

CHAPTER 206  
CERTAIN CRIMINAL PROCEDURES

S. F. 528

AN ACT concerning certain criminal procedures relating to notice of seized property, nontestimonial identification, trial by jury, and deferred judgments, deferred sentences and suspended sentences.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 809.2, Code 1981, is amended to read as follows:

809.2 NOTICE ~~OF HEARING~~. The clerk of court shall issue a notice ~~of a hearing~~, containing a reasonable description of the seized property and the time, place, and cause of its seizure, within ~~forty-eight~~ seventy-two hours ~~of~~ after the time of its seizure. Such notice shall be in a manner reasonably calculated to apprise affected persons of the pendency of the hearing their right to file a claim for the return of the property, pursuant to section 809.3.

Sec. 2. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. AUTHORITY TO ISSUE ORDER. A nontestimonial identification order authorized by this chapter may be issued only by a district court or district associate court judge upon written application of a prosecuting attorney in the investigation of a felony offense.

Sec. 3. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. TIME OF APPLICATION. Applications for a nontestimonial identification order under this chapter may be made prior to the arrest of a suspect. The procedural provisions of this chapter shall not limit the conduct of lineups or other nontestimonial procedures after arrest.

Sec. 4. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. CONTENTS OF APPLICATION. The application shall:

1. Describe the felony offense that is being investigated;
2. Name or describe with particularity the person to be detained for the desired nontestimonial identification procedure;
3. State the time when and place where the applicant requests that the nontestimonial identification procedure be conducted; and
4. Be supported by one or more affidavits setting forth the facts and circumstances showing that the basis for issuance of an order under this chapter exist. If an affidavit is based in whole or in part on hearsay, the affiant shall set forth particular facts bearing on the informant's reliability and shall disclose, as far as is practicable, the means by which the information was obtained.

Sec. 5. Chapter 810, Code 1981, is amended by adding the following new section:

**NEW SECTION. BASIS FOR ORDER.** An order authorized by this chapter shall be issued only if the court finds that the application and the affidavit or affidavits in support of the application establish each of the following:

1. That there is probable cause to believe that a felony described in the application has been committed.

2. That there are reasonable grounds to suspect that the person named or described in the application committed the felony and it is reasonable in view of the seriousness of the offense to subject that person to the requested nontestimonial identification procedures.

3. That the results of the requested nontestimonial identification procedures will be of material aid in determining whether the person named or described in the application committed the felony.

4. That such evidence cannot practicably be obtained from other sources.

Sec. 6. Chapter 810, Code 1981, is amended by adding the following new section:

**NEW SECTION. ISSUANCE OF ORDER.** Upon a showing that the required grounds exist, the court shall issue an order directing the person named or described in the application to appear at a designated time and place for nontestimonial identification procedures.

Sec. 7. Chapter 810, Code 1981, is amended by adding the following new section:

**NEW SECTION. CONTENTS OF ORDER.** The order shall be directed to the person named or described in the application and shall inform the person of all of the following:

1. That the presence of the person is required for the purpose of conducting or permitting nontestimonial identification procedures in order to aid in the investigation of the felony specified therein.

2. The time and place of the required appearance.

3. The nontestimonial identification procedures to be conducted, the methods to be used, and the approximate length of time the procedures will require.

4. The grounds to suspect that the person named in the affidavit committed the felony specified therein.

5. That the person will be under no legal obligation to submit to any interrogation or to make any statement during the period of the person's appearance except for that required for voice identification.

6. That the person may request the judge to make a reasonable modification of the order with respect to time and place of appearance, including a request to have any nontestimonial identification procedure other than a lineup conducted at the person's place of residence.

7. That if the person fails to appear, he or she may be held in contempt of court.

8. That the right to counsel shall apply during nontestimonial identification procedures, including the right of indigent persons to appointed counsel.

