

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA, )  
 )  
 Plaintiff-Appellee, )  
 )  
 v. ) S.CT. NO. 19-0451  
 )  
 DAVID LEE STAAKE, )  
 )  
 Defendant-Appellant. )

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR FAYETTE COUNTY  
HONORABLE RICHARD D. STOCHL, JUDGE

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APPELLANT'S BRIEF AND ARGUMENT

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## **CERTIFICATE OF SERVICE**

On the 28<sup>th</sup> day of October, 2019, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to David L. Staake, 123 5th Str. N.W., Olwein, IA 50662.

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/s/ Shellie L. Knipfer

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## **STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

### **I. SHOULD THE DISTRICT COURT ORDER COURT COSTS, ATTORNEY FEES, AND JAIL COST WITHOUT HAVING TOTAL THE COSTS BEFORE IT?**

#### **Authorities**

State v. Cooley, 587 N.W.2d 752, 754 (Iowa 1999)

State v. Albright, 925 N.W.2d 144, 158 (Iowa 2019)

Iowa Code § 910.2(1) (2019)

Iowa Code § 31J.2(13)(b) (2019)

State v. Van Hoff, 415 N.W.2d 647, 648 (Iowa 1987)

Iowa Code § 910.3 (2019)

Iowa Code § 692A.110(2) (2019)

Iowa Code § 692A.110(1) (2019)

### **II. WHETHER NEWLY ENACTED SENATE FILE 589 IS NOT RETROACTIVE AND DOES NOT PRECLUDE THIS COURT FROM CONSIDERING STAAKE'S CHALLENGE TO HIS SENTENCING FOLLOWING HIS GUILTY PLEA?**

#### **Authorities**

S.F. 589 Div. V § 28

<https://www.legis.iowa.gov/docs/publications/iactc/88.1/CH0140.pdf> (last visited July 1, 2019)



**A. Senate File 589 applies prospectively and may not be applied to Staake's direct appeal.**

Iowa Code § 4.5 (2017)

Iowa Const. art. III § 26

<https://www.legis.iowa.gov/docs/publications/iactc/88.1/CH0140.pdf>

Iowa Beta Chapter of Phi Delta Theta Fraternity v. State, 763 N.W.2d 250, 266 (Iowa 2009)

Baldwin v. City of Waterloo, 372 N.W.2d 486, 491 (Iowa 1985)

**B. Even if Senate File 589 applies to Staake's direct appeal, it should be invalidated for improperly restricting the role and jurisdiction of Iowa's appellate courts.**

Klouda v. Sixth Judicial Dist. Dept. of Correctional Services, 642 N.W.2d 255, 260 (Iowa 2002)

State v. Phillips, 610 N.W.2d 840, 842 (Iowa 2000)

Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206, 212 (Iowa 2018)

Iowa Const. art. V § 1

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Iowa Const. art. V § 4

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Matter of Guardianship of Matejski, 419 N.W.2d 576, 577 (Iowa 1988)

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Waldon v. District Court of Lee County, 256 Iowa 1311, 1316, 130 N.W.2d 728, 731 (1964)

Iowa Code § 602.4102(2) (2017)

Iowa Code § 814.6(1)(a)(3) (2019)

**C. Senate File 589 violates equal protection.**

U.S. Const. amend. XIV

Iowa Const. art. I § 6

Varnum v. Brien, 763 N.W.2d 862, 878 (Iowa 2009)

State v. Doe, 927 N.W.2d 656, 661 (Iowa 2019)

City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439-41, 105 S.Ct. 3249, 3254-55 (1985)

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**D. Senate File 589 denies Staake due process.**

U.S. Const. amend XIV

Iowa Const. art. I § 9

Medina v. California, 505 U.S. 437, 112 S.Ct. 2572 (1992)

Evitts v. Lucey, 469 U.S. 387, 405, 105 S.Ct. 830, 841 (1985)

Douglas v. People of State of Cal., 372 U.S. 353, 83 S.Ct. 814 (1963)

Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956)

## **ROUTING STATEMENT**

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

## **STATEMENT OF THE CASE**

**Nature of the Case:** This is an appeal by the Defendant-Appellant, David Lee Staake, from the judgment and sentence following appellant's plea of guilty to the offense sexual abuse in the third degree in violation of Iowa Code 709.4(1)(b)(3)(d) (2017). The Honorable Richard D. Stochl presided at the plea and sentencing proceeding in Fayette County District Court.

