

**Senate File 233 - Introduced**

SENATE FILE 233

BY DAWSON

**A BILL FOR**

1 An Act relating to criminal law including the disclosure  
2 of a defendant's privileged records, no-contact orders,  
3 commencement limitations for certain sexual offenses,  
4 sexually predatory offenses, victim rights, discovery,  
5 postconviction relief actions, criminal appeals, and  
6 pretrial bond amounts for certain felonies.  
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

COMMUNICATIONS IN PROFESSIONAL CONFIDENCE

Section 1. Section 622.10, subsection 4, paragraph a, subparagraph (2), Code 2023, is amended by adding the following new subparagraph division:

NEW SUBPARAGRAPH DIVISION. (e) As used in this subsection, "*exculpatory information*" means only information that tends to negate the guilt of the defendant and not information that is merely impeaching or substantially cumulative.

DIVISION II

NO-CONTACT ORDERS

Sec. 2. Section 664A.8, Code 2023, is amended to read as follows:

**664A.8 Extension of no-contact order.**

~~Upon the filing of an application by the state or by the victim of any public offense referred to in section 664A.2, subsection 1 which is filed within ninety days prior to the expiration of a modified no-contact order, the~~ The court shall modify and extend the no-contact order upon the expiration of the no-contact order for an additional period of five years, unless, upon the filing of an application by the defendant within ninety days prior to the expiration of a modified no-contact order, the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's family. The number of modifications extending the no-contact order permitted by [this section](#) is not limited. If the defendant files an application to modify or terminate a no-contact order, the court shall notify the victim at the victim's last-known address and afford the victim a reasonable opportunity to be heard.

DIVISION III

LIMITATION OF CRIMINAL ACTIONS INVOLVING CERTAIN SEXUAL OFFENSES

Sec. 3. Section 802.2B, Code 2023, is amended by adding the

1 following new subsections:

2 NEW SUBSECTION. 5A. Continuous sexual abuse of a child in  
3 violation of section 709.23.

4 NEW SUBSECTION. 5B. Kidnapping in the first degree when the  
5 person kidnapped, and as a consequence of the kidnapping, is  
6 intentionally subjected to sexual abuse in violation of section  
7 710.2.

8 NEW SUBSECTION. 5C. Burglary in the first degree in  
9 violation of section 713.3, subsection 1, paragraph "d".

10 Sec. 4. Section 802.2C, Code 2023, is amended to read as  
11 follows:

12 **802.2C Kidnapping.**

13 An information or indictment for kidnapping in the first,  
14 second, or third degree, except as provided in section 802.2B,  
15 committed on or with a person who is under the age of eighteen  
16 years shall be found within ten years after the person upon  
17 whom the offense is committed attains eighteen years of age,  
18 or if the person against whom the information or indictment  
19 is sought is identified through the use of a DNA profile, an  
20 information or indictment shall be found within three years  
21 from the date the person is identified by the person's DNA  
22 profile, whichever is later.

23 DIVISION IV

24 SEXUALLY PREDATORY OFFENSES

25 Sec. 5. Section 901A.1, subsection 1, paragraph c, Code  
26 2023, is amended to read as follows:

27 c. Enticing a minor in violation of section 710.10,  
28 subsection 1 or 2.

29 DIVISION V

30 VICTIM RIGHTS

31 Sec. 6. Section 915.11, subsection 1, Code 2023, is amended  
32 to read as follows:

33 1. a. A local police department or county sheriff's  
34 department shall advise a victim of the right to  
35 register with the county attorney, and shall provide a

1 request-for-registration form to each victim. A local police  
2 department or county sheriff's department shall provide a  
3 telephone number and internet site to each victim to register  
4 with the automated victim notification system established  
5 pursuant to [section 915.10A](#).

6 b. A local police department or county sheriff's department  
7 shall provide a victim with a pamphlet explaining the victim's  
8 rights as a victim of a public offense or delinquent act.

9 Sec. 7. Section 915.38, Code 2023, is amended by adding the  
10 following new subsection:

11 NEW SUBSECTION. 3A. a. It is the public policy of this  
12 state that statements made by children to forensic interviewers  
13 at child advocacy centers and child protection centers are  
14 presumptively reliable and should be admitted into evidence in  
15 the courts.

