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**SF 392** – Sexual Misconduct with Arrested or Detained Persons (LSB1481SV)  
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Fiscal Note Version – New

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### **Description**

**Senate File 392** relates to sexual misconduct by a peace officer with offenders and juveniles in the peace officer's custody, providing that any peace officer who engages in a sex act with an individual, including a juvenile, in the peace officer's custody commits a Class D felony. Under current law, a peace officer who engages in a sex act with an individual, including a juvenile, in the peace officer's custody commits an aggravated misdemeanor.

The Bill defines "custody" as the detention of a person by lawful authority or process, and specifies that the term "peace officer" includes sheriffs and their regular deputies who are subject to mandated law enforcement training, marshals and police officers of cities, peace officer members of the Department of Public Safety, parole and probation officers, special security officers employed by the Board of Regents institutions, conservation officers, employees of the Department of Transportation who are designated as peace officers by resolution of the Department, employees of an aviation authority designated as peace officers by the authority, and other persons as may be so designated by law.

### **Background**

A Class D felony is punishable by confinement for no more than five years and a fine of at least \$750 but not more than \$7,500. In FY 2018, there were two aggravated misdemeanor convictions under Iowa Code section [709.16](#) for sexual misconduct with an offender at a county jail.

An individual who violates the provisions of this Bill is subject to a special sentence pursuant to Iowa Code section [903B.2](#). A special sentence is defined as 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 for a period of 10 years. An individual 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.

Additionally, a person who violates the provisions of this Bill is designated as a tier II sex offender under Iowa Code section [692A.102\(1\)\(b\)\(12\)](#) if the victim is 13 years of age or older, or as a tier III sex offender pursuant to Iowa Code section [692A.102\(1\)\(c\)\(28\)](#) if the victim is under the age of 13. In either scenario, the person committing the offense must register as a sex offender pursuant to Iowa Code section [692A.103](#).

### **Assumptions**

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay; 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**

The correctional impact of [SF 392](#) cannot be determined. The Bill establishes a new criminal offense, and the number of convictions cannot be estimated.

**Table 1** below shows estimates for sentencing to State prison, parole, probation, or Community-Based Corrections (CBC) residential facilities; length of stay (LOS) under those supervisions; and supervision marginal costs per day for all convictions of Class D felonies (involving sex crimes). Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 8, 2019, for information related to the correctional system.

**Table 1 — Sentencing Estimates and Length of Stay (LOS)**

Conviction Offense Class	Percent to Prison	FY 18 Avg Length of Stay Prison (months)	FY 18 Marginal Prison Cost/Day	Percent to Probation	FY 18 Avg Length of Stay Probation (months)	FY 18 Avg Cost/Day Probation	Percent to CBC	FY 18 Marginal CBC Cost/Day	FY 18 Avg Length of Stay Parole (months)	FY 18 Marginal Cost/Day Parole	Percent to County Jail	Marginal County Jail Cost/Day
Class D Felony (Sex)	79.0%	34.8	\$ 19.93	49.0%	42.9	\$ 5.38	10.0%	\$ 11.85	2.7	\$ 5.38	19.0%	\$ 50

### **Minority Impact**

The minority impact of [SF 392](#) is unknown. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 7, 2019, for information related to minorities in the criminal justice system.

### **Fiscal Impact**

The fiscal impact of [SF 392](#) cannot be estimated. The Bill establishes a new criminal offense, and the resulting cost to the justice system cannot be estimated. **Table 2** shows estimates for the average State cost per offense class type. The estimates include operating costs incurred by the Judicial Branch, the State Public Defender, and the Department of Corrections for one additional conviction. The cost would be incurred across multiple fiscal years for prison and parole supervision.

**Table 2 — Average State Cost Per Offense Class Type**

Offense Class	Total Minimum Cost	Total Maximum Cost
Class D Felony	\$9,200	\$14,100

### **Source**

Criminal and Juvenile Justice Planning Division, Department of Human Rights

/s/ Holly M. Lyons

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