



Date: January 26, 2023

To: Iowa General Assembly

From: Caitlin Jarzen, Director of Governmental Affairs, Iowa Judicial Branch

Regarding: Judicial Branch Administration, including judicial council duties regarding mental health advocate best practices, access to limited department of revenue information for jury list compilation, juror information confidentiality, contracting authority, the apportionment of district associate judges, remote testimony in civil proceedings, and access to criminal history records.

Bill Impact:

Judicial council duties regarding mental health advocate best practices: This provision of the bill would strike the requirement for judicial council to develop and promulgate best practices for mental health advocates. The requirement was added to the Code in 2012. Judicial council is not the appropriate body to develop best practices for mental health advocates and the requirement is inconsistent with current practices.

Access to limited department of revenue information for jury list compilation and juror information confidentiality: Currently, the primary jury source lists are the voter registration list, the motor vehicle operators list, and nonoperators identification list. These source lists present the following limitations:

- 1) Numerous Iowans are not registered to vote and do not have a driver's license or nonoperators identification; and
- 2) Those who are registered to vote and/or have a driver's license or nonoperators identification often do not update their address in those systems.

This bill updates Chapters 422 and 607A of the Iowa Code to expand the sources from which jury lists can be compiled. Although Code chapter 607A requires state government officials to furnish lists necessary for the formulation of jury source lists, Code chapter 422 forbids tax information from being divulged for use in a matter unrelated to tax administration.

This bill will remove ambiguities and inconsistencies from the Code and will improve the accuracy of Iowa's jury source lists. Currently, the Individual Income, Corporate, and Franchise Taxes chapter of the Code (422) forbids a tax return, return information, or investigative or audit information from being divulged to any person or entity, other than the taxpayer, the department of revenue, or internal revenue service, for use in a matter unrelated to tax administration. This prohibition is inconsistent with the Juries chapter of the Code (607A), which states that state government officials shall furnish lists necessary for the formulation of jury source lists.

The bill provides that information provided by the department of revenue shall not include financial information of taxpayers and shall be limited to information fields that are currently provided by the voter registration list, and motor vehicle operators list and nonoperators identification list, specifically:

- Name;
- Date of birth;
- Last four digits of social security number; and
- Address.

The current jury source lists are the voter registration list, motor vehicle operators list, and nonoperators identification list. There are many Iowans who are not registered to vote and do not have a drivers license or nonoperators license. There are also many Iowans who are registered to vote or who have a drivers license or nonoperators license but have not updated their address with the department of transportation or secretary of state. In contrast to the current jury source lists, people do update their address with the department of revenue, so its address data is more accurate. Expanding the primary jury source lists to include the department of revenue would improve the address accuracy and expand jury pools.

Additionally, this bill protects prospective juror street addresses and day and month of birth by deeming them confidential and not subject to disclosure without an order of the court. Currently, the contact information and date of birth of jurors is public information. Prospective jurors have reported litigants showing up at their homes in attempt to discuss the pending case. This bill will help to shield prospective jurors from inappropriate contacts and harassment.

Contracting authority: This provision of the bill would authorize the judicial branch to agree to contractual limitations of liability. Vendors are increasingly requiring limitation of liability clauses in contracts, including information technology, telephone systems, colocation agreements, services, space, equipment, and other items.

The authorization to agree to limitation of liability clauses in judicial branch contracts is necessary to prevent material harm to the state courts from: (1) a failure to obtain goods and services needed by the judicial branch; or (2) obtaining goods and services at materially higher prices.

The legislature granted express statutory authority to the department of administrative services to agree to contractual limitations of liability, under certain conditions, pursuant to Iowa Code section 8A.311. This bill would provide the same authority to the judicial branch.

Apportionment of district associate judges: District associate judges are currently apportioned based on county population. This bill would amend the apportionment mechanism of district associate judges to be consistent with apportionment of district court judges, using a weighted workload formula. The language in this bill mirrors the language Iowa Code section 602.6201, Office of district judge — apportionment, with a few exceptions.

Language regarding nomination, appointment, retention, and residency of district associate judges is omitted from this bill. These topics are addressed in Iowa Code sections 602.6304 and 602.6305 and remain unchanged by this bill.

Remote testimony in civil proceedings: This provision would authorize remote testimony in civil proceedings.

Currently, Iowa Code section 624.1 provides: “All issues of fact in ordinary actions shall be tried upon oral evidence taken in open court, except that depositions may be used as provided by law.” The Iowa Supreme Court held that the phrase “in open court” meant physical presence in the courtroom, and ruled that allowing telephonic testimony over objection violated this statute. In re Estate of Rutter, 633 N.W.2d 745–46 (Iowa 2001). This bill amends Iowa Code section 624.1 by adding language that defines “open court” to include remote appearances.

Please see the following related orders from the Iowa Supreme Court:

- [In the Matter of Remote Testimony in Judicial Proceedings \(November 4, 2022\)](#)
- [In the Matter of Remote Judicial Proceedings \(November 4, 2022\)](#)

Criminal History Records: Prior to March 2012, the security level of criminal histories was set at level 5. In March 2012, the security level was lowered to level 2 (available to self-represented litigants and case attorneys). In July 2022, the judicial branch raised the security level back to level 5 due to concern that a lower security level was inconsistent with Code Chapter 692.

The recent change in security level caused practical issues in counties where common practice had been for the county attorney to file the criminal history to

the docket. When criminal history was set at security level 2, both the judge and defense attorney could see it when a county attorney filed it to the docket. At security level 5, only the judge can see it.

There are several issues with this:

1. It could be construed as ex parte communication.
2. The defense attorney does not receive a copy of the criminal history and is not able to review it to prepare for court proceedings.
3. The criminal history is not accessible for appellate review.

To comply with chapter 692, the security level of criminal history remains set at level 5. Practitioners have found alternative ways to exchange the information but they not ideal. This bill would allow criminal history records to be disseminated to the attorney of the accused and self-represented litigants, as follows:

1. Without a court order, if the criminal history is already a part of the prosecution's file and is subject to a discovery obligation; and
2. With a court order, if the criminal history is not already part of the prosecution's file.