16 b. Notwithstanding any other provision of law, the court may  
17 upon motion of a party admit a recorded statement of a child,  
18 as defined in section 702.5, if all of the following apply:

19 (1) The recorded statement describes conduct that violates  
20 chapter 709.

21 (2) The recorded statement was obtained by a forensic  
22 interviewer employed by a child advocacy center or child  
23 protection center.

24 (3) The interview was conducted substantially in accordance  
25 with a nationally recognized protocol for interviewing  
26 children.

27 (4) The recorded statement is offered in a criminal  
28 proceeding and any of the following apply:

29 (a) The child testifies at trial.

30 (b) The child has been questioned by the defendant or the  
31 defendant's attorney at a deposition or any substantially  
32 similar setting.

33 (c) The child is unavailable as a witness as provided in  
34 rule of evidence 5.804(a).

35 (d) The court finds by a preponderance of the evidence that

1 the child would suffer significant emotional or psychological  
2 trauma from testifying in the personal presence of the  
3 defendant at the time of the criminal proceeding.

4 *c.* A court may deny the admission of a recorded statement  
5 under this subsection only if the party opposing the admission  
6 proves by clear and convincing evidence that the recorded  
7 statement is unreliable.

8 *d.* Portions of a recorded statement admitted pursuant  
9 to this subsection may be redacted under the following  
10 circumstances:

11 (1) By agreement of the parties.

12 (2) By order of the court, if the court finds by a  
13 preponderance of the evidence that redaction is necessary to  
14 either:

15 (a) Minimize embarrassment or trauma to the child.

16 (b) Effectuate a provision of the rules of evidence other  
17 than the rules of evidence against hearsay.

18 DIVISION VI

19 DISCOVERY

20 Sec. 8. NEW SECTION. 813A.1 **Discovery depositions in**  
21 **criminal actions — witness list.**

22 1. Discovery depositions shall not be permitted in any  
23 criminal action except upon application to the court and a  
24 showing of exceptional circumstances.

25 2. A criminal defendant shall file a written list of the  
26 names and addresses of all witnesses expected to be called for  
27 the defense at the time the defendant requests or receives  
28 discretionary discovery from the state, the date when any  
29 approved deposition is taken, or ten days prior to trial,  
30 whichever date is earliest. If the defendant does not disclose  
31 to the prosecuting attorney all of the defense witnesses, the  
32 court shall order the exclusion of the testimony of any such  
33 witnesses, absent good cause shown.

34 3. A person who is not yet a party to a criminal action  
35 shall not be permitted to file an application with the court to

1 depose another person until such time as the person is charged  
2 with or indicted for the associated criminal offense.

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DIVISION VII

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POSTCONVICTION RELIEF AND DISCOVERY PROCEDURE

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Sec. 9. Section 822.7, Code 2023, is amended to read as

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follows:

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**822.7 Court to hear application.**

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The application shall be heard in, and before any judge

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of the court in which the conviction or sentence took place.

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However, if the applicant is seeking relief under section

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822.2, subsection 1, paragraph "f", the application shall be

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heard in, and before any judge of the court of the county

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in which the applicant is being confined. A record of the

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proceedings shall be made and preserved. All rules and

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statutes applicable in civil proceedings including pretrial

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and discovery procedures are available to the parties, subject

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to the restrictions contained in section 822.7A. The court

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may receive proof of affidavits, depositions, oral testimony,

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or other evidence, and may order the applicant brought before

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it for the hearing. If the court finds in favor of the

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applicant, it shall enter an appropriate order with respect to

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the conviction or sentence in the former proceedings, and any

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supplementary orders as to arraignment, retrial, custody,

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bail, discharge, correction of sentence, or other matters that

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may be necessary and proper. The court shall make specific

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findings of fact, and state expressly its conclusions of law,

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relating to each issue presented. This order is a final

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judgment.

