

MAR 1 1 2005
Place On Calendar

HOUSE FILE 713
BY COMMITTEE ON PUBLIC SAFETY

(SUCCESSOR TO HSB 40)

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

A BILL FOR

1 An Act relating to requiring certain persons to submit a DNA
2 sample for DNA profiling, making a request for DNA profiling,
3 providing a penalty, and providing effective and contingent
4 effective dates.

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

HF 713

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DIVISION I

2 Section 1. NEW SECTION. 81.1 DEFINITIONS.

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

5 1. "DNA" means deoxyribonucleic acid.

6 2. "DNA databank" means the repository for DNA samples
7 obtained pursuant to section 81.4.

8 3. "DNA database" means the collection of DNA profiles and
9 DNA records.

10 4. "DNA profile" means the objective form of the results
11 of DNA analysis performed on a DNA sample. The results of all
12 DNA identification analysis on an individual's DNA sample are
13 also collectively referred to as the DNA profile of an
14 individual.

15 5. "DNA profiling" means the procedure established by the
16 division of criminal investigation, department of public
17 safety, for determining a person's genetic identity.

18 6. "DNA record" means the DNA sample and DNA profile, and
19 other records in the DNA database and DNA data bank used to
20 identify a person.

21 7. "DNA sample" means a biological sample provided by any
22 person required to submit a DNA sample or a DNA sample
23 submitted for any other purpose under section 81.4.

24 8. "Person required to submit a DNA sample" means a person
25 convicted, adjudicated delinquent, who receives a deferred
26 judgment, or found not guilty by reason of insanity of an
27 offense requiring DNA profiling pursuant to section 81.2.
28 "Person required to submit a DNA sample" also means a person
29 determined to be a sexually violent predator pursuant to
30 section 229A.7.

31 Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO SUBMIT A
32 DNA SAMPLE.

33 1. The attorney general shall adopt rules in consultation
34 with the division of criminal investigation, department of
35 public safety, for the purpose of classifying felonies and

1 indictable misdemeanors which shall require the offender to
2 submit a DNA sample for DNA profiling upon confinement in or
3 prior to release from a county jail, upon commitment to the
4 custody of the director of the department of corrections, or
5 prior to discharge of sentence, or as a condition of
6 probation. Factors to be considered shall include the
7 deterrent effect of DNA profiling, the likelihood of repeated
8 violations, and the seriousness of the offense. The offenses
9 that require the offender to submit a DNA sample for DNA
10 profiling shall include but are not limited to the following:

- 11 a. Murder in violation of section 707.2 or 707.3.
- 12 b. Attempt to commit murder in violation of section
13 707.11.
- 14 c. Kidnapping in violation of section 710.1, 710.2, or
15 710.3.
- 16 d. Sexual abuse in violation of section 709.2, 709.3, or
17 709.4.
- 18 e. Assault with intent to commit sexual abuse in violation
19 of section 709.11.
- 20 f. Assault while participating in a felony in violation of
21 section 708.3.
- 22 g. Burglary in the first degree in violation of section
23 713.3.

24 2. A person determined to be a sexually violent predator
25 pursuant to chapter 229A shall be required to submit a DNA
26 sample for DNA profiling pursuant to section 81.4 prior to
27 discharge or placement in a transitional release program.

28 3. A person found not guilty by reason of insanity of an
29 offense that requires DNA profiling shall be required to
30 submit a DNA sample for DNA profiling pursuant to section 81.4
31 as part of the person's treatment management program.

32 4. A juvenile adjudicated delinquent of an offense that
33 requires DNA profiling of an adult offender shall be required
34 to submit a DNA sample for DNA profiling pursuant to section
35 81.4 as part of the disposition of the juvenile's case.

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

8 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA DATABASE
9 AND DNA DATABANK.

10 1. A state DNA database and a state DNA databank are
11 established under the control of the division of criminal
12 investigation, department of public safety. The division of
13 criminal investigation shall conduct DNA profiling of a DNA
14 sample submitted in accordance with this section.

15 2. A DNA sample shall be submitted, and the division of
16 criminal investigation shall store and maintain DNA records in
17 the DNA database and DNA databank for persons required to
18 submit a DNA sample.

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

- 22 a. Crime scene evidence and forensic casework.
23 b. A relative of a missing person.
24 c. An anonymous DNA profile used for forensic validation,
25 forensic protocol development, or quality control purposes, or
26 for the establishment of population statistics database.

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

31 Sec. 4. NEW SECTION. 81.4 COLLECTING, SUBMITTING,
32 ANALYZING, IDENTIFYING, AND STORING DNA SAMPLES AND DNA
33 RECORDS.

34 1. The division of criminal investigation shall adopt
35 rules for the collection, submission, analysis,

1 identification, storage, and disposition of DNA records.

2 2. A supervising agency having control, custody, or
3 jurisdiction over a person shall collect a DNA sample from a
4 person required to submit a DNA sample. The supervising
5 agency shall collect a DNA sample, upon admittance to the
6 pertinent institution or facility, of the person required to
7 submit a DNA sample or at a determined date and time set by
8 the supervising agency. If a person required to submit a DNA
9 sample is confined at the time a DNA sample is required, the
10 person shall submit a DNA sample as soon as practicable. If a
11 person required to submit a DNA sample is not confined after
12 the person is required to submit a DNA sample, the supervising
13 agency shall determine the date and time to collect the DNA
14 sample.

15 3. A person required to submit a DNA sample who refuses to
16 submit a DNA sample may be subject to contempt proceedings
17 pursuant to chapter 665 until the DNA sample is submitted.

