SENATE FILE 525
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 233)

(As Amended and Passed by the Senate March 22, 2023)

= New Language by the Senate

= Language Stricken by the Senate

A BILL FOR

An Act relating to criminal law including the disclosure of a defendant's privileged records, no-contact orders, commencement limitations for certain sexual offenses, sexually predatory offenses, victim rights, discovery, postconviction relief actions, criminal appeals, and pretrial bond amounts for certain felonies.

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

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 information that tends to negate the guilt of the defendant and not information that is 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

following new subsections:

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

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

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

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

802.2C Kidnapping.

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

DIVISION IV

SEXUALLY PREDATORY OFFENSES

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

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

DIVISION V

VICTIM RIGHTS

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

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

request-for-registration form to each victim. A local police department or county sheriff's department shall provide a telephone number and internet site to each victim to register with the automated victim notification system established pursuant to section 915.10A.

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

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

NEW SUBSECTION. 3A. *a.* It is the public policy of this state that statements made by children to forensic interviewers at child advocacy centers and child protection centers should be admitted into evidence in the courts.

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

(1) The recorded statement describes conduct that violates any Iowa criminal law.

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

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

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

(a) The child testifies at trial.

(b) The child has been questioned by the defendant or the defendant's attorney at a deposition or any substantially similar setting and any of the following apply:

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

(ii) The court finds by a preponderance of the evidence that the child would suffer significant emotional or psychological

trauma from testifying in the personal presence of the defendant at the time of the criminal proceeding.

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

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

(1) By agreement of the parties.

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

(a) Minimize embarrassment or trauma to the child.

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

DIVISION VI

DISCOVERY

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

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

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

3. A person who is not yet a party to a criminal action shall not be permitted to file an application with the court to depose another person until such time as the person is charged

with or indicted for the associated criminal offense.

DIVISION VII

POSTCONVICTION RELIEF AND DISCOVERY PROCEDURE

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

822.7 Court to hear application.

The application shall be heard in, and before any judge of the 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 heard in, and before any judge of the court of the county in which the applicant is being confined. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings including pretrial and discovery procedures are available to the parties, subject to the restrictions contained in section 822.7A. The court may receive proof of affidavits, depositions, oral testimony, or other evidence, and may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

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

This chapter is intended to provide a limited scope of discovery that is no broader than what is afforded to a defendant in a criminal action. Notwithstanding any other statute, rule, or law, the following limitations on discovery and procedure shall apply to a claim for postconviction relief under this chapter:

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

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

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

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

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

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

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

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

6. The state shall not be required to produce any discovery

contained in a court file accessible to the applicant.

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

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

DIVISION VIII

CRIMINAL APPEALS

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

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

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

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

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

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

DIVISION IX

PRETRIAL BOND FOR CLASS "A" AND FORCIBLE FELONIES

Sec. 14. NEW SECTION. **811.1B Pretrial bond amounts for**

class "A" and forcible felonies.

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

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

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

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

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

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

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

3. The presumption contained in this section is rebuttable only upon a showing by the defendant, by a preponderance of

evidence, that the defendant is not a danger to another person or the property of another if not detained pending trial.

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