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Sec. 10. NEW SECTION. **822.7A Postconviction relief —**

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**discovery.**

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This chapter is intended to provide a limited scope of

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discovery that is no broader than what is afforded to a

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defendant in a criminal action. Notwithstanding any other

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statute, rule, or law, the following limitations on discovery

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and procedure shall apply to a claim for postconviction relief

1 under this chapter:

2 1. An applicant may conduct discovery only by order of the  
3 court to be granted upon a showing that the information sought  
4 is reasonably calculated to lead to the discovery of admissible  
5 evidence to support or defeat a claim that is adequately  
6 pled in the application and, if taken as true, constitutes a  
7 colorable claim for relief.

8 2. An applicant shall not be permitted to depose or  
9 otherwise conduct discovery involving a victim, as defined in  
10 section 915.10, of the underlying public offense, unless the  
11 applicant proves all of the following by clear and convincing  
12 evidence:

13 a. The evidence is necessary to prove the applicant is  
14 innocent of the underlying public offense and all lesser  
15 included offenses.

16 b. The information is not available from any other source.

17 c. Contact with a victim is minimized by limitations on  
18 the method of discovery including in camera review, remote  
19 testimony, or allowing a victim to provide a written statement  
20 in lieu of testimony.

21 3. The attorney-client privilege contained in section  
22 622.10 shall be absolute, except that the filing of an  
23 application shall waive any privilege an applicant may claim  
24 regarding an attorney who represented the applicant in the  
25 underlying criminal action or any previous postconviction  
26 relief action.

27 4. Evidence that would be excluded in a criminal action  
28 pursuant to rule of evidence 5.412 shall not be discoverable or  
29 admissible in a postconviction relief action.

30 5. The state shall not be required to produce copies  
31 of discovery previously disclosed to an applicant in the  
32 underlying criminal action or a previous postconviction relief  
33 action or which the applicant previously possessed in the  
34 underlying criminal action or a previous postconviction relief  
35 action.

1 6. The state shall not be required to produce any discovery  
2 contained in a court file accessible to the applicant.

3 7. The state shall not be required to produce any discovery  
4 that cannot lawfully be disseminated or that is otherwise  
5 confidential by law.

6 8. An applicant shall not be permitted to conduct discovery  
7 or seek the appointment of an expert witness through ex parte  
8 communication or an in camera review.

9 DIVISION VIII

10 CRIMINAL APPEALS

11 Sec. 11. Section 814.6, subsection 1, paragraph a,  
12 subparagraph (3), Code 2023, is amended to read as follows:

13 (3) A conviction where the defendant has pled guilty. This  
14 subparagraph does not apply to a guilty plea for a class "A"  
15 felony ~~or in a case where the defendant establishes good cause.~~

16 Sec. 12. Section 814.6, subsection 2, Code 2023, is amended  
17 by adding the following new paragraph:

18 NEW PARAGRAPH. *g.* A sentence following a guilty plea if  
19 the defendant can demonstrate to the appellate court, upon the  
20 filing of an application, that the district court more likely  
21 than not abused its discretion at sentencing. This paragraph  
22 does not apply to a plea agreement, a mandatory sentence, or  
23 a sentence entered pursuant to a recommendation made by the  
24 defendant or the defendant's attorney.

25 Sec. 13. NEW SECTION. **814.20A No authority to reverse**  
26 **unpreserved errors.**

27 An appellate court shall not vacate a criminal judgment on  
28 direct appeal based upon errors that were not preserved at the  
29 district court. This limitation includes but is not limited  
30 to the requirement that a specific motion for judgment of  
31 acquittal be made to preserve a challenge to the sufficiency  
32 of the evidence and the requirement that a specific motion in  
33 arrest of judgment be made in order to challenge a guilty plea.

34 DIVISION IX

35 PRETRIAL BOND FOR CLASS "A" AND FORCIBLE FELONIES



1     Sec. 14. NEW SECTION. 811.1B Pretrial bond amounts for  
2 class "A" and forcible felonies.

3     1. It is the policy of this state that, for certain  
4 violent offenses, a court setting bond must give significant  
5 consideration to the danger a defendant poses to another person  
6 or the property of another if the defendant is not detained  
7 pending trial. This consideration is in addition to all others  
8 recognized by law, including but not limited to the bond amount  
9 necessary to secure the defendant's appearance.

