



[SF 525](#) – Criminal Procedure (LSB1114SV)
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Fiscal Note Version – New

Description

[Senate File 525](#) relates to criminal law, including the disclosure of a defendant's privileged records, no-contact orders, commencement limitations for certain sexual offenses, sexually predatory offenses, victim rights, discovery, postconviction relief actions, criminal appeals, and pretrial bond amounts for certain felonies.

Division I — Communications in Professional Confidence

Description and Background

Division I limits exculpatory information under Iowa Code section [622.10](#) to only information that tends to negate the guilt of the defendant and not information that is merely impeaching or substantially cumulative.

Under Iowa Code section 622.10, individuals of certain professions who obtain information by reason of the individual's employment are not allowed in giving testimony to disclose any confidential communication properly entrusted to the person. The confidentiality privilege is absolute with regard to a criminal action, and the disclosure of any privileged records to a defendant is not authorized or required in a criminal action unless either of the following occurs:

- The privilege holder waives the confidentiality privilege.
- The defendant seeking access to privileged records files a motion demonstrating in good faith a reasonable probability that the information sought is likely to contain exculpatory information that is not available from any other source and for which there is a compelling need for the defendant to present a defense in the case.

A Brady motion is a defendant's request to the prosecution for evidence which is favorable or exculpatory to the defense.

Assumptions

- The State Public Defender reports that the provisions of Division I may lead to an increase in the number of Brady motions.
- Each Brady motion will take an average of 3.5 hours of attorney time to investigate the Brady issue, prepare the Brady motion, and hear the motion in court.
- State Public Defender contract attorneys are paid \$78 per hour for Class A felony cases, \$73 per hour for Class B felony cases, and \$68 per hour for all other cases.

Fiscal Impact

Division I may result in additional Brady motions for State Public Defender attorneys and contract attorneys, but the extent of this increase is not known. There will be increased costs to the State Public Defender operating budget and the Indigent Defense Fund due to increased attorney time for additional Brady motions, but the total fiscal impact cannot be estimated.

Division II — No-Contact Orders

Description

Division II relates to the modification and extension of no-contact orders. Under Division II, when a no-contact order expires, the court must modify and extend the no-contact order for an additional five years unless the defendant files an application within 90 days prior to the expiration, and the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's family. The number of modifications extending a no-contact order is not limited.

Division II also provides that if the defendant applies to modify or terminate a no-contact order, the court must notify the victim at the victim's last-known address and afford the victim a reasonable opportunity to be heard.

Background

Under Iowa Code chapter [664A](#), no-contact orders may be entered by the court for violations or alleged violations involving harassment, stalking, sexual abuse in the first degree, sexual abuse in the second degree, sexual abuse in the third degree, or any other public offense for which there is a victim.

Iowa Code section [664A.8](#) currently provides that the court is required to modify and extend a no-contact order for an additional five years upon the filing of an application by the State or by the victim within 90 days prior to the expiration of the no-contact order. Upon such an application by the State or the victim, the court is required to modify and extend the no-contact order unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's family. The number of modifications extending a no-contact order is not limited.

Assumptions

- Based on whether an extension is resisted by the defendant, some no-contact order extensions will require a court hearing and some will not. It is not known what percentage will require a hearing.
- Some extensions will require minimal court time, but those that involve an application by a defendant and a hearing will require more time. The average court time for each no-contact order extension is not known, but for the purposes of this **Fiscal Note**, an average of 10 minutes (0.17 hours) is assumed.
- A no-contact order extension will require the time of a district judge or district associate judge, a court reporter, a judicial specialist, and a clerk of court.
- The average combined cost per hour for a district judge or district associate judge plus a court reporter, judicial specialist, and clerk of court is \$226.
- There are approximately 14,500 no-contact orders issued each year.
- Division II will apply to orders that were issued prior to the effective date of the Bill that were initially set to expire after the effective date of the Bill.
- Approximately 14,500 no-contact orders will be affected by Division II each year from FY 2024 to FY 2028.
- The extension of a no-contact order for an additional five years will occur indefinitely unless, upon application by the defendant, the court finds that the defendant no longer poses a threat.
- Beginning in FY 2029, no-contact orders extended under Division II will be up for extension again.
- There will be fewer no-contact orders eligible for a second extension than a first extension, fewer no-contact orders eligible for a third extension than a second extension, and so on.

- State Public Defender contract attorneys spend approximately four hours on each claim for a violation of a no-contact order.
- Contract attorneys are paid \$68 per hour for these cases.

