



[SF 2328](#) – Criminal Victims’ Rights, Recidivism Reduction (LSB5174SV)
Staff Contact: Isabel Waller (515.281.6561) isabel.waller@legis.iowa.gov
Fiscal Note Version – New

Description

[Senate File 2328](#) relates to criminal law, including the disclosure of a defendant’s privileged records in a criminal action, permanent no-contact orders, penalties for domestic abuse assault, limitations on criminal actions involving certain sexual offenses, criminal sentencing and corrections, parole and work release, crime victim rights, discovery in criminal actions, postconviction relief procedure, and certain reporting requirements.

Division I — Communications in Professional Confidence — Criminal Actions

Description

Division I of SF 2328 limits exculpatory information in certain circumstances to only information that tends to negate the guilt of the defendant, and not information that is merely impeaching or is substantially cumulative in nature. This Division may have a fiscal impact, but it cannot be determined at this time.

Division II — Permanent No-Contact Orders

Description

Division II modifies the protocol for entering no-contact orders. Under the Bill, no-contact orders entered would be permanent rather than lasting for five years. The victim may apply to modify or dissolve a no-contact order. If such application occurs, the prosecuting attorney must be given the opportunity to be heard at a hearing prior to the modification or dissolution of the no-contact order. The defendant may also apply to modify or dissolve a no-contact order if certain conditions are met, including the passage of five or more years since the discharge of the sentence for the offense resulting in the issuance of the no-contact order. Upon application by a defendant to modify or dissolve a permanent no-contact order, the district court must conduct a hearing on the application.

Division II also requires the court, upon application by the victim, a victim counselor, the victim’s attorney, or the prosecuting attorney, to reinstate any permanent no-contact order that expired because it was not extended pursuant to Iowa Code section [664A.8](#). Division II also requires a five-year no-contact order entered prior to the enactment of this Bill that has not yet expired to be converted into a permanent no-contact order upon application by the victim, a victim counselor, the victim’s attorney, or the prosecuting attorney. An application under these circumstances may only be denied if the court makes written findings that the defendant no longer presents a danger to the victim and that denying the request is in the interest of justice.

Assumptions

- There are approximately 22,000 no-contact orders and protective orders issued each year.
- The Judicial Branch estimates that 10.0% of defendants and respondents will seek to have an order dissolved or terminated after five years have passed.

- There will be approximately 2,200 applications to dissolve or terminate an order each year, but the full impact will not occur for approximately five years.
- It will take approximately 19.8 minutes to hear each application.
- The cost of one hour with a district associate judge is \$206. This includes one hour of court reporter time, one hour of judicial specialist time, and one-half hour of clerk of court time.

Fiscal Impact

The cost to the Judicial Branch to hear applications by defendants to dissolve or terminate no-contact orders and protective orders will cost approximately \$149,000 annually, but the full impact will not occur for the first five years.

Division III — Domestic Abuse Assault Penalties

Description

Division III eliminates current law that provides that a conviction for, deferred judgment for, or plea of guilty to domestic abuse assault that occurred more than 12 years before the date of the violation charged is not to be considered in determining that the violation charged is a second and subsequent offense.

Background

Iowa Code section [708.2A](#) provides that a second conviction for domestic abuse assault results in a higher conviction class than if it were a first conviction and that a third or subsequent offense is a Class D felony. Penalties for domestic abuse assault include a simple misdemeanor, a serious misdemeanor, an aggravated misdemeanor, and a Class D felony, based on injury caused, intent to inflict a serious injury, use of a weapon, and prior offenses.

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 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 removal of the 12-year provision in Division III could result in a reclassification of class based on the first offense. In FY 2021, there were 68 individuals convicted under Iowa Code section 708.2A who also had a prior conviction under Iowa Code section 708.2A 12 or more years prior, 4 of which were for aggravated misdemeanors, 10 for serious misdemeanors, and 54 for simple misdemeanors. It cannot be determined which of the original offenses would result in an increased class of conviction, but there would likely be an increase in convictions for second and subsequent offenses and an increase in prison admissions. The proportion of the increase cannot be estimated.

Table 1 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 Class D felonies, aggravated misdemeanors, and serious misdemeanors. A conviction for a simple misdemeanor does not result in a prison sentence but does carry the possibility of confinement for up to 30 days. Marginal county jail costs are estimated to be \$50 per day. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 18, 2022, for information related to the correctional system.

