



HF 2401 – Sexual Offenses (LSB5309HV)

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Fiscal Note Version – As Amended and Passed by the House

Description — All Divisions

[House File 2401](#) makes a variety of changes to child abuse and sex offender laws. Of the six divisions in the Bill, two will have a fiscal impact and four are expected to have little or no fiscal impact.

- Fiscal Impact: Divisions I, VI
- Little or no fiscal impact: Divisions II, III, IV, V

DIVISION I: Sexually Violent Predators — Accumulation of Earned Time

Description

Division I relates to sexually violent predators and the accumulation of earned time by offenders, and provides penalties. The Division makes various changes to provisions relating to the release of sexually violent predators under Iowa Code chapter [229A](#).

Division I specifies that an inmate committed to the Department of Corrections (DOC) who is required to participate in a sex offender or domestic abuse treatment program shall not be eligible for any reduction of sentence until the inmate participates in and completes a sex offender or domestic abuse treatment program. The Division specifies that an inmate committed to the DOC may be ordered to forfeit any or all earned time if the inmate has failed to complete a sex offender or domestic abuse treatment program as specified in Iowa Code section [903A.2](#).

Background

Under Iowa Code section [903A.2\(1\)\(a\)\(2\)](#), an inmate required to participate in a sex offender treatment program (SOTP) shall not be eligible for a reduction of sentence unless the inmate participates in and completes an SOTP. Failure to complete treatment includes refusal to attend or removal by corrections officers. Prior to 2016, the DOC policy interpreted this language to mean that an inmate could no longer accrue any earned time after refusing to attend the DOC's SOTP, but would not lose any previously accrued earned time. In January 2016, the DOC revised its policy to also include the forfeiture of previously accrued earned time. In 2017, the Iowa Supreme Court ruled in [State v. Iowa District Court for Jones County](#) that the DOC policy prior to 2016 applied and that the DOC could not lawfully forfeit an offender's earned time accrued prior to the offender's refusal of or removal from the SOTP.

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.
- In FY 2017, 33 offenders were unsuccessful in the Domestic Abuse Treatment Program. It is assumed that 33 offenders will be unsuccessful in the program annually.
- In FY 2017, 43 offenders were unsuccessful in the SOTP. It is assumed that 43 offenders will be unsuccessful in the program annually.
- The maximum sentence imposed on average would add six years after loss of earned time for those unsuccessful in the SOTP and seven years for those unsuccessful in the Domestic Abuse Treatment Program.
- 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

No additional persons will be convicted because of the provisions in this Division. The impact will occur because the length of stay for offenders who were unsuccessful in the treatment programs will increase due to loss of earned time. This impact will begin in FY 2019 and continue to increase until FY 2024. The additional costs are outlined in the Fiscal Impact section of this Fiscal Note. The Bill is expected to increase the prison population due to the increased length of stay after forfeiture of earned time.

Table 1 — [HF 2401](#) Estimated Prison Population Changes

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
SOTP	43	86	129	172	215	215
Domestic Abuse Treatment	33	66	99	132	165	198
Total Additional Population	76	152	228	304	380	413

*On average, offenders stay an additional 6 years for SOTP and 7 years for Domestic Abuse Treatment.

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.

Minority Impact

Of the current active offenders, three of the six offenders unsuccessful in the Domestic Abuse Treatment Program and four of the 22 offenders unsuccessful in the SOTP are African-American. This division is not estimated to have a minority impact. 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

[House File 2401](#) will have a fiscal impact on the operating budget of the DOC due to the increased length of stay for offenders who are unsuccessful in the SOTP or the Domestic Abuse Treatment Program. It is estimated there will be 43 unsuccessful participants in the SOTP and 33 unsuccessful participants in the Domestic Abuse Treatment Program annually. The marginal

costs are estimated to increase until FY 2024, when the prison population is no longer expected to further increase as a result of the Bill.