Fiscal Impact

Division II is expected to increase the workload of the Judicial Branch. The amount of court time necessary for each no-contact order is unknown, but if an average of 10 minutes per extension is needed, the Judicial Branch expects it will incur increased costs of approximately \$557,000 per year from FY 2024 to FY 2028, as shown in **Table 1**. The Judicial Branch is funded through the General Fund.

Table 1 — Annual Cost to Judicial Branch, FY 2024 to FY 2028

No-Contact Orders Affected	Time Required	Personnel Cost Per Hour	Total Cost
14,500	0.17 hours	\$226	\$557,000

In succeeding fiscal years, no-contact orders that are extended under Division II will be up for extension again, which will increase the number of no-contact orders to be modified and extended each year. For FY 2029 and succeeding fiscal years, this increased number of no-contact orders will lead to higher annual costs than shown in **Table 1** for extending no-contact orders. However, the number of no-contact orders that will be eligible for extension starting in FY 2029 and the average court time cannot be estimated, and the total fiscal impact is unknown.

Additionally, the State Public Defender notes that an increased number of no-contact orders may lead to an increase in no-contact order violations. Providing indigent defense to defendants for additional no-contact order violations will increase costs to the Indigent Defense Fund, but the increase in the number of no-contact order violations and the extent of this cost increase cannot be estimated. State Public Defender contract attorney representation will cost approximately \$270 per claim for a no-contact order violation.

Division III — Limitation of Criminal Actions Involving Certain Sexual Offenses

Description and Background

Division III adds the following offenses to the list of offenses for which an information or indictment may be commenced at any time after the commission of the offense, when the offense was committed on or with a person who is under the age of 18:

- Continuous sexual abuse of a child.
- Kidnapping in the first degree when the person kidnapped, and as a consequence of the kidnapping, is intentionally subjected to sexual abuse.
- Burglary in the first degree, when the person performs or participates in a sex act with any person which would constitute sexual abuse.

Under Iowa Code section [802.2B](#), the offenses for which an information or indictment may be commenced at any time after the commission of the offense, when the offense was committed on or with a person who is under the age of 18, currently include lascivious acts with a child, assault with intent to commit sexual abuse, indecent contact with a child, lascivious conduct with a minor, sexual misconduct with a juvenile, child endangerment, and sexual exploitation of a minor.

Continuous sexual abuse of a child and burglary in the first degree are Class B felonies. Kidnapping in the first degree is a Class A felony. A Class B felony is punishable by confinement for no more than 25 years. A Class A felony is punishable by life in prison without the possibility of parole.

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.

Correctional Impact

Division III changes the statute of limitations for certain offenses, and the correctional impact cannot be estimated due to a lack of data. This change may increase the number of prison admissions for these offenses, but the extent of that increase cannot be calculated. 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 III changes the statute of limitations for certain offenses, and as a result, the Criminal and Juvenile Justice Planning Division of the Department of Human Rights cannot use prior existing data to estimate the minority impact. 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 elimination of the statute of limitations for these offenses may increase the number of prosecutions and resulting prison admissions, but the extent cannot be estimated. Any impact to the State General Fund would include 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. The average State cost per offense for a Class B felony is \$14,200 to \$46,300. The State cost for a Class A felony must be calculated on an individual basis to determine prison costs. At a minimum, a Class A felony requires two indigent defense attorneys at a cost of approximately \$40,200 and includes court time and jury trial costs ranging from \$9,900 to \$14,100.

Division IV — Sexually Predatory Offenses

Description and Background

Division IV adds enticement of a minor in violation of Iowa Code section [710.10\(2\)](#) to the definition of a sexually predatory offense.

Under Iowa Code section 710.10(2), enticement of a minor includes when a person, without authority and with the intent to commit an illegal sex act upon or sexual exploitation of a minor under the age of 16, entices or attempts to entice a person reasonably believed to be under the age of 16. This is a Class D felony. A Class D felony is punishable by confinement of up to five years and a fine of at least \$1,025 but not more than \$10,245.

Under Iowa Code chapter [901A](#), a person convicted of a sexually predatory offense that is a felony, who has a prior conviction for a sexually predatory offense, must be sentenced to and

serve twice the maximum period of incarceration for the offense, or 25 years, whichever is greater. The person's sentence must not be reduced by more than 15.0%. A person convicted of a sexually predatory offense that is a felony who has previously been sentenced by the preceding terms must be sentenced to life in prison.

Assumptions

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; 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.
- Admissions include only individuals admitted to DOC supervision whose most serious offense is enticement of a minor.

