



[SF 2382](#) – Criminal Justice Reform – Omnibus (LSB5257SV.1)
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Fiscal Note Version – As Amended and Passed by the Senate

Description

[Senate File 2382](#) 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, and all court costs, fees, fines, and restitution and other financial obligations ordered by the court or assessed by the clerk of the district court have been paid.

Upon objection by the county attorney to the application, the court shall dismiss the application if any of the following apply:

- A conviction listed under Iowa Code section 901C.3 as established by this Division,
- The defendant is the subject of a protective order or a no-contact order,
- The defendant has been subsequently convicted of or granted a deferred judgment for a criminal offense, other than a simple misdemeanor under Iowa Code chapter [321](#) or a similar local ordinance, or
- The defendant has previously been granted two deferred judgments.

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, 2018.

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

- The clerks' staff will be required to do the research for the expungements.
- There are a few hundred qualifying misdemeanor convictions already on the record that might qualify for expungement pursuant to this Bill, and thousands more are added each year.
- The number of applications to expunge misdemeanors will range from 5,000 to 30,000. It is unknown how many applications for expungement will be received and how many applications will qualify.
- For each application, the clerk's staff will spend 60 minutes searching for information on the criteria to qualify, and three minutes preparing either an order of expungement or notice of rejection to applicant.
- The average cost per hour for clerk of court staff (Judicial Specialist 2) is \$26.
- 80.0% of applicants will qualify for an expungement.
- District Associate Judges will spend three minutes processing each expungement order.
- The hourly rate for a District Associate Judge is \$95.43.
- The cost will be \$32,072 per 1,000 applications for expungement.
- The DPS processing time for each expungement application is approximately 2.5 minutes.

Fiscal Impact

Division I is estimated to have a negative fiscal impact on the operating budget of the Judicial Branch. The Division will increase time spent by the clerk of court staff and District Associate Judges processing expungement applications and orders. It is estimated that the additional time spent on processing expungement requests will range from 5,250 to 31,500 hours, depending on the number of applications. District Associate Judges would spend additional time ranging from 250 to 1,500 hours per year on expungement orders. The estimated additional cost per year for clerk staff and District Associate Judge time is estimated to range from \$160,000 to \$962,000. In addition, Division I may increase time spent by staff at county attorney offices processing or objecting to an application for expungement.

Division I may also have a fiscal impact on the DPS. If everyone who is eligible for expungement applied in the first year, it would require over 3,300 hours of labor to remove records of conviction. It is more likely that there would be a gradual increase in the number of applications spread out over several years, with the number of eligible individuals increasing as well. The DPS indicates it would need to study the increase in workload and readdress staffing needs after implementation. Any additional FTE positions would be paid for from criminal history record check revenue, potentially leading to an increase in the fees charged by the Department for record checks.

Division II – Robbery

Description

Division II modifies the criminal offense of robbery in the first degree to include circumstances in which a person commits a robbery with a simulated firearm or simulated explosive. The Division defines a simulated firearm as a device or object that is expressly or impliedly represented to be a firearm and under the circumstances would lead a reasonable person to believe it to be a firearm. The Division also defines a "simulated explosive" as a device or object that is expressly or impliedly represented to be an explosive and under the circumstances would lead a reasonable person to believe it to be an explosive.

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, 2018, 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. 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.

Background

Currently, a person commits robbery in the first degree when 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 current law, 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 correction 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.
- Given the definition expansion of robbery in the first degree involving simulated firearms or simulated explosives, the analysis assumes that 50.0% of dismissed or acquitted charges will become convictions under this proposal.
- 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 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).
- In FY 2017, there were 41 convictions of robbery in the first degree. It is assumed there will be seven additional convictions of robbery in the first degree annually.
- Of those convicted of aggravated theft, 46.7% will be sentenced to prison.
- 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 from each offense.
- Of those convicted of aggravated theft or robbery in the third degree, 47.0% will be sentenced to prison. For the State conviction costs, 47.0% of the new convictions are calculated with the maximum cost and the remaining 53.0% are calculated with the minimum costs.
- The average State cost for one aggravated misdemeanor conviction ranges from \$3,300 to \$6,600. The average State cost for one Class C felony conviction ranges from \$9,000 to \$17,200. The average State cost for one Class B felony conviction ranges from \$12,500 to \$29,600.

