

House Study Bill 528 - Introduced

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

A BILL FOR

1 An Act relating to defense subpoenas in criminal cases, and
2 providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

3 For purposes of **this chapter, chapters 13B, 229A, 232, 665,**
4 **812, 814, and 822,** and ~~section~~ sections 811.1A and 821A.1, and
5 the rules of criminal procedure, a person is indigent if the
6 person is entitled to an attorney appointed by the court as
7 follows:

8 Sec. 2. NEW SECTION. **821A.1 Defense subpoenas in criminal**
9 **actions.**

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

15 (1) There is a compelling need for the evidence sought and
16 that such evidence is material, necessary, exculpatory, and
17 admissible at trial.

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

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

22 (1) "*Exculpatory*" means information that tends to negate
23 the guilt of the defendant, and not information that is merely
24 impeaching or is substantially cumulative in nature.

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

31 2. Notwithstanding any rule of criminal procedure
32 concerning the issuance of a subpoena, this section is the
33 exclusive mechanism for a criminal defendant or counsel acting
34 on the defendant's behalf to issue a subpoena for documents or
35 other evidence.

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

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

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

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

16 7. Documents or other evidence obtained through a defense
17 subpoena must be provided to the prosecuting attorney within
18 twenty-four hours of obtaining the documents or evidence.

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

22 9. An attorney who knowingly issues a defense subpoena that
23 does not comply with this section and the rules of criminal
24 procedure commits a simple misdemeanor.

25 10. An applicant for postconviction relief shall not be
26 entitled to relief on a claim of ineffective assistance of
27 counsel as a result of evidence obtained through a defense
28 subpoena.

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 defense subpoenas in criminal cases.

33 The bill provides that a criminal defendant or counsel
34 acting on the defendant's behalf shall not issue any subpoena
35 for documents or other evidence except upon application to the

1 court. An application shall not be granted unless a defendant
2 proves by clear and convincing evidence there is a compelling
3 need for the evidence sought and that such evidence is
4 material, necessary, exculpatory, and admissible at trial; and
5 the evidence sought does not include the private information of
6 a crime victim or any other person except for the defendant's
7 own private information.

8 Notwithstanding any rule of criminal procedure concerning
9 the issuance of a subpoena, the bill provides that the
10 procedure set forth in the bill is the exclusive mechanism
11 for a criminal defendant or counsel acting on behalf of the
12 defendant to issue a subpoena for documents or other evidence.
13 Documents or other evidence obtained by a subpoena that does
14 not comply with the requirements of the bill shall not be
15 admissible in any criminal action if offered by the defendant,
16 and an attorney who knowingly issues a defense subpoena that
17 does not comply with the requirements of the bill commits a
18 simple misdemeanor. An application for a defense subpoena
19 shall not be made or reviewed ex parte. Any documents or
20 evidence obtained by a defense subpoena must be provided to the
21 prosecuting attorney within 24 hours of obtaining the documents
22 or evidence.

23 The bill provides that upon application by a crime victim or
24 the prosecuting attorney, the court shall appoint an attorney
25 to represent a person or entity served with a defense subpoena,
26 if the person or entity is indigent.

27 The bill provides that an applicant for postconviction
28 relief shall not be entitled to relief on a claim of
29 ineffective assistance of counsel as a result of evidence
30 obtained through a defense subpoena.