

SF3224 - 0 - Violent Offenders; Sentencing

Chief Author: **Scott Newman**  
 Committee: **Judiciary And Public Safety Finance And Policy**  
 Date Completed: **3/1/2022 9:33:41 AM**  
 Lead Agency: **Supreme Court**  
 Other Agencies:  
     Corrections Dept                      Public Defense Board  
     Sentencing Guidelines  
     Comm

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Corrections Dept</b>						
General Fund	-	-	-	116	643	
<b>Public Defense Board</b>						
General Fund	-	-	156	312	312	
<b>State Total</b>						
General Fund	-	-	156	428	955	
<b>Total</b>	-	-	<b>156</b>	<b>428</b>	<b>955</b>	
<b>Biennial Total</b>			<b>156</b>			<b>1,383</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Corrections Dept</b>					
General Fund	-	-	-	1.3	7.1
<b>Public Defense Board</b>					
General Fund	-	-	2.5	2.5	2.5
<b>Total</b>	-	-	<b>2.5</b>	<b>3.8</b>	<b>9.6</b>

**Lead LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Alyssa Holterman Rosas      **Date:** 3/1/2022 9:33:41 AM  
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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>	<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Corrections Dept</b>					
General Fund	-	-	-	116	643
<b>Public Defense Board</b>					
General Fund	-	-	156	312	312
<b>Total</b>	<b>-</b>	<b>-</b>	<b>156</b>	<b>428</b>	<b>955</b>
<b>Biennial Total</b>			<b>156</b>		<b>1,383</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>					
Corrections Dept					
General Fund	-	-	-	116	643
Public Defense Board					
General Fund	-	-	156	312	312
<b>Total</b>	<b>-</b>	<b>-</b>	<b>156</b>	<b>428</b>	<b>955</b>
<b>Biennial Total</b>			<b>156</b>		<b>1,383</b>
<b>2 - Revenues, Transfers In*</b>					
Corrections Dept					
General Fund	-	-	-	-	-
Public Defense Board					
General Fund	-	-	-	-	-
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>			<b>-</b>		<b>-</b>

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 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Alyssa Holterman Rosas    **Date:** 2/28/2022 1:40:54 PM  
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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

**Bill Description**

SF3224 amends Minn. Stat. § 609.1095: at subdivision 2 to require that a judge “must” rather than “may” impose an aggravated durational departure if the court finds an offender convicted of a violent crime has 2 or more prior convictions for violent crimes and is a danger to public safety; at subdivision 3 to require that in all other cases an offender who is convicted of a third violent crime must be committed to the commissioner of corrections, and to eliminate the provision regarding ineligibility for probation, parole, discharge, or work release until the entire sentence is served; at subdivision 4 to require that when imposing an executed presumptive imprisonment sentence a judge “must” rather than “may” impose an aggravated durational departure if the fact finder determines an offender has 5 or more prior felony convictions and the present offense is a felony that was committed as part of a patter of criminal conduct; and by adding a new subdivision 5 to require that any person convicted and sentenced under this section must serve any sentences consecutively to any unexpired previously imposed sentences unless the total time to serve in prison would be longer if a concurrent sentence were imposed, and to add the provision previously in subdivision 3 regarding ineligibility for probation, parole, discharge, or work release, making it applicable to all sentences imposed under section 609.1095.

**Assumptions**

It is assumed that the provisions of this bill will not increase case filing rates as no new criminal offenses are created. Rather this bill only impacts the sentences imposed on existing offenses.

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**Expenditure and/or Revenue Formula**

This bill is not anticipated to have a fiscal impact on the judicial branch as it will not measurably increase the judicial branch resources required to process these existing cases.