**Course of Proceedings in the District Court:** On August 13, 2018, Staake was charged by trial information with the offense sexual abuse in the third degree in violation of Iowa Code 709.4(1)(b)(3)(d). (Trial Information, 8/13/18)(App. pp. 5-7).

On March 4, 2019, Staake appeared in open court, with counsel, and entered a plea of guilty to the charge which the district court accepts. (Tr. p.7 L.6-12). Staake requested immediate sentencing. (Tr. p.7 L.13-17). The district court adjudged Staake guilty of the offense sexual abuse in the third degree in violation of Iowa Code 709.4(1)(b)(3)(d). (Judgment and Sentence, p.1, 3/4/19)(App. p. 8). Staake was sentenced to an indeterminate term of 10 years and fined \$1,000. Both the sentence and fine were suspended. (Id.; Order Amending Judgment and Sentence, 3/12/19)(App. pp. 8, 12-13).

Staake was also ordered to pay court costs as to be determined at a later date. (Judgment and Sentence, pp.1-2)(App. pp. 8-9). At the time of sentencing the only known costs were \$204.84 for court costs. (Id. p.1)(App. p. 8).

A few days later defense counsel certified \$210 in attorney fees. (Certification of Attorney Fees, 3/7/19)(App. p. 11). On March 18<sup>th</sup> the district court approved the Oelwein Police Departments claim for room and board. (Room and

Board Reimbursement Claim, 3/12/19; Order, 3/18/19)(App. p. 14).

Notice of appeal was timely filed. (Notice, 3/20/19) (App. pp. 17-18).

**Facts:** Any facts relevant to the appeal will be discussed in the argument below.

## **ARGUMENT**

### **I. THE DISTRICT COURT ORDERED COURT COSTS, ATTORNEY FEES, AND JAIL COST WITHOUT HAVING TOTAL THE COSTS BEFORE IT.**

**Preservation of Error:** Review of sentencing is properly before this court upon direct appeal despite the absence of objection in the trial court. State v. Cooley, 587 N.W.2d 752, 754 (Iowa 1999).

**Scope of Review:** Issues of restitution are reviewed for errors at law. State v. Albright, 925 N.W.2d 144, 158 (Iowa 2019).

**Merits:** The district court prematurely ordered Staake to pay court costs and any costs or fees submitted to the clerk

of court when it did not have those costs before it. The restitution portion of the judgment and sentence must be vacated and remanded for determination, once all costs are determined, of Staake's reasonable ability to pay. See id. at 162-63.

The legislature divides restitution into two categories. The first category includes victim restitution, fines, penalties, and surcharges. Id. at 159; see Iowa Code § 910.2(1). "The court is required to order restitution for items in this first category regardless of the offender's ability to pay." Albright, 925 N.W.2d at 159. The second category includes restitution for crime victim assistance reimbursement, restitution for public agencies pursuant to section 321J.2(13)(b)<sup>1</sup>, cost costs

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<sup>1</sup> "The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, "emergency response" means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses

and correctional fees, court-appointed attorney fees, contribution to local anti-crime organizations, or restitution to medical assistance program pursuant to 249A. Id. at 159; see Iowa Code § 910.2(1). “The court can only order restitution for items in the second category to the extent the offender has the reasonable ability to pay.” Albright, 925 N.W.2d at 159. But first the court must determine what amount, if any, the offender is reasonably able to pay. State v. Van Hoff, 415 N.W.2d 647, 648 (Iowa 1987)(“A constitutional prerequisite for a restitution order is the court's determination of a defendant's reasonable ability to pay.”).

