

**Senate Study Bill 3025 - 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.