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[HF 753](#) – Public Defenders, Discovery Request Fees (LSB1214HZ)  
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Fiscal Note Version – New

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**Description**

[House File 753](#) relates to the assessment of fees when a public defender or designee requests copies of certain documents. The Bill requires that an agency furnish copies of any document in the possession of the agency that the agency has the technological capacity to duplicate at a cost not to exceed \$10 per document, upon request of the State Public Defender, a public defender office, or an attorney or nonprofit legal organization appointed by the court as a designee of the State Public Defender.

[House File 753](#) provides that if the production of a videotape would require extensive editing due to confidentiality concerns, the court may issue a protective order restricting access to only the defendant, the State Public Defender, a public defender office, the county attorney, law enforcement, or an attorney or nonprofit legal organization appointed by the court as a designee of the State Public Defender.

**Background**

Currently, State agencies and local governments may charge a fee to the State Public Defender for documents including but not limited to: police reports, photographs, grand jury transcripts, audiotapes, videotapes, transcripts of audiotapes or videotapes, audio or video files on storage systems, transcripts of audio or video files on storage systems, and other items related to investigation or legal representation being conducted by the public defender or designee. The fees vary by the local or State agency providing the document and the document being provided. The fees are paid from the Indigent Defense Fund.

**Assumptions**

- The documents applicable to the Bill include any expense item or miscellaneous claim with a description including “discovery,” or with a primary keyword of “DVD,” “video,” “CD,” “evidence,” “tape,” “records,” or “911.”
- The documents not applicable to the Bill include any expense item or miscellaneous claim with a description of “unspecified copies,” or with a description of “mileage,” “postage,” “parking,” “copies,” “miscellaneous,” or “phone.”
- In FY 2018, payments from the Indigent Defense Fund to State, county, and municipal units for costs totaled \$97,494. It is assumed that payments from the Fund will remain consistent in future fiscal years.
- The Bill will not require clerk of court offices to provide paper copies of electronic documents that are already available electronically.

**Fiscal Impact**

**Office of the State Public Defender**

[House File 753](#) is estimated to reduce payments from the Indigent Defense Fund to State, county, and municipal units for discovery costs. The total amount of savings cannot be

determined, but the \$10 fee cap will likely provide for savings to the Indigent Defense Fund. In FY 2018, payments from the Indigent Defense Fund to State, county, and municipal units for costs totaled \$97,494. The Bill may also reduce indigent defense costs by an unspecified amount because it would reduce attorney time in negotiations and disputes regarding payments for copies of documents and videos and the costs of production of other items of discovery.

### **Local Government Impact**

[House File 753](#) is estimated to have an impact on several local agencies applicable under the Bill, including but not limited to local law enforcement and county attorneys. Due to the varying nature of fees charged by local agencies for discovery materials, the overall local impact of the \$10 fee cap cannot be determined and will vary on a case-by-case basis.

### **Possible Miscellaneous Costs**

#### Department of Public Safety

[House File 753](#) may have a fiscal impact to the Department of Public Safety (DPS) operating costs. Currently, all divisions within the DPS work criminal cases and pass investigative reports and documents to prosecutors, who ultimately turn over items to defense counsel. Under this Bill, if defense counsel comes directly to the DPS for discovery requests, DPS funding could be used for the cost of copying requested documents. The investigative divisions within the DPS open approximately 2,000 criminal investigations per year. It is estimated each investigation will require one flash drive to comply with the proposed legislation. In addition to the costs of purchasing flash drives or other devices to transfer requested information or documents, there will be an operational impact in that duties will be added to existing staff to accomplish this transfer of documents. The DPS estimates a cost of \$80,000 per year to the investigative divisions under this legislation.

#### Judicial Branch

[House File 753](#) may increase expenses of the Judicial Branch operating budget; however, due to the uncertainty of document requests the fiscal impact cannot be determined. With the shortage of court reporters, the courts may move toward the use of advanced audio recording systems for making the court record and the use of remote video conferencing for conducting court hearings. These records would be covered under this Bill. Providing copies of the audio or video records may create a burden on administrative staff time, as well as creating costs for making and providing the copy. The Judicial Branch currently charges a fee to the State Public Defender for DVD and U.S. mail costs. Under this Bill, there will be a \$10 fee cap for each document.

### **Sources**

Office of the State Public Defender  
Department of Public Safety  
Judicial Branch

/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.

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