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

21 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL LIABILITY
22 -- LIMITATION.

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

30 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

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

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

1 b. Uses or obtains a DNA record for a purpose other than
2 what is authorized under this chapter.

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

7 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST NOT
8 INVALIDATED.

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

13 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

14 1. A DNA record shall be considered a confidential record
15 and disclosure of a DNA record is only authorized pursuant to
16 this section.

17 2. Confidential DNA records under this section may be
18 released to the following agencies for law enforcement
19 identification purposes:

20 a. Any criminal or juvenile justice agency as defined in
21 section 692.1.

22 b. Any criminal or juvenile justice agency in another
23 jurisdiction that meets the definition of a criminal or
24 juvenile justice agency as defined in section 692.1.

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

28 4. A DNA record or other forensic information developed
29 pursuant to this chapter may be released for use in a criminal
30 or juvenile delinquency proceeding in which the state is a
31 party and where the DNA record or forensic information is
32 relevant and material to the subject of the proceeding. Such
33 a record or information may become part of a public transcript
34 or other public recording of such a proceeding.

35 5. A DNA record or other forensic information may be

1 released pursuant to a court order for criminal defense
2 purposes to a defendant, who shall have access to DNA samples
3 and DNA profiles related to the case in which the defendant is
4 charged.

5 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA RECORDS.

6 1. A person whose DNA record has been included in the DNA
7 database or DNA databank established pursuant to section 81.3
8 may request, in writing to the division of criminal
9 investigation, expungement of the DNA record from the DNA
10 database and DNA databank based upon the person's conviction,
11 adjudication, or civil commitment which caused the submission
12 of the DNA sample being reversed on appeal and the case
13 dismissed. The written request shall contain a certified copy
14 of the final court order reversing the conviction,
15 adjudication, or civil commitment, and a certified copy of the
16 dismissal, and any other information necessary to ascertain
17 the validity of the request.

18 2. The division of criminal investigation, upon receipt of
19 a written request that validates reversal on appeal of a
20 person's conviction, adjudication, or commitment, and
21 subsequent dismissal of the case, or upon receipt of a written
22 request by a person who voluntarily submitted a DNA sample
23 under section 81.3, subsection 3, paragraph "b", or upon
24 receipt of a written request by a person who voluntarily
25 submitted a DNA sample pursuant to section 81.3, subsection 3,
26 paragraph "b", shall expunge all of the DNA records and
27 identifiable information of the person in the DNA database and
28 DNA databank. However, if the division of criminal
29 investigation determines that the person is otherwise
30 obligated to submit a DNA sample, the DNA records shall not be
31 expunged. If the division of criminal investigation denies an
32 expungement request, the division shall notify the person
33 requesting the expungement of the decision not to expunge the
34 DNA record and the reason supporting its decision. The
35 division of criminal investigation decision is subject to

1 judicial review pursuant to chapter 17A. The division of
2 criminal investigation shall adopt rules governing the
3 expungement procedure and a review process.

4 3. The division of criminal investigation is not required
5 to expunge or destroy a DNA record pursuant to this section,
6 if expungement or destruction of the DNA record would destroy
7 evidence related to another person.

8 Sec. 10. NEW SECTION. 81.10 DNA PROFILING AFTER
9 CONVICTION.

10 1. Notwithstanding chapter 822, a person who has been
11 convicted of a felony and who has not been required to submit
12 a DNA sample for DNA profiling may make a motion to the court
13 to require that DNA profiling be performed on a DNA sample.

14 2. The motion shall state the following:

15 a. The facts of the underlying case that led to the
16 conviction.

17 b. How the requested DNA profiling would raise a
18 reasonable probability that the person would not have been
19 convicted if DNA profiling had existed at the time of the
20 conviction or if DNA profiling had been conducted prior to the
21 conviction.

22 c. The evidence to be subjected to DNA profiling.

23 3. Notice of the motion shall be served, by certified
24 mail, upon the county attorney of the county where the
25 conviction occurred, and if known, the motion shall also be
26 served, by certified mail, upon the state, local agency, or
27 laboratory holding the evidence to be tested. The county
28 attorney shall have sixty days to file an answer to the
29 motion.

30 4. If any DNA profiling or other biological evidence
31 testing was previously conducted, the results of the DNA
32 profiling or other biological testing shall be disclosed in
33 any motion or answer filed by either party.

34 5. If the evidence requested to be tested was previously
35 subjected to DNA profiling or other biological testing by

1 either party, the court shall order the disclosure of the
2 results of such profiling or testing to the court and all
3 parties involved, including any laboratory reports, underlying
4 data, and laboratory notes prepared in connection with the DNA
5 profiling or testing.

6 6. The court may order a hearing on the motion to
7 determine if evidence should be subjected to DNA profiling in
8 order to determine a DNA profile.

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

11 a. The evidence subject to DNA profiling is available and
12 in a condition that will permit DNA profiling.

13 b. A sufficient chain of custody has been established for
14 the evidence.

15 c. The identity of the perpetrator was a significant issue
16 or should have been a significant issue in the underlying
17 criminal case.

18 d. The evidence subject to DNA profiling is material to
19 the underlying criminal case.

20 e. A DNA profile obtained from the evidence would raise a
21 reasonable probability the person would not have been
22 convicted if DNA profiling had existed at the time of the
23 conviction or if DNA profiling had been conducted prior to the
24 conviction.

25 8. Upon the court granting the motion, DNA profiling shall
26 be conducted within the guidelines generally accepted by the
27 scientific community.