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

Conviction Offense Class	Percent Ordered to State Prison	FY 21 Avg LOS in Prison in Months (All Releases)	FY 21 Marginal Cost Per Day Prison	Percent Ordered to Probation	Avg LOS on Probation in Months	FY 21 Avg Cost Per Day Probation	Percent Sentenced to CBC Residential Facility	FY 21 Marginal Cost Per Day CBC	Percent Ordered to County Jail	Marginal Cost Per Day Jail	Avg LOS on Parole in Months	FY 21 Marginal Cost Per Day Parole
D Felony (Persons)	84.2%	18.8	\$23.33	47.8%	32.8	\$7.01	10.5%	\$17.78	38.6%	\$50.00	11.3	\$7.01
Aggravated Misdemeanor (Persons)	47.0%	9.6	\$23.33	51.7%	20.6	\$7.01	5.2%	\$17.78	70.7%	\$50.00	6.2	\$7.01
Serious Misdemeanor	1.8%	6.5	\$23.33	56.0%	14.5	\$7.01	0.9%	\$17.78	69.0%	\$50.00	18.1	\$7.01

Minority Impact

Division III is estimated to have a disproportionate impact on African Americans. Of the 68 individuals who had a prior conviction under Iowa Code section 708.2A 12 or more years prior who may be convicted of an increased class under this Bill, 69.1% were Caucasian and 17.6% were African American, while the Iowa population is 85.3% Caucasian and 3.9% African American. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 18, 2022, for information related to minorities in the criminal justice system.

Fiscal Impact

The fiscal impact of Division III cannot be estimated due to a lack of data. **Table 2** below shows the average State cost per offense for a Class D felony, aggravated misdemeanor, serious misdemeanor, and simple misdemeanor. 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). The cost would be incurred across multiple fiscal years for prison and parole supervision.

Table 2 — Average State Cost Per Offense	
Class D Felony	\$9,100 to \$16,600
Aggravated Misdemeanor	\$4,900 to \$9,500
Serious Misdemeanor	\$410 to \$7,000
Simple Misdemeanor	\$40 to \$370

Division IV — Limitation of Criminal Actions Involving Certain Sexual Offenses

Description

Division IV adds the following offenses to the list of offenses for which an information or indictment may be commenced at any time after the commission of the offense, when the offense was committed on or with a person who is under the age of 18:

- Continuous sexual abuse of a child.
- Kidnapping in the first degree when the person kidnapped, as a consequence of the kidnapping, is intentionally subjected to sexual abuse.
- Burglary in the first degree, when the person performs or participates in a sex act with any person which would constitute sexual abuse.

Background

Under Iowa Code section [802.2B](#), the offenses for which an information or indictment may be commenced at any time after the commission of the offense, when the offense was committed on or with a person who is under the age of 18, currently includes: lascivious acts with a child, assault with intent to commit sexual abuse, indecent contact with a child, lascivious conduct with a minor, sexual misconduct with a juvenile, child endangerment, and sexual exploitation of a minor.

Continuous sexual abuse of a child and burglary in the first degree are Class B felonies. Kidnapping in the first degree is a Class A felony. A Class B felony is punishable by confinement for no more than 25 years. A Class A felony is punishable by life in 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.

Correctional Impact

Division IV changes the statute of limitations for certain offenses, and the correctional impact cannot be estimated due to a lack of data. This change will likely increase the number of prison admissions for these offenses, but the extent of that increase cannot be calculated. Refer to the LSA memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 18, 2022, for information related to the correctional system.

Minority Impact

Division IV changes the statute of limitations for certain offenses, and as a result, the Criminal and Juvenile Justice Planning Division of the Department of Human Rights cannot use prior existing data to estimate the minority impact. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 18, 2022, for information related to minorities in the criminal justice system.

Fiscal Impact

Division IV changes the statute of limitations for certain offenses, and the fiscal impact cannot be estimated due to a lack of data. The average State cost per offense for a Class A felony must be calculated on an individual basis to determine prison costs. At a minimum, Class A felonies require two indigent defense attorneys at a cost of approximately \$39,200 and include court time and jury trial costs ranging from \$10,400 to \$14,700. The average State cost per offense for a Class B felony ranges from \$12,600 to \$45,700. The estimated impact to the State General Fund includes operating costs incurred by the Judicial Branch, the Indigent Defense Fund, and the DOC. The cost would be incurred across multiple fiscal years for prison and parole supervision.

