

**Senate File 393 - Introduced**

SENATE FILE 393  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1009)

**A BILL FOR**

- 1 An Act relating to discovery and postconviction procedure.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. Section 822.7, Code 2025, is amended to read as  
2 follows:

3 **822.7 Court to hear application.**

4 The application shall be heard in, and before any judge  
5 of, the court in which the conviction or sentence took place.  
6 However, if the applicant is seeking relief under section 822.2,  
7 subsection 1, paragraph "f", the application shall be heard in,  
8 and before any judge of, the court of the county in which the  
9 applicant is being confined. A record of the proceedings shall  
10 be made and preserved. All rules and statutes applicable in  
11 civil proceedings including pretrial and discovery procedures are  
12 available to the parties, subject to the restrictions contained  
13 in section 822.7A. The court may receive proof of affidavits,  
14 depositions, oral testimony, or other evidence, and may order  
15 the applicant brought before it for the hearing. If the court  
16 finds in favor of the applicant, it shall enter an appropriate  
17 order with respect to the conviction or sentence in the former  
18 proceedings, and any supplementary orders as to rearraignment,  
19 retrial, custody, bail, discharge, correction of sentence, or  
20 other matters that may be necessary and proper. The court  
21 shall make specific findings of fact, and state expressly its  
22 conclusions of law, relating to each issue presented. This order  
23 is a final judgment.

24 Sec. 2. NEW SECTION. **822.7A Discovery.**

25 1. This chapter is intended to provide a limited scope of  
26 discovery that is no broader than what is afforded to a defendant  
27 in a criminal action. Discovery rules and procedures in actions  
28 under this chapter shall be narrowly construed to permit only the  
29 discovery that is necessary to promote the sound administration  
30 of justice. It shall be an abuse of the discovery process to  
31 conduct discovery in violation of this section.

32 2. As used in this section:

33 a. "Affected person" means any of the following:

34 (1) A victim as defined in section 915.10.

35 (2) A person whose private information is sought in a

1 discovery request.

2 (3) A person whose private information is reasonably likely  
3 to be revealed in an answer to a discovery request.

4 b. "Discovery" or "discovery request" includes any manner or  
5 method of discovery permitted by the rules of civil procedure,  
6 including depositions and subpoenas to produce documents or other  
7 evidence.

8 c. "Private information" means any of the following:

9 (1) Information for which a person has a reasonable  
10 expectation of privacy including but not limited to information  
11 the state would need a search warrant to obtain, nonpublic  
12 electronic communications, and information that would reveal  
13 personal information immaterial to the matter.

14 (2) Any information protected by any other provision of state  
15 law.

16 3. Notwithstanding any other statute, rule, or law, the  
17 following limitations on discovery and procedure shall apply to  
18 a claim for postconviction relief under this chapter:

19 a. No discovery in an action under this chapter may be  
20 conducted unless and until permitted by order of the court  
21 consistent with the limitations of this section or by prior  
22 agreement of the parties. A discovery request must be  
23 accompanied by a statement identifying the information sought and  
24 the manner in which the proposed discovery is to be conducted. A  
25 court may grant a discovery request only upon a showing of all of  
26 the following:

27 (1) The information sought, and the manner in which it is  
28 sought, does not unreasonably invade the privacy interests of an  
29 affected person.

30 (2) Objective facts show that the information sought is  
31 necessary to support or defeat a claim that is adequately pled  
32 and, if taken as true, constitutes a colorable claim for relief.

33 (3) All affected persons have received notice of the  
34 discovery request, including the statement identifying the  
35 information sought and the manner in which the proposed discovery

1 is to be conducted, and have had a reasonable opportunity to  
2 object to the proposed discovery.

3 b. Notwithstanding paragraph "a", either party may obtain  
4 discovery from an attorney who previously represented the  
5 applicant in the underlying criminal action or on appeal  
6 therefrom.

7 c. The parties shall have standing to object to or move  
8 to quash any discovery request, including discovery requests  
9 of third parties. An affected person shall have standing to  
10 object to or move to quash any discovery request for private  
11 information, including discovery requests of third parties.

12 d. Discovery involving a victim of the underlying public  
13 offense shall not be conducted unless all of the following is  
14 established by clear and convincing evidence:

15 (1) The evidence is necessary to prove the applicant is  
16 innocent of the underlying public offense and all lesser included  
17 offenses.

18 (2) The information is not available from any other source.

19 (3) Contact with a victim is minimized by limitations on  
20 the method of discovery, including in camera review, remote  
21 testimony, or allowing a victim to provide a written statement  
22 in lieu of testimony.

23 e. Discovery of evidence subject to rule of evidence 5.412  
24 shall be limited to that permitted by section 622.31A.