28 9. A criminal or juvenile justice agency, as defined in
29 section 692.1, shall maintain a DNA sample and criminal
30 evidence that could be tested for DNA shall be kept for a
31 period of three years beyond the limitations for the
32 commencement of a criminal case as set forth in chapter 802.

33 10. If the court determines a person is indigent, the
34 person filing the motion shall be entitled to the appointment
35 of an attorney pursuant to chapter 815.

1 Sec. 11. Section 229A.7, Code 2005, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 5A. If the court or jury determines that
4 the respondent is a sexually violent predator, the court shall
5 order the respondent to submit a DNA sample for DNA profiling
6 pursuant to section 81.4.

7 Sec. 12. Section 232.52, Code 2005, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 10. The court shall order a juvenile
10 adjudicated a delinquent for an offense that requires DNA
11 profiling under section 81.2 to submit a DNA sample for DNA
12 profiling pursuant to section 81.4.

13 Sec. 13. Section 669.14, Code 2005, is amended by adding
14 the following new subsection:

15 NEW SUBSECTION. 15. Any claim arising from or related to
16 the collection of a DNA sample for DNA profiling pursuant to
17 section 81.4 or a DNA profiling procedure performed by the
18 division of criminal investigation, department of public
19 safety.

20 Sec. 14. Section 802.2, Code 2005, is amended to read as
21 follows:

22 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD DEGREE.

23 1. An information or indictment for sexual abuse in the
24 first, second, or third degree committed on or with a person
25 who is under the age of eighteen years shall be found within
26 ten years after the person upon whom the offense is committed
27 attains eighteen years of age, or if the identity of the
28 person against whom the information or indictment is sought is
29 established through the use of a DNA profile, an information
30 or indictment shall be found within three years from the date
31 the identity of the person is identified by the person's DNA
32 profile, whichever is later.

33 2. An information or indictment for any other sexual abuse
34 in the first, second, or third degree shall be found within
35 ten years after its commission, or if the identity of the

1 person against whom the information or indictment is sought is
2 established through the use of a DNA profile, an information
3 or indictment shall be found within three years from the date
4 the identity of the person is identified by the person's DNA
5 profile, whichever is later.

6 3. As used in this section, "identified" means a person's
7 legal name is known and the person has been determined to be
8 the source of the DNA.

9 Sec. 15. Section 901.5, subsection 8A, Code 2005, is
10 amended to read as follows:

11 8A. a. The court shall order DNA profiling of a defendant
12 convicted of an offense that requires profiling under section
13 ~~13.10~~ 81.2.

14 b. Notwithstanding section ~~13.10~~ 81.2, the court may order
15 the defendant to provide a ~~physical-specimen~~ DNA sample to be
16 submitted for DNA profiling if appropriate. In determining
17 the appropriateness of ordering DNA profiling, the court shall
18 consider the deterrent effect of DNA profiling, the likelihood
19 of repeated offenses by the defendant, and the seriousness of
20 the offense.

21 Sec. 16. Section 906.4, unnumbered paragraph 3, Code 2005,
22 is amended to read as follows:

23 Notwithstanding section ~~13.10~~ 81.2, the board may order the
24 defendant to provide a ~~physical-specimen~~ DNA sample to be
25 submitted for DNA profiling as a condition of parole or work
26 release, if appropriate. In determining the appropriateness
27 of ordering DNA profiling, the board shall consider the
28 deterrent effect of DNA profiling, the likelihood of repeated
29 offenses by the defendant, and the seriousness of the offense.

30 Sec. 17. 2002 Iowa Acts, chapter 1080, is repealed.

31 Sec. 18. Section 13.10, Code 2005, is repealed.

32 Sec. 19. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE PRIOR TO
33 EFFECTIVE DATE OF THIS DIVISION OF THIS ACT. A person
34 convicted, adjudicated a delinquent, civilly committed as a
35 sexually violent predator, or found not guilty by reason of

1 insanity, prior to the effective date of this division of this
2 Act, who would otherwise be required to submit a DNA sample
3 under this division of this Act, and who is under the custody,
4 control, or jurisdiction of a supervising agency, shall submit
5 a DNA sample prior to being released from the supervising
6 agency's custody, control, or jurisdiction.

7 Sec. 20. EFFECTIVE DATE. This division of this Act, being
8 deemed of immediate importance, takes effect upon enactment.

9 DIVISION II

10 Sec. 21. Section 81.2, subsection 1, as enacted in
11 division I of this Act, is amended by striking the subsection
12 and inserting in lieu thereof the following:

13 1. A person who receives a deferred judgment for a felony
14 or against whom a judgment or conviction for a felony has been
15 entered shall be required to submit a DNA sample for DNA
16 profiling pursuant to section 81.4.

17 Sec. 22. CONTINGENT EFFECTIVE DATE. The effective date of
18 this division of this Act shall be the later of July 1, 2005,
19 or the date when sufficient funds have been appropriated or
20 are first received to pay the costs of conducting DNA
21 profiling on DNA samples submitted by all convicted felons.
22 The commissioner of public safety shall notify the Code editor
23 when sufficient funds have been appropriated or are first
24 received to pay the costs of complying with this division of
25 this Act.