10    2. *a.* When probable cause for an offense is found by  
11 the magistrate, or the district court has found the minutes  
12 supporting an indictment or information are sufficient to  
13 support a conviction if unexplained, and after considering the  
14 conditions for release as provided in section 811.2, subsection  
15 2, and making a finding on the record, the following shall be  
16 presumed to be the minimum pretrial bond amounts for each count  
17 charged, notwithstanding any other provision of law:

18     (1) For a class "A" felony, a five hundred thousand dollar  
19 bond.

20     (2) For a class "B" forcible felony, a twenty-five thousand  
21 dollar bond.

22     (3) For a class "C" forcible felony, a ten thousand dollar  
23 bond.

24     (4) For a class "D" forcible felony, a five thousand dollar  
25 bond.

26    *b.* The court shall require the execution of a bail bond  
27 with sufficient surety, or the deposit of cash in lieu of bond.  
28 However, except as provided in section 811.1, bail initially  
29 given remains valid until final disposition of the offense or  
30 entry of an order deferring judgment. If the amount of bail  
31 is deemed insufficient by the court before whom the offense  
32 is pending, the court may order an increase of bail and the  
33 defendant must provide the additional undertaking, written or  
34 in cash, to secure release.

35    3. The presumption contained in this section is rebuttable

1 only upon a showing by the defendant, by a preponderance of  
2 evidence, that the defendant is not a danger to another person  
3 or the property of another if not detained pending trial.

4 4. As with other bond reviews, a determination under this  
5 section made by a magistrate is reviewable by a district  
6 court judge or a district associate judge having original  
7 jurisdiction of the offense with which the defendant is charged  
8 pursuant to section 811.2, subsection 7, paragraph "a", while a  
9 determination made by a district court judge is only reviewable  
10 by the appellate court pursuant to section 811.2, subsection  
11 7, paragraph "b".

12 EXPLANATION

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

15 This bill relates to criminal law including the disclosure  
16 of a defendant's privileged records, no-contact orders,  
17 commencement limitations for certain sexual offenses, sexually  
18 predatory offenses, victim rights, discovery, postconviction  
19 relief actions, criminal appeals, and pretrial bond amounts for  
20 certain felonies.

21 DIVISION I — COMMUNICATIONS IN PROFESSIONAL CONFIDENCE.

22 Under current law, a practicing attorney, counselor, physician,  
23 surgeon, physician assistant, advanced registered nurse  
24 practitioner, mental health professional, or the stenographer  
25 or confidential clerk of any such person, who obtains  
26 information by reason of the person's employment, or a member  
27 of the clergy, shall not be allowed, in giving testimony, to  
28 disclose any confidential communication properly entrusted to  
29 the person. Except as otherwise provided, the confidentiality  
30 privilege shall be absolute with regard to a criminal action  
31 and Code section 622.10 shall not be construed to authorize or  
32 require the disclosure of any privileged records to a defendant  
33 in a criminal action unless either the privilege holder waives  
34 the confidentiality privilege or the defendant seeking access  
35 to privileged records files a motion demonstrating in good

1 faith a reasonable probability that the information sought is  
2 likely to contain exculpatory information that is not available  
3 from any other source and for which there is a compelling need  
4 for the defendant to present a defense in the case. The bill  
5 defines "exculpatory information" to mean only information that  
6 tends to negate the guilt of the defendant and not information  
7 that is merely impeaching or substantially cumulative.

8 DIVISION II — NO-CONTACT ORDERS. Current law provides that  
9 upon the filing of an application by the state or by the victim  
10 of any public offense, the court shall modify and extend the  
11 no-contact order for an additional period of five years, unless  
12 the court finds that the defendant no longer poses a threat to  
13 the safety of the victim, persons residing with the victim, or  
14 members of the victim's family.

15 The bill provides that the court shall modify and extend the  
16 no-contact order upon the expiration of the no-contact order  
17 for an additional period of 5 years, unless, upon the filing  
18 of an application by the defendant within 90 days prior to the  
19 expiration of a modified no-contact order, the court finds  
20 that the defendant no longer poses a threat to the safety of  
21 the victim, persons residing with the victim, or members of  
22 the victim's family. If the defendant files an application to  
23 modify or terminate a no-contact order, the court shall notify  
24 the victim at the victim's last known address and afford the  
25 victim a reasonable opportunity to be heard.