Correctional Impact

Division II is estimated to increase convictions for robbery in the first degree by seven convictions annually and increase prison orders by 19 convictions annually. The Division is estimated to decrease probation orders by 16, residential orders by one, and jail orders by 12 annually.

Table 1 shows the estimated additional prison population each year as a result of Division II. The Division is estimated to increase the prison population by 251 inmates by year 10 of implementation.

Table 1 – Senate File 2382, Division II, Prison Population Increase

| FY 2019 | FY 2020 | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 | FY 2027 | FY 2028 |
|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| 0 | 22 | 52 | 82 | 112 | 142 | 172 | 202 | 232 | 251 |

Table 2 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, 2018, for information related to the correctional system.

Table 2 – Sentencing Estimates and LOS

| | Percent to Prison | Avg LOS Prison (months) | FY 17 Marginal Cost/Day Prison | Avg LOS Parole (months) | Percent to Probation | Avg LOS Probation (months) | FY 17 Avg Cost/Day Parole & Probation | Percent to CBC | FY 17 Marginal Cost/Day CBC | Percent to County Jail | Marginal Cost/Day Jail |
|--------------------------|-------------------|-------------------------|--------------------------------|-------------------------|----------------------|----------------------------|---------------------------------------|----------------|-----------------------------|------------------------|------------------------|
| Class B Felony (Persons) | 93.0% | 90.2 | \$17.52 | 33.3 | 9.0% | 34.9 | \$4.93 | 4.0% | \$10.56 | 44.0% | \$50.00 |
| Class C Felony (Persons) | 85.0% | 38.9 | \$17.52 | 20.1 | 29.0% | 36.7 | \$4.93 | 4.0% | \$10.56 | 34.0% | \$50.00 |
| Class D Felony (Persons) | 77.0% | 15.4 | \$17.52 | 10.9 | 51.0% | 29.7 | \$4.93 | 8.0% | \$10.56 | 25.0% | \$50.00 |
| Aggravated Misd | 47.0% | 9.0 | \$17.52 | 4.9 | 70.0% | 19.3 | \$4.93 | 4.0% | \$10.56 | 51.0% | \$50.00 |

Minority Impact

Division II is estimated to have a minority impact. In FY 2017, 49.0% of the persons convicted in Iowa of robbery in the first, second, or third degree were African American. The U.S. Census estimate as of July 1, 2017, states that the Iowa population was 3.7% African American. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 29, 2018, for information related to minorities in the criminal justice system.

Fiscal Impact

Division II is estimated to have a fiscal impact of approximately \$603,000 annually beginning in FY 2020. Under this Division, there would be an estimated seven additional Class B felony convictions and 23 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 3** contains estimates for the average State cost per offense class type and the estimated cost increase.

Table 3 – Senate File 2382, Division II, Estimated Costs for Additional Convictions

| Offense | Penalty | Cost Range | Net Additional Convictions | | Cost Increase Estimate | |
|------------------|------------------|---------------------|----------------------------|---------|------------------------|------------|
| | | | FY 2019 | FY 2020 | FY 2019 | FY 2020 |
| Robbery 1st | Class B Felony | \$12,500 - \$29,600 | 4 | 7 | \$ 118,400 | \$ 207,200 |
| Robbery 2nd | Class C Felony | \$9,000 - \$17,200 | 12 | 23 | 206,400 | 395,600 |
| Robbery 3rd | Aggravated Misd. | \$3,300 - \$6,600 | -12 | -24 | (58,212) | (116,424) |
| Aggravated Theft | Aggravated Misd. | \$3,300 - \$6,600 | 12 | 24 | 58,212 | 116,424 |
| | Total | | 16 | 30 | \$ 324,800 | \$ 602,800 |