26 DIVISION III

27 Sec. 23. IMPLEMENTATION OF ACT. Section 25B.2, subsection
28 3, shall not apply to this Act.

29 EXPLANATION

30 This bill relates to requiring certain persons to submit a
31 DNA sample for DNA profiling.

32 DIVISION I - The division moves Code section 13.10 to new
33 Code section 81.2 and modifies the section. The division
34 requires submission of a DNA sample if a person is convicted
35 of or receives a deferred judgment for an offense. The

1 division requires a person civilly committed as a sexually
2 violent predator to provide a DNA sample for DNA profiling
3 prior to the person's discharge or placement in a transitional
4 release program. A juvenile who has been adjudicated a
5 delinquent of a criminal offense requiring a DNA sample under
6 new Code section 81.2 shall also submit a DNA sample for DNA
7 profiling under the division. The division also requires a
8 DNA sample from a person found not guilty by reason of
9 insanity of a criminal offense requiring a DNA sample under
10 new Code section 81.2. Current law provides that only a
11 person convicted of a criminal offense listed in Code section
12 13.10 is required to provide a DNA sample for DNA profiling.

13 The division establishes, in the division of criminal
14 investigation, department of public safety, a state DNA
15 database for storage of DNA profiles and records and a state
16 DNA databank for storage of DNA samples. The division defines
17 "DNA sample" to mean a biological sample provided by any
18 person required to submit a DNA sample or a biological sample
19 submitted for any other permissible purpose. The division
20 defines "DNA profile" to mean the objective form of the
21 results of the DNA analysis performed on the DNA sample.

22 The division provides that a supervising agency with
23 custody, control, or jurisdiction over a person required to
24 submit a DNA sample shall collect the sample. A person
25 required to submit a DNA sample who refuses to provide a
26 sample is subject to contempt proceedings. The division
27 provides that a person collecting the DNA sample is immune
28 from civil or criminal liability if the person collects the
29 sample in a reasonable manner according to generally accepted
30 medical practices or with the procedures set out in
31 administrative rules.

32 The division provides that the division of criminal
33 investigation may contract with a private entity to conduct
34 such profiling.

35 The division provides that a person who knowingly or

1 intentionally discloses, uses, or obtains a DNA sample without
2 authorization commits an aggravated misdemeanor. The bill
3 also provides that any person who knowingly or intentionally
4 alters a DNA sample or sample collection container, or who
5 falsifies the source of a DNA sample, commits a class "D"
6 felony.

7 The division provides that any detention, arrest, or
8 conviction based upon a DNA database match is not invalidated
9 if it is later determined that the DNA profile was obtained or
10 placed into the DNA database by mistake or error.

11 The division provides that a DNA record is a confidential
12 record and may only be disclosed as provided in the bill. A
13 DNA record may be disclosed to a criminal and juvenile justice
14 agency, the federal government for a national database, and
15 any other agency using the confidential record in its official
16 capacity and for criminal defense purposes.

17 The division provides that if a person who is required to
18 submit a DNA sample has the person's conviction, adjudication,
19 or civil commitment subsequently reversed on appeal, the
20 person may file a written request with the division of
21 criminal investigation requesting that all DNA records be
22 expunged. The division also permits a relative of a missing
23 person who voluntarily submitted a DNA sample or a person who
24 submitted a sample for forensic work to request that their DNA
25 sample be expunged. Upon receipt of a certified copy of the
26 order reversing the conviction, adjudication, or civil
27 commitment, and a certified copy of the order dismissing the
28 case, the DNA records shall be expunged unless the destruction
29 of the records would destroy DNA evidence related to another
30 person.

31 If the division of criminal investigation denies the
32 request to expunge their DNA record, the division of criminal
33 investigation is required to notify the person in writing.
34 The bill provides that the denial may be appealed to district
35 court.

1 The division provides that any claim arising or related to
2 the collection of a DNA sample shall proceed under the state
3 tort claims Act in Code chapter 669.

4 The division also requires a person convicted, adjudicated
5 as delinquent, civilly committed as a sexually violent
6 predator, or found not guilty by reason of insanity, prior to
7 the effective date of the division, who would otherwise be
8 required to submit a DNA sample under the division, and who is
9 under the custody, control, or jurisdiction of a supervising
10 agency, to submit a DNA sample prior to being released from
11 the supervising agency's custody, control, or jurisdiction.

12 The division modifies the statute of limitations for any
13 sexual abuse in the first, second, or third degree by allowing
14 a case to be brought against a person within three years from
15 the date the identity of the person is identified by the
16 person's DNA profile. Current law provides that a sexual
17 abuse case must be prosecuted within 10 years of the
18 commission of the crime or within 10 years of the victim
19 attaining the age of 18.

20 The division provides that a person who has been convicted
21 of a felony and who has not been required to submit a DNA
22 sample for DNA profiling may make a motion to the court to
23 require DNA profiling on a DNA sample. Under the division,
24 the court shall grant the person's motion if all of the
25 following apply: the evidence subject to DNA profiling is
26 available and in a condition to be tested; a sufficient chain
27 of custody has been established; the identity of the
28 perpetrator was a significant issue or should have been a
29 significant issue in the underlying criminal offense; the
30 evidence subject to DNA profiling is material to the
31 underlying criminal case; and a DNA profile obtained from the
32 evidence would raise a reasonable probability the person would
33 not have been convicted if DNA profiling existed at the time
34 of the conviction or if DNA profiling had been conducted.

35 The division repeals 2002 Acts, chapter 1080, which

1 requires all felons to submit a DNA sample for DNA profiling
2 upon sufficient funding because the law in the 2002 Acts does
3 not conform with the changes in this division and division II.

4 Division I, being deemed of immediate importance, takes
5 effect upon enactment.

6 DIVISION II - The division provides that a person who
7 receives a deferred judgment for a felony or any convicted
8 felon shall submit a DNA sample for DNA profiling upon the
9 appropriation of sufficient funds to cover the expense of
10 collecting and conducting DNA profiling.

