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[SF 172](#) – Sex Act, Definition (LSB1327SV)

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Fiscal Note Version – New

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## **Description**

[Senate File 172](#) relates to the definition of “sex act” or “sexual activity.” The Bill expands the current definition of “sex act,” for purposes of the Iowa criminal code, to include contact between the mouth and anus of two or more persons; contact between the finger, hand, or other body part of one person and the genitalia or anus of another person except in the course of examination or treatment by certain licensed professionals; and the touching of a person’s own genitals or anus with a finger, hand, artificial sexual organ, or other similar device at the direction of another person.

## **Background**

The term “sex act” or “sexual activity” is defined in Iowa Code section [702.17](#). The expansion of the definition, as proposed by SF 172, refers to the term “sex act” in matters of interpretation under the Iowa criminal code, specifically Iowa Code chapter [709](#). In order for a “sex act” or “sexual activity” to be defined as sexual abuse and as criminal in nature, the act must be performed under the following circumstances:

1. The act is done by force or against the will of the other person. If the consent of the other person is obtained by threat of violence or the act is done under the influence of a sleep-inducing drug or otherwise occurs in a state of unconsciousness, the act is done against the will of another individual.
2. The other individual involved is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
3. The other individual involved is a child.

## **Assumptions**

It is assumed that as a result of the expansion of the definition of “sex act,” the number of prison and Community-Based Corrections (CBC) admissions for sex-related offenses will increase.

## **Correctional Impact**

Senate File 172 expands the definition of “sex act,” and the correctional impact cannot be estimated due to a lack of existing data.

**Table 1** provides estimates for sentencing to State prison, parole, probation, or CBC residential facilities; length of stay (LOS) under those supervisions; and supervision marginal costs per day for all convictions ranging from serious misdemeanors to Class A felonies. The LOS data is not applicable to simple misdemeanors. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 22, 2021, for information related to the correctional system.

**Table 1 — Sentencing Estimates and LOS**

Conviction Offense Class	Percent to Prison	Avg Length of Stay Prison (months)	FY 20 Marginal Cost/Day Prison	Percent Ordered to Probation	Avg LOS on Probation	Avg Cost/Day on Probation	Percent Sentenced to CBC Residential Facility	FY 20 Marginal Cost CBC/Day	Percent Ordered to County Jail	Avg Length of Stay in County Jail	Marginal Cost/Day	Avg LOS on Parole	FY 20 Average Cost/Day Parole
Serious Misdemeanor	2.0%	5	\$ 20.33	56.0%	13.4	\$ 5.38	1.0%	\$ 14.78	69.0%	N/A	\$ 50	2.4	\$ 5.38
Aggravated Misdemeanor (Sex)	78.0%	10.51	\$ 20.33	58.5%	15.1	\$ 5.38	1.0%	\$ 14.78	74.6%	N/A	\$ 50	2.5	\$ 5.38
Class D Felony (Sex)	85.0%	32.24	\$ 20.33	45.2%	49.7	\$ 5.38	6.8%	\$ 14.78	43.8%	N/A	\$ 50	5.1	\$ 5.38
Class C Felony (Sex)	91.0%	76	\$ 20.33	34.1%	50	\$ 5.38	5.5%	\$ 14.78	32.7%	N/A	\$ 50	7.2	\$ 5.38
Class B Felony (Sex)	95.0%	285.2	\$ 20.33	9.4%	--	\$ 5.38	3.1%	\$ 14.78	15.6%	N/A	\$ 50	29.4	\$ 5.38
Class A Felony	100.0%	510	\$ 20.33	N/A	N/A	N/A	N/A	\$ 14.78	N/A	N/A	\$ 50	N/A	N/A

**Minority Impact**

Senate File 172 expands the definition of “sex act” or “sexual activity” to include new actions not previously criminalized under Iowa Code chapter 709. As a result, the Criminal and Juvenile Justice Planning Division (CJJP) of the Department of Human Rights cannot use prior existing data to estimate the minority impact of SF 172. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 27, 2021, for information related to minorities in the criminal justice system.

**Fiscal Impact**

The fiscal impact of SF 172 cannot be determined. The Department of Corrections (DOC) estimates that the expansion of the definition of “sex act” and subsequent convictions will lead to an increase in the number of offenders in custody of the DOC. This will likely lead to an increase in State costs, but an estimate cannot be determined at this time, as it is not possible to estimate how many new convictions will result or at what level of crime these convictions will be charged.

**Table 2** contains cost estimates for the average State cost per offense class type for one conviction. The cost estimates include operating costs incurred by the Judicial Branch, the State Public Defender, and the DOC for one 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 Cost	
	Minimum	Maximum
Serious Misdemeanor	\$ 410	\$ 7,500
Aggravated Misdemeanor	3,700	7,800
Class D Felony	7,700	13,500
Class C Felony	9,900	19,200
Class B Felony	12,700	35,800
Class A Felony	183,700	188,000

The expansion of the definition of “sex act” and subsequently related convictions resulting from SF 172 may also result in an increase in fine and surcharge revenue, but the impact cannot be determined at this time.

**Sources**

Department of Corrections  
Legislative Services Agency

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/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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