Table 2 — HF 2401 Additional Prison Costs Per Year

	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>
Additional Population	76	152	228	304	380	413
Annual Marginal Cost Per Inmate	\$ 6,395	\$ 6,395	\$ 6,395	\$ 6,395	\$ 6,395	\$ 6,395
Total Additional Cost Per Year	\$ 486,000	\$ 972,000	\$1,458,000	\$1,944,000	\$2,430,000	\$2,641,000

*Totals may not sum due to rounding of marginal cost.

DIVISION II: Child Abuse — Sexual Offenses and Sex Offenders

Description

Division II amends the definition of child abuse in Iowa Code section [232.68](#) in the following ways:

- Modifies the criteria for “commission of a sexual offense” to establish that the offense only applies to a person who is 14 years old or older. Under current law, the offense applies regardless of age.
- Modifies the criteria for “allowing access to a registered sex offender” to establish that the offense applies to a person responsible for the care of a child who knowingly allows a person who is required to register on the sex offender registry access to the child, and provides some exceptions.

Assumptions

- According to the Department of Human Services (DHS), there were 263 assessments in FY 2017 accepted under commission of a sexual offense where the alleged perpetrator was less than 12 years old. This represents 0.9% of accepted child abuse assessments. There were 571 cases where the perpetrator was 18 years old and younger.
- An unknown number of these cases may still be accepted for referral under the criteria for caretaker status or a different criterion of child abuse.
- The exact status of caseloads of Social Worker III classification cannot be determined. Actual caseloads vary from county to county, and some are reported much higher than the statewide average.
- Expenditures in the child welfare system have a State match of 89.0% with federal funds.
- Programming changes will need to be made to the Child Welfare Information System (CWIS) for the modified criteria in the Division.

Fiscal Impact

This Division may have a positive impact on the DHS Field Operations operating budget. Fewer commissions of sexual offense referral cases will lead to decreased caseloads for Social Worker III employees. Due to the unknown nature of net referral changes and the variability of caseloads across the State, the total savings is unknown.

Changes to programming for the CWIS are estimated to be minimal and will be absorbed in the DHS General Administration appropriation.

DIVISION III: Sexual Offenders and Predators — Registration and Child Endangerment

Description

Division III of this Bill relates to the criminal offense of child endangerment. This Division would modify Iowa Code section [726.6\(h\)](#) so that child endangerment is committed only if the sex offender defined below is required to register or is on the sex offender registry because of a sex offense committed against a minor. The Division also adds a new section stating that a person who has had to register or is on the sex offender registry because of a sex offense committed against a minor commits child endangerment if the sex offender knowingly takes custody or control of a child or minor, or knowingly has unsupervised access to a child or minor. This would not apply if the sex offender is a parent or guardian of the child or minor nor is a spouse of the parent, guardian, or person having custody or control of the child or minor.

Background

The Sex Offender Registry was created in Iowa Code chapter [692A](#) during the 1995 Legislative Session. Residency restrictions were added in 2002, and the registry law was amended in 2005 and 2009. Any person convicted of a sex offense in Iowa, or required to register in another jurisdiction under that sex offender registry, is required to register in this State if the offender resides, is employed, or attends school in this State. A juvenile convicted of a sex offense is required to register as a sex offender unless the juvenile court waives that requirement. Each offender is classified as either a tier I, tier II, or tier III offender. Tiers contain sex offenses in ascending order of severity, with tier III being the most serious. The tier classification determines the frequency of the verification of relevant information at the county sheriff's office and determines when an offender is eligible to apply for a modification of registration requirements. The classification system does not affect the duration of the registration requirement.

Currently under Iowa Code section [726.6](#), a parent, guardian, or person having custody or control over a child or a minor under the age of 18 with a mental or physical disability, or a person who is a member of the household where a child or such a minor resides, commits child endangerment when that person knowingly allows a person who is required to register or is on the sex offender registry custody or control of, or unsupervised access to, a child or minor. The charge of child endangerment does not apply if the sex offender is a parent or guardian of the child or minor nor is a spouse of the parent, guardian, or person having custody or control of the child or minor.