11 Division II becomes effective on the later of July 1, 2005,
12 or the date when sufficient funds have been appropriated or
13 are first received to pay the costs of conducting DNA
14 profiling on DNA samples submitted by all convicted felons,
15 whichever is sooner.

16 Division III provides that the bill may include a state
17 mandate as defined in Code section 25B.3. The bill makes
18 inapplicable Code section 25B.2, subsection 3, which would
19 relieve a political subdivision from complying with a state
20 mandate if funding for the cost of the state mandate is not
21 provided or specified. Therefore, political subdivisions are
22 required to comply with any state mandate included in the
23 bill.

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Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 713 - DNA Database (LSB 1117 HV)

Analyst: Beth Lenstra (Phone: (515) 281-7846) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version - New

Description

Division I of House File 713 adds the following groups to the list of persons required to submit a DNA sample for DNA profiling: sexual predators as defined in Chapter 229.A, Code of Iowa; not guilty by reason of insanity for offenses that require DNA profiling; and juveniles adjudicated as delinquent for offenses that require DNA profiling of an adult offender. The Division also imposes a graduated system of penalties for criminal offenses related to DNA profiling. Division I takes effect upon enactment. Division II requires all convicted felons, including people who receive a deferred judgment for a felony, to submit a DNA sample. This Division is effective when sufficient funds have been appropriated or are first received to pay for the costs of conducting DNA profiling on samples taken from all convicted felons.

Background

1. In FY 2004, there were 212 juveniles adjudicated delinquent under the mandated offenses in Division I, and 282 adults, including those with deferred sentences. The number of sexually violent predators who would be tested in addition to the original offense cannot be determined, but is anticipated to be minimal. Insanity pleas are rare and are not likely to increase the number of tests.
2. The number of convicted felons and adjudicated juveniles who may have already been required to provide a DNA sample under current law is unknown at this time.
3. DNA sampling of all felons is not required until funding is available. DNA sampling of all felons would result in a significant expansion in the number of samples taken. For example, in FY 2004, 4,096 juveniles were adjudicated delinquent for felony offenses, and 8,479 adults were convicted of felony offenses.
4. The Department of Public Safety provides the DNA testing kits.

Assumptions

1. It is anticipated that the number of offenders providing DNA samples under HF 713 will be minimal.
2. The average State costs for one aggravated misdemeanor conviction ranges from \$1,100 to \$5,700.
3. The average State costs for one Class D felony conviction ranges from \$2,800 to \$12,000.
4. These estimates include court costs, indigent defense, probation, prison, and parole, if applicable. The maximum costs for both offenses will be incurred across multiple years while the offender is supervised in the correctional system.

Correctional Impact

The creation of a new offense carries the potential for a correctional impact on court caseloads, prisons, county jails, and Community-Based Corrections (CBC) resources. The correctional impact of HF 713 cannot be determined due to a lack of data. However, that impact is not anticipated to be significant.

Fiscal Impact

The fiscal impact of HF 713 cannot be estimated due to a lack of data. However, that impact is expected to be minimal. The increase in the number of offenders providing DNA samples under Division I of HF 713 is not significant.

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division (CJJP)
State Public Defender
Judicial Branch
Department of Corrections
Department of Public Safety
Department of Human Services

/s/ Holly M. Lyons

March 22, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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HSB 40
PUBLIC SAFETY

Eichhorn, chair

Tjepkes

Heddens

SENATE/HOUSE FILE
BY (PROPOSED ATTORNEY
GENERAL BILL)

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

A BILL FOR

1 An Act relating to requiring certain persons to submit a DNA
2 sample for DNA profiling, authorizing a fee, providing a
3 penalty, and providing effective and contingent effective
4 dates.

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

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DIVISION I

Section 1. NEW SECTION. 81.1 DEFINITIONS.

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

1. "DNA" means deoxyribonucleic acid.

2. "DNA databank" means the repository for DNA samples obtained pursuant to section 81.4.

3. "DNA database" means the collection of DNA profiles and DNA records.

4. "DNA profile" means the objective form of the results of DNA analysis performed on a 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.

5. "DNA profiling" means the procedure established by the division of criminal investigation, department of public safety, for determining a person's genetic identity.

6. "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.

7. "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.

8. "Person required to submit a DNA sample" means a person convicted, adjudicated delinquent, who receives 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.

Sec. 2. NEW SECTION. 81.2 PERSONS REQUIRED TO SUBMIT A DNA SAMPLE.

1. The attorney general shall adopt rules in consultation with the division of criminal investigation, department of public safety, for the purpose of classifying felonies and

1 indictable misdemeanors which shall require the offender to
2 submit a DNA sample for DNA profiling upon confinement in or
3 prior to release from a county jail, upon commitment to the
4 custody of the director of the department of corrections, or
5 prior to discharge of sentence, or as a condition of
6 probation. Factors to be considered shall include the
7 deterrent effect of DNA profiling, the likelihood of repeated
8 violations, and the seriousness of the offense. The offenses
9 that require the offender to submit a DNA sample for DNA
10 profiling shall include but are not limited to the following:

- 11 a. Murder in violation of section 707.2 or 707.3.
 - 12 b. Attempt to commit murder in violation of section
13 707.11.
 - 14 c. Kidnapping in violation of section 710.1, 710.2, or
15 710.3.
 - 16 d. Sexual abuse in violation of section 709.2, 709.3, or
17 709.4.
 - 18 e. Assault with intent to commit sexual abuse in violation
19 of section 709.11.
 - 20 f. Assault while participating in a felony in violation of
21 section 708.3.
 - 22 g. Burglary in the first degree in violation of section
23 713.3.
- 24 2. A person determined to be a sexually violent predator
25 pursuant to chapter 229A shall be required to submit a DNA
26 sample for DNA profiling pursuant to section 81.4 prior to
27 discharge or placement in a transitional release program.
- 28 3. A person found not guilty by reason of insanity of an
29 offense that requires DNA profiling shall be required to
30 submit a DNA sample for DNA profiling pursuant to section 81.4
31 as part of the person's treatment management program.
- 32 4. A juvenile adjudicated delinquent of an offense that
33 requires DNA profiling of an adult offender shall be required
34 to submit a DNA sample for DNA profiling pursuant to section
35 81.4 as part of the disposition of the juvenile's case.