Division III – Property Crimes – Value

Description

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

- Arson in the second degree
- Theft (2nd, 3rd, 4th, 5th degrees)
- Aggravated Theft
- Theft Detection Devices – Shield or Removal
- Fraudulent Practice (2nd, 3rd, 4th, 5th degrees)
- Credit Card Fraud
- Identity Theft
- Criminal Mischief (2nd, 3rd, 4th, 5th degrees)
- Trespass
- Railroad Vandalism (4th, 5th, 6th, 7th degrees)
- Transmission of Unsolicited Bulk Email

Background

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

Table 4 – Current Property Crimes Classifications

| Penalty | Arson | Theft | Aggravated Theft | Fraudulent Practice | Criminal Mischief | RR Vandalism |
|------------------------|-----------------|-----------------|------------------|---------------------|-------------------|-----------------|
| Class C Felony | 2 nd | 1 st | | | | |
| Class D Felony | | 2 nd | x | 2 nd | 2 nd | 4 th |
| Aggravated Misdemeanor | 3 rd | 3 rd | x | 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 (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); 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 correction 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 damage or stolen property or services necessary to commit certain levels of numerous criminal offenses. These modifications would 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

The following chart shows the FY 2017 conviction levels for African Americans for the offenses impacted by the Division:

| Offense | Percentage African American |
|-----------------------------------|-----------------------------|
| Criminal Mischief (all degrees) | 18.8% |
| Trespassing | 14.6% |
| Fraudulent Practice (all degrees) | 9.6% |
| Theft (all degrees) | 16.5% |
| Aggravated Theft | 29.4% |

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 – Revocation of Driver’s License for Drug-Related Convictions

Description

Division IV strikes Iowa Code section [901.5\(10\)](#), which revokes a defendant’s driver’s license for 180 days if the defendant is sentenced for a controlled substance offense under Iowa Code sections [124.401](#), [124.401A](#), [124.402](#), or [124.403](#). The Division makes conforming changes and provides that a defendant’s driver’s license suspended or revoked pursuant to Iowa Code section [901.5\(10\)](#) prior to the effective date of the Division shall be reinstated if the defendant is otherwise eligible for a driver’s license.

The Division provides a contingent effective date, specifying that the Division takes effect on the date the Governor submits to the U.S. Secretary of Transportation a written certification that the Governor is opposed to the enforcement in Iowa of a law described in [23 U.S.C. §159\(a\)\(3\)\(A\)](#), and a written certification that the General Assembly has adopted a joint resolution expressing its opposition to the same, in accordance with [23 U.S.C. §159\(a\)\(3\)\(B\)](#).

Background

Federal Revocation Requirements

Under federal law ([23 U.S.C. §159](#)), a state must either:

- 1) Enact and enforce a law that requires in all circumstances – or requires in the absence of compelling circumstances warranting an exception – the revocation or suspension for at least six months, of the driver’s license of any individual who is convicted of any violation of the Controlled Substances Act or any drug offense; or
- 2) The Governor of the State submits written certification in opposition to the enforcement of such a law, and the Legislature adopts a resolution expressing the same.

If a state decides to opt out, the resolution is sent to the Federal Highway Administration for certification. If a state does not comply with the above requirements, it will lose an amount equal to 8.0% of the amount required to be apportioned to the state under the National Highway Performance Program and the Surface Transportation Block Grant Program.

The current conforming section is Iowa Code section [901.5](#). Under this Iowa Code section, the Iowa District Court is required to notify and order the DOT to revoke a defendant’s driver’s license for a period of 180 days if convicted of one of the eligible offenses listed under Iowa Code section [901.5](#).

DOT License Revocations and Reinstatements for Drug Offenses

The DOT charges a \$20 reinstatement fee that must be paid at the time of license reinstatement. There is no civil penalty associated with this type of license revocation. All revenue the DOT generates from fees charged for driver’s licenses is deposited into the Statutory Allocations Fund under the control of the DOT. In FY 2017, the DOT issued 4,778 driver’s license revocations for drug convictions.

