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SENATE FILE 229
BY GRONSTAL

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing a procedure for a criminal defendant to
2 obtain fingerprint testing or DNA profiling after a
3 conviction.

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

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SF 229
JUDICIARY

1 Section 1. Section 13B.4, subsection 1, Code 2001, is
2 amended to read as follows:

3 1. The state public defender shall coordinate the
4 provision of legal representation of all indigents under
5 arrest or charged with a crime, seeking postconviction relief,
6 against whom a contempt action is pending, in proceedings
7 under chapter 229A, on appeal in criminal cases, on appeal in
8 proceedings to obtain postconviction relief when ordered to do
9 so by the district court in which the judgment or order was
10 issued, in applications under chapter 822A, and on a reopening
11 of a sentence proceeding, and may provide for the
12 representation of indigents in proceedings instituted pursuant
13 to chapter 908. The state public defender shall not engage in
14 the private practice of law.

15 Sec. 2. Section 815.9, subsection 1, unnumbered paragraph
16 1, Code 2001, is amended to read as follows:

17 For purposes of this chapter, chapter 13B, chapter 229A,
18 chapter 232, chapter 665, chapter 814, chapter 822, chapter
19 822A, and the rules of criminal procedure, a person is
20 indigent if the person is entitled to an attorney appointed by
21 the court as follows:

22 Sec. 3. Section 815.11, Code 2001, is amended to read as
23 follows:

24 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

25 Costs incurred under chapter 229A, 665, ~~or~~ 822, or 822A, or
26 section 232.141, subsection 3, paragraph "c", or sections
27 814.9, 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10,
28 or the rules of criminal procedure on behalf of an indigent
29 shall be paid from funds appropriated by the general assembly
30 to the office of the state public defender in the department
31 of inspections and appeals for those purposes.

32 Sec. 4. NEW SECTION. 822A.1 APPLICATION FOR FINGERPRINT
33 TESTING OR DNA PROFILING.

34 1. Application contents. Notwithstanding chapter 822, a
35 person may file an application in the county where the person

1 was convicted, for the performance of fingerprint testing or
2 DNA profiling of evidence that was secured in the criminal
3 proceedings against the applicant but was not tested. The
4 application shall identify the proceedings in which the
5 applicant was convicted, give the date of the entry of the
6 judgment of conviction or sentence complained of, specifically
7 set forth the grounds upon which the application is based, and
8 clearly state the relief desired. Facts within the personal
9 knowledge of the applicant shall be set forth separately from
10 other allegations of facts and shall be verified. Affidavits,
11 records, or other evidence supporting the allegations shall be
12 attached to the application or the application shall recite
13 why they are not attached. The application shall identify all
14 previous proceedings, together with the grounds therein
15 asserted, taken by the applicant to secure relief from the
16 conviction or sentence. Argument, citations, and discussion
17 of authorities are unnecessary. If the court determines that
18 the application is sufficient as to form, the court shall set
19 a hearing on the application. The court may dismiss the
20 application, without hearing, if the court determines the
21 application is deficient on its face. The application must
22 allege the following:

23 a. That fingerprint testing or DNA profiling was not
24 obtainable because testing was not available at the time of
25 the criminal proceedings.

26 b. The identity of the applicant was an issue in the
27 proceedings.

28 c. A sufficient chain of custody of the evidence can be
29 established in accordance with the Iowa rules of evidence.

30 d. The integrity of the evidence can be preserved for
31 further testing or profiling and the result of testing or
32 profiling of the evidence has the potential to produce
33 material facts not previously presented and heard that would
34 require vacation of the conviction or sentence in the interest
35 of justice.

1 2. Hearing on the application. If the applicant proves
2 the allegations contained in the application by a
3 preponderance of the evidence, the court shall order the
4 testing or profiling and set a hearing after completion of the
5 testing or profiling.

6 3. Hearing on the test results. If the applicant proves
7 beyond a reasonable doubt that the test results or profiling
8 prove the applicant's innocence or create reasonable doubt in
9 the former proceedings, the court shall enter an appropriate
10 order with respect to the conviction or sentence in the former
11 proceedings, and any supplementary orders as to rearraignment,
12 retrial, custody, bail, discharge, or other matters that may
13 be necessary and proper. The court shall make specific
14 findings of fact, and state express conclusions of law,
15 relating to each issue presented. This order is a final
16 judgment.

