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[SF 470](#) – Child Pornography (LSB1847SV)  
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Fiscal Note Version – New

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### **Description**

[Senate File 470](#) modifies the offense of knowingly purchasing or possessing a visual depiction containing a pictorial representation of a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. The Bill provides that a visual depiction containing pictorial representations of the same minor are prosecuted and punished as separate offenses for each pictorial representation of the same minor, rather than as one offense.

### **Background**

Under Iowa Code section [728.12\(3\)](#), it is unlawful to knowingly purchase or possess a visual depiction of a minor engaging in a prohibited sexual act or the simulation of a prohibited sexual act. A visual depiction containing pictorial representations of different minors is prosecuted and punished as separate offenses for each pictorial representation of a different minor. However, violations involving multiple visual depictions of the same minor are prosecuted and punished as one offense.

The penalty for a violation of Iowa Code section 728.12(3) is an aggravated misdemeanor for a first offense and a Class D felony for a second or subsequent offense, and it is a Tier II sex offense under the Sex Offender Registry. A person who violates Iowa Code section 728.12(3) is subject to a special sentence under Iowa Code section [903B.2](#).

An aggravated misdemeanor is punishable by confinement of up to two years and a fine of at least \$855 but not more than \$8,540. A Class D felony is punishable by confinement of up to five years and a fine of at least \$1,025 but not more than \$10,245. Registration as a Tier II sex offender requires an offender to report in person to verify the offender's registration information every six months.

A person who violates Iowa Code section 728.12(3) is subject to a special sentence pursuant to Iowa Code section 903B.2. A special sentence is a punishment in addition to the punishment for the underlying criminal offense and consists of committing the individual to the custody of the Department of Corrections (DOC) for 10 years. A person serving a special sentence begins the sentence in the same manner as if the individual were on parole or part of a work release program. The special sentence is subject to revocation for up to two years for a first revocation and up to five years for a second or any subsequent revocation.

### **Assumptions**

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay (LOS); revocation rates; plea bargaining; and other criminal justice system policies and practices.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.

## **Correctional Impact**

Senate File 470 modifies an existing criminal offense, and the correctional impact cannot be estimated because the number of past convictions involving multiple images of the same minor is not known. The Bill could increase the number of convictions for this offense, but the extent of this increase cannot be estimated.

**Table 1** below shows estimates for sentencing to State prison, parole, probation, or community-based corrections (CBC) residential facilities; LOS under those supervisions; and supervision marginal costs per day for all convictions of Class D felonies and aggravated misdemeanors for sex offenses. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 20, 2023, for information related to the correctional system.

**Table 1 — Sentencing Estimates and LOS**

Conviction Offense Class	Percent Ordered to State Prison	FY 22 Avg LOS in Prison in Months (All Releases)	FY 22 Marginal Cost Per Day Prison	Percent Ordered to Probation	FY 22 Avg LOS on Probation in Months	FY 22 Avg Cost Per Day Probation	Percent Sentenced to CBC Residential Facility	FY 22 Marginal Cost Per Day CBC	Percent Ordered to County Jail	Marginal Cost Per Day Jail	FY 22 Avg LOS on Parole in Months	FY 22 Marginal Cost Per Day Parole
D Felony (Sex)	76.3%	25.6	\$23.42	51.7%	47.3	\$7.27	4.2%	\$20.67	31.4%	\$50.00	7.0	\$7.27
Aggravated Misdemeanor (Sex)	70.7%	12.6	\$23.42	57.2%	26.2	\$7.27	2.4%	\$20.67	35.2%	\$50.00	16.0	\$7.27

## **Minority Impact**

Senate File 470 modifies an existing criminal offense, and the minority impact cannot be estimated. However, if the Bill increases the number of convictions for this offense, it may disproportionately impact African American individuals. Of the 148 convictions under Iowa Code section 728.12(3) in FY 2022, 89.9% involved Caucasian individuals, 7.1% involved African American individuals, and 3.0% involved individuals of other races. Iowa's population is 84.5% Caucasian, 3.6% African American, and 11.9% other races. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 20, 2023, for information related to minorities in the criminal justice system.

## **Fiscal Impact**

Senate File 470 modifies an existing criminal offense, and the fiscal impact cannot be estimated because the number of past convictions involving multiple images of the same minor is not known. The average State cost per offense for a Class D felony ranges from \$9,500 to \$17,400. The average State cost per offense for an aggravated misdemeanor ranges from \$5,000 to \$9,600. The estimated impact to the State General Fund includes operating costs incurred by the Judicial Branch, the Indigent Defense Fund, and the DOC. The cost would be incurred across multiple fiscal years for prison and parole supervision.

## **Sources**

Division of Criminal and Juvenile Justice Planning, Department of Human Rights  
Department of Corrections  
Legislative Services Agency

/s/ Jennifer Acton

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.