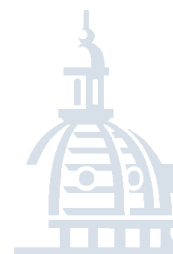


Fiscal Note

Fiscal Services Division



[SF 523](#) – Criminal Procedure and Juror Qualifications (LSB1111SV)
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Fiscal Note Version – New

Description

[Senate File 523](#) relates to criminal law, including defense subpoenas in criminal actions, depositions, conditional guilty pleas, prosecution witnesses, juror qualifications, and the Rules of Criminal Procedure.

Division I — Defense Subpoenas

Description and Background

Division I relates to defense subpoenas in criminal actions and provides the following:

- A criminal defendant or counsel acting on the defendant's behalf may not issue any subpoena for documents or evidence except upon application to the court. The defendant must prove by clear and convincing evidence that there is a compelling need for the evidence sought and that such evidence is material, necessary, exculpatory, and admissible at trial; and that the evidence does not include the private information of a crime victim or any other person except for the defendant's private information. This is the exclusive mechanism for a criminal defendant or counsel acting on the defendant's behalf to issue a subpoena for documents or other evidence.
- An application for a defense subpoena cannot be filed or reviewed ex parte.
- The prosecuting attorney is not required to execute or effectuate any order or subpoena issued pursuant to Division I.
- A crime victim or other party who is the subject of a subpoena must not be required by the court to execute a waiver.
- Upon application by a crime victim or the prosecuting attorney, the court must appoint an attorney to represent a person or entity served with a defense subpoena if the person or entity is determined to be indigent. Counsel appointed for this purpose is paid from the Indigent Defense Fund.
- Documents or other evidence obtained through a defense subpoena must be provided to the prosecuting attorney within 24 hours of obtaining the documents or evidence.
- Documents or other evidence obtained through a defense subpoena that does not comply with the requirements in Division I are not admissible in any criminal action if offered by the defendant.
- An attorney who knowingly issues a defense subpoena that does not comply with the requirements of Division I and the Rules of Criminal Procedure commits a simple misdemeanor.
- An applicant for postconviction relief is not entitled to relief on a claim of ineffective assistance of counsel as a result of evidence obtained through a defense subpoena.

Iowa Code section [815.9\(1\)](#) provides the qualifications for indigency. Iowa Code section [815.11](#) establishes the Indigent Defense Fund. The Indigent Defense Fund consists of funds appropriated by the General Assembly to the Office of the State Public Defender for indigent legal defense by a court-appointed attorney.

A simple misdemeanor is punishable by confinement of up to 30 days and a fine of at least \$105 but not more than \$855.

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.
- Expanding representation by the State Public Defender to indigent individuals who receive a defense subpoena will significantly increase costs to the Indigent Defense Fund. The number of individuals this will apply to cannot be estimated.
- The State Public Defender reports significantly increased costs to the Indigent Defense Fund due to an increase in attorney time spent on criminal cases; the time needed for investigation; the number of motions, hearings, trials, and appeals; and the use of expert witnesses. The requirement to provide any information obtained through a subpoena to the prosecutor within 24 hours may also increase costs to the Indigent Defense Fund due to additional staff needed to comply.
- The State Public Defender will require 15.0 Investigator 2 full-time equivalent (FTE) positions at a cost of \$66,700 each to meet the increased investigatory needs of public defender employees and contract attorneys.
- The number of applications to the court for defense subpoenas is unknown.
- An application for a defense subpoena may require an average of approximately 0.17 hours of court time.
- The average cost per hour for a district judge or district associate judge is \$101.49.
- There are approximately 68,000 felony and indictable misdemeanor cases filed annually.

Correctional Impact

Division I establishes a new criminal offense, and the correctional impact cannot be estimated due to a lack of existing conviction data. 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 20, 2023, for information related to the correctional system.

Minority Impact

Division I establishes a new offense. As a result, the Division of Criminal and Juvenile Justice Planning (CJJP) of the Department of Human Rights cannot use existing data to estimate the minority impact of the Bill. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 20, 2023, for information related to minorities in the criminal justice system.

