



[HF 2199](#) – Skimming Devices, Criminal Penalties (LSB5352HV)
Analyst: Laura Book (515.205.9275) laura.book@legis.iowa.gov
Fiscal Note Version – New

Description

[House File 2199](#) relates to the illegal use of a scanning device or encoding machine. The Bill modifies several definitions and offenses under Iowa Code section [715A.10](#), creates a new offense under the same Code section, and expands the definition of criminal mischief in the third degree.

Background

Under [HF 2199](#), a person commits a Class D felony if the person directly or indirectly uses a scanning device or encoding machine to access, read, obtain, memorize, or store information encoded on a payment card without the permission of the authorized user, the issuer of the authorized user's payment card, or a merchant. Under current law, a person must also have the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant. A Class D felony is punishable by confinement for no more than five years and a fine of at least \$750 but not more than \$7,500.

The Bill creates a new criminal offense providing that a person shall not possess a scanning device with the intent to obtain information encoded on a payment card, or the knowledge that a person other than the user, issuer, or merchant intends to use the scanning device to obtain information encoded on a payment card without permission from the user, the issuer, or a merchant. A person who violates this provision commits an aggravated misdemeanor. An aggravated misdemeanor is punishable by confinement of no more than two years and a fine of at least \$625 but not more than \$6,250.

The Bill expands criminal mischief in the third degree under Iowa Code section [716.5](#) to include when a person intentionally damages, defaces, alters, or destroys property upon real or personal property that has the ability to process a payment card as defined in Code section [715A.10](#) in the Bill. Criminal mischief in the third degree is an aggravated misdemeanor.

Assumptions

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends, prisoner length of stay, 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.

Impacts

Correctional Impact

The correctional impact of [HF 2199](#) is estimated to be minimal. Under the Bill, the penalty for the illegal direct or indirect use of a scanning device or encoding machine is a Class D felony, and possession or knowledge of the intent to use these devices or machines is an aggravated

misdeemeanor. The penalty for criminal mischief in the third degree is an aggravated misdemeanor. **Table 1** below shows estimates for sentencing to State prison, parole, probation, or Community-Based Corrections (CBC) residential facilities; length of stay (LOS) under those supervisions; and supervision marginal costs per day for all convictions of Class D felonies and aggravated misdemeanors involving non-persons crimes. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Correctional Impact Memo](#), dated January 8, 2018, for information related to the correctional system.

Table 1 – Sentencing Estimates and LOS

Conviction Offense Class	Percent to Prison	FY 17 Avg Length of Stay in Prison (months)	FY 17 Prison Marginal Cost/Day	Avg Length of Stay on Parole	FY 17 Marginal Cost/Day Parole	Percent to Probation	Avg Length of Stay Probation (months)	FY 17 Avg Cost/Day on Probation	Percent to CBC	FY 17 Marginal Cost/Day CBC	Percent to County Jail	Avg Length of Stay County Jail (days)	Marginal Cost/Day Jail
Class D Felony (Non-Persons)	74%	11.3	\$17.52	13.4	\$4.93	64%	31.6	\$4.93	11%	\$10.56	26%	N/A	\$50.00
Aggravated Misd (Non-Persons)	31%	6.4	\$17.52	5.7	\$4.93	53%	19.5	\$4.93	3%	\$10.56	65%	N/A	\$50.00

Minority Impact

The minority impact of [HF 2199](#) is unknown. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Memo](#), dated January 29, 2018, for information related to minorities in the criminal justice system.

Fiscal Impact

The fiscal impact of [HF 2199](#) is expected to be minimal. **Table 2** contains estimates for the average State cost per offense class type.

Table 2 – Average State Cost per Offense Class Type

Offense Class	Total Minimum Cost	Total Maximum Cost
Aggravated Misdemeanor	\$3,300	\$6,600
Class D Felony	\$7,900	\$12,100

Sources

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

/s/ Holly M. Lyons

February 5, 2018

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.