**Long-Term Fiscal Considerations**

None

**Local Fiscal Impact**

**References/Sources**

**Agency Contact:**

**Agency Fiscal Note Coordinator Signature:** Janet Marshall

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SF3224 - 0 - Violent Offenders; Sentencing

Chief Author: **Scott Newman**  
 Committee: **Judiciary And Public Safety Finance And Policy**  
 Date Completed: **3/1/2022 9:33:41 AM**  
 Agency: **Corrections Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	116	643	
<b>Total</b>	-	-	-	<b>116</b>	<b>643</b>	
<b>Biennial Total</b>			-			<b>759</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	1.3	7.1
<b>Total</b>	-	-	-	<b>1.3</b>	<b>7.1</b>

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Jim Carlson      **Date:** 3/1/2022 8:36:23 AM  
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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
General Fund		-	-	-	116	643
<b>Total</b>		-	-	-	<b>116</b>	<b>643</b>
<b>Biennial Total</b>				-		<b>759</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund		-	-	-	116	643
<b>Total</b>		-	-	-	<b>116</b>	<b>643</b>
<b>Biennial Total</b>				-		<b>759</b>
<b>2 - Revenues, Transfers In*</b>						
General Fund		-	-	-	-	-
<b>Total</b>		-	-	-	-	-
<b>Biennial Total</b>				-		-

**Bill Description**

The proposed legislation would amend M.S. 2020, section 609.1095 and would require: aggravated sentences for certain violent offenders; consecutive sentences for certain violent offenders; certain violent offenders to serve their entire pronounced sentence in custody.

**Assumptions**

The Minnesota Sentencing Guidelines Commission (MSGC) assumes that due to the pandemic, the cases sentenced in 2020 would not be a fair approximation of the number sentenced in the future. Cases sentenced in 2019 are used to estimate the impact of this bill.

Refer to the fiscal note from the MSGC for details on their assumptions that lead to the estimates for prison bed impact. Based on their assumptions the total estimated prison bed impact as a result of this bill would be a need for an additional 277 beds each year. The estimated year-by-year prison bed impact would be an additional 12 beds in FY2024 and 58 beds in FY2025. The number of beds would increase each year, eventually reaching 277 beds in FY2049 and each subsequent year.

There would be a minimal impact on supervision caseloads statewide, however the accumulative effect could be significant as new offenses or penalty enhancements are enacted.

Prison bed costs are based on a marginal per diem cost of \$41.80 for FY2023, \$42.42 for FY2024, and \$43.18 for FY2025 and each subsequent year. This includes marginal costs for all facility, private and public bed rental, health care and support costs.

The annual costs are estimated by multiplying the number of prison beds by the subsequent annual per diem. Unless otherwise noted, prison beds are phased out on a quarterly basis.

Prison bed FTE impact for the increase in the offender population assumes 80 percent of the ongoing bed impact is personnel-related and the average salary per FTE is \$72,000 including benefits.

It is assumed this bill would be effective August 1, 2022 and apply to crimes committed on or after that date.

**Expenditure and/or Revenue Formula**

Costs/(Savings) for Prison Beds - DOC

Fiscal Year	2021	2022	2023	2024	2025
Number of Prison Beds	0	0	0	12	58
Cost of Prison Beds (in 000s)	\$0	\$0	\$0	\$116	\$643
FTEs	0	0	0	1.3	7.1

**Long-Term Fiscal Considerations**

Costs would increase to \$4,365,000 in FY2050 and would continue into subsequent years.

**Local Fiscal Impact**

There would be a minimal impact to local correctional resources because the majority of the bill's impact would be from longer prison durations for cases already receiving executed prison sentences. There could be some correctional savings from fewer cases being supervised on probation because the provisions of this bill would prohibit some mitigated dispositional departures.

**References/Sources**

Minnesota Sentencing Guidelines Commission

Department of Corrections staff

**Agency Contact:** Karen Juneski 651-361-7259

**Agency Fiscal Note Coordinator Signature:** Chris Dodge

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SF3224 - 0 - Violent Offenders; Sentencing

Chief Author: **Scott Newman**  
 Committee: **Judiciary And Public Safety Finance And Policy**  
 Date Completed: **3/1/2022 9:33:41 AM**  
 Agency: **Public Defense Board**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		
		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	156	312	312	
<b>Total</b>	-	-	<b>156</b>	<b>312</b>	<b>312</b>	
<b>Biennial Total</b>			<b>156</b>		<b>624</b>	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	2.5	2.5	2.5
<b>Total</b>	-	-	<b>2.5</b>	<b>2.5</b>	<b>2.5</b>