Correctional Impact

Division IV adds an offense to the definition of a sexually predatory offense, and the correctional impact cannot be estimated. Division IV may increase the LOS under DOC supervision for some individuals convicted of enticement of a minor, but the number of individuals affected and the extent of the increase in LOS cannot be estimated. Individuals who enter DOC supervision for enticement of a minor currently have an estimated LOS of 25.6 months in prison or 27.2 months in Community-Based Corrections (CBC).

Table 2 shows estimates for sentencing to State prison, parole, probation, or CBC residential facilities; LOS under those supervisions; and supervision marginal costs per day for all convictions of Class D felonies. Refer to the 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.

Table 2 — Sentencing Estimates and LOS

Conviction Offense Class	Percent Ordered to State Prison	FY 22 Avg LOS in Prison in Months (All Releases)	FY 22 Marginal Cost Per Day Prison	Percent Ordered to Probation	FY 22 Avg LOS on Probation in Months	FY 22 Avg Cost Per Day Probation	Percent Sentenced to CBC Residential Facility	FY 22 Marginal Cost Per Day CBC	Percent Ordered to County Jail	Marginal Cost Per Day Jail	FY 22 Avg LOS on Parole in Months	FY 22 Marginal Cost Per Day Parole
D Felony (Sex)	76.3%	25.6	\$23.42	51.7%	47.3	\$7.27	4.2%	\$20.67	31.4%	\$50.00	7.0	\$7.27

Minority Impact

Division IV expands the definition of a sexually predatory offense, and the minority impact cannot be estimated. However, if Division IV increases the LOS under DOC supervision for some individuals convicted of enticement of a minor, it may disproportionately impact African American individuals. Of the 20 convictions under Iowa Code section 710.10(2) in FY 2022, 86.2% involved Caucasian individuals, 7.2% involved African American individuals, and 6.6% involved individuals of other races. Iowa’s population is 84.5% Caucasian, 3.6% African American, and 11.9% other races. 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

Division IV adds an offense to the definition of a sexually predatory offense, and the fiscal impact cannot be estimated. Currently, it costs the DOC approximately \$163,000 to supervise each annual group of admissions to DOC supervision for enticement of a minor under Iowa Code section 710.10(2) across the entire LOS. The cost may increase under Division IV, but the extent cannot be estimated. The average State cost per offense for a Class D felony is \$9,500 to \$17,400. The estimated impact to the State General Fund includes operating costs incurred by the Judicial Branch, the Indigent Defense Fund, and the DOC. The cost would be incurred across multiple fiscal years for prison and parole supervision.

Division V — Victim Rights

Description and Background

Division V provides that it is the public policy of the State that statements made by children to forensic interviewers at child advocacy centers and child protection centers are presumptively reliable and should be admitted into evidence in court. Upon motion of a party, and under certain circumstances, the court may admit these recorded statements of a child.

Division V also provides that a local police department or county sheriff's department must provide a victim with a pamphlet explaining the victim's rights as a victim of a public offense or delinquent act. Under current law, a local police department or county sheriff's department must advise a victim of the right to register with the county attorney and must provide a telephone number and Internet site to each victim to register with the automated victim notification system established within the Crime Victim Assistance Division of the Department of Justice.

Assumptions

- The State Public Defender reports that Division V will lead to increased costs due to the hiring of expert witnesses.
- The cost to the State Public Defender for hiring an expert witness is approximately \$2,400.
- The State Public Defender estimates that it provides counsel for approximately 520 cases related to sex offenses that involve children each year.
- The number of additional cases in which the State Public Defender will utilize an expert witness cannot be estimated.

Fiscal Impact

The State Public Defender expects an increase in the need for expert witnesses under Division V. The number of additional cases with the need for an expert witness is not known, but if the State Public Defender utilizes an expert witness in 25.0% to 50.0% of cases related to sex offenses that involve children, the total additional annual cost for expert witnesses would be \$312,000 to \$624,000. The State Public Defender also expects that Division V may lead to increased attorney time required in affected cases, but the extent of this increase and the fiscal impact cannot be estimated. The State Public Defender is funded through the General Fund.

Division VI — Discovery

Description and Background

Division VI provides the following:

- Discovery depositions are not permitted in any criminal action except upon application to the court and a showing of exceptional circumstances.
- A criminal defendant must file a witness list by certain deadlines.
- A person who is not yet a party to a criminal action is not permitted to file an application with the court to depose another person.

Assumptions

- Limiting discovery depositions will require State Public Defender attorneys and contract attorneys to conduct additional investigation in the early stages of cases.
- The State Public Defender reports that 25.0 additional Investigator full-time equivalent (FTE) positions at a cost of \$67,000 each will be required to meet the increased investigatory needs.

