as the DNA profile of an individual.

2 The bill defines "forensic sample" to mean an evidentiary
3 item that potentially contains DNA relevant to a crime.

4 The bill defines "keyboard search" to mean a keyboard
5 search as defined in the national DNA index system operational
6 procedures manual.

7 The bill defines "state DNA index system" to mean a
8 state searchable DNA database created and maintained by the
9 department of public safety where DNA profiles are stored and
10 searched at the state level.

11 The bill provides that a defendant who has been convicted of
12 a felony or an aggravated misdemeanor may make an application
13 to the court for an order to require that DNA profiling be
14 performed on a forensic sample collected in the case for which
15 the defendant stands convicted. Current law provides that such
16 a defendant who has not previously been required to submit a
17 DNA sample for DNA profiling may make such an application.

18 The bill requires the defendant's application for an order
19 to require DNA profiling be performed on a forensic sample
20 collected in the case to include a statement detailing why
21 the DNA profiling results would have changed the outcome of
22 the trial or invalidated a guilty plea if the requested DNA
23 profiling had been conducted prior to the conviction. Current
24 law requires such application to state why DNA evidence would
25 have changed the outcome of the trial or invalidated a guilty
26 plea if DNA profiling had been conducted prior to conviction.

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

30 Subject to the confidentiality provisions of Code section
31 81.8, the bill requires that any DNA profiling of the defendant
32 or an unknown person, or other biological evidence conducted
33 by the state or by the defendant shall be disclosed and the
34 results of such profiling or other testing be described in
35 the motion or answer. Current law requires DNA profiling,

1 not DNA testing results, to be disclosed and does not require
2 disclosure when the DNA profiling results in the DNA profile of
3 an unknown person.

4 The bill specifies that the court shall grant the
5 defendant's application for an order to require that DNA
6 profiling be performed on a forensic sample collected in the
7 case for which the person stands convicted when either DNA
8 profiling has not been performed on the forensic sample or when
9 DNA profiling has been previously performed on the forensic
10 sample and the defendant is requesting DNA profiling using a
11 new method or technology that is substantially more probative
12 than the DNA profiling previously performed.

13 Additionally, the bill specifies that the defendant's
14 application shall be granted if a sufficient chain of custody
15 has been established for the forensic sample; the identity of
16 the person who committed the crime for which the defendant
17 was convicted was a significant issue in the crime for which
18 the defendant was convicted; the forensic sample is material
19 to evidence included in the trial record or admitted to at a
20 guilty plea proceeding; and the DNA profiling results would
21 raise a reasonable probability that the defendant would not
22 have been convicted if such results had been introduced at
23 trial.

24 Upon the court granting a defendant's application under the
25 bill, DNA profiling of a forensic sample shall be conducted
26 within the guidelines generally accepted by the scientific
27 community if the testing type or resulting profile is not
28 eligible to be uploaded or searched in the national DNA index
29 system database. If court-ordered DNA profiling produces an
30 unidentified DNA profile, after notice to the parties, the
31 court may order the department of public safety to either: (1)
32 compare the DNA profile to the national DNA index system if the
33 combined DNA index system administrator determines that the
34 forensic sample is collected contemporaneously from the crime
35 scene, has a nexus to the crime scene, is probative, and is

1 suitable for analysis; the DNA profile was generated through a
2 technology that complies with all requirements in the national
3 DNA index system operational procedures manual; and the DNA
4 profile meets all the requirements in the national DNA index
5 system operational procedures manual for either uploading the
6 profile or conducting a keyboard search or (2) compare the DNA
7 profile to the state DNA index system if the profile meets all
8 applicable state requirements.

9 The bill provides that if any provision of the court order
10 results in a violation of federal law, the federal bureau
11 of investigation's national DNA index system operational
12 procedures manual, or the memorandum of understanding between
13 the federal bureau of investigation laboratory division and
14 the Iowa division of criminal investigation criminalistics
15 laboratory for participation in the national DNA index system,
16 that portion of the order shall be considered unenforceable.

17 The bill provides that the results of DNA profiling shall
18 be provided to the court, the defendant, the state, and
19 the federal bureau of investigation. DNA samples obtained
20 pursuant to the bill may be included in the DNA data bank,
21 and DNA profiles and DNA records may be included in the
22 DNA database. A criminal or juvenile justice agency shall
23 maintain DNA samples and forensic samples that could be tested
24 for DNA for a period of three years beyond the limitations
25 for the commencement of criminal actions under Code chapter
26 802. Failure to maintain DNA samples and forensic samples as
27 specified in the bill does not create a cause of action for
28 damages or a presumption of spoliation in the event a forensic
29 sample is no longer available for testing.

30 If the court determines a defendant who files an application
31 under the bill is indigent, the defendant shall be entitled to
32 appointment of counsel as provided in Code chapter 815.

33 If the court determines after DNA profiling was ordered that
34 the results indicate conclusively that the DNA profile of the
35 defendant matches the profile from the analyzed evidence used

1 against the defendant, the court may order the defendant to pay
2 the costs of the proceedings as specified in the bill.

3 The bill provides that a court shall not enter an order under
4 Code chapter 81 that would result in a violation of state or
5 federal law or loss of access to a federal system or database.

6 The bill provides that a finding that the results of DNA
7 profiling ordered would have changed the outcome of the trial
8 or would void the factual basis of a guilty plea had the
9 profiling been conducted prior to the conviction can form the
10 basis for a postconviction proceeding, and such results are
11 considered a ground of fact which could not have been raised
12 within the applicable time period for bringing a postconviction
13 relief proceeding.