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Alyssa Holterman Rosas      **Date:** 3/1/2022 9:33:26 AM  
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**State Cost (Savings) Calculation Details**

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General Fund	-	-	-	156	312	312
<b>Total</b>	-	-	-	<b>156</b>	<b>312</b>	<b>312</b>
<b>Biennial Total</b>				<b>156</b>		<b>624</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund	-	-	-	156	312	312
<b>Total</b>	-	-	-	<b>156</b>	<b>312</b>	<b>312</b>
<b>Biennial Total</b>				<b>156</b>		<b>624</b>
<b>2 - Revenues, Transfers In*</b>						
General Fund	-	-	-	-	-	-
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>				-		-

**Bill Description**

This bill amends the provisions of Minn. Stat. § 609.1095, subdivisions 2, 3, 4, and adds subd. 5. The bill mandates aggravated sentences for certain violent offenders and career offenders, mandates consecutive sentencing where the length of sentence is longer than a concurrent sentence and requires such offenders to serve the entire “announced” sentence in custody.

**Section 1** of the bill amends 609.0195, Subd. 2, (known as the dangerous offender statute) to mandate the sentencing judge to impose an aggravated durational departure when the sentence is executed (not stayed) and the person meets the requisite criteria: defendant is an adult (18 years of age when current offense committed), convicted of a violent felony crime; the person has two or more prior convictions for violent crimes; and the fact finder determines the offender is a danger to public safety. The bill will prohibit mitigated dispositional departures. Currently, the sentencing judge may impose an aggravated durational departure, but is not mandated to do so. Also, the sentencing judge may impose a mitigated dispositional departure currently. The aggravated durational departure is not waivable.

**Section 2** of the bill revises 609.1095, subd. 3, similar to the amendments to subd. 2 above. It appears to tie the mandate for an executed prison sentence to the subd. 2 provisions. Even if the Guidelines presumptive sentence is a stayed sentence and the defendant meets certain requirements, the mandatory sentence must be a commitment of at least the length of presumptive term. The criteria include a conviction for a violent crime and a determination by the court that the person has two or more prior felony convictions for violent crimes, and either the Guidelines’ presumptive sentence is not a commitment, or the fact finder makes the findings under subd. 2.

It is a mandatory commit, not waivable by the parties. It does exclude 3<sup>rd</sup> and 4<sup>th</sup> degree controlled substance crimes from the list of violent offenses. It also eliminates the language for this subdivision prohibiting any early release until person served the full term of imprisonment.

**Section 3** amends 609.1095, subd. 4, (known as the career offender statute) to mandate the sentencing judge to impose an aggravated durational departure up to the statutory maximum when the sentence is executed (not stayed) and the person meets the requisite criteria: convicted of a felony, and the fact finder determines that the offender has five or more prior felony convictions, and the present offense is a felony committed as part of a pattern of criminal conduct. The bill will prohibit mitigated dispositional departures. Currently, the sentencing judge may impose an aggravated durational departure, but is not mandated to do so. Then sentencing judge can also impose a mitigated dispositional departure. The required aggravated durational departure provision is not waivable.

**Section 4** of the bill adds Minn. Stat. § 609.1095, subd. 5(a), which mandates consecutive sentencing to any unexpired previously imposed sentence if longer than a concurrent sentence. This applies to both the dangerous offender provisions and the career offender provisions.

This section also adds the provision to subd. 5(b), that requires a person sentenced under any of the amended § 609.1095 mandatory provisions to serve “the entire announced sentence” without any early release or parole.

