



SF 589 – Criminal Justice Reform, Omnibus (LSB1084SV)
Analyst: Laura Book (515.205.9275) laura.book@legis.iowa.gov
Fiscal Note Version – As amended and passed by the Senate

Description

[Senate File 589](#) as amended and passed by the Senate, relates to criminal law and procedure including certain related administrative proceedings, provides penalties, and includes effective date provisions.

Division I — Expungements

Description

Division I relates to the expungement of certain misdemeanor offenses. The Division provides that upon the application of a defendant convicted of a misdemeanor, the court shall enter an order expunging the record of such a criminal case, as a matter of law, if the defendant has established the following:

- More than eight years have passed since the date of the conviction;
- The defendant has no pending criminal charges;
- The defendant has not previously been granted two deferred judgements; and
- The defendant has paid all court costs, fees, fines, restitution, and any other financial obligations ordered by the court or assessed by the clerk of the district court.

The Division states that a person shall be granted an expungement of a record one time in the person’s lifetime. After receipt of notice from the clerk of the district court that a record of conviction has been expunged, the record of conviction shall be removed from the criminal history data files maintained by the Department of Public Safety (DPS) if such a record was maintained in the criminal history data files.

The Division applies to misdemeanor convictions that occur prior to, on, or after July 1, 2019.

Background

Under Iowa Code section [907.1](#), “expunged” refers to the court’s criminal record with reference to a deferred judgment or any other criminal record that has been segregated in a secure area or database which is exempted from public access.

Assumptions

- All applicants will have to pay a law enforcement agency to conduct an interstate criminal background check and provide a written and certified/verified report on that background check with an Application for Expungement.
- Clerks of court are not allowed to do legal research. Therefore, all applicants will have to pay an attorney or have another authorized entity review the report on the criminal background check to verify that none of the charges revealed in the report meet any of the disqualifying criteria, and that the applicant has paid all court debt. If private attorneys or other outside entities are not required to conduct this review, Judicial Branch law clerks might have to do so.

- There will be 5,000 applications per year to expunge misdemeanors.
- If required to do the research, Judicial Branch law clerks will spend 45 minutes, at a rate of \$34 per hour, to conduct a review of an application.
- Clerk staff will spend 10 minutes preparing either an order of expungement or a notice that the applicant does not qualify, at a rate of \$26 per hour.
- Ninety percent of applications will qualify for expungement (4,500 applications).
- District Associate Judges will spend five minutes processing each expungement order and a total of 375 hours per year on expungement orders.
- The hourly rate for a District Associate Judge is \$95.43.

Fiscal Impact

Division I is estimated to have an impact on the Judicial Branch operating budget. The Judicial Branch has indicated that there is no way to determine how many people will apply for expungements each year. The estimates provided assume there will be 5,000 applications for expungement per year. **Table 1** provides the cost estimate range to the Judicial Branch for the additional time spent processing expungement applications and orders each year. The Bill does not specify who will conduct the review to verify whether the applicant qualifies, and the maximum cost includes the possibility that Judicial Branch law clerks will be required to review the applications.

Table 1 — Total Estimated Annual Additional Costs for Expungement Applications/Orders

	<u>Minimum</u>	<u>Maximum</u>
Law Clerk Review of Application	\$ 0	\$ 127,500
Clerk Staff Preparation of Order	21,667	21,667
District Assoc. Judge Expungement Order	35,786	35,786
Total Cost	<u>\$ 57,453</u>	<u>\$ 184,953</u>

Division II — Robbery and Aggravated Theft

Description

The Division provides that a person serving a sentence for a conviction of robbery in the first degree, if that conviction occurs on or after July 1, 2019, shall serve between 50.0% and 70.0% of a 25-year Class B felony sentence prior to being eligible for parole or work release. The Division provides parameters for the sentencing court to determine when the person is first eligible for parole or work release.

The Division repeals the offense of robbery in the third degree. Under current law, a person commits robbery in the third degree when, while perpetrating a robbery, the person commits a simple misdemeanor assault in violation of Iowa Code section [708.2\(6\)](#). Robbery in the third degree is an aggravated misdemeanor.

The Division repeals Iowa Code section [714.3A](#) (Aggravated Theft) and moves the content of that Iowa Code section into new Iowa Code section 711.3B. The Division also increases the maximum property value threshold for aggravated theft from \$200 to \$300. Aggravated theft is punishable as an aggravated misdemeanor or a Class D felony.