Assumptions

- The General Assembly will pass the required resolution and the Governor will submit the letter to the U.S. Secretary of Transportation in order to be in compliance with federal law.
- Staff processing time for a license revocation is approximately 30 minutes.
- The driver’s license reinstatement fee is \$20.
- 25.0% of those with a drug revocation would not have to pay the \$20 fee.

Fiscal Impact

Division IV is estimated to reduce revenue to the Statutory Allocations Fund from driver’s license reinstatement fees. It is estimated there will be fewer individuals paying a \$20 driver’s license reinstatement fee if the drug revocation provision is eliminated. However, those individuals whose licenses are revoked for a drug offense often have an additional offense that would result in a license revocation. Also, a person who has a revoked or suspended license for multiple offenses or who is serving back-to-back revocations would not have to pay the \$20 fee. As a result, the reduction in revenue to the Statutory Allocation Fund is estimated to be approximately \$24,000.

Division IV is also estimated to have a positive impact on the DOT operating budget. The removal of the requirement to revoke driver’s licenses for a drug conviction will reduce workload for DOT staff. It is estimated there would be some salary savings due to the decrease in processing sanction notices and Temporary Restricted License applications that would offset the lost revenue. It is estimated there would be approximately 2,389 hours of increased FTE position capacity statewide, equaling approximately 1.0 FTE position. The corresponding salary savings is approximately \$55,263.

Division V – Theft, Fraud, and Forgery Revisions

Section 37 – Theft Consolidation

Description and Background

Section 37 creates new Iowa Code section 714.2A relating to the consolidation of theft offenses. The Division provides that for purposes of charging a person with theft, any conduct specified as theft in Iowa Code section [714.1](#), subsections 1 through 10, constitutes a single offense. Theft offenses include: taking, misappropriation, theft by deception, possession or receipt of stolen property, fraudulent conversion, check fraud, theft from a public utility, unlawful access to a computer, theft of video rental property, and other similar offenses related to theft.

Correctional and Fiscal Impact

Division V consolidates theft offenses. In FY 2017, there were 10,252 cases involving a theft conviction. Nine of those cases involved more than one theft conviction. The consolidation of theft offenses will likely decrease the number of theft convictions. However, a higher proportion may now receive an increased penalty after being convicted at higher classes due to the consolidation. The extent of this increase cannot be measured, as it is unclear how many of these offenses may be consolidated at time of charging.

Section 38 – Forgery

Description and Background

Division V amends Iowa Code section [715A.2\(2\)](#) relating to forgery. Under the Division, 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 Division also changes the circumstances under which an employer is subject to a civil penalty for hiring a person who commits such a forgery, pursuant to Iowa Code section [715A.2A](#). A person who forges a document as described in Division V commits a Class D felony.

Correctional Impact

The correctional impact of section 38 is estimated to be minimal. **Table 5** 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, 2018, for information related to the correctional system.

Table 5 – Sentencing Estimates and LOS

| Conviction Offense Class | Percent to Prison | FY 17 Avg Length of Stay in Prison (months) | FY 17 Prison Marginal Cost per Day | Avg LOS on Parole (months) | FY 17 Marginal Cost per Day Parole | Percent Sentenced to Probation | Avg Length of Stay on Probation (months) | FY 17 Avg Cost per Day on Probation | Percent Sentenced to CBC | FY 17 Marginal Cost CBC per Day | Percent Sentenced to County Jail | Marginal Cost per Day |
|---------------------------------|--------------------------|--|---|-----------------------------------|---|---------------------------------------|---|--|---------------------------------|--|---|------------------------------|
| Class D Felony (Non-Persons) | 74.0% | 11.3 | \$17.52 | 13.4 | \$4.93 | 64.0% | 31.6 | \$4.93 | 11.0% | \$10.56 | 26.0% | \$50.00 |

Fiscal Impact

The fiscal impact of section 38 is estimated to be minimal. 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 \$7,900 to \$12,100.

Section 39 – Breach of Fiduciary Obligation

Division V amends Iowa Code section [802.5](#) relating to extending the periods of time for which a person may be prosecuted for any offense involving a material element of fraud or a breach of fiduciary obligation.