Division V — Criminal Sentencing and Corrections

Description

Division V, Section 13, provides that if a person is sentenced for two or more separate offenses contained in Iowa Code section [902.12](#)(1) (murder in the second degree, attempted murder, sexual abuse in the second degree, kidnapping in the second degree, robbery in the second degree, and vehicular homicide under certain circumstances), and one or more of the convictions is for an offense under Iowa Code chapter [709](#) or [710](#) (sexual abuse in the second

degree and kidnapping in the second degree), the sentences are required to be served consecutively.

Division V, Section 15, provides that the minimum sentence of any person convicted of a felony contained in Iowa Code section 902.12 and who did not receive a deferred judgment or a deferred or suspended sentence should be determined as follows, if not already prescribed by statute:

- A Class B felon should be confined for at least one year.
- A Class C felon should be confined for at least two months.
- A Class D felon should be confined for at least one month.

Division V, Section 16, adds to Iowa Code section 902.12, which currently provides minimum sentences for certain felonies. The Bill provides for minimum sentences of at least 90.0% of the maximum term for the following offenses. Division V also provides that in regards to earned time, category C sentences include sentences for these offenses:

- Homicide or a related crime.
- Assault.
- Terrorism.
- Sexual abuse.
- Kidnapping or related offenses.
- Human trafficking, except for solicitation of commercial sexual activity.
- Robbery, aggravated theft, or extortion.
- Arson.
- Burglary, except for possession of burglar's tools with the intent to use them in the perpetration of a burglary.
- Criminal gang participation or gang recruitment.
- Obscenity.

Division V, Section 17, provides minimum sentences for certain misdemeanors. The minimum sentence for a person convicted of a misdemeanor contained in Iowa Code section 902.12 who did not receive a deferred judgment or deferred or suspended sentence is as follows:

- At least 14 days for an aggravated misdemeanor.
- At least seven days for a serious misdemeanor.
- At least two days for a simple misdemeanor.

Background

Iowa Code section 902.12 provides a minimum sentence of at least 70.0% of a maximum term of a person's sentence for the following: murder in the second degree, attempted murder, sexual abuse in the second degree, kidnapping in the second degree, robbery in the second degree, and vehicular homicide under certain circumstances.

An inmate serving a category C sentence is ineligible for a reduction of sentence under Iowa Code section [903A.2](#). (Earned Time)

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.

Correctional and Fiscal Impact

Division V, Section 13, provides that if a person is sentenced for two or more separate offenses contained in Iowa Code section 902.12, and one or more of the convictions is for an offense under Iowa Code chapter 709 or 710, the sentences must be served consecutively. Of those actively incarcerated on February 18, 2022, there were 82 individuals who met these criteria who are currently serving concurrent sentences. This portion of the Bill would lengthen the sentences of individuals whose crimes meet these criteria, but the extent of the increase cannot be estimated.

According to the DOC, Division V, Section 16, would extend the period of incarceration for those who are admitted to prison for crimes currently designated as crimes under Iowa Code section 902.12. Current law requires that a person be denied parole or work release unless the person has served at least 50.0% or 70.0% of the maximum term of a person's sentence for certain felonies. According to the DOC, this Section changes the mandatory term to 90.0% of a person's sentence. The DOC reports that extending the minimum period of incarceration for one cohort of individuals annually admitted to prison for convictions under current Iowa Code 902.12 is expected to cost \$5.5 million more per annual cohort over the course of that cohort's supervision period compared to current estimated supervision costs. A cohort is the group of individuals annually admitted to prison for convictions under a certain Iowa Code section.

Division V, Section 16, creates mandatory terms for crimes that historically have not had mandatory terms applied. This Division creates mandatory terms for these offenses consistent with those proposed for crimes under Iowa Code section 902.12, with a mandatory minimum term of 90.0% of a person's sentence required to be served prior to release consideration. This Section also provides that for earned time purposes, these sentences are classified as category C sentences, meaning they are ineligible for a reduction of sentence. This section is expected to impact approximately 1,118 prison admissions annually. Due to the mandatory term applied, the DOC expects that the cost of supervision per annual cohort of individuals admitted under the affected Iowa Code sections would cost \$34.6 million more over the duration of the supervision of each annual cohort.