Background

Currently, under Iowa Code section [711.2](#) a person commits robbery in the first degree when, while perpetrating a robbery, the person purposely inflicts or attempts to inflict serious injury or is armed with a dangerous weapon. Robbery in the first degree is a Class B felony. Under

Iowa Code section [902.12](#), a person serving a sentence for a conviction of robbery in the first degree is required to serve at least 70.0% of the 25-year maximum Class B felony sentence prior to becoming eligible for parole or work release. A robbery in the second degree is a Class C felony, and aggravated theft is an aggravated misdemeanor or a Class D felony, depending on the circumstances of the crime.

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 the 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. Additionally, reliable LOS data for county jails is not available.
- The repeal of robbery in the third degree will move 50.0% of convictions from robbery in the third degree to robbery in the second degree and will move 50.0% to aggravated theft.
- The mandatory term before eligibility for parole or work release for those convicted of robbery in the first degree will be halfway between 12.5 years and 25 years (58.3% of sentence).
- It is assumed that 100.0% of those convicted of robbery in the first degree or robbery in the second degree will be sentenced to prison. The maximum costs for Class B and Class C felonies were used to calculate the total additional costs for each offense.
- Of those convicted of aggravated theft or robbery in the third degree, 46.0% will be sentenced to prison. For the State conviction costs, 46.0% of the new convictions are calculated using the maximum cost and the remaining 54.0% are calculated using the minimum cost.
- The average State cost for one aggravated misdemeanor conviction ranges from \$4,700 to \$7,500. The average State cost for one Class C felony conviction ranges from \$10,200 to \$18,400. The average State cost for one Class B felony conviction ranges from \$11,800 to \$38,300.

Correctional Impact

Division II will not increase the number of robbery convictions but will change the distribution of offenses. The Division is estimated to increase the prison population by 286 inmates by year 10 of implementation. The correctional impact incorporates the possible decrease in length of stay for robbery in the first degree. **Table 2** shows the estimated additional prison population each year.

Table 2 — Senate File 589, Division II, Prison Population Increase

FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
0	22	55	88	121	154	187	220	253	286

Table 3 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 B felonies, Class C felonies, Class D felonies, and aggravated misdemeanors in crimes involving persons. 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 3 — Sentencing Estimates and LOS

Conviction Offense Class	Percent to Prison	FY 18 Avg Length of Stay Prison (months)	FY 18 Marginal Cost/Day Prison	Percent to Probation	FY 18 Avg Length of Stay Probation (months)	FY 18 Avg Cost/Day Probation	Percent to CBC	FY 18 Marginal Cost/Day CBC	FY 18 Avg Length of Stay Parole (months)	FY 18 Marginal Cost/Day Parole	Percent to County Jail	Marginal Cost/Day
Class B Felony (Persons)	93.0%	85.2	\$19.93	9.0%	39.3	\$5.38	2.0%	\$11.85	34.0	\$5.38	44.0%	\$50.00
Class C Felony (Persons)	90.0%	39.8	\$19.93	30.0%	32.6	\$5.38	5.0%	\$11.85	19.5	\$5.38	39.0%	\$50.00
Class D Felony (Persons)	80.0%	17.2	\$19.93	53.0%	29.5	\$5.38	8.0%	\$11.85	10.6	\$5.38	31.0%	\$50.00
Aggravated Misdemeanor (Persons)	46.0%	8.5	\$19.93	71.0%	20.2	\$5.38	5.0%	\$11.85	4.8	\$5.38	53.0%	\$50.00

Minority Impact

Division II is estimated to have a minority impact. In FY 2018, 52.0% of the persons convicted in Iowa of robbery in the first, second, or third degree were African-American. 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

Division II is estimated to increase costs to the Justice System by approximately \$423,800 annually beginning in FY 2021. Under this Division, there will be an estimated 34 additional Class C felony convictions annually. The estimated impact to the State General Fund includes operating costs incurred by the Judicial Branch, the Indigent Defense Fund, and the Department of Corrections (DOC). **Table 4** contains estimates for the average State cost per offense class type and the estimated cost increase.