### **Assumptions**

Changes in Section 1 will take away the sentencing judge’s discretion if the offender meets the criteria. Most defendants that would qualify for sentencing under this provision will plead guilty, either with a plea agreement that would include not being sentenced to an upward departure or leave the sentence up to the district court, thus waiving a *Blakely* jury trial and submitting to the court. Requiring mandatory sentences will decrease the number of guilty pleas, agreements, and/or stipulated court sentencing trials, thereby increasing the number of jury trials, both for the current offense and for the sentencing factors, since it is the only way to avoid a lengthy mandatory sentence. This will also increase the number of appeals. The increase is difficult to predict because there is no sentencing data on how many of these cases fitting the criteria were resolved by plea agreements and not sentenced to aggravated durational departures.

As with the amendment in Section 1, this change will take away the sentencing judge’s discretion if the offender meets the criteria. Most defendants who would qualify for sentencing under this provision will plead guilty, either with a plea agreement that includes not being sentenced to an upward departure or to leaving the sentence up to the district court, thus waiving a *Blakely* jury trial and submitting to the court.

Requiring mandatory sentences will decrease the number of guilty pleas, agreements, and/or stipulated court sentencing trials, thereby increasing the number of jury trials, both for the current offense and for sentencing factors. Again, taking the chance at trial will be the only way to avoid a very lengthy mandatory sentence. This will also increase the number of appeals. The increase is difficult to predict because there is no sentencing data on how many of cases fitting the criteria were resolved by plea agreements and not sentenced to aggravated durational departures.

### **Section 4**

Since most of the dangerous offender cases would involve person offenses, and most likely be on the permissive consecutive list in the Sentencing Guidelines, this may not have much impact on our agency, but will increase prison terms. For the career offender cases, because many of those offenses are property or drug offenses, currently those offenses would not be subject to consecutive sentencing. This may increase sentences for these defendants, which will affect pleas, decreasing the incentive to plead if facing a mandatory consecutive sentence. In turn, will increase trial and sentencing trials to avoid conviction.

This change in the language appears to attempt to eliminate even supervised release. If this is what that change does, there will be even more cases that will not result in a guilty plea with no incentive to do so when facing extremely long sentences that could be up to the statutory maximum.

With respect to section 4 of the bill MSGC found 7 cases that would qualify under this statute. Because. All seven were person crimes currently eligible for consecutive sentencing, it is assumed that they would have received consecutive sentencing had they been longer. Because these defendants were instead given aggravated durational departures, it is therefore assumed that consecutive sentencing would not have been longer in any of the seven cases. The bill will prohibit mitigated dispositional departures and require aggravated durational departures; in dangerous offender cases. The number of such mitigated departures granted, or aggravated departures not imposed, is not known. According to MSGC in 2019, there were seven aggravated durational departures in which the judge cited the dangerous-offender provision as the reason for departure. While both of these provisions will have an impact on the number of trials it is unknown or too few cases to make an estimate on the impact. Among the 2019 violent-crime cases (excluding controlled substance crime in the 3rd or 4th degree) receiving an executed sentence of at least the Guidelines duration (as required by subd. 3) that were not already executed sentences under subd. 2 or 4 MSGC staff found 67 cases with two prior violent crimes (excluding controlled substance crime in the 3rd or 4th degree). Those pronounced sentences contained a total of 6,691 months in prison. By eliminating the one-third supervised release term, the bill is assumed to cause an increase in the time to be served equal to one-third of that total pronounced sentence, resulting in an additional total of 2,230 months in prison. In cases with that significant a change in sentencing, there is little or no incentive to reach a plea agreement. Assuming that 90% of these cases are public defender cases and that 80% of these go to trial, there would be an additional 48 trials. Assuming a one week trial with one week of preparation this would mean a need for an additional 3,840 hours of attorney time. The bill would prohibit mitigated dispositional departures and require aggravated durational departures in career offender cases. According to MSGC in 2019, there were 17 aggravated durational departures in which the judge cited the career-offender provision as the reason for departure. Among those 17 aggravated durational departures were five-mitigated dispositional departures. It is assumed that, in the future those five aggravated durations would be executed instead of stayed, as required by the bill. Again, while this provision will have an impact on the number of trials it is unknown or too few cases to make an estimate on the impact. In addition, subd 5 will require service of the