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

8 Sec. 3. NEW SECTION. 81.3 ESTABLISHMENT OF DNA DATABASE
9 AND DNA DATABANK.

10 1. A state DNA database and a state DNA databank are
11 established under the control of the division of criminal
12 investigation, department of public safety. The division of
13 criminal investigation shall conduct DNA profiling of a DNA
14 sample submitted in accordance with this section.

15 2. A DNA sample shall be submitted, and the division of
16 criminal investigation shall store and maintain DNA records in
17 the DNA database and DNA databank for persons required to
18 submit a DNA sample.

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

- 22 a. Crime scene evidence and forensic casework.
23 b. A relative of a missing person.
24 c. An anonymous DNA profile used for forensic validation,
25 forensic protocol development, or quality control purposes, or
26 for the establishment of population statistics database.

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

31 Sec. 4. NEW SECTION. 81.4 COLLECTING, SUBMITTING,
32 ANALYZING, IDENTIFYING, AND STORING DNA SAMPLES AND DNA
33 RECORDS.

34 1. The division of criminal investigation shall adopt
35 rules for the collection, submission, analysis,

1 identification, storage, and disposition of DNA records.

2 2. A supervising agency having control, custody, or
3 jurisdiction over a person shall collect a DNA sample from a
4 person required to submit a DNA sample. The supervising
5 agency shall collect a DNA sample, upon admittance to the
6 pertinent institution or facility, of the person required to
7 submit a DNA sample or at a determined date and time set by
8 the supervising agency. If a person required to submit a DNA
9 sample is confined at the time a DNA sample is required, the
10 person shall submit a DNA sample as soon as practicable. If a
11 person required to submit a DNA sample is not confined after
12 the person is required to submit a DNA sample, the supervising
13 agency shall determine the date and time to collect the DNA
14 sample.

15 3. The supervising agency may collect a reasonable fee
16 from a person required to submit a DNA sample. If the person
17 required to submit a DNA sample is indigent, a waiver of the
18 fee may be obtained from the supervising agency by the person.

19 4. A person required to submit a DNA sample who refuses to
20 submit a DNA sample may be subject to contempt proceedings
21 pursuant to chapter 665 until the DNA sample is submitted.

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

25 Sec. 5. NEW SECTION. 81.5 CIVIL AND CRIMINAL LIABILITY
26 -- LIMITATION.

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

34 Sec. 6. NEW SECTION. 81.6 CRIMINAL OFFENSE.

35 1. A person who knowingly or intentionally does any of the

1 following commits an aggravated misdemeanor:

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

5 b. Uses or obtains a DNA record for a purpose other than
6 what is authorized under this chapter.

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

11 Sec. 7. NEW SECTION. 81.7 CONVICTION OR ARREST NOT
12 INVALIDATED.

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

17 Sec. 8. NEW SECTION. 81.8 CONFIDENTIAL RECORDS.

18 1. A DNA record shall be considered a confidential record
19 and disclosure of a DNA record is only authorized pursuant to
20 this section.

21 2. Confidential DNA records under this section may be
22 released to the following agencies for law enforcement
23 identification purposes:

24 a. Any criminal or juvenile justice agency as defined in
25 section 692.1.

26 b. Any criminal or juvenile justice agency in another
27 jurisdiction.

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

31 4. A DNA record or other forensic information developed
32 pursuant to this chapter may be released for use in a criminal
33 or juvenile delinquency proceeding in which the state is a
34 party and where the DNA record or forensic information is
35 relevant and material to the subject of the proceeding. Such

1 a record or information may become part of a public transcript
2 or other public recording of such a proceeding.

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

8 Sec. 9. NEW SECTION. 81.9 EXPUNGEMENT OF DNA RECORDS.

9 1. A person whose DNA record has been included in the DNA
10 database or DNA databank established pursuant to section 81.3
11 may request, in writing to the division of criminal
12 investigation, expungement of the DNA record from the DNA
13 database and DNA databank based upon the person's conviction,
14 adjudication, or civil commitment which caused the submission
15 of the DNA sample being reversed on appeal and the case
16 dismissed. The written request shall contain a certified copy
17 of the final court order reversing the conviction,
18 adjudication, or civil commitment, and a certified copy of the
19 dismissal, and any other information necessary to ascertain
20 the validity of the request.

21 2. The division of criminal investigation, upon receipt of
22 a written request that validates reversal on appeal of a
23 person's conviction, adjudication, or commitment, and
24 subsequent dismissal of the case, or upon receipt of a written
25 request by a person who voluntarily submitted a DNA sample
26 under section 81.3, subsection 3, paragraph "b", or upon
27 receipt of a written request by a person who voluntarily
28 submitted a DNA sample pursuant to section 81.3, subsection 3,
29 paragraph "b", shall expunge all of the DNA records and
30 identifiable information of the person in the DNA database and
31 DNA databank. However, if the division of criminal
32 investigation determines that the person is otherwise
33 obligated to submit a DNA sample, the DNA records shall not be
34 expunged. If the division of criminal investigation denies an
35 expungement request, the division shall notify the person

1 requesting the expungement of the decision not to expunge the
2 DNA record and the reason supporting its decision. The
3 division of criminal investigation decision is subject to
4 judicial review pursuant to chapter 17A. The division of
5 criminal investigation shall adopt rules governing the
6 expungement procedure and a review process.