Division V, Section 17, relates to minimum sentences for certain misdemeanors. The DOC would be fiscally impacted due to reimbursements provided to jails, but the extent of those costs cannot be calculated. Additionally, local governments would experience costs for the time individuals are incarcerated in county jail, but the figure cannot be estimated.

Refer to the LSA memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 18, 2022, for information related to the correctional system.

Minority Impact

The minority impact of Division V cannot be estimated due to a lack of data. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 18, 2022, for information related to minorities in the criminal justice system.

Division VI — Parole and Work Release

Description

Division VI makes the following changes:

- Modifies Board of Parole (BOP) procedure. Under the Bill, a parole or work release may be ordered only for the best interest of society, any victim of the person, and the person. The BOP is to release a person on parole or work release only when in its opinion there is a

significant possibility that the person can be released without detriment to the community, any victim of the person, or the person.

- Limits the BOP to reviewing the status of a person other than a Class A felon, a Class B felon serving a sentence of more than 25 years, a felon serving a sentence for a first conviction for a violation of Iowa Code section [124.401D](#), or a felon serving a mandatory minimum sentence other than a Class A felon, to no more frequently than every six months.
- Provides that the BOP shall require that all parole hearings be recorded and maintained as public records for a minimum of three years from the date of the hearing or the most recent release of an inmate on parole.
- Modifies the intent of the General Assembly for the BOP to implement a plan of early release. The plan must ensure that parole or work release is only ordered when in the best interest of society, any victim of the person, and the person, rather than to control the prison population.

Background

Under current law, a parole or work release should be ordered for the best interest of society and the offender. The BOP is to release a person on parole or work release when in its opinion there is a reasonable probability that the person can be released without detriment to the community or the person.

Under current law, the BOP at least annually reviews the status of a person other than a Class A felon, a Class B felon serving a sentence of more than 25 years, a felon serving a sentence for a first conviction for a violation of Iowa Code section 124.401D, or a felon serving a mandatory minimum sentence other than a Class A felon.

According to Iowa Code section [906.5](#), the intent of the General Assembly is currently that the BOP is to implement a plan of early release in an effort to assist in controlling the prison population and assuring prison space for the confinement of offenders whose release would be detrimental to the citizens of Iowa.

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.

Correctional Impact

Division VI may have a correctional impact by decreasing the number of offenders who are granted parole and work release and thus increasing the prison population. However, the number of victims who will choose to be a part of the work release process, and the overall impact this Division will have on the decision of granting parole and work release, cannot be determined.

Minority Impact

The minority impact of Division VI cannot be estimated due to a lack of data. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 18, 2022, for information related to minorities in the criminal justice system.

Fiscal Impact

The requirement for the BOP to capture and store recordings of interviews would have a modest fiscal impact on the BOP. The BOP reports that this can be absorbed into its existing budget and full-time equivalent (FTE) positions.

The change in intent for the BOP may increase prison populations, but the fiscal impact cannot be determined.

Division VII — Crime Victims — Rights

Description

Division VII relates to crime victims' rights and makes the following changes:

- Requires a local police department or county sheriff's department to provide a victim with a pamphlet explaining the victim's rights and to provide to the Crime Victim Assistance Division (CVAD) of the Office of the Attorney General the contact information for a victim of a public offense or delinquent act. A victim counselor is to contact a victim to determine if the victim is in need of further assistance or whether the victim has any questions regarding rights as a victim.
- Provides that it is the public policy of the State that statements made by children to forensic interviewers at child advocacy centers and child protection centers are presumptively reliable and should be admitted into evidence in court. The court should upon motion of a party admit such recorded statement of a child under certain circumstances.
- Provides that a defendant charged with a criminal offense for sexual abuse or who has filed an application for postconviction relief upon conviction for a sexual offense cannot question any victim regarding evidence that is inadmissible under [Rule of Evidence 5.412](#).
- Requires all attorneys licensed in Iowa to complete a minimum of one hour annually of continuing legal education that focuses on crime victims and improving their experience within the criminal justice system.

Background

According to Iowa Code section [915.20A](#), a victim counselor is a person who is engaged in a crime victim center, is certified as a counselor by the crime victim center, and is under the control of a direct service supervisor of a crime victim center, whose primary purpose is the rendering of advice, counseling, and assistance to victims of crime.

