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[SF 2349](#) – Criminal Procedure, Defense Subpoenas (LSB5336SV)  
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Fiscal Note Version – New

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### **Description**

[Senate File 2349](#) relates to defense subpoenas in criminal actions and provides the following:

- A criminal defendant or counsel acting on the defendant’s behalf may not issue any subpoena for documents or evidence except upon application to the court. The defendant must prove by a preponderance of the evidence all of the following:
  - There is a compelling need for the evidence sought, and the evidence is material, necessary, exculpatory, and admissible at trial.
  - The evidence sought does not include the private information of a crime victim or any other person except for the defendant’s private information.
- Notwithstanding any rule of criminal procedure concerning the issuance of a subpoena, the Bill serves as the exclusive mechanism for a criminal defendant or counsel acting on the defendant’s behalf to issue a subpoena for documents or other evidence.
- An application for a defense subpoena must not be filed or reviewed ex parte.
- The prosecuting attorney is not required to execute or effectuate any order or subpoena issued pursuant to the Bill.
- A crime victim or other party who is the subject of a subpoena must not be required by the court to execute a waiver.
- Upon application by a crime victim or the prosecuting attorney, the court must appoint an attorney to represent the person or entity served with a defense subpoena if the person or entity is determined to be indigent. Counsel appointed for this purpose pursuant to the Bill must be paid from the Indigent Defense Fund.
- Documents or other evidence obtained through a defense subpoena must be provided to the prosecuting attorney within five business days after the receipt of the documents or other evidence.
- Documents or other evidence obtained through a defense subpoena that does not comply with the requirements in the Bill are not admissible in any criminal action if offered by the defendant.
- The court may sanction an attorney for knowingly issuing a defense subpoena in violation of the Bill.
- An applicant for postconviction relief is not entitled to relief on a claim of ineffective assistance of counsel as a result of evidence obtained through a defense subpoena.

### **Background**

Iowa Code section [815.9\(1\)](#) provides the qualifications for indigency. Iowa Code section [815.11](#) establishes the Indigent Defense Fund. The Indigent Defense Fund consists of funds appropriated by the General Assembly from the General Fund to the Office of the State Public Defender (SPD) for indigent legal defense by a court-appointed attorney. Approximately \$22.7 million was expended from the Indigent Defense Fund in FY 2023 for processing criminal claims. The average cost per criminal case in FY 2023 was \$524 per case.

### **Assumptions**

- Expanding representation by the SPD to indigent individuals who receive a defense subpoena may significantly increase costs to the Indigent Defense Fund due to an increase in attorney time spent on criminal cases; the time needed for investigation; the number of motions, hearings, trials, and appeals; and the use of expert witnesses. The number of individuals to which this will apply cannot be estimated.
- The requirement to provide information obtained through a subpoena to the prosecutor within five days may also increase costs to the Indigent Defense Fund due to additional staff needed to comply.
- The SPD will require 15.0 Investigator 2 full-time equivalent (FTE) positions at a cost of \$67,000 each to meet the increased investigatory needs of public defender employees and contract attorneys.
- The number of applications to the court for defense subpoenas is unknown.
- The average cost per criminal case is estimated to double from \$524 to \$1,048 per case.

### **Fiscal Impact**

The total fiscal impact of Senate File 2349 cannot be estimated, but the costs to the SPD are anticipated to be significant. Under the Bill, the amount of attorney time spent on a case is estimated to increase due to the increased numbers of motions, hearings, and investigations, and fewer resolutions before trials which may increase the average cost per criminal case handled by court-appointed attorneys. The costs will be incurred by the Indigent Defense Fund.

Additionally, the SPD estimates the need to hire 15.0 Investigator 2 FTE positions, for a total cost of \$1.0 million to the SPD operating budget.

### **Sources**

Office of the State Public Defender  
Legislative Services Agency

/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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