



HF 563 – Child Pornography, Penalties (LSB 2462HV)

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Fiscal Note Version – New

Description

House File 563 amends [Iowa Code section 728.12\(3\)](#) (Sexual Exploitation of a Minor) to increase the penalty for knowingly purchasing or possessing a visual depiction of a minor engaged in certain acts from an aggravated misdemeanor to a Class “D” felony. The penalty is a Class “C” felony for a second or subsequent conviction. This Bill provides that certain offenders are guilty of an aggravated misdemeanor for the first offense, rather than a Class “D” felony.

Background

Correctional and Fiscal Information

- Current law provides for an aggravated misdemeanor penalty for violating [Iowa Code section 728.12\(3\)](#) – possessing child pornography. According to the Justice Data Warehouse, there were six offenders convicted of this aggravated misdemeanor penalty in FY 2012. All of the offenders were sentenced to probation.
- This Bill eliminates the sentencing option of an aggravated misdemeanor penalty. According to the Justice Data Warehouse, 50.0% of Class “D” felony convictions under [Iowa Code chapter 728](#) are sentenced to State prison while 50.0% are sentenced to probation.
- Sex offenders supervised by Community-Based Corrections (CBC) for either probation or parole may be required to wear an electronic monitoring device and be supervised at the intensive level. They are also required to participate in the Sex Offender Treatment Program (SOTP).
- Sex offenders are subject to the requirements of the Sex Offender Registry (SOR) for at least 10 years. The SOR is administered by the Department of Public Safety (DPS).
- According to the Justice Data Warehouse, the Criminal and Juvenile Justice Planning Division, the Office of the State Court Administrator, the DPS, the Office of the State Public Defender, and the Department of Corrections, the following are estimates for sentencing, length of stay under supervision, and costs for an aggravated misdemeanor and a Class “D” felony conviction for sexual exploitation of a minor:

Criminal Justice System Information

Conviction Offense Class	Percent Sentenced to State Prison	Avg Length of Stay in Prison	Marginal Cost Per Day	Percent Sentenced to Probation	Avg Length of Stay on Probation	Avg Length of Stay on Parole	Average Cost for Sex Offender Supervision ISP and SOTP in CBC	Special Sentence of 10 Years After Discharge of Original Sentence	Sex Offender Registry for at Least 10 years	Cost of Indigent Defense	Average Cost Per Case for Judicial Branch
Aggravated Misdemeanor	0.0%	0	\$0.00	100.0%	20.4 months	5.5 months	\$17.91	Yes	Yes	\$1,200	\$209
Class "D" Felony	50.0%	31.7 months	\$17.60	50.0%	33.9 months	12.5 months	\$17.91	Yes	Yes	\$1,200	\$427

In addition to the costs in the above table, there is an additional cost to the State prison system for providing sex offender treatment while incarcerated.

Minority Data Information

According to the Justice Data Warehouse, 50.0% of the offenders convicted in FY 2012 for violations of [Iowa Code section 728.12\(3\)](#) were White, 16.7% were Black, 16.7% were Hispanic, and 16.6% were of an unknown race/ethnicity. Minority offenders are disproportionately convicted compared to their percentage of the Iowa population. Refer to the [Minority Impact Memo](#), dated February 11, 2013, for information related to minorities in the criminal justice system.

Assumptions

Correctional and Fiscal Information

- Charge, conviction, and sentencing patterns and trends will not change over the projection period.
- Prisoner length of stay, revocation rates, plea bargaining, and other criminal justice policies and practices will not change over the projection period.
- The law will become effective July 1, 2013. 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.
- Current convictions for aggravated misdemeanors will become Class “D” felony convictions under this Bill.
- The impact of the provision that certain offenders are guilty of an aggravated misdemeanor for the first offense, rather than a Class “D” felony cannot be estimated but is expected to be minimal.
- These will be bench trials.
- The impact on the indigent defense budget is expected to be minimal. The fee cap for an aggravated misdemeanor is the same as a Class “D” felony — \$1,200.

Minority Data Information: The impact on minorities will remain consistent with current data.

Summary of Impacts

Correctional Impact

There will be an estimated six offenders annually convicted under this Bill’s provisions. Three will be sentenced to prison while three will be sentenced to probation. These offenders will have been convicted of an aggravated misdemeanor and received a probation sentence under current law.

There will be one offender admitted to prison in FY 2014 and three annually thereafter. The prison population will increase by one offender in FY 2014, four offenders in FY 2015, and six offenders annually thereafter. The population exceeds admissions because the average length of stay in prison exceeds two years.

The probation population will increase by three offenders annually. While this is not a significant increase in the overall population, these offenders will remain under supervision for a longer period than current law. Refer to the [January 2012 Task Force Report to the General Assembly](#) as prepared by the Criminal and Juvenile Justice Planning Division for the [Sex Offender Research Council](#) for additional statistical information regarding sex offender supervision in Iowa.

Minority Impact

It is expected this Bill will have a disproportionate impact on minorities because approximately 33.4% of offenders convicted under this Bill's provisions may be minorities, specifically Blacks and Hispanics. This Bill shifts aggravated misdemeanor convictions to Class "D" felony convictions. Enhanced penalties will result in an increased number of minority offenders supervised in the correctional system, and they will be supervised for a longer period than under current law.

Fiscal Impact

The fiscal impact is estimated to be \$13,600 in FY 2014 and \$66,200 in FY 2015 to the State General Fund as indicated in the table below. Costs for the Judicial Branch are expected to level off in FY 2015. State prison costs are expected to continue to increase through FY 2016. Costs for CBC supervision are expected to continue increasing across the five-year projection period because of the long length of stay due to the Special Sentence.

State General Fund Fiscal Impact

	FY 2014	FY 2015
Judicial Branch	\$ 700	\$ 1,300
State Prison	3,200	25,700
CBC	9,700	39,200
	<u>\$ 13,600</u>	<u>\$ 66,200</u>

Sources

Department of Human Rights, Criminal and Juvenile Justice Planning Division
Department of Corrections
Office of the State Public Defender
State Court Administrator's Office
Department of Human Services
Department of Public Safety

/s/ Holly M. Lyons

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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.