Table 4 — Senate File 589, Division II, Estimated Costs for Additional Convictions

Offense	Penalty	Cost Range	Conviction Change		Cost Increase Estimate	
			FY 2019	FY 2020	FY 2019	FY 2020
Robbery 2nd	Class C Felony	\$10,200 - \$18,400	17	34	\$ 312,800	\$ 625,600
Robbery 3rd	Aggravated Misd.	\$4,700 - \$7,500	-34	-68	-204,600	-406,400
Aggravated Theft	Aggravated Misd.	\$4,700 - \$7,500	17	34	102,300	\$ 204,600
	Total				<u>\$ 210,500</u>	<u>\$ 423,800</u>

Division III — Property Crimes — Value Description

Division III increases the value of damaged or stolen property or services necessary to commit certain levels of numerous criminal offenses. The Division modifies the minimum value eligible for penalty for the following offenses:

- Arson in the second degree.
- Theft in the second, third, fourth, and fifth degrees.
- Theft detection devices — shield or removal.
- Fraudulent practice in the second, third, fourth, and fifth degrees.
- Credit card fraud.
- Identity theft.
- Criminal mischief in the second, third, fourth, and fifth degrees.
- Trespass.
- Railroad vandalism in the fourth, fifth, sixth, and seventh degrees.
- Transmission of unsolicited bulk email.

Background

Under current law, the following penalties apply to the offenses modified under this Division:

Table 5 — Current Property Crimes Classifications

Penalty	Arson	Theft	Fraudulent Practice	Criminal Mischief	Railroad Vandalism
Class C Felony	2 nd	1 st	-	-	-
Class D Felony	-	2 nd	2 nd	2 nd	4 th
Aggravated Misdemeanor	3 rd	3 rd	3 rd	3 rd	5 th
Serious Misdemeanor	-	4 th	4 th	4 th	6 th
Simple Misdemeanor	-	5 th	5 th	5 th	7 th

In addition, the following penalties apply to offenses modified under this Division:

- Simple Misdemeanor: Theft detection devices — shield or removal (if the value is above \$300).
- Serious Misdemeanor: Trespass (if the value is above \$300).
- Aggravated Misdemeanor: Trespass (involving a hate crime).
- Class D Felony: Credit card fraud (if the value is \$1,500 and above); identity theft (if the value is \$1,500 and above); transmission of unsolicited bulk email (if the value is \$1,500 and above).

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 the 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. Additionally, reliable LOS data for county jails is not available.

Correctional Impact

Division III increases the value of damaged or stolen property or services necessary to commit certain levels of numerous criminal offenses. These modifications will reduce the number of higher-level convictions and increase the number of lower-level convictions. It is difficult to estimate how this Division will affect charging and conviction practice. Due to these unknown factors, this portion of the Bill cannot be assessed for correctional impact.

Minority Impact

Table 6 shows the FY 2018 conviction levels for African-Americans for offenses impacted by the Division:

Table 6 — SF 589, Division III, Minority Impact

Offense	Percentage African-American
Arson (2nd)	19.0%
Criminal Mischief (all degrees) and Trespass	19.0%
Identity Theft	24.0%
Credit Card Fraud	21.0%
Theft (all degrees)	18.0%

Fiscal Impact

Division III is estimated to increase the number of lower-level convictions as a result of the reduction in higher-level convictions. The increase in lower-level convictions could result in decreased overall costs to the State through the Judicial Branch, the Indigent Defense Fund, and the DOC. Lower-level convictions may result in a reduction in fines and surcharges paid.

Division IV — Fraud and Forgery Revisions

Section 25 — Forgery

Description and Background

Section 25 amends Iowa Code section [715A.2\(2\)](#) relating to forgery. Under this Section, a person commits forgery when the person possesses a writing that is or purports to be a driver's license, nonoperator's identification card, birth certificate, or occupational license or certificate in support of an occupational license issued by a department, agency, board, or commission in this State. By amending the definition of forgery, the Section also changes the circumstances under which an employer is subject to a civil penalty for hiring or continuing to employ a person who commits such a forgery, pursuant to Iowa Code section [715A.2A](#). A person who forges a document as described in Section 25 of the Bill commits a Class D felony.

Correctional Impact

The correctional impact of Section 25 is unknown. **Table 7** 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 aggravated misdemeanors and Class D felonies in crimes involving persons. Refer to the 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 7 — Sentencing Estimates and LOS

Conviction Offense Class	Percent to Prison	FY 18 Avg Length of Stay Prison (months)	FY 18 Marginal Cost/Day Prison	Percent to Probation	FY 18 Avg Length of Stay Probation (months)	FY 18 Avg Cost/Day Probation	Percent to CBC	FY 18 Marginal Cost/Day CBC	FY 18 Avg Length of Stay Parole (months)	FY 18 Marginal Cost/Day Parole	Percent to County Jail	Marginal Cost/Day
Class D Felony (Persons)	80.0%	17.2	\$19.93	53.0%	29.5	\$5.38	8.0%	\$11.85	10.6	\$5.38	31.0%	\$50.00
Aggravated Misdemeanor (Persons)	46.0%	8.5	\$19.93	71.0%	20.2	\$5.38	5.0%	\$11.85	4.8	\$5.38	53.0%	\$50.00

Fiscal Impact

The fiscal impact of Section 25 is unknown. The estimated impact to the State General Fund includes operating costs incurred by the Judicial Branch, the Indigent Defense Fund, and the DOC. The average State cost per offense for a non-person Class D felony ranges from \$9,200 to \$14,100.