entire pronounced sentence. According to MSGC the total sentences pronounced among the 20 career-offender cases (the 12 executed cases, the 5 stayed cases to be executed under the bill, and the 3 additional aggravated departure cases assumed to be required by the bill and assumed to be of a duration equal to an average of the 17 actual cases) is 1,558 months. This is a significant increase and will take away any incentive to come to a plea agreement in these cases. Assuming that 90% of these cases are public defender cases and that 80% of these go to trial, there would be an additional 14 trials. Assuming a one week trial with one week of preparation this would mean a need for an additional 1,120 hours of attorney time.

With respect to section 4 of the bill MSGC found 7 cases that would qualify under this statute. Because. All seven were person crimes currently eligible for consecutive sentencing, it is assumed that they would have received consecutive sentencing had they been longer. Because these defendants were instead given aggravated durational departures, it is therefore assumed that consecutive sentencing would not have been longer in any of the seven cases.

The bill will prohibit mitigated dispositional departures and require aggravated durational departures; in dangerous offender cases. The number of such mitigated departures granted, or aggravated departures not imposed, is not known. According to MSGC in 2019, there were seven aggravated durational departures in which the judge cited the dangerous-offender provision as the reason for departure. While both of these provisions will have an impact on the number of trials it is unknown or too few cases to make an estimate on the impact.

Among the 2019 violent-crime cases (excluding controlled substance crime in the 3rd or 4th degree) receiving an executed sentence of at least the Guidelines duration (as required by subd. 3) that were not already executed sentences under subd. 2 or 4 MSGC staff found 67 cases with two prior violent crimes (excluding controlled substance crime in the 3rd or 4th degree). Those pronounced sentences contained a total of 6,691 months in prison. By eliminating the one-third supervised release term, the bill is assumed to cause an increase in the time to be served equal to one-third of that total pronounced sentence, resulting in an additional total of 2,230 months in prison. In cases with that significant a change in sentencing, there is little or no incentive to reach a plea agreement. Assuming that 90% of these cases are public defender cases and that 80% of these go to trial, there would be an additional 48 trials. Assuming a one week trial with one week of preparation this would mean a need for an additional 3,840 hours of attorney time.

The bill would prohibit mitigated dispositional departures and require aggravated durational departures in career offender cases. According to MSGC in 2019, there were 17 aggravated durational departures in which the judge cited the career-offender provision as the reason for departure. Among those 17 aggravated durational departures were five-mitigated dispositional departures. It is assumed that, in the future those five aggravated durations would be executed instead of stayed, as required by the bill. Again, while this provision will have an impact on the number of trials it is unknown or too few cases to make an estimate on the impact.

In addition, subd 5 will require service of the entire pronounced sentence. According to MSGC the total sentences pronounced among the 20 career-offender cases (the 12 executed cases, the 5 stayed cases to be executed under the bill, and the 3 additional aggravated departure cases assumed to be required by the bill and assumed to be of a duration equal to an average of the 17 actual cases) is 1,558 months. This is a significant increase and will take away any incentive to come to a plea agreement in these cases. Assuming that 90% of these cases are public defender cases and that 80% of these go to trial, there would be an additional 14 trials. Assuming a one week trial with one week of preparation this would mean a need for an additional 1,120 hours of attorney time.

### **Expenditure and/or Revenue Formula**

Taken as a whole there would be a need for an additional 4,960 hours of attorney time, or 2.5 FTE attorneys. Because of the serious nature of these cases, they would require an experienced attorney. The personnel and non-personnel costs for an attorney in the middle of the range would be \$125,000. Assuming a phase in of personnel the first year, we would expect a cost of \$188,000 in the first year and \$375,000 annually. Taken as a whole there would be a need for an additional 4,960 hours of attorney time, or 2.5 FTE attorneys. Because of the serious nature of these cases, they would require an experienced attorney. The personnel and non-personnel costs for an attorney in the middle of the range would be \$125,000. Assuming a phase in of personnel the first year, we would expect a cost of \$156,000 in the first year and \$312,000 annually.

