HOUSE FILE 734
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 142)

(COMPANION TO LSB 1258SV BY
COMMITTEE ON JUDICIARY)

(As Amended and Passed by the House March 26, 2019)

[= New Language by the House

* = Language Stricken by the House

A BILL FOR

An Act relating to postconviction DNA profiling procedure.

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

Section 1. Section 81.1, Code 2019, is amended to read as follows:

81.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Aggravated misdemeanor"* means an offense classified as an aggravated misdemeanor committed by a person eighteen years of age or older on or after July 1, 2014, other than any of the following offenses:

a. A violation of chapter 321.

b. A second offense violation of section 321J.2, unless the person has more than one previous revocation as determined pursuant to section 321J.2, subsection 8, within the twelve-year period immediately preceding the commission of the offense in question.

c. A violation of chapter 716B.

d. A violation of chapter 717A.

e. A violation of section 725.7.

2. *"DNA"* means deoxyribonucleic acid.

3. *"DNA data bank"* means the repository for DNA samples obtained pursuant to section 81.4.

4. *"DNA database"* means the collection of DNA profiles and DNA records.

5. *"DNA profile"* means the objective form of the results of DNA analysis performed on a forensic sample or an individual's DNA sample. The results of all DNA identification analysis on an individual's DNA sample are also collectively referred to as the DNA profile of an individual. *"DNA profile"* also means the objective form of the results of DNA analysis performed on a forensic sample.

6. *"DNA profiling"* means the procedure ~~established by the division of criminal investigation, department of public safety,~~ for determining a person's genetic identity or for testing a forensic sample, including analysis that might not result in the establishment of a complete DNA profile.

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

8. *"DNA sample"* means a biological sample provided by any person required to submit a DNA sample or a DNA sample submitted for any other purpose under section 81.4.

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

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

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

~~9.~~ 12. *"Person required to submit a DNA sample"* means a person convicted, adjudicated delinquent, receiving a deferred judgment, or found not guilty by reason of insanity of an offense requiring DNA profiling pursuant to section 81.2. *"Person required to submit a DNA sample"* also means a person determined to be a sexually violent predator pursuant to section 229A.7.

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

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

81.10 Application requirements for DNA profiling after conviction.

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

2. The ~~motion~~ application shall state the following:

a. The specific crimes for which the defendant stands convicted in this case.

b. The facts of the underlying case, as proven at trial or admitted to during a guilty plea proceeding.

c. Whether any of the charges include sexual abuse or involve sexual assault, and if so, whether a sexual assault examination was conducted and ~~evidence~~ forensic samples were preserved, if known.

d. Whether identity was at issue or contested by the defendant.

e. Whether the defendant offered an alibi, and if so, testimony corroborating the alibi and, from whom.

f. Whether eyewitness testimony was offered, and if so from whom.

g. Whether any issues of police or prosecutor misconduct have been raised in the past or are being raised by the [~~motion~~ application].

h. The type of inculpatory evidence admitted into evidence at trial or admitted to during a guilty plea proceeding.

i. Whether blood testing or other biological evidence testing was conducted previously in connection with the case and, if so, by whom and the result, if known.

j. What biological evidence exists and, if known, the agency or laboratory storing the ~~evidence~~ forensic sample that the defendant seeks to have tested.

k. Why the requested ~~analysis of DNA evidence~~ DNA profiling of the forensic sample is material to the issue in the case and not merely cumulative or impeaching.

l. Why the DNA ~~evidence~~ profiling results would have changed the outcome of the trial or invalidated a guilty plea if the requested DNA profiling had been conducted prior to the conviction.

3. *a.* A ~~motion~~ proceeding for relief filed under this section shall be filed in the county where the defendant was

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

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

4. Any DNA profiling of the defendant or other biological evidence testing conducted by the state or by the defendant shall be disclosed and the results of such profiling or testing described in the [~~motion~~ application] or answer.

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

6. The court may order a hearing on the [~~motion~~ application] to determine if ~~evidence~~ the forensic sample should be subjected to DNA ~~analysis~~ profiling.

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

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

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

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

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

~~e. DNA analysis of the evidence would raise a reasonable probability that the defendant would not have been convicted if DNA profiling had been available at the time of the conviction and had been conducted prior to the conviction.~~

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

~~9. Results of DNA analysis conducted pursuant to this section shall be reported to the parties and to the court and may be provided to the board of parole, department of corrections, and criminal and juvenile justice agencies, as defined in section 692.1, for use in the course of investigations and prosecutions, and for consideration in connection with requests for parole, pardon, reprieve, and commutation. DNA samples obtained pursuant to this section may be included in the DNA data bank, and DNA profiles and DNA records developed pursuant to this section may be included in the DNA database.~~

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

~~11. If the court determines a defendant who files a motion under this section is indigent, the defendant shall be entitled to appointment of counsel as provided in chapter 815.~~

~~12. If the court determines after DNA analysis ordered pursuant to this section that the results indicate conclusively that the DNA profile of the defendant matches the profile from the analyzed evidence used against the defendant, the court may order the defendant to pay the costs of these proceedings,~~

~~including costs of all testing, court costs, and costs of court-appointed counsel, if any.~~

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

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

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

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

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

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

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

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

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

1. If DNA profiling ordered under section 81.11 produces an unidentified DNA profile, after notice to the parties, including the department of public safety, the court may order

the department of public safety to do any of the following:

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

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

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

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

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

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

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

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

2. A criminal or juvenile justice agency, as defined in section 692.1, shall maintain DNA samples and forensic samples

that could be tested for DNA for a period of three years beyond the limitations for the commencement of criminal actions as set forth in chapter 802. This section does not create a cause of action for damages or a presumption of spoliation in the event a forensic sample is no longer available for testing.

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

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

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

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

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

NEW PARAGRAPH. *h.* The results of DNA profiling ordered pursuant to [an application] filed under section 81.10 would have changed the outcome of the trial or void the factual basis of a guilty plea had the profiling been conducted prior to the conviction.

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

822.3 How to commence proceeding — limitation.

A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction or sentence took place. However, if the applicant is seeking relief under section 822.2, subsection 1, paragraph "*f*", the application shall be filed with the clerk

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