26 DIVISION III — LIMITATION OF CRIMINAL ACTIONS INVOLVING  
27 CERTAIN SEXUAL OFFENSES. The bill adds the following offenses  
28 to the list of offenses committed on or with a person under  
29 the age of 18 that may be commenced at any time: continuous  
30 sexual abuse of a child in violation of Code section 709.23;  
31 kidnapping in the first degree when the person kidnapped, as a  
32 consequence of the kidnapping, is intentionally subjected to  
33 sexual abuse in violation of Code section 710.2; and burglary  
34 in the first degree involving the performance of a sex act in  
35 violation of Code section 713.3(1)(d).

1 DIVISION IV — SEXUALLY PREDATORY OFFENSES. The bill  
2 adds a violation of Code section 710.10(2) to the list of  
3 violations that constitute a "sexually predatory offense".  
4 That subsection provides that a person commits a class "D"  
5 felony when, without authority and with the intent to commit an  
6 illegal sex act upon or sexual exploitation of a minor under  
7 the age of 16, the person entices or attempts to entice a  
8 person reasonably believed to be under the age of 16.

9 DIVISION V — VICTIM RIGHTS. The bill provides that a local  
10 police department or county sheriff's department shall provide  
11 a victim with a pamphlet explaining the victim's rights as a  
12 victim of a public offense or delinquent act.

13 The bill provides that it is the public policy of the state  
14 that statements made by children to forensic interviewers  
15 at child advocacy centers and child protection centers are  
16 presumptively reliable and should be admitted into evidence  
17 in the courts. Notwithstanding any other provision of law,  
18 a court shall admit a recorded statement into evidence upon  
19 motion by a party if the recorded statement is made by a child  
20 under the age of 14 years; the recorded statement describes  
21 conduct that violates Code chapter 709 (sexual abuse); the  
22 recorded statement was obtained by a forensic interviewer  
23 employed by an accredited child advocacy center or child  
24 protection center; the interview was conducted substantially  
25 in accordance with a nationally recognized protocol for  
26 interviewing children; and if offered in a criminal proceeding,  
27 the child testifies at trial, the child has been questioned by  
28 the defendant or the defendant's attorney at a deposition or  
29 any substantially similar setting, the child is unavailable  
30 as a witness, or the court finds by a preponderance of the  
31 evidence that the child would suffer significant emotional or  
32 psychological trauma from testifying in the personal presence  
33 of the defendant at the time of the criminal proceeding.

34 The bill provides that a court may deny admission of a  
35 recorded statement only if the party opposing admission proves

1 by clear and convincing evidence that the recorded statement is  
2 unreliable. Portions of a recorded statement may be redacted  
3 by agreement of the parties, by order of the court, or if the  
4 court finds by a preponderance of the evidence that redaction  
5 is necessary to either minimize embarrassment or trauma to  
6 the child or to effectuate a provision of the Iowa rules of  
7 evidence other than the rules of evidence against hearsay.

8       DIVISION VI — DISCOVERY. The bill provides that discovery  
9 depositions shall not be permitted in any criminal action  
10 except upon application to the court and a showing of  
11 exceptional circumstances.

12       The bill provides that a criminal defendant shall file  
13 a written list of all witnesses expected to be called for  
14 the defense at the time the defendant requests or receives  
15 discretionary discovery from the state, the date when any  
16 approved deposition is taken, or 10 days prior to trial,  
17 whichever date is earliest. If the defendant does not disclose  
18 to the prosecuting attorney all of the defense witnesses, the  
19 court shall order the exclusion of the testimony of any such  
20 witnesses, absent good cause shown.

21       The bill provides that a person who is not yet a party to a  
22 criminal action shall not be permitted to file an application  
23 with the court to depose another person until such time as the  
24 person is charged with or indicted for the associated criminal  
25 offense.