17 4. A transcript of the hearing in subsection 2 or 3 and
18 transcripts of all other proceedings shall be made and
19 preserved. All rules and statutes applicable in civil
20 proceedings, including pretrial and discovery procedures, are
21 available to the parties. The court may receive proof of
22 affidavits, depositions, oral testimony, or other evidence,
23 and may order the applicant brought before it for the hearing.
24 If the applicant is unable to pay for the testing, or court,
25 stenographic, and printing costs, these costs shall be made
26 available to the applicant in the trial court and on appeal.

27 5. The county attorney for the county that prosecuted the
28 defendant shall represent the state on an application filed
29 under this chapter. The attorney general may represent the
30 state, if requested by the county attorney and if the attorney
31 general consents to the representation.

32 6. An appeal from a final judgment entered under this
33 chapter may be taken, perfected, and prosecuted either by the
34 applicant or by the state in the manner and within the time
35 after judgment as provided in the rules of appellate procedure

1 for appeals from final judgments in criminal cases.

2 Sec. 5. NEW SECTION. 822A.2 PRESERVATION OF EVIDENCE.

3 1. After the completion of a criminal case or appeal or
4 the time for appeal has expired, the law enforcement agency
5 responsible for gathering fingerprint or DNA evidence from the
6 crime scene shall be responsible for the storage, chain of
7 custody, and preservation of such evidence for a period of
8 twenty-five years.

9 2. Evidence preserved under subsection 1 may be disposed
10 of prior to the expiration of twenty-five years, if, after
11 giving notice to the defendant in the underlying criminal
12 case, the county attorney or the attorney general makes an
13 application to the court, and the court determines by the
14 preponderance of the evidence any of the following:

15 a. The evidence to be preserved has no significant value
16 for fingerprint or DNA analysis and may be returned to the
17 rightful owner of the property or destroyed if no rightful
18 owner can be found.

19 b. There is a sufficient amount of fingerprint or DNA
20 evidence already preserved if future testing is required.

21 c. The evidence to be preserved is too large or is made of
22 an unusual material that makes it impractical for a law
23 enforcement agency to preserve.

24 d. The defendant consents to the evidence being destroyed.

25 Sec. 6. IMPLEMENTATION OF ACT. Section 25B.2, subsection
26 3, shall not apply to this Act.

27 EXPLANATION

28 This bill creates a procedure for a criminal defendant to
29 obtain fingerprint testing or DNA profiling after a conviction
30 if testing or profiling had not been performed previously.

31 The bill provides that a defendant may make an application
32 to the court for fingerprint testing or DNA profiling. The
33 state shall be represented by the county attorney, or the
34 attorney general, if the attorney general consents to such
35 representation. An application must prove that fingerprint

1 testing or DNA profiling was not available at the time of the
2 criminal proceedings, that the identity of the defendant was
3 an issue in the case, and that a sufficient chain of custody
4 of the evidence can be established. The bill also provides
5 that before a test can be permitted, the court must find that
6 the integrity of the evidence can be preserved for further
7 testing and the result of the evidence has the potential to
8 produce material facts not previously presented which
9 potentially could require vacation of the convictions of the
10 sentence in the interest of justice.

11 Under the bill, if the court permits testing, and the test
12 results produce new evidence which would be materially
13 relevant to proving the innocence of the applicant, the court
14 may order a hearing on the test results. The bill provides
15 that if the court finds beyond a reasonable doubt that the
16 test results prove the applicant's innocence or create
17 reasonable doubt in the former proceedings, the court may
18 enter any appropriate order with respect to the former
19 proceedings, including ordering a retrial or discharging the
20 applicant from confinement. The bill provides that the final
21 court order may be appealed by the applicant or the state.

22 If an applicant is unable to pay for testing, an attorney,
23 and certain other costs related to the application, the bill
24 provides that these costs shall be provided at state expense.

25 The bill provides that after completion of the criminal
26 case or the time for appeal has expired, the law enforcement
27 agency responsible for gathering any fingerprint or DNA
28 evidence in the case shall be responsible for the chain of
29 custody, storing, and the preserving of such evidence for a
30 period of 25 years. The bill does not require storing and
31 preserving the evidence if any of the following apply: the
32 evidence to be stored has no significant value for future
33 testing, the agency has enough evidence to ensure future
34 testing, the evidence is too large or unusual for an agency to
35 store, or the defendant consents to the destruction of the

1 evidence.

2 The bill may include a state mandate as defined in Code
3 section 25B.3. The bill makes inapplicable Code section
4 25B.2, subsection 3, which relieves a political subdivision
5 from complying with a state mandate if funding for the cost of
6 the state mandate is not provided or specified. Therefore,
7 political subdivisions are required to comply with any state
8 mandate included in the bill.

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