Assumptions

- The sharing of victim contact information includes personally identifying information that must be protected from unauthorized or accidental access.
- The CVAD will need to create or procure a secure database that will allow for over 400 law enforcement agencies to input victim data and allow victim counselors to access that data.
- The CVAD estimates start-up costs of the database to be approximately \$500,000 with ongoing maintenance expenses of \$50,000 each year.
- The CVAD does not currently provide direct services to victims, and none of the CVAD staff are victim counselors.
- If the crime victim counselors are to be employed by the CVAD under the Bill, the CVAD will require additional staff to manage the database, provide assistance to law enforcement agencies inputting data, access the data to contact the victims, and identify and vet local resources in communities across the State.
- The CVAD estimates approximately 320 victims will be input into the database each day who will need to be contacted.
- The CVAD estimates it will require 11.0 FTE positions to manage this program, at the cost of \$75,000 per FTE position.

- The CVAD will also incur further expenses each year related to technology and equipment as well as a larger space, as the CVAD has no workspaces for new staff.
- The hiring of new staff will take approximately three months, so costs related to FTE positions are calculated at 75.0% for the first year.

Fiscal Impact

As shown in **Table 3** below, the estimated cost of Division VII to the Office of the Attorney General is approximately \$1.1 million in FY 2023 and \$875,000 for each year after. This cost includes creating and maintaining the database and hiring 11.0 FTE positions to manage the program. This fiscal impact would be to the General Fund.

Table 3 — Estimated Cost to the Office of the Attorney General

	FY 2023	FY 2024 and after
Database	\$500,000	\$50,000
Staff	<u>619,000</u>	<u>825,000</u>
Total	<u>\$1,119,000</u>	<u>\$875,000</u>

The Office of the Attorney General notes that if the Bill requires local victim services agencies to assume the duty of contacting victims rather than CVAD employees, the General Fund appropriation for victim services programs would need to be increased from \$5.0 million annually to approximately \$15.0 million annually to meet a 200.0% increase in demand.

Division VIII — Discovery

Description

Division VIII does the following:

- Provides that a criminal defendant or the defendant’s counsel cannot issue any subpoena for documents or other evidence except upon application to the court. The application is only to be granted if the defendant proves by a preponderance of the evidence various factors related to the necessity of the subpoena. A person who issues a subpoena that does not comply with this Division may be declared in contempt of court.
- Provides that discovery depositions are not permitted in any criminal action, except upon application to the court and if exceptional circumstances are shown.
- Requires a criminal defendant to file a witness list by certain deadlines.

Division VIII may have a fiscal impact to the Office of the State Public Defender, but the extent cannot be projected at this time.

Division IX — Postconviction Relief and Discovery Procedure

Description

Division IX provides a limited scope of discovery to postconviction relief proceedings.

Fiscal Impact

This Division restricts discovery depositions by requiring an application to the court and a showing of exceptional circumstances. This will likely increase the workload of the courts if the court has to review each application and determine what constitutes an exceptional circumstance. Additionally, eliminating depositions except in exceptional circumstances may result in more trials as depositions often help to resolve a case. The fiscal impact of this Division to the Judicial Branch cannot be determined but may be significant.

Division X — Required Reports to the General Assembly

Description

Division X requires each district judge to submit an annual report to the Governor and General Assembly each year by December 15 related to deferred judgments, deferred sentences, and suspended sentences.

Division X also requires the DOC in cooperation with the BOP to submit an annual report to the Governor and General Assembly each year related to the recidivism rate for violent and sexual criminal offenses contained in Iowa Code section 902.12.

Assumptions

- Each of the 116 district judges will submit an annual report to the Governor and the General Assembly each year.
- It will take approximately four hours for each judge to write the report.
- The cost per hour for a district associate judge is \$111.

Fiscal Impact

The requirement for the district judges to submit annual reports would cost approximately \$52,000 each year.

The annual report required of the DOC and BOP would require the structure of the Iowa Corrections Offender Network (ICON) to be programmed to account for some of the required elements. Significant ICON programming costs would result, but the extent cannot be calculated. Additionally, this report would require staff time to create and disseminate the report.

NOTE: At the time this Fiscal Note was written, responses requested on 2/15/22 from the State Public Defender had not been received and may change the fiscal impacts of this Bill.

Sources

Criminal and Juvenile Justice Planning Division, Department of Human Rights
Board of Parole
Office of the Attorney General
Department of Corrections
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.