At the time of sentencing the county attorney and the clerk of court are to have prepared statements of restitution and given them to the statements to the presentence investigator. Albright, 925 N.W.2d 159-60. Then at sentencing the court must set out the amount of restitution

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incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.” Iowa Code § 31J.2(13)(b) (2019).



and the persons who must be paid. Id. at 160. If the court does not have the full amount of restitution requested, it can “issue a temporary order determining the reasonable amount of restitution identified up to that time.” Id. (quoting Iowa Code § 910.3 (2019)). When it has the full restitution amount the court can issue a permanent or supplemental order. Id.

In the present case the court did not have all the costs before it when it ordered Staake to pay all court costs and the cost of prosecution. (Judgment and Sentence, pp.1-2)(App. pp. 8-9). So there was no consideration of his ability to pay restitution because the restitution amounts for the court and prosecution costs were unknown to the court. And any costs are substantial for the father of two, one being a newborn, and a stay-at-home wife. (Financial Affidavit, 7/21/18)(App. p. 4). For example, Staake was ordered to complete sex offender treatment. (Judgment and Sentence p.2)(App. p. 9). Staake also has the costs of registering as a sex offender starting with \$250 civil penalty. See Iowa Code § 692A.110(2) (2019). And

the continuing cost of \$25 per year payable to the sheriff in the county where he resides. See id. § 692A.110(1).

Following sentencing trial counsel and the Oelwein Police Department filed claims of \$210 and \$60 respectively.

(Certification of Attorney Fees, 3/7/19; Room and Board Reimbursement Claim, 3/12/19)(App. pp. 11, 14). But those costs were not known to the district court at the time of sentencing.

Therefore, this court should vacate the restitution order and remand this matter.

**II. NEWLY ENACTED SENATE FILE 589 IS NOT RETROACTIVE AND DOES NOT PRECLUDE THIS COURT FROM CONSIDERING STAAKE'S CHALLENGE TO HIS SENTENCING FOLLOWING HIS GUILTY PLEA.**

This court is not precluded from considering Staake's challenge to his sentence following his guilty plea because of recent changes to Iowa Code section 814.6 that took effect July 1, 2019. Staake filed notice of appeal before July 1<sup>st</sup>. As of July 1, 2019, the law governing a defendant's right to appeal reads as follows:

Sec. 28. Section 814.6, subsection 1, paragraph a, Code 2019, is amended to read as follows:

[1. Right of appeal is granted to defendants from:]

*a.* A final judgment of sentence, except in the following cases:

(1) A simple misdemeanor conviction.

(2) An ordinance violation.

(3) A conviction where the defendant has pled guilty. This subparagraph does not apply to a guilty plea for a class "A" felony or in a case where the defendant establishes good cause.

S.F. 589 Div. V § 28, available at

<https://www.legis.iowa.gov/docs/publications/iactc/88.1/CH0140.pdf> (last visited July 1, 2019) (struck language removed).

The new law should not apply to Staake's pending appeal because it is prospective only, it improperly invades the jurisdiction and authority of the court, and it violates equal protection, and due process.

**A. Senate File 589 applies prospectively and may not be applied to Staake's direct appeal.**

Under the Iowa Code, all statutes are presumed to be prospective in operation unless expressly made retrospective. Iowa Code § 4.5 (2017). All newly-enacted statutes take effect on July 1<sup>st</sup> following enactment unless the legislature has provided for an earlier effective date. Iowa Const. art. III § 26. Senate File 589 does not provide a specific effective date. S.F. 589 available at <https://www.legis.iowa.gov/docs/publications/iactc/88.1/CH0140.pdf> (last visited July 1, 2019).

The courts look to legislative intent to determine whether a statute applies retrospectively or prospectively. Iowa Beta Chapter of Phi Delta Theta Fraternity v. State, 763 N.W.2d 250, 266 (Iowa 2009). The courts recognize the rule that statutes are presumed to apply prospectively, but also recognize that a remedial or procedural rule can be applied both prospectively and retrospectively. Id. A statute that

impacts substantive rights, however, will be applied prospectively only. Id.