26       DIVISION VII — POSTCONVICTION RELIEF AND DISCOVERY  
27 PROCEDURE. The bill provides that all rules and statutes  
28 applicable in civil proceedings are available to the parties  
29 in a postconviction relief action subject to the restrictions  
30 contained in new Code section 822.7A. New Code section  
31 822.7A provides that Code chapter 822 (postconviction relief  
32 procedure) is intended to provide a limited scope of discovery  
33 that is no broader than what is afforded to a defendant in a  
34 criminal action. The following limitations on discovery and  
35 procedure shall apply to any postconviction relief action under

1 Code chapter 822: an applicant may conduct discovery only  
2 by order of the court to be granted upon a showing that the  
3 information sought is reasonably calculated to lead to the  
4 discovery of admissible evidence to support or defeat a claim  
5 that is adequately pled in the application and, if taken as  
6 true, makes a colorable claim for relief; an applicant shall  
7 not be permitted to depose or otherwise conduct discovery  
8 involving a victim unless the applicant proves that the  
9 evidence is necessary to prove the applicant is innocent of the  
10 underlying public offense and all lesser included offenses,  
11 the information is not available from any other source, and  
12 contact with a victim is minimized by limitations on the  
13 method of discovery; the attorney-client privilege shall be  
14 absolute, except that the filing of an application waives any  
15 privilege the applicant may claim regarding an attorney who  
16 represented the applicant in the underlying criminal action  
17 or any previous postconviction relief action; evidence that  
18 would be excluded in a criminal action pursuant to Iowa rule  
19 of evidence 5.412 shall not be discoverable or admissible in a  
20 postconviction relief action; the state shall not be required  
21 to produce copies of discovery that was previously disclosed to  
22 an applicant in the underlying criminal action or a previous  
23 postconviction relief action or which was possessed by the  
24 applicant in the underlying criminal action or a previous  
25 postconviction relief action; the state shall not be required  
26 to produce any discovery contained in a court file accessible  
27 to the applicant; the state shall not be required to produce  
28 any discovery that cannot lawfully be disseminated or that is  
29 otherwise made confidential by law; and an applicant shall not  
30 be permitted to conduct discovery or seek the appointment of  
31 an expert witness through ex parte communication or in camera  
32 review.

33 DIVISION VIII — CRIMINAL APPEALS. The bill provides  
34 that discretionary review for an appeal may be available  
35 for a sentence following a guilty plea if the defendant can

1 demonstrate to the appellate court that the district court more  
2 likely than not abused its discretion at sentencing, but does  
3 not apply in cases of a plea agreement, a mandatory sentence,  
4 or a sentence entered pursuant to a recommendation made by the  
5 defendant or the defendant's attorney.

6 The bill provides that an appellate court shall not vacate a  
7 criminal judgment on direct appeal based upon errors that were  
8 not preserved at the district court. This limitation includes  
9 but is not limited to the requirement that a specific motion  
10 for judgment of acquittal be made to preserve a challenge  
11 to the sufficiency of the evidence and the requirement that  
12 a specific motion in arrest of judgment be made in order to  
13 challenge a guilty plea.

14 DIVISION IX — PRETRIAL BOND FOR CLASS "A" AND FORCIBLE  
15 FELONIES. The bill provides that for certain violent offenses,  
16 a court setting bond must give significant consideration  
17 to the danger a defendant poses to another person or the  
18 property of another if the defendant is not detained pending  
19 trial. When probable cause for an offense has been found  
20 by a magistrate, or the district court has found the minutes  
21 supporting an indictment or information to be sufficient, and  
22 after considering conditions for release under Code section  
23 811.2 (bail and bail restrictions) and making a finding on  
24 the record, the following shall be presumed to be the minimum  
25 pretrial bond amounts for each count charged notwithstanding  
26 any other provision of law: for a class "A" felony, a \$500,000  
27 bond; for a class "B" forcible felony, a \$25,000 bond; for a  
28 class "C" forcible felony, a \$10,000 bond; and for a class "D"  
29 forcible felony, a \$5,000 bond.

30 The bill provides that the court shall require the execution  
31 of a bail bond with sufficient surety or the deposit of cash in  
32 lieu of bond.