Section 27 — Breach of Fiduciary Obligation

Section 27 amends Iowa Code section [802.5](#) by extending the period of time during which a person may be prosecuted for any offense involving a material element of fraud or breach of fiduciary obligation.

Correctional Impact

The correctional impact of Section 27 is estimated to be minimal. In FY 2018, there were 22 charges that fell outside the three-year window specified in current law. These charges have

the potential to be convictions under this Bill, but it is difficult to determine the reasons surrounding the dismissed or quitted charges and whether the extension of the statute of limitations would have influenced the disposition of these cases. For these reasons, the correctional impact associated with Section 27 of the Bill cannot be calculated.

Fiscal Impact

The fiscal impact of Section 27 is estimated to be minimal due to the small number of new convictions anticipated under the Section.

Division V — Criminal Proceedings

Description

Division V creates new Iowa Code section 701.12 relating to evidence in a criminal prosecution. The Division modifies various provisions under Iowa Code chapter [814](#) related to appeals from the district court. The Division also modifies postconviction procedure under Iowa Code chapter [822](#).

Assumptions

- The average cost of legal representation of an indigent person in a postconviction relief proceeding is \$1,605.33 at the trial level and an additional \$1,883.33 for representation on the appeal seeking the postconviction relief. It is assumed that the average costs will remain consistent in future fiscal years.
- Division V may change the structure of plea proceedings and decrease the number of guilty pleas entered. This change could result in additional cases being tried, rather than being resolved by plea agreement.

Fiscal Impact

Division V is estimated to result in additional costs to the State Public Defender and the Indigent Defense Fund. The Office of the State Public Defender estimates two potential fiscal impacts. The first impact may be from the prohibition on an ineffective assistance of counsel claim being raised on direct appeal from the criminal proceeding. Division V will require a separate postconviction relief case. Currently, there is no information to determine how many separate postconviction relief cases there will be, but the State Public Defender estimates that each case may have an additional estimated cost of approximately \$3,489 for the separate action.

In addition, the Office of the State Public Defender estimates that Division V may result in an increase in Indigent Defense Fund costs because there may be a change in the structure of plea proceedings and a decrease in the number of guilty pleas entered. Currently, guilty pleas are entered in more than 90.0% of cases. In FY 2018, the State Public Defender had a total of 28,632 adult claims against the Indigent Defense Fund that did not go to trial, at a total cost of \$15.0 million. The average cost per claim was \$2,837.05. The fiscal impact of Division V cannot be determined because it is unknown how many more cases will be tried, rather than resolved by plea agreement, which would increase claims to the State Public Defender and the Indigent Defense Fund. However, the fiscal impact to the State Public Defender and the Indigent Defense Fund could be significant depending on the increase in cases.

Division VI — Arson

Description

Division VI requires an offender who commits the criminal offense of arson in the first degree to serve between 50.0% and 70.0% of a 25-year Class B felony sentence prior to being eligible for parole or work release. The Division also provides that the court determine when a person convicted of arson in the first degree can first become eligible for parole or work release within

the parameters of 50.0% to 70.0% of the 25-year sentence, based upon all pertinent information. This Division applies to convictions of arson in the first degree that occur on or after July 1, 2019.

Background

Under current law, such an offender is sentenced to confinement for 25 years but is eligible for parole upon entering prison.

Assumptions

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner 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. Additionally, reliable LOS data for county jails is not available.
- Offenders convicted will serve a length of stay midway between 50.0% and 70.0% of the sentence (12.5 to 17.5 years) under this Division.
- The annual marginal cost of prison per day is equal to the daily marginal cost multiplied by 365 days (\$19.93 x 365 = \$7,274.45).

Correctional Impact

Division VI will not result in any additional convictions but will increase the LOS in prison for those convicted of arson in the first degree. In FY 2018, there were six convictions for arson in the first degree. The projected LOS in prison for those convicted of arson in the first degree is estimated to increase from 29 months to 180 months, increasing the LOS by approximately 13 years. The Division is estimated to increase the prison population by 38 inmates by year 10 of implementation. Refer to the 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.