The first step is to determine if the legislature expressly stated its intention on how the statute should be applied. Id. As noted above, Senate File 589 did not provide for a specific effective date.

Because the legislature did not expressly provide for retrospective application, this Court must then consider whether the statute is procedural, remedial or substantive:

... Substantive law creates, defines and regulates rights. Procedural law, on the other hand, “is the practice, method, procedure, or legal machinery by which the substantive law is enforced or made effective.” Finally, a remedial statute is one that intends to afford a private remedy to a person injured by a wrongful act. It is generally designed to correct an existing law or redress an existing grievance.

Baldwin v. City of Waterloo, 372 N.W.2d 486, 491 (Iowa 1985)(citations omitted).

Senate File 589 is a substantive law that deprives Staake of his current ability to challenge his guilty plea sentence.

Because the matter involves a challenge to his sentence, the State would have Staake return to district court pursuant to rule 2.24(5)(a). Such would be a waste of judicial resources when it can be resolved now. Especially since any adverse ruling would likely be appealed.

Even if the statute could be characterized as procedural in nature, the courts have “refused to apply a statute retrospectively when the statute eliminates or limits a remedy.” Iowa Beta Chapter of Phi Delta Theta Fraternity v. State, 763 N.W.2d 250, 267 (Iowa 2009). Senate File 589 deprives criminal defendants of their ability to have their claims of an illegal sentence addressed on their merits on direct appeal. If the district courts rule adversely to defendants, they will not have a right to direct appeal after July 1<sup>st</sup> because the legislation deprives defendants of a remedy that was previously available. Defendants will likely have to request discretionary review of the lower courts’ adverse rulings and argue good cause for review.

Because Senate File 589 would change Staake's ability to seek a remedy on direct appeal from an illegal sentence following a guilty plea, this court need not apply Senate File 589 to his case. Staake asks that this court rule directly on the merits of his claim.

**B. Even if Senate File 589 applies to Staake's direct appeal, it should be invalidated for improperly restricting the role and jurisdiction of Iowa's appellate courts.**

Issues of retrospective and prospective application aside, Staake contends Senate File 589 improperly interferes with the separation of powers, with this court's jurisdiction, and with the court's role in addressing constitutional violations.

"The separation-of-powers doctrine is violated 'if one branch of government purports to use powers that are clearly forbidden, or attempts to use powers granted by the constitution to another branch.'" Klouda v. Sixth Judicial Dist. Dept. of Correctional Services, 642 N.W.2d 255, 260 (Iowa 2002)(quoting State v. Phillips, 610 N.W.2d 840, 842 (Iowa 2000)). The doctrine means that one branch of

government may not impair another branch in “the performance of its constitutional duties.” Id.

The Iowa Constitution, like its federal counterpart, establishes three separate, yet equal, branches of government. Iowa Const. art. III, § 1. Our constitution tasks the legislature with making laws, the executive with enforcing the laws, and the judiciary with construing and applying the laws to cases brought before the courts.

Our framers believed “the judiciary is the guardian of the lives and property of every person in the State.” 1 The Debates of the Constitutional Convention of the State of Iowa 229 (W. Blair Lord rep., 1857) [hereinafter The Debates], <http://www.statelibraryofiowa.org/services/collections/law-library/iaconst>. Every citizen of Iowa depends upon the courts “for the maintenance of [her] dearest and most precious rights.” Id. The framers believed those who undervalue the role of the judiciary “lose sight of a still greater blessing, when [the legislature] den[ies] to the humblest individual the protection which the judiciary may throw as a shield around [her].” Id.

Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d 206, 212 (Iowa 2018).

All judicial power in Iowa is vested in the Iowa Supreme Court and its inferior courts. Iowa Const. art. V § 1. “Courts constitute the agency by which judicial



authority is made operative. The element of sovereignty known as judicial is vested, under our system of government, in an independent department, and the power of a court and the various subjects over which each court shall have jurisdiction are prescribed by law.”

Franklin v. Bonner, 201 Iowa 516, \_\_\_, 207 N.W. 778, 779 (1926).