9. That the person may request that the court modify or vacate the order as provided in this chapter.

Sec. 8. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. MODIFICATION OF ORDER. At the request of the person named or described in the application, the issuing court may modify a nontestimonial identification order with respect to time, place or manner of conducting the identification procedures if it appears reasonable under the circumstances to do so.

Sec. 9. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. VACATION OF ORDER. On motion of the person named or described in the application, the issuing court shall vacate the nontestimonial identification order if the court finds that the order was improperly issued or that there are no longer sufficient grounds for issuance of the order.

Sec. 10. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. SERVICE OF ORDER. The order issued pursuant to this chapter shall be served by a law enforcement officer by delivery of a copy of the order to the person named or described in the order.

Sec. 11. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. TIME OF SERVICE.

1. The nontestimonial identification order shall be served upon the person named or described in the order within five days after its issuance, excluding Saturdays, Sundays, and legal holidays, between the hours of 8:00 a.m. and 12:00 midnight, and shall be so served not later than twelve hours prior to the time of the person's required participation.

2. If the issuing court finds reasonable cause to believe that the person named or described in the application may either flee or alter or destroy the nontestimonial evidence sought, the court may direct a law enforcement officer to bring the person before the court. Upon presentation of the person, the court shall read the nontestimonial identification order to the person and afford a reasonable opportunity for the person to consult with a lawyer and to seek modification or vacation of the order. The court may then direct the person to participate immediately in the designated nontestimonial identification procedures. After the procedures have been completed, the person shall be released or charged with a felony.

Sec. 12. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. IMPLEMENTATION OF ORDER. Nontestimonial identification procedures may be conducted by any law enforcement officer or other person designated by the judge. The judge may require medical supervision for any test ordered pursuant to this chapter when the judge deems such supervision necessary. A person who appears under an order of appearance issued pursuant to this chapter shall not be detained longer than is reasonably necessary to conduct the specified nontestimonial identification procedures unless he or she is arrested for a felony.

Sec. 13. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. FAILURE TO COMPLY. Any person who, without adequate excuse, fails to comply with a nontestimonial identification order served upon the person pursuant to this chapter may be held in contempt of the court which issued the order.

Sec. 14. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. RETURN. Within ten days after the nontestimonial identification procedure, the order shall be returned to the issuing court. The court, the prosecuting attorney, and the person who was the subject of the order, shall be furnished with a written report of the results of any tests or comparisons utilizing the evidence obtained in the authorized procedures. This report shall be disclosed promptly after it becomes available unless the court directs that disclosure be delayed.

Sec. 15. Chapter 810, Code 1981, is amended by adding the following new section:

NEW SECTION. DISPOSITION OF EVIDENCE. If at the time of the return probable cause does not exist to believe that the person committed the felony specified in the application, the court shall order that the products of the nontestimonial identification procedures and all copies thereof, be promptly destroyed. Upon motion of the prosecuting attorney, the court may authorize further retention of the nontestimonial evidence so obtained for such time as reasonably necessary to facilitate a continuing investigation or prosecution.

Sec. 16. Section 813.2, rule of criminal procedure 16, subsection 1, Code 1981, is amended to read as follows:

1. TRIAL BY COURT-ALLOWED JURY. Cases required to be tried by jury shall be so tried unless the defendant voluntarily and intelligently waives a jury trial in a-reported-proceeding-in-open-court writing and on the record within thirty days after arraignment and after such time only with the consent of the prosecuting attorney. The defendant may not withdraw a voluntary and knowing waiver of trial by jury as a matter of right, but the court, in its discretion, may permit withdrawal of the waiver prior to the commencement of the trial.

Sec. 17. Section 907.3, subsection 1, Code 1981, is amended by adding the following new lettered paragraphs:

NEW LETTERED PARAGRAPH. e. The defendant committed an assault as defined in section 708.1, against a peace officer in the performance of the peace officer's duty.

NEW LETTERED PARAGRAPH. f. The defendant is a corporation.

Approved May 18, 1981