Fiscal Impact

The total fiscal impact of Division I to the Office of the State Public Defender cannot be estimated, but the cost to the Indigent Defense Fund is estimated to be significant. Under Division I, the number of individuals for whom the State Public Defender provides representation will increase. Furthermore, the amount of attorney time spent on a case will increase, and there will be an increase in costs for expert witnesses. This will lead to an increase in the average cost per criminal case handled by a contract attorney. The total cost of criminal claims processed by the State Public Defender for the Indigent Defense Fund was approximately

\$23.3 million in FY 2022, and Division I may increase this cost by a significant percentage. The Indigent Defense Fund is funded through the General Fund.

Additionally, the Office of the State Public Defender will require 15.0 Investigator 2 FTE positions, at a total cost of \$1.0 million to the State Public Defender operating budget, which is funded through the General Fund.

Division I will likely have a fiscal impact to the Judicial Branch for the court time required to review applications for defense subpoenas, but the extent of the fiscal impact cannot be estimated because the number of applications that will be submitted is unknown. **Table 1** demonstrates the annual fiscal impact to the Judicial Branch if an application is submitted in 10.0% of felony and indictable misdemeanor cases. The fiscal impact could vary significantly based on the actual number of defense subpoena applications.

Table 1 — Potential Annual Fiscal Impact to the Judicial Branch

Number of Cases	Percent of Cases With an Application	Court Time Per Application	Cost Per Hour	Total Cost
68,000	10.0%	0.17 hours	\$101.49	\$117,322

Additionally, Division I establishes a new criminal offense, but the fiscal impact cannot be estimated due to a lack of existing conviction data. The average State cost per offense for a simple misdemeanor is \$35 to \$375. 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.

Division II — Depositions

Description

Division II provides that a person who expects to be made a party to a criminal prosecution is not entitled to conduct a deposition prior to being indicted for a criminal offense.

Fiscal Impact

Division II is not estimated to have a fiscal impact.

Division III — Conditional Guilty Pleas

Description

Division III provides that a conditional guilty plea that purports to reserve an issue for appeal may only be entered with the consent of the prosecuting attorney and the Attorney General. An appellate court has jurisdiction only over conditional guilty pleas that comply with this requirement and when appellate adjudication of the reserved issue is in the interest of justice.

Fiscal Impact

Division III is not estimated to have a fiscal impact.

Division IV — Prosecution Witnesses — Minors

Description and Background

Division IV requires the Supreme Court to amend the Rules of Criminal Procedure to comply with Iowa Code section [915.36A](#), including but not limited to the elimination of a requirement that a defendant be physically present at the deposition of a minor.

Under Iowa Code section 915.36A, a prosecuting witness who is a minor has the right to have the interview or deposition taken outside the presence of the defendant. The interview or deposition may be televised by closed-circuit equipment to a room where the defendant can view the interview or deposition in a manner that ensures that the defendant will not have contact with the minor. The defendant is allowed to communicate with the defendant's counsel in the room where the minor is being interviewed or deposed by an appropriate electronic method.

Assumptions and Fiscal Impact

Division IV may increase costs to the State Public Defender operating budget and the Indigent Defense Fund, as a second attorney or investigator may be required during these depositions to communicate with the defendant who is in a separate location. However, the fiscal impact cannot be determined.

Division V — Juror Qualifications

Description

Division V provides that the following persons are disqualified from jury service:

- A person convicted of a felony who remains under the supervision of the DOC, a Community-Based Corrections (CBC) judicial district, or the Board of Parole.
- A person convicted of a felony that requires the person to register as a sex offender under Iowa Code chapter [692A](#) or to serve a special sentence under Iowa Code chapter [903B](#).

Fiscal Impact

Division V is estimated to have a minimal fiscal impact to the Judicial Branch.

Division VI — Supreme Court — Rules of Criminal Procedure

Description

Division VI requires the Supreme Court to revise the Rules of Criminal Procedure submitted for Legislative Council review on October 14, 2022, to comply with this Bill. The revised Rules are required to be submitted for Legislative Council review no later than June 1, 2023.

Division VI is effective upon enactment.

Fiscal Impact

Division VI is not estimated to have a fiscal impact.

Sources

Judicial Branch

Department of Human Rights, Division of Criminal and Juvenile Justice Planning

Office of the State Public Defender

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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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