With respect to the jurisdiction of the courts, the Iowa Constitution provides:

Sec. 4. Jurisdiction of supreme court. The supreme court shall have appellate jurisdiction only in cases in chancery, and shall constitute a court for the correction of errors at law, under such restrictions as the general assembly may, by law, prescribe; and shall have power to issue all writs and process necessary to secure justice to parties, and shall exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state.

Iowa Const. art. V § 4.

Sec. 6. Jurisdiction of district court. The district court shall be a court of law and equity, which shall be distinct and separate jurisdictions, and have jurisdiction in civil and criminal matters

arising in their respective districts, in such manner as shall be prescribed by law.

Iowa Const. art. V § 6.

It should not go unnoticed that the Iowa Constitution mentions that limitations on the manner of the court's jurisdiction can be prescribed by the legislature. Iowa Const. art. V § 4. The Iowa Supreme Court has previously recognized statutory limitations placed on the right to appeal, for example. See In re Durant Comm. Sch. Dist., 252 Iowa 237, 245, 106 N.W.2d 670, 676 (1960) (“We have repeatedly held the right of appeal is a creature of statute. It was unknown at common law. It is not an inherent or constitutional right and the legislature may grant or deny it at pleasure.”).

But the ability of the legislature to “prescribe” the “manner” of jurisdiction should not be confused with an ability to remove jurisdiction from the court. Subject matter jurisdiction is conferred upon Iowa's courts by the Iowa Constitution. Matter of Guardianship of Matejski, 419

N.W.2d 576, 577 (Iowa 1988). They have general jurisdiction over all matters brought before them and the legislature can only prescribe the manner of its exercise; the legislature cannot deprive the courts of their jurisdiction. Id. (referring to Laird Brothers v. Dickerson, 40 Iowa 665, 670 (1875)); Schrier v. State, 573 N.W.2d 242, 244-45 (Iowa 1997).

“Once the right to appeal has been granted, however, it must apply equally to all. It may not be extended to some and denied to others.” Waldon v. District Court of Lee County, 256 Iowa 1311, 1316, 130 N.W.2d 728, 731 (1964). Although Iowa Code section 602.4102 contemplates the Iowa Supreme Court handling criminal appeals, Senate File 589 would make challenges to guilty pleas unreviewable on direct appeal except for a class “A” or where defendant establishes good cause – whatever that means. Iowa Code § 602.4102(2) (2017); see Iowa Code § 814.6(1)(a)(3)(as amended 2019). This is particularly problematic for the court’s inherent jurisdiction.

By removing consideration of guilty plea challenges - except for class As and where good cause is established - from the realm direct appeal, the legislature is intruding on Iowa appellate courts' independent role in interpreting the constitution and protecting Iowans' constitutional rights. The legislature has violated the separation of powers and impermissibly interfered with the inherent jurisdiction of this court. The provision of Senate File 589 that prohibits the court from ruling upon challenges to guilty pleas should be invalidated.

**C. Senate File 589 violates equal protection.**

Staake contends Senate File 589 denies him equal protection under the law because it deprives him of his ability to challenge his sentence on direct appeal just because he pled guilty.

Both the federal and state constitutions provide for equal protection of citizens under the law. U.S. Const. amend. XIV; Iowa Const. art. I § 6. "Like the Federal Equal Protection

Clause found in the Fourteenth Amendment to the United States Constitution, Iowa's constitutional promise of equal protection is essentially a direction that all persons similarly situated should be treated alike.” Varnum v. Brien, 763 N.W.2d 862, 878 (Iowa 2009)(internal quotation marks omitted). Accord State v. Doe, 927 N.W.2d 656, 661 (Iowa 2019).

There are three classes of review for an equal protection claim based upon the underlying classification or right involved. Classifications based on race, alienage, or national origin and classifications impacting fundamental rights are evaluated according to strict scrutiny. Varnum v. Brien, 763 N.W.2d at 879. Such classifications are “presumptively invalid and must be narrowly tailored to serve a compelling governmental interest.” Id. Intermediate or heightened scrutiny is applied to “quasi-suspect groups. Id. To survive intermediate scrutiny, the law must not only further an important governmental interest and be substantially related

to that interest, but the justification for the classification must be genuine and must not depend on broad generalizations.