Minority Impact

In FY 2018, 15.0% of arson convictions in the first, second, and third degree in Iowa were committed by African-Americans. 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

Division VI will increase the cost of the DOC operating budget due to the increased LOS for offenders convicted of arson in the first degree. The fiscal impact will begin in FY 2022, when those persons convicted on or after July 1, 2019, would have been eligible for release under the prior law. **Table 8** shows the total increase in marginal costs beginning in FY 2022. The Division is estimated to result in increased annual costs of \$276,000 by FY 2029.

Table 8 — Senate File 589, Additional Prison Costs Per Year

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Additional Population	0	0	3	8	13
Annual Marginal Cost Per Inmate	\$ 7,274	\$ 7,274	\$ 7,274	\$ 7,274	\$ 7,274
Total Additional Cost Per Year	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 21,822</u>	<u>\$ 58,192</u>	<u>\$ 94,562</u>

Division VII — Limitation of Criminal Actions

Description

Division VII amends Iowa Code section [802.2](#) to provide that an information or indictment for sexual abuse in the first, second, or third degree committed on or with a person who is under the age of 18 years shall be found within 15 years of the offense. In addition, the Division amends Iowa Code section [802.2A](#) to provide that an information or indictment for incest under Iowa Code section [726.2](#) committed on or with a person who is under the age of 18 shall be found within 15 years after the commission of the offense, and an indictment or information for sexual exploitation by a counselor, therapist, or school employee under Iowa Code section [709.15](#) committed on or with a person who is under the age of 18 shall be found within 15 years after the commission of the offense. Current law provides a 10-year limit for an information or indictment for all the above offenses.

Correctional Impact

It is estimated there will be an increase in convictions under this Division, but the extent is unknown. In FY 2018, there were 10 charges acquitted or dismissed that involved minor victims and had a disposition date that was more than 10 years after the offense date. These acquitted offenses could potentially have become convictions under this Division. It is difficult to determine reasons surrounding dismissed or acquitted charges and whether the extension of the statute of limitations would have influenced the disposition of these cases. As a result, the correctional impact of Division VII cannot be calculated.

Fiscal Impact

The fiscal impact of Division VII is unknown but is estimated to be minimal due to the low level of convictions of the applicable offenses.

Summary of SF 589

Correctional Impact

Table 9 summarizes the correctional impact of all the Divisions in the Bill.

Table 9 — SF 589 Correctional Impact Summary

Bill Division	Offense	Penalties	Net Additional Convictions - FY 2019	Net Additional Convictions - FY 2020
II	Robbery 2nd	Class C Felony	17	34
	Robbery 3rd	Aggravated Misd.	-34	-68
	Aggravated Theft	Aggravated Misd.	17	34
III	Property Crimes	Various	Correctional impact cannot be determined	Correctional impact cannot be determined
IV	Fraud and Forgery	Various	Correctional impact cannot be determined	Correctional impact cannot be determined
VI	Arson in the First Degree	Class B Felony	No additional convictions, increases length of stay	No additional convictions, increases length of stay
VII	Limitation of Criminal Actions	Various	Correctional impact cannot be determined	Correctional impact cannot be determined

Fiscal Impact

Table 10 summarizes the estimated fiscal impact of all the Divisions in the Bill.

Table 10 — SF 589 Fiscal Impact Summary

Bill Division	Provision	Fund	Fiscal Impact - FY 2020	Fiscal Impact - FY 2021
I	Expungements	Judicial Branch Operating Budget	\$57,453 - \$184,953	\$57,453 - \$184,953
II	Robbery and Aggravated Theft	Various justice system operating costs	\$210,500	\$423,800
III	Property Crime	Various justice system operating costs	Cannot be determined	Cannot be determined
IV	Fraud and Forgery Revisions	Various justice system operating costs	Cannot be determined	Cannot be determined
V	Criminal Proceedings	State Public Defender Operating Budget, Indigent Defense Fund	Cannot be determined	Cannot be determined
VI	Arson in the First Degree**	Various justice system operating costs	\$0	\$0
VII	Limitation of Criminal Actions	Various justice system operating costs	Cannot be determined	Cannot be determined

**Division VI fiscal impact will not occur until FY 2022. See Division VI for more detail.

Sources

Department of Corrections
 Criminal and Juvenile Justice Planning Division, Department of Human Rights
 Department of Public Safety
 Judicial Branch
 Office of the State Public Defender
 LSA analysis and calculations

/s/ Holly M. Lyons

April 8, 2019

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.