7 3. The division of criminal investigation is not required
8 to expunge or destroy a DNA record pursuant to this section,
9 if expungement or destruction of the DNA record would destroy
10 evidence related to another person.

11 Sec. 10. Section 229A.7, Code 2005, is amended by adding
12 the following new subsection:

13 NEW SUBSECTION. 5A. If the court or jury determines that
14 the respondent is a sexually violent predator, the court shall
15 order the respondent to submit a DNA sample for DNA profiling
16 pursuant to section 81.4.

17 Sec. 11. Section 232.52, Code 2005, is amended by adding
18 the following new subsection:

19 NEW SUBSECTION. 10. The court shall order a juvenile
20 adjudicated a delinquent for an offense that requires DNA
21 profiling under section 81.2 to submit a DNA sample for DNA
22 profiling pursuant to section 81.4.

23 Sec. 12. Section 669.14, Code 2005, is amended by adding
24 the following new subsection:

25 NEW SUBSECTION. 15. Any claim arising from or related to
26 the collection of a DNA sample for DNA profiling pursuant to
27 section 81.4 or a DNA profiling procedure performed by the
28 division of criminal investigation, department of public
29 safety.

30 Sec. 13. Section 802.2, Code 2005, is amended to read as
31 follows:

32 802.2 SEXUAL ABUSE -- FIRST, SECOND, OR THIRD DEGREE.

33 1. An information or indictment for sexual abuse in the
34 first, second, or third degree committed on or with a person
35 who is under the age of eighteen years shall be found within

1 ten years after the person upon whom the offense is committed
2 attains eighteen years of age, or if the identity of the
3 person against whom the information or indictment is sought is
4 established through the use of a DNA profile, an information
5 or indictment shall be found within three years from the date
6 the identity of the person is identified by the person's DNA
7 profile, whichever is later.

8 2. An information or indictment for any other sexual abuse
9 in the first, second, or third degree shall be found within
10 ten years after its commission, or if the identity of the
11 person against whom the information or indictment is sought is
12 established through the use of a DNA profile, an information
13 or indictment shall be found within three years from the date
14 the identity of the person is identified by the person's DNA
15 profile, whichever is later.

16 3. As used in this section, "identified" means a person's
17 legal name is known and the person has been determined to be
18 the source of the DNA.

19 Sec. 14. Section 901.5, subsection 8A, Code 2005, is
20 amended to read as follows:

21 8A. a. The court shall order DNA profiling of a defendant
22 convicted of an offense that requires profiling under section
23 ~~13-10~~ 81.2.

24 b. Notwithstanding section ~~13-10~~ 81.2, the court may order
25 the defendant to provide a ~~physical-specimen~~ DNA sample to be
26 submitted for DNA profiling if appropriate. In determining
27 the appropriateness of ordering DNA profiling, the court shall
28 consider the deterrent effect of DNA profiling, the likelihood
29 of repeated offenses by the defendant, and the seriousness of
30 the offense.

31 Sec. 15. Section 906.4, unnumbered paragraph 3, Code 2005,
32 is amended to read as follows:

33 Notwithstanding section ~~13-10~~ 81.2, the board may order the
34 defendant to provide a ~~physical-specimen~~ DNA sample to be
35 submitted for DNA profiling as a condition of parole or work

1 release, if appropriate. In determining the appropriateness
2 of ordering DNA profiling, the board shall consider the
3 deterrent effect of DNA profiling, the likelihood of repeated
4 offenses by the defendant, and the seriousness of the offense.

5 Sec. 16. 2002 Iowa Acts, chapter 1080, is repealed.

6 Sec. 17. Section 13.10, Code 2005, is repealed.

7 Sec. 18. PERSONS REQUIRED TO SUBMIT A DNA SAMPLE PRIOR TO
8 EFFECTIVE DATE OF THIS DIVISION OF THIS ACT. A person
9 convicted, adjudicated a delinquent, civilly committed as a
10 sexually violent predator, or found not guilty by reason of
11 insanity, prior to the effective date of this division of this
12 Act, who would otherwise be required to submit a DNA sample
13 under this division of this Act, and who is under the custody,
14 control, or jurisdiction of a supervising agency, shall submit
15 a DNA sample prior to being released from the supervising
16 agency's custody, control, or jurisdiction.

17 Sec. 19. EFFECTIVE DATE. This division of this Act, being
18 deemed of immediate importance, takes effect upon enactment.

19 DIVISION II

20 Sec. 20. Section 81.2, subsection 1, as enacted in
21 division I of this Act, is amended by striking the subsection
22 and inserting in lieu thereof the following:

23 1. A person against whom a judgment or conviction for a
24 felony has been entered shall be required to submit a DNA
25 sample for DNA profiling pursuant to section 81.4.

26 Sec. 21. CONTINGENT EFFECTIVE DATE. The effective date of
27 this division of this Act shall be the later of July 1, 2005,
28 or the date when sufficient funds have been appropriated or
29 are first received to pay the costs of conducting DNA
30 profiling on DNA samples submitted by all convicted felons.
31 The commissioner of public safety shall notify the Code editor
32 when sufficient funds have been appropriated or are first
33 received to pay the costs of complying with this division of
34 this Act.