Fiscal Impact

Section 39 has no fiscal impact.

Division VI – Criminal Proceedings

Description

Division VI creates a 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 District Court. The Division also modifies post-conviction procedures under Iowa Code chapter [822](#).

Fiscal Impact

Division VI is estimated to result in additional costs to the State Public Defender and the Indigent Defense Fund. It is estimated that eliminating appeals from guilty pleas in all but Class A felonies will increase costs. If fewer people plead guilty, then an increase in the amount of trials may result. The State Public Defender estimates that even if these proceedings represent a minor percentage of the 90.0% of the cases in which pleas are now entered, the cost to the Indigent Defense Fund is likely to be \$1.5 million. In addition, the State Public Defender estimates a similar increase is likely for its operating budget.

The provision of Division VI that removes the ability to resolve ineffective assistance counsel claims on direct appeal will likely have a fiscal impact on the State Public Defender and Indigent Defense trial and appellate costs. It is estimated that each case would involve a minimum of \$20,000 in additional Indigent Defense trial and appellate costs. In addition, as a result of the modifications made in this Division, it is a possibility that guilty pleas could only be challenged in post-conviction relief proceedings. As a result, an indigent person could potentially have a longer stay in prison, pending review of the person's guilty plea.

Division VII – State and County Medical Examiner Death Reports and Investigations

Description

Division VII provides that the report of an investigation made by the State medical examiner or county medical examiner shall be admissible in court, including any findings of the State medical examiner or county medical examiner and any information provided by a county attorney or law enforcement agency. The Division specifies permissible sources to rely upon in formulating findings.

Fiscal Impact

Division VII has no fiscal impact.

Division VIII – Criminal Penalties

Description

Division VIII makes changes to several criminal penalties related to possession of a controlled substance, vehicular homicide, and arson in the first degree. The Division also specifies program requirements for the sobriety and drug monitoring program under Iowa Code section [901D.7](#).

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.

Section 51 – Possession of a Controlled Substance

Description

Section 51 decreases the penalty for first offense possession of marijuana under five grams from an offense punishable by imprisonment for not more than six months or by a fine of not more than \$1,000 or both, to a simple misdemeanor punishable by confinement for no more than 30 days or a fine of at least \$65, but not more than \$625, or both.

The section makes convictions for violations in any other state count as a previous offense if the violation in the other state substantially corresponds with possession of controlled substance violations in this State.

Background

Currently, if a person commits a first offense possession of marijuana, the offense is punishable by imprisonment in the county jail for not more than six months or by a fine of not more than \$1,000, or by both. If a person commits a second offense possession of marijuana, the person commits a serious misdemeanor, and if a person commits a third or subsequent offense possession of marijuana, the person commits an aggravated misdemeanor. In FY 2017, there were 3,692 convictions for first offense possession of marijuana.

Assumptions

- 50.0% of the 3,692 convictions for first offense possession of marijuana in FY 2017 involved five grams or less.
- 75.0% of the additional simple misdemeanor first offense possession of marijuana convictions involving five grams or less would utilize the services of a public defender.
- The average State cost per serious misdemeanor is \$343 and the average State cost per simple misdemeanor is \$255.

Correctional Impact

Section 51 would result in an estimated 923 fewer serious misdemeanor convictions under Iowa Code section [124.401\(5\)](#) in FY 2019. This amount would increase to 1,846 fewer convictions in FY 2020. There would be fewer admissions into jail, prison, and CBC residential facilities, as well as fewer placements on probation and parole.

Table 6 below shows estimates for sentencing to State prison, parole, probation, or CBC residential facilities; LOS under those supervisions; and supervision marginal costs per day for convictions of simple and serious misdemeanors. Refer to the LSA memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 8, 2018, for information related to the correctional system.

