

## CHAPTER 81

### DNA PROFILING

Referred to in §906.4

81.1	Definitions.	81.7	Conviction or arrest not invalidated.
81.2	Persons required to submit a DNA sample.	81.8	Confidential records.
81.3	Establishment of DNA database and DNA data bank.	81.9	Expungement of DNA records.
81.4	Collecting, submitting, analyzing, identifying, and storing DNA samples and DNA records.	81.10	Application requirements for DNA profiling after conviction.
81.5	Civil and criminal liability — limitation.	81.11	Application for DNA profiling.
81.6	Criminal offense.	81.12	When DNA database comparisons may be ordered.
		81.13	Additional DNA profiling provisions.
		81.14	Compliance with applicable laws.

#### 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 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.
  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.

[2005 Acts, ch 158, §1, 19](#); [2013 Acts, ch 107, §1, 5](#); [2019 Acts, ch 149, §1](#)

Referred to in [§802.10](#)

### **81.2 Persons required to submit a DNA sample.**

1. A person who receives a deferred judgment for a felony or against whom a judgment or conviction for a felony or aggravated misdemeanor has been entered shall be required to submit a DNA sample for DNA profiling pursuant to [section 81.4](#).

2. A person determined to be a sexually violent predator pursuant to [chapter 229A](#) shall be required to submit a DNA sample for DNA profiling pursuant to [section 81.4](#) prior to discharge or placement in a transitional release program.

3. A person found not guilty by reason of insanity of an offense that requires DNA profiling shall be required to submit a DNA sample for DNA profiling pursuant to [section 81.4](#) as part of the person’s treatment management program.

4. A juvenile adjudicated delinquent of an offense that requires DNA profiling of an adult offender shall be required to submit a DNA sample for DNA profiling pursuant to [section 81.4](#) as part of the disposition of the juvenile’s case.

5. An offender placed on probation shall immediately report to the judicial district department of correctional services after sentencing so it can be determined if the offender has been convicted of an offense requiring DNA profiling. If it is determined by the judicial district that DNA profiling is required, the offender shall immediately submit a DNA sample.

6. A person required to register as a sex offender shall submit a DNA sample for DNA profiling pursuant to [section 81.4](#).

[2005 Acts, ch 158, §2, 19](#); [2007 Acts, ch 38, §4](#); [2013 Acts, ch 107, §2, 5](#)

Referred to in [§81.1, 232.52, 901.5](#)

### **81.3 Establishment of DNA database and DNA data bank.**

1. A state DNA database and a state DNA data bank are established under the control of the division of criminal investigation, department of public safety. The division of criminal investigation shall conduct DNA profiling of a DNA sample submitted in accordance with [this section](#).

2. A DNA sample shall be submitted, and the division of criminal investigation shall store and maintain DNA records in the DNA database and DNA data bank for persons required to submit a DNA sample.

3. A DNA sample may be submitted, and the division of criminal investigation shall store and maintain DNA records in the DNA database and DNA data bank for any of the following:

a. Crime scene evidence and forensic casework.

b. A relative of a missing person.

c. An anonymous DNA profile used for forensic validation, forensic protocol development, or quality control purposes, or for the establishment of a population statistics database.

4. A fingerprint record of a person required to submit a DNA sample shall also be submitted to the division of criminal investigation with the DNA sample to verify the identity of the person required to submit a DNA sample.

[2005 Acts, ch 158, §3, 19](#)

Referred to in [§81.9](#)

### **81.4 Collecting, submitting, analyzing, identifying, and storing DNA samples and DNA records.**

1. The division of criminal investigation shall adopt rules for the collection, submission, analysis, identification, storage, and disposition of DNA records.

2. A supervising agency having control, custody, or jurisdiction over a person shall collect a DNA sample from a person required to submit a DNA sample. The supervising agency shall collect a DNA sample, upon admittance to the pertinent institution or facility, of the person required to submit a DNA sample or at a determined date and time set by the supervising agency. If a person required to submit a DNA sample is confined at the time a DNA sample is

required, the person shall submit a DNA sample as soon as practicable. If a person required to submit a DNA sample is not confined after the person is required to submit a DNA sample, the supervising agency shall determine the date and time to collect the DNA sample.

3. A person required to submit a DNA sample who refuses to submit a DNA sample may be subject to contempt proceedings pursuant to [chapter 665](#) until the DNA sample is submitted.

4. The division of criminal investigation shall conduct DNA profiling on a DNA sample or may contract with a private entity to conduct the DNA profiling.

[2005 Acts, ch 158, §4, 19](#)

Referred to in [§81.1](#), [81.2](#), [81.5](#), [229A.7](#), [232.52](#), [669.14](#)

#### **81.5 Civil and criminal liability — limitation.**

A person who collects a DNA sample shall not be civilly or criminally liable for the collection of the DNA sample if the person performs the person's duties in good faith and in a reasonable manner according to generally accepted medical practices or in accordance with the procedures set out in the administrative rules of the department of public safety adopted pursuant to [section 81.4](#).