### **Long-Term Fiscal Considerations**

### **Local Fiscal Impact**

**References/Sources**

**Agency Contact:**

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**Date:** 3/1/2022 9:31:32 AM

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SF3224 - 0 - Violent Offenders; Sentencing

Chief Author: **Scott Newman**  
 Committee: **Judiciary And Public Safety Finance And Policy**  
 Date Completed: **3/1/2022 9:33:41 AM**  
 Agency: **Sentencing Guidelines Comm**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
<b>Total</b>	-	-	-	-	-

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

**LBO Signature:** Jim Carlson      **Date:** 3/1/2022 8:36:14 AM  
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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-
<b>2 - Revenues, Transfers In*</b>						
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

**Bill Description**

This bill amends Minnesota Statutes 2020, section 609.1095, subdivisions 2, 3, and 4 by adding a subdivision. The new subdivision requires aggravated sentences for certain violent offenders; requires consecutive sentences for certain violent offenders; and requires certain offenders to serve the entire pronounced sentence in custody.

Subdivision 2 Increased sentences for dangerous offender who commits third violent crime:

Instead of being optional, this bill makes an aggravated durational departure from the presumptive imprisonment sentence mandatory for dangerous offenders who commit a third violent crime.

Subdivision 3 Mandatory sentence for dangerous offender who commits third violent felony:

Currently, subdivision 3 language states that a person who commits a violent felony must be committed to the commissioner of corrections for a mandatory sentence of at least the length of the presumptive sentence under the Sentencing Guidelines if the court determines on the record at the time of sentencing that the person has two or more prior felony convictions for violent crimes. The proposed amendment to subdivision 3 states that one of the following also has to be true the Sentencing Guidelines presumptive sentence does not presume an executed prison sentence; or the fact finder does not make the determination under subdivision 2, clause (2). The amendment also strikes language in subdivision 3 which states any person convicted and sentenced as required by this subdivision is not eligible for probation, parole, discharge, or work release, until that person has served the full term of imprisonment imposed by the court (which is two-thirds of the pronounced sentence).

Subdivision 4 Increased sentence for offender who commits sixth felony:

Instead of being optional, this bill makes an aggravated durational departure from the presumptive sentence mandatory for offenders who commit a sixth felony committed as part of a pattern of criminal conduct.

Creation of subdivision 5 Consecutive sentences; release:

This bill creates a new subdivision (subdivision 5). Under this new subdivision, any person convicted and sentenced as required by this section must serve any imposed sentences consecutively to any unexpired portion of a previously imposed sentence unless the total time to serve in prison would be longer if a concurrent sentence were imposed. Notwithstanding sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135, any person convicted and sentenced as required by this section is not eligible for probation, parole, discharge, or work release until that person has served the entire announced sentence imposed by the court.

This bill is effective August 1, 2022 and applies to crimes committed on or after that date.

**Assumptions**

It is assumed that due to the COVID-19 health pandemic, the cases sentenced in 2020 will not be a fair approximation of cases sentenced in the future; therefore, cases sentenced in 2019 are used instead to estimate the impact of this bill.

With respect to section 4 of the bill (new Minn. Stat. § 609.1095, subd. 5), it is assumed that the required consecutive sentencing (if longer than a concurrent sentence) will be calculated using the rules for consecutive sentence found in section 2.F of the Sentencing Guidelines. None of the seven subdivision 2 (dangerous offender) cases sentenced in 2019 received a consecutive sentence. Because all seven were person crimes currently eligible for consecutive sentencing, it is assumed that they would have received consecutive sentencing had they been longer. Because these defendants were instead given aggravated durational departures, it is therefore assumed that consecutive sentencing would not have been longer in any of the seven cases. It is assumed that a similar pattern will apply to the subd. 3 cases and subd. 4 cases particularly since subd. 4 (career offender) cases will certainly have lengthy criminal histories, which would not be counted under the Sentencing Guidelines' consecutive sentencing policy. Therefore, it is assumed that there will be no impact from