Table 6 – Sentencing Estimates and LOS

| | Percent to Prison | Avg LOS Prison (months) | FY 17 Marginal Cost/Day Prison | Avg LOS Parole (months) | Percent to Probation | Avg LOS Probation (months) | FY 17 Avg Cost/Day Parole & Probation | Percent to CBC | FY 17 Marginal Cost/Day CBC | Percent to County Jail | Avg LOS County Jail (days) | Marginal Cost/Day Jail |
|----------------------------|-------------------|-------------------------|--------------------------------|-------------------------|----------------------|----------------------------|---------------------------------------|----------------|-----------------------------|------------------------|----------------------------|------------------------|
| Serious Misd (Non-Persons) | 2.0% | 7.3 | \$17.52 | N/A | 57.0% | 13.8 | \$4.93 | 1.0% | \$10.56 | 72.0% | N/A | \$50.00 |
| Simple Misdemeanor | N/A | N/A | \$17.52 | N/A | N/A | N/A | \$4.93 | N/A | \$10.56 | N/A | N/A | \$50.00 |

The portion of this Bill section allowing drug convictions from other states to be counted as prior convictions in Iowa is expected to increase the number of higher-level subsequent drug convictions; however, the extent of that increase cannot be measured.

Minority Impact

Section 51 of this Bill would have a positive minority impact to the African-American community. In FY 2017, 19.5% of the persons convicted of first offense marijuana possession were African American. The U.S. Census estimate as of July 1, 2017, states that the Iowa population was 3.7% African American. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 29, 2018, for information related to minorities in the criminal justice system.

Fiscal Impact

During FY 2019, it is estimated that there would be 19 fewer admissions to prison, 10 fewer admissions to a CBC residential facility, 434 fewer admissions to jail, and 572 fewer placements on probation. Those numbers would double in FY 2020 and subsequent years. **Table 7** contains estimates for the average State cost per offense class type and the estimated cost savings. Additionally, with considerably fewer jail admissions and shorter LOS, there would be savings to local governments.

Table 7 – Senate File 2382, Section 51, Estimate of Costs

| Offense | Cost Range | Conviction Shift | | Cost Increase Estimate | |
|---------------------|-------------------|-------------------------|----------------|-------------------------------|----------------|
| | | FY 2019 | FY 2020 | FY 2019 | FY 2020 |
| Serious Misdemeanor | \$250 - \$4,900 | -923 | -1,846 | (\$316,600) | (\$633,200) |
| Simple Misdemeanor | \$30 - \$330 | 923 | 1,846 | \$235,400 | \$470,700 |
| Net Change | | 0 | 0 | (\$81,200) | (\$162,500) |

Section 53 – Vehicular Homicide

Description

Section 53 provides that a person commits a Class C felony when the person unintentionally causes the death of another person when exceeding the speed limit by 30 miles per hour or more, in violation of Iowa Code section [321.285](#), [321.290](#), [321.293](#), or [321.295](#), if the death of the other person directly or indirectly results from such a violation. This new provision does not apply to a member of a public safety agency performing official duties, as defined in Iowa Code section [34.1](#).

Background

Currently, the following penalties are applied to the following offenses:

- A person who violates Iowa Code section [321.285](#) commits a simple misdemeanor or a simple misdemeanor as a scheduled violation under Iowa Code section [805.8A](#).
- A person who violates Iowa Code section [321.290](#) or [321.293](#) commits a simple misdemeanor.
- A person who violates Iowa Code section [321.295](#) commits a simple misdemeanor punishable as a scheduled fine of \$50.

Currently, Iowa Code section [707.6A\(2\)\(a\)](#) states that a person commits a Class C felony when the person unintentionally causes the death of another person by driving a motor vehicle in a reckless manner with willful or wanton disregard for the safety of persons or property, or when they elude or attempt to elude a pursuing law enforcement vehicle. Section 53 would add language that a person commits a Class C felony when the person unintentionally causes the death of another person by exceeding a speed limit by 30 miles per hour or more.

A Class C felony is punishable by imprisonment for no more than 10 years and a fine between \$1,000 and \$10,000. Violations of Iowa Code section [707.6A\(2\)\(a\)](#) are subject to a 70.0% mandatory minimum sentence. Additionally, under Iowa Code section [321.210D](#), a person in violation of Iowa Code section [707.6A](#), subsection 1 or 2, is subject to a driver's license suspension for vehicular homicide for one year.