[2005 Acts, ch 158, §5, 19](#)

#### **81.6 Criminal offense.**

1. A person who knowingly or intentionally does any of the following commits an aggravated misdemeanor:

a. Discloses any part of a DNA record to a person or agency that is not authorized by the division of criminal investigation to have access to the DNA record.

b. Uses or obtains a DNA record for a purpose other than what is authorized under [this chapter](#).

2. A person who knowingly or intentionally alters or attempts to alter a DNA sample, falsifies the source of a DNA sample, or materially alters a collection container used to collect the DNA sample, commits a class "D" felony.

[2005 Acts, ch 158, §6, 19](#)

#### **81.7 Conviction or arrest not invalidated.**

The detention, arrest, or conviction of a person based upon a DNA database match is not invalidated if it is determined that the DNA sample or DNA profile was obtained or placed into the DNA database by mistake or error.

[2005 Acts, ch 158, §7, 19](#)

#### **81.8 Confidential records.**

1. A DNA record shall be considered a confidential record and disclosure of a DNA record is only authorized pursuant to [this section](#).

2. Confidential DNA records under [this section](#) may be released to the following agencies for law enforcement identification purposes:

a. Any criminal or juvenile justice agency as defined in [section 692.1](#).

b. Any criminal or juvenile justice agency in another jurisdiction that meets the definition of a criminal or juvenile justice agency as defined in [section 692.1](#).

3. The division of criminal investigation shall share the DNA record information with the appropriate federal agencies for use in a national DNA database.

4. A DNA record or other forensic information developed pursuant to [this chapter](#) may be released for use in a criminal or juvenile delinquency proceeding in which the state is a party and where the DNA record or forensic information is relevant and material to the subject of the proceeding. Such a record or information may become part of a public transcript or other public recording of such a proceeding.

5. A DNA record or other forensic information may be released pursuant to a court order for criminal defense purposes to a defendant, who shall have access to DNA samples and DNA profiles related to the case in which the defendant is charged.

[2005 Acts, ch 158, §8, 19](#)

**81.9 Expungement of DNA records.**

1. A person whose DNA record has been included in the DNA database or DNA data bank established pursuant to [section 81.3](#) may request, in writing to the division of criminal investigation, expungement of the DNA record from the DNA database and DNA data bank based upon the person's conviction, adjudication, or civil commitment which caused the submission of the DNA sample being reversed on appeal and the case dismissed. The written request shall contain a certified copy of the final court order reversing the conviction, adjudication, or civil commitment, and a certified copy of the dismissal, and any other information necessary to ascertain the validity of the request.

2. The division of criminal investigation, upon receipt of a written request that validates reversal on appeal of a person's conviction, adjudication, or commitment, and subsequent dismissal of the case, or upon receipt of a written request by a person who voluntarily submitted a DNA sample pursuant to [section 81.3, subsection 3](#), paragraph "b", shall expunge all of the DNA records and identifiable information of the person in the DNA database and DNA data bank. However, if the division of criminal investigation determines that the person is otherwise obligated to submit a DNA sample, the DNA records shall not be expunged. If the division of criminal investigation denies an expungement request, the division shall notify the person requesting the expungement of the decision not to expunge the DNA record and the reason supporting its decision. The division of criminal investigation decision is subject to judicial review pursuant to [chapter 17A](#). The department of public safety shall adopt rules governing the expungement procedure and a review process.

3. The division of criminal investigation is not required to expunge or destroy a DNA record pursuant to [this section](#), if expungement or destruction of the DNA record would destroy evidence related to another person.

[2005 Acts, ch 158, §9, 19](#)

**81.10 Application requirements for DNA profiling after conviction.**

1. A defendant who has been convicted of a felony or aggravated misdemeanor may make an application to the court for an order to require that DNA profiling be performed on a forensic sample collected in the case for which the person stands convicted.

2. The 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 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 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 forensic sample that the defendant seeks to have tested.

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

l. Why the DNA 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 proceeding for relief filed under [this section](#) shall be filed in the county where the defendant was convicted. 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 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 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 application or answer.

5. If the 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 application to determine if the forensic sample should be subjected to DNA profiling.

[2005 Acts, ch 158, §10, 19; 2013 Acts, ch 107, §3, 5; 2019 Acts, ch 149, §2](#)

Referred to in [§81.13, 822.2, 822.3](#)

### **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.

[2019 Acts, ch 149, §3](#)

Referred to in [§81.12](#)

### **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.

2019 Acts, ch 149, §4

#### **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.

2019 Acts, ch 149, §5

#### **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.

2019 Acts, ch 149, §6