A conviction of child endangerment can range from an aggravated misdemeanor to a Class B felony, depending on the circumstances of the case. **Table 3** 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 offenders convicted of Class B, Class C, Class D, and aggravated misdemeanor child endangerment.

Table 3 — Sentencing Estimates

	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
Class B Felony Persons	93.0%	90.2	\$17.52	33.3	9.0%	34.9	\$4.93	4.0%	\$10.56	44.0%	N/A	\$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%	N/A	\$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%	N/A	\$50.00
Aggravated Misd. Persons	47.0%	9	\$17.52	4.9	70.0%	19.3	\$4.93	4.0%	\$10.56	51.0%	N/A	\$50.00

Assumptions

- There is no reliable data available on sex offenders residing with children who are not the offenders’ offspring. It is expected that these situations would be infrequent.
- 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.

Correctional Impact

It is estimated that there would be a minimal correctional impact from this Division, as situations it would address would be infrequent. 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

It is estimated that the minority impact of this Bill would be minimal. In the last five years, convictions under Iowa Code section [726.6](#) have been predominately Caucasian males. 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

It is estimated that the fiscal impact of this Division would be minimal. The State’s cost for one additional conviction of child endangerment would be:

- \$3,300 to \$6,600 for an aggravated misdemeanor.
- \$7,900 to \$12,100 for a Class D felony.
- \$9,000 to \$17,200 for a Class C felony.
- \$12,500 to \$29,600 for a Class B felony.

The minimum cost includes court time for a district associate judge or a district court judge, court reporter, court attendant, and clerk of court staff, plus the costs of probation supervision. The maximum cost includes court time and the costs of a jury trial, indigent defense, State prison, and parole supervision.

DIVISION IV: Lascivious Conduct with a Minor

Description

Division IV relates to the criminal offense of lascivious conduct with a minor. The Division expands the definition of lascivious conduct with a minor and classifies the conviction as either a serious or an aggravated misdemeanor, depending on the elements of the offense. A person who violates the provisions of the Division must register as a sex offender pursuant to Iowa Code chapter [692A](#).

Background

Division IV does not change the current offense of lascivious conduct with a minor as prescribed in Iowa Code section [709.14](#). The current offense is punishable as a serious misdemeanor.

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.
- Fifty percent of dismissed or acquitted charges may become convictions under this Bill.

Impacts

Correctional Impact

The correctional impact of [HF 2401](#) is estimated to be minimal. In FY 2017, there were 14 convictions of lascivious conduct with a minor under Iowa Code section [709.14](#). In FY 2017, there were nine dismissed or acquitted charges of lascivious conduct with a minor. The Bill is expected to increase jail orders and probation orders by three orders annually.

Under the expanded definition of lascivious acts with a minor, the conviction is either a serious or an aggravated misdemeanor depending on the elements of the offense. **Table 4** 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 (sex offenses) 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 4 – Estimates for Sentencing

Conviction Offense Class	Percent Sentenced to State Prison	FY 17 Avg. Length of Stay in Prison (months)	FY 17 Marginal Cost/Day	Avg. Length of Stay on Parole (months)	FY 17 Marginal Cost/Day Parole	Percent Sentenced to Probation	Avg. Length of Stay on Probation (months)	FY 17 Avg. Cost/Day on Probation	Percent Sentenced to CBC Residential Facility	FY 17 Marginal CBC Cost/Day	Percent Sentenced to County Jail	Avg. Length of Stay in County Jail (Days)	Marginal Cost/ Day
Aggravated Misdemeanor (Sex Offense)	78.0%	15	\$17.52	3.9	\$4.93	46.0%	22.9	\$4.93	9.0%	\$10.56	26.0%	N/A	\$50.00
Serious Misdemeanor	2.0%	7.3	\$18.51	N/A	\$4.59	57.0%	13.8	\$4.93	1.0%	\$10.56	72.0%	N/A	\$50.00

Minority Impact

There is no minority impact expected under this Division. 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 this Division is estimated to be minimal. **Table 5** contains estimates for the average State cost per offense class type.