35

EXPLANATION

1 This bill relates to requiring certain persons to submit a
2 DNA sample for DNA profiling.

3 DIVISION I - The division moves Code section 13.10 to new
4 Code section 81.2 and modifies the section. The division
5 requires submission of a DNA sample if a person is convicted
6 of or receives a deferred judgment for an offense. The
7 division requires a person civilly committed as a sexually
8 violent predator to provide a DNA sample for DNA profiling
9 prior to the person's discharge or placement in a transitional
10 release program. A juvenile who has been adjudicated a
11 delinquent of a criminal offense requiring a DNA sample under
12 new Code section 81.2 shall also submit a DNA sample for DNA
13 profiling under the division. The division also requires a
14 DNA sample from a person found not guilty by reason of
15 insanity of a criminal offense requiring a DNA sample under
16 new Code section 81.2. Current law provides that only a
17 person convicted of a criminal offense listed in Code section
18 13.10 is required to provide a DNA sample for DNA profiling.

19 The division establishes, in the division of criminal
20 investigation, department of public safety, a state DNA
21 database for storage of DNA profiles and records and a state
22 DNA databank for storage of DNA samples. The division defines
23 "DNA sample" to mean a biological sample provided by any
24 person required to submit a DNA sample or a biological sample
25 submitted for any other permissible purpose. The division
26 defines "DNA profile" to mean the objective form of the
27 results of the DNA analysis performed on the DNA sample.

28 The division provides that a supervising agency with
29 custody, control, or jurisdiction over a person required to
30 submit a DNA sample shall collect the sample, and may charge
31 the person a reasonable fee. If the person is indigent, the
32 fee may be waived. A person required to submit a DNA sample
33 who refuses to provide a sample is subject to contempt
34 proceedings. The division provides that a person collecting
35 the DNA sample is immune from civil or criminal liability if

1 the person collects the sample in a reasonable manner
2 according to generally accepted medical practices or with the
3 procedures set out in administrative rules.

4 The division provides that the division of criminal
5 investigation may contract with a private entity to conduct
6 such profiling.

7 The division provides that a person who knowingly or
8 intentionally discloses, uses, or obtains a DNA sample without
9 authorization commits an aggravated misdemeanor. The bill
10 also provides that any person who knowingly or intentionally
11 alters a DNA sample or sample collection container, or who
12 falsifies the source of a DNA sample, commits a class "D"
13 felony.

14 The division provides that any detention, arrest, or
15 conviction based upon a DNA database match is not invalidated
16 if it is later determined that the DNA profile was obtained or
17 placed into the DNA database by mistake or error.

18 The division provides that a DNA record is a confidential
19 record and may only be disclosed as provided in the bill. A
20 DNA record may be disclosed to a criminal and juvenile justice
21 agency, the federal government for a national database, and
22 any other agency using the confidential record in its official
23 capacity and for criminal defense purposes.

24 The division provides that if a person who is required to
25 submit a DNA sample has the person's conviction, adjudication,
26 or civil commitment subsequently reversed on appeal, the
27 person may file a written request with the division of
28 criminal investigation requesting that all DNA records be
29 expunged. The division also permits a relative of a missing
30 person who voluntarily submitted a DNA sample or a person who
31 submitted a sample for forensic work to request that their DNA
32 sample be expunged. Upon receipt of a certified copy of the
33 order reversing the conviction, adjudication, or civil
34 commitment, and a certified copy of the order dismissing the
35 case, the DNA records shall be expunged unless the destruction

1 of the records would destroy DNA evidence related to another
2 person.

3 If the division of criminal investigation denies the
4 request to expunge their DNA record, the division of criminal
5 investigation is required to notify the person in writing.
6 The bill provides that the denial may be appealed to district
7 court.

8 The division provides that any claim arising or related to
9 the collection of a DNA sample shall proceed under the state
10 tort claims Act in Code chapter 669.

11 The division also requires a person convicted, adjudicated
12 as delinquent, civilly committed as a sexually violent
13 predator, or found not guilty by reason of insanity, prior to
14 the effective date of the division, who would otherwise be
15 required to submit a DNA sample under the division, and who is
16 under the custody, control, or jurisdiction of a supervising
17 agency, to submit a DNA sample prior to being released from
18 the supervising agency's custody, control, or jurisdiction.

19 The division modifies the statute of limitations for any
20 sexual abuse in the first, second, or third degree by allowing
21 a case to be brought against a person within three years from
22 the date the identity of the person is identified by the
23 person's DNA profile. Current law provides that a sexual
24 abuse case must be prosecuted within 10 years of the
25 commission of the crime or within 10 years of the victim
26 attaining the age of 18.

27 The division repeals 2002 Acts, chapter 1080, which
28 requires all felons to submit a DNA sample for DNA profiling
29 upon sufficient funding because the law in the 2002 Acts does
30 not conform with the changes in this division and division II.

31 Division I, being deemed of immediate importance, takes
32 effect upon enactment.

33 DIVISION II - The division provides that all convicted
34 felons shall submit a DNA sample for DNA profiling upon the
35 appropriation of sufficient funds to cover the expense of

1 collecting and conducting DNA profiling on all convicted
2 felons.

3 Division II becomes effective on the later of July 1, 2005,
4 or the date when sufficient funds have been appropriated or
5 are first received to pay the costs of conducting DNA
6 profiling on DNA samples submitted by all convicted felons,
7 whichever is sooner.

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