Fiscal Impact

The State Public Defender estimates that it will require 25.0 Investigator FTE positions at a total cost of \$1.7 million to the State Public Defender operating budget, which is funded through the General Fund. Division VI may also require increased attorney time to be spent on each case, but the extent of this cannot be estimated.

Division VII — Postconviction Relief and Discovery Procedure

Description and Background

Division VII provides a limited scope of discovery to postconviction relief proceedings, including the following:

- Discovery may only be conducted by order of the court granted upon a showing that the information sought is reasonably calculated to lead to the discovery of admissible evidence to support or defeat a claim that is adequately pled in the application and, if taken as true, constitutes a colorable claim for relief.
- An applicant is not permitted to depose or conduct discovery involving a victim unless the applicant proves various factors by clear and convincing evidence.
- Division VII provides an exception to the attorney-client privilege in Iowa Code section 622.10.
- Evidence that would be excluded in a criminal action pursuant to Rule of Evidence [5.412](#) is not discoverable or admissible in a postconviction relief action.
- The State is not required to produce copies of discovery previously disclosed to or possessed by an applicant, contained in a court file accessible to the applicant, or that cannot be lawfully disseminated or that is otherwise confidential by law.
- An applicant is not permitted to conduct discovery or seek the appointment of an expert witness through ex parte communication or an in camera review.

Assumptions

- The State Public Defender reports that Division VII may result in additional appeals of postconviction relief proceedings, but the number of additional appeals cannot be estimated.
- Each appeal will cost approximately \$1,700 to the Indigent Defense Fund.
- The State Public Defender paid 436 postconviction relief claims in FY 2022.

Fiscal Impact

The State Public Defender expects that it will incur costs for additional appeals resulting from the provisions of Division VII. The number of additional appeals and total fiscal impact to the Indigent Defense Fund cannot be estimated. However, if there are appeals of 25.0% to 50.0% of postconviction relief proceedings that State Public Defender contract attorneys provide representation for, it would cost approximately \$185,000 to \$371,000 annually to the Indigent Defense Fund.

Division VIII — Criminal Appeals

Description and Background

Division VIII removes the right of appeal from a defendant who has pled guilty who establishes good cause to appeal. It instead provides that discretionary review may be available for a sentence following a guilty plea if the defendant can demonstrate to the appellate court that the district court more likely than not abused its discretion at sentencing. This provision does not apply to a plea agreement, a mandatory sentence, or a sentence entered pursuant to a recommendation made by the defendant or defendant's attorney.

Division VIII also provides that an appellate court must not vacate a criminal judgment on direct appeal based upon errors that were not preserved at the district court. This limitation includes but is not limited to the requirement that a specific motion for judgment of acquittal be made to preserve a challenge to the sufficiency of the evidence and the requirement that a specific motion in arrest of judgment be made in order to challenge a guilty plea.

Assumptions

- A challenge to a guilty plea must be filed as postconviction relief.
- The State Public Defender expects an increase in the number of postconviction relief proceedings under Division VIII.
- The average cost to the Indigent Defense Fund for a postconviction relief proceeding is \$1,600.

Fiscal Impact

The State Public Defender may incur additional costs for postconviction relief proceedings under Division VIII, but the number of additional postconviction relief proceedings and the extent of the fiscal impact cannot be estimated. Additionally, the State Public Defender reports that increased attorney time may be needed due to the discretionary review provided for in Division VIII, but the extent of this increase cannot be estimated. The fiscal impact of Division VIII will be to the Indigent Defense Fund, which is funded through the General Fund.

Division IX — Pretrial Bond for Class A and Forcible Felonies

Description and Background

Division IX provides that for certain violent offenses, a court setting bond must give significant consideration to the danger a defendant poses to another person or the property of another if the defendant is not detained pending trial.

Division IX also provides that the following are presumed to be the minimum pretrial bond amounts for each count charged. This presumption is rebuttable only upon a showing by the defendant, by a preponderance of evidence, that the defendant is not a danger to another person or the property of another if not detained pending trial.

- \$500,000 for a Class A felony.
- \$25,000 for a Class B forcible felony.
- \$10,000 for a Class C forcible felony.
- \$5,000 for a Class D forcible felony.

Under Iowa Code section [702.11](#), a forcible felony is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, human trafficking, arson in the first degree, or burglary in the first degree.

Fiscal Impact

Division IX is not estimated to have a fiscal impact.

Sources

Judicial Branch
Department of Human Rights, Division of Criminal and Juvenile Justice Planning
Department of Corrections
Office of the State Public Defender

/s/ Jennifer Acton

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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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