In calendar years 2016 and 2017, there were 50 accidents resulting in 59 fatalities in which speed was ruled as the causing factor. Of these 50 accidents, there were nine in which the speeding driver was not killed and could face charges. Of those nine accidents, the following occurred:

- Six drivers were charged with vehicular homicide (a Class C felony with a 70.0% mandatory minimum sentence).
- One driver was cited for failure to stop in an assured clear distance (a speeding violation), and received a one-year driver's license suspension.
- One driver was cited for driving between one and five miles over the speed limit, and received a one-year driver's license suspension.
- Charges are pending in the last case.

Persons convicted of Class C felony vehicular homicide are sentenced to prison and serve an average length of stay of 102 months. These individuals would not be placed on probation or sentenced to a CBC residential facility.

Assumptions

An accident resulting in a fatality when the driver was operating a motor vehicle 30 miles per hour or greater over the speed limit is already cited under Iowa Code section [707.6A](#), subsection 1 or 2.

Correctional Impact

There would be no correctional impact from this Division, as it is estimated that there would be no new convictions under Iowa Code section [707.6A](#). Refer to the LSA memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 8, 2018, for information related to the correctional system.

Minority Impact

There would be no minority impact from this Division, as it is estimated that there would be no new convictions under Iowa Code section [707.6A](#). Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 29, 2018, for information related to minorities in the criminal justice system.

Fiscal Impact

There would be no fiscal impact from this Division, as there would be no additional charges or convictions.

Section 54 – Arson in the First Degree

Description

Section 54 would require 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 section 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 section applies to convictions of arson in the first degree that occur on or after July 1, 2018.

The Division also makes arson in the first degree a category B sentence under Iowa Code section [903A.2](#), in effect increasing the length of the sentence by reducing the amount of earned time the person is eligible for during confinement from one and two-tenths of a day for each day of good conduct to fifteen eighty-fifths of a day for each day of good conduct.

Background

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

Assumptions

- Offenders convicted will serve a mid-point length of stay between 50.0% and 70.0% under this proposal.
- The annual marginal cost of prison per day is equal to the daily marginal cost multiplied by 365 days ($\$17.52 \times 365 = \$6,394.80$).

Correctional Impact

Section 54 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 2017, there were eight 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 26.9 months to 180 months, increasing the length of stay by approximately 13 years. The Division is estimated to increase the prison population by 62 inmates at 10 years from implementation. Refer to the LSA memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 8, 2018, for information related to the correctional system.

Minority Impact

In FY 2017, 6.2% 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 29, 2018, for information related to minorities in the criminal justice system.

Fiscal Impact

Section 54 will have a fiscal impact on the operating budget of the DOC due to the increased LOS for offenders convicted of arson in the first degree. The fiscal impact will begin in FY 2021, when those persons convicted on or after July 1, 2018, would have been eligible for release under the prior law. **Table 8** shows the total increase in marginal costs beginning in FY 2021. The Division is estimated to result in additional costs of \$397,000 by FY 2028.

Table 8 – Senate File 2382, Section 54, Additional Prison Costs per Year

| | FY 2019 | FY 2020 | FY 2021 | FY 2021 | FY 2022 |
|---------------------------------|----------|----------|-----------|-----------|------------|
| Additional Population | 0 | 0 | 6 | 14 | 22 |
| Annual Marginal Cost Per Inmate | \$ 6,395 | \$ 6,395 | \$ 6,395 | \$ 6,395 | \$ 6,395 |
| Total Additional Cost Per Year | \$ 0 | \$ 0 | \$ 38,370 | \$ 89,530 | \$ 140,690 |

Section 55 – Sobriety and Drug Monitoring Program**Description**

Section 55 specifies that the sobriety and drug monitoring program established under Iowa Code section [901D.3](#) shall not be less than 90 days. The section provides that the order or directive placing a participant in the program must include a requirement that the participant must not have a failed test result or have missed a required test 30 days prior to the end of participation in the program.