Table 5 – Average State Cost Per Offense Class Type

Offense Class	Total Minimum Cost	Total Maximum Cost
Aggravated Misdemeanor	\$3,300	\$6,600
Serious Misdemeanor	\$250	\$4,900

DIVISION V: Sex Offender Housing Workgroup

Description

This Division directs the DOC to lead a workgroup to study the issue of housing for the placement of aging sex offenders who qualify for release from the custody of the DOC or the DHS. The workgroup is required to meet to study this issue and submit a report with recommendations to the General Assembly by January 2019.

Fiscal Impact

Division V is not estimated to have a fiscal impact.

DIVISION VI: Sex Offender Treatment and Supervision Task Force

Description

Division VI directs the Criminal and Juvenile Justice Planning (CJJP) Division of the Department of Human Rights to establish a Sex Offender Treatment and Supervision Task Force and lists the task force members. A report with recommendations is to be filed with the General Assembly by July 1, 2019. Duties of the task force are:

- Study the effectiveness of electronic monitoring.
- Study risk assessment models created for sex offenders.
- Review the efforts of Iowa and other states in implementing treatment programs.
- Make recommendations on the best treatment options available for sex offenders.
- Develop a plan to integrate State government databases for updating addresses of persons on the sex offender registry.

Task force members will include members of the General Assembly selected by the Legislative Council and representatives from each of the following:

- Department of Transportation.
- Iowa Civil Liberties Union.
- Department of Human Services.
- Department of Public Safety.
- Iowa State Sheriffs' and Deputies' Association.
- Iowa County Attorneys Association.
- Department of Corrections.
- Board of Parole.

- Judicial Districts of the Department of Correctional Services.
- Department of Justice.
- State Public Defender.
- Iowa Coalition Against Sexual Assault.

Background

The CJJP currently staffs the existing Sex Offender Research Council (SORC) as created in Iowa Code section [216A.139](#).

Assumptions

Most, but not all, of the required members are already represented on the SORC.

Fiscal Impact

Division VI is estimated to have a minimal fiscal impact. There would be no fiscal impact to the CJJP if the SORC were utilized and additional identified members participated in those meetings. If an additional task force were created requiring CJJP staffing, the estimated cost to provide staff and administrative support would be \$50,000 for 0.5 full-time equivalent (FTE) position.

ALL DIVISIONS

Fiscal Impact — All Divisions

Table 6 outlines the estimated increased costs in [HF 2401](#).

Table 6

Estimated Impact of HF 2401					
	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>
Division I – Department of Corrections	\$ 486,000	\$ 972,000	\$ 1,458,000	\$ 1,944,000	\$ 2,430,024
Division VI – CJJP Higher Estimate	50,000	0	0	0	0
Grand Total	<u>\$ 536,000</u>	<u>\$ 972,000</u>	<u>\$ 1,458,000</u>	<u>\$ 1,944,000</u>	<u>\$ 2,430,024</u>

Correctional Impact — All Divisions

The correctional impact of [HF 2401](#) is estimated to be minimal. 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 — All Divisions

There is no minority impact expected for [HF 2401](#). 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.

Sources

Child Welfare Policy and Practice Group, [Initial Targeted Child Welfare Review](#)
 Department of Corrections
 Department of Human Rights, Criminal and Juvenile Justice Planning Division

Department of Human Services
Department of Public Safety
Judicial Branch, Office of the State Court Administrator
Office of the State Public Defender
[State v. Iowa District Court for Jones County](#), 909 N.W.2d 811 (2017).

/s/ Holly M. Lyons

March 13, 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.