Id. All other classifications are evaluated using rational basis review, in which a complainant has the “heavy burden of showing the statute is unconstitutional and must negate every reasonable basis upon which a classification may be sustained.” Id. See City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 439-41, 105 S.Ct. 3249, 3254-55 (1985)(discussing different levels of scrutiny under federal equal protection analysis).

The first step in analyzing an equal protection claim is to determine if the legislation is treating similarly situated persons differently. State v. Doe, 927 N.W.2d 656, 662 (Iowa 2019). “[T]o truly ensure equality before the law, the equal protection guarantee requires that laws treat all those who are similarly situated with respect to the purposes of the law alike.” Varnum v. Brien, 763 N.W.2d at 883.

Staake asserts there is a group of criminal defendants who have been convicted following a guilty plea made in the district court. Within this group, Senate File 589 has singled out those wrongly-sentenced defendants. Whereas defendants who went to trial can obtain relief on direct appeal of his criminal conviction, a defendant who pled guilty may not get relief on direct appeal. The legislature has treated Staake and defendants like him differently based upon his decision to plead guilty.

By depriving Staake of his right to direct review of his sentence following a guilty plea, Senate File 589 deprives him of a fundamental right to due process and equal protection. Strict scrutiny should apply to his claim on appeal. Varnum v. Brien, 763 N.W.2d 862, 879 (Iowa 2009); See City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 440, 105 S.Ct. 3249, 3254 (1985)(discussing different levels of scrutiny under federal equal protection analysis).

Regardless of whether this court considers Staake’s claim under strict scrutiny or rational scrutiny, however, Senate File 589 cannot stand. Video from the legislature’s discussions regarding the bill indicates it was designed to reduce “waste” caused by “frivolous appeals” in the criminal justice system. Senate Video 2019-03-28 at 1:49:10-1:49:20<sup>2</sup>, statements of Senator Dawson, available at <https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190328125735925&dt=2019-03-28&offset=3054&bill=SF%20589&status=i>.

To the extent Senate File 589 prevents appellate courts from ruling upon challenges to sentencing following a guilty plea, the bill is neither narrowly tailored nor rationally related to its legislative purpose. Senate File 589 is not only not narrowly tailored or rationally related to the government’s professed purpose, but directly contravenes it.

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<sup>2</sup>. Times listed on video links are approximate.



Senate File 589 denies Staake equal protection under the law and should not be applied to his appeal.

**D. Senate File 589 denies Staake due process.**

Both the Iowa Constitution and the United States Constitution ensure criminal defendants are accorded due process of law. U.S. Const. amend XIV; Iowa Const. art. I § 9. In the realm of criminal law, however, the Due Process Clause has limited operation beyond the rights guaranteed in the Bill of Rights. Medina v. California, 505 U.S. 437, 112 S.Ct. 2572 (1992).

Staake contends Senate File 589 violates his right to due process, by interfering with the appellate court's ability to review guilty pleas. Where a state provides an appeal as of right but refuses to allow a defendant a fair opportunity to obtain an adjudication on the merits of his appeal, the "right" to appeal does not comport with due process. Evitts v. Lucey, 469 U.S. at 405, 105 S.Ct. at 841 (citing Douglas v. People of

State of Cal., 372 U.S. 353, 83 S.Ct. 814 (1963); Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956)).

Accordingly, Senate File 589 denies Staake due process and should not be applied to his appeal.

### **CONCLUSION**

For the reasons stated above, the defendant respectfully requests this court to vacate the restitution order in his sentencing and remand for determination of his reasonable ability to pay once the total restitution amount is determined.

### **NONORAL SUBMISSION**

Counsel does not request to be heard in oral argument.

### **ATTORNEY'S COST CERTIFICATE**

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$1.96, and that amount has been paid in full by the Office of the Appellate Defender.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR  
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This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

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/s/ Shellie L. Knipfer

Dated: 10/28/19

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