Fiscal Impact

Section 55 does not have a fiscal impact.

Division IX – Juror Service and Donations**Description**

Division IX relates to jurors, including donation of juror compensation or reimbursement, jury manager authority to excuse or defer jurors, and public access to juror information. The Division provides that a juror may donate compensation or reimbursement for juror service to an Iowa Supreme Court-designated State fund or charitable organization.

Fiscal Impact

Division IX does not have a fiscal impact.

Summary
Correctional Impact

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

Table 9 – SF 2382 as amended and passed by the Senate Correctional Impact Summary

| Bill Division | Offense | Penalties | Net Additional Convictions - FY 2019 | Net Additional Convictions - FY 2020 |
|----------------------|--------------------------------------|------------------|---|---|
| II | Robbery 1st | Class B Felony | 4 | 7 |
| | Robbery 2nd | Class C Felony | 12 | 23 |
| | Robbery 3rd | Aggravated Misd. | -12 | -24 |
| | Aggravated Theft | Aggravated Misd. | 12 | 24 |
| III | Property Crimes | Various | Correctional impact cannot be determined | Correctional impact cannot be determined |
| V | Theft and Fraud | Various | Correctional impact cannot be determined | Correctional impact cannot be determined |
| | Forgery | Class D Felony | Minimal correctional impact | Minimal correctional impact |
| VIII | Possession of a Controlled Substance | Serious Misd. | -923 | -1,846 |
| | | Simple Misd. | 923 | 1,846 |
| VIII | Vehicular Homicide | Class C Felony | No expected correctional impact | No expected correctional impact |
| VIII | Arson in the First Degree* | Class B Felony | No additional convictions, increases length of stay | No additional convictions, increases length of stay |

Fiscal Impact

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

Table 10 – SF 2382 as amended and passed by the Senate Fiscal Impact Summary

| Bill Division | Provision | Fund | Fiscal Impact - FY 2019 | Fiscal Impact - FY 2020 |
|---------------|--|---|---|---|
| I | Expungements | Judicial Branch Operating Budget | \$160,000 - \$962,000 | \$160,000 - \$962,000 |
| II | Robbery | Various justice system operating costs | \$325,000 | \$603,000 |
| III | Property Crime | Various justice system operating costs | Fiscal impact cannot be determined | Fiscal impact cannot be determined |
| IV | Revocation of Driver's License for Drug-Related Convictions | Statutory Allocations Fund | (\$24,000) | (\$24,000) |
| IV | Revocation of Driver's License for Drug-Related Convictions | DOT Operating Budget | \$55,000 | \$55,000 |
| V | Theft, Fraud, and Forgery Revisions | Various justice system operating costs | Fiscal impact cannot be determined, but is expected to be minimal | Fiscal impact cannot be determined, but is expected to be minimal |
| VI | Criminal Proceedings | State Public Defender Operating Budget, Indigent Defense Fund | Full impact unknown | Full impact unknown |
| VII | State and County Medical Examiner Death Reports and Investigations | DPH Operating Budget | No expected fiscal impact | No expected fiscal impact |
| VIII | Criminal Penalties - Section 51 Possession of a Controlled Substance | Various justice system operating costs | (\$81,200) | (\$162,500) |
| VIII | Criminal Penalties - Section 53 Vehicular Homicide | Various justice system operating costs | No expected fiscal impact | No expected fiscal impact |
| VIII | Criminal Penalties - Section 54 Arson in the First Degree** | Various justice system operating costs | \$0 | \$0 |
| IX | Jury Service and Donations | Judicial Branch Operating Costs | No expected fiscal impact | No expected fiscal impact |

**Section 54 fiscal impact will not occur until FY 2021, see Division VIII for more detail.

Sources

Department of Corrections
 Department of Human Rights, Criminal and Juvenile Justice Planning Division
 Department of Public Safety
 Department of Transportation
 Judicial Branch, Office of the State Court Administrator
 Office of the State Public Defender
 LSA Calculations

/s/ Holly M. Lyons

March 6, 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.