25 f. The state shall not be required to produce copies of  
26 discovery previously disclosed to an applicant in the underlying  
27 criminal action or a previous postconviction relief action  
28 or that the applicant previously possessed in the underlying  
29 criminal action or a previous postconviction relief action except  
30 upon a showing of a compelling need.

31 g. The state shall not be required to produce any discovery  
32 contained in a court file accessible to the applicant.

33 h. The state shall not be required to produce any discovery  
34 that cannot lawfully be disseminated or that is otherwise  
35 confidential by law.

1 i. A discovery request or for the appointment of an expert  
2 witness shall not be filed or reviewed ex parte.

3 j. The court shall not require a victim or other affected  
4 person to execute a waiver of any right, privilege, or privacy  
5 interest.

6 k. The state shall not be required to execute or effectuate  
7 any subpoena issued pursuant to this section.

8 4. Documents or other evidence obtained by one party through  
9 a subpoena must be provided to the other party within three  
10 business days after the receipt of the documents or other  
11 evidence.

12 5. The court may sanction an attorney or party for knowingly  
13 conducting discovery in violation of this section.

14 6. The attorney-client privilege contained in section 622.10  
15 shall be absolute, except that the filing of an application shall  
16 waive any privilege an applicant may claim regarding an attorney  
17 who represented the applicant in the underlying criminal action  
18 or any previous postconviction relief action.

19 7. If a person acting on behalf of an applicant contacts a  
20 victim or witness, the person shall clearly inform the victim  
21 or witness, either in person or in writing, of the identity and  
22 capacity of the person contacting the victim or witness; that  
23 the victim or witness does not have to talk to or otherwise  
24 provide evidence or discovery to the applicant, the applicant's  
25 attorney, or any other agents of the applicant, unless the victim  
26 or witness wishes; and that the victim or witness may have  
27 an advocate or attorney present during any interview or other  
28 contact.

29 8. Upon application by a victim or the state, the court shall  
30 appoint an attorney to represent the victim. Counsel appointed  
31 pursuant to this subsection shall be paid from the indigent  
32 defense fund established pursuant to section 815.11.

33 9. Nothing in this section shall be construed as relieving  
34 the state of any constitutional obligation to disclose  
35 exculpatory evidence to a postconviction relief applicant.

EXPLANATION

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

This bill relates to discovery and postconviction procedure.

The bill provides limitations on discovery and procedure applicable to a claim for postconviction relief, notwithstanding any other statute, rule, or law. No discovery may be conducted unless and until permitted by order of the court consistent with the limitations of the bill or by prior agreement of the parties. A discovery request must be accompanied by a statement identifying the information sought and the manner in which the proposed discovery is to be conducted. A court may grant a discovery request only upon a showing that the information sought and the manner in which it is sought does not unreasonably invade the privacy interests of an affected person; the information sought is necessary to support or defeat a claim; and all affected persons have received notice of the discovery request and have had a reasonable opportunity to object to the proposed discovery.

The bill provides that either party may obtain discovery from an attorney who previously represented the applicant in the underlying criminal action or on appeal.

The parties have standing to object to or move to quash any discovery request, and an affected person has standing to object to or move to quash any discovery request for private information.

The bill provides that discovery involving a victim of the underlying public offense may not be conducted unless all of the following is established by clear and convincing evidence: the evidence is necessary to prove the applicant is innocent of the underlying public offense and all lesser included offenses; the information is not available from any other source; and contact with a victim is minimized by limitations on the method of discovery. Discovery of evidence subject to rule of evidence 5.412 (sex-offense cases: the victim's sexual behavior or

1 predisposition) are limited to that permitted by Code section  
2 622.31A.

3 The bill provides that the state is not required to produce  
4 copies of discovery previously disclosed to an applicant except  
5 upon a showing of a compelling need. The state is not required  
6 to produce any discovery contained in a court file accessible to  
7 the applicant, or to produce any discovery that cannot lawfully  
8 be disseminated or that is otherwise confidential by law.

9 The bill requires that documents or other evidence obtained by  
10 one party through a subpoena must be provided to the other party  
11 within three business days. The court may sanction an attorney  
12 or party for knowingly conducting discovery in violation of the  
13 bill.

14 The bill provides that if a person acting on behalf of  
15 an applicant contacts a victim or witness, the person shall  
16 clearly inform the victim or witness of the person's identity and  
17 capacity, and inform the victim or witness that the victim or  
18 witness does not have to talk to or otherwise provide evidence  
19 or discovery unless the victim or witness wishes, and that the  
20 victim or witness may have an advocate or attorney present during  
21 any interview or other contact. Upon application by a victim or  
22 the state, the court will appoint an attorney to represent the  
23 victim.

24 The bill does not relieve the state of any constitutional  
25 obligation to disclose exculpatory evidence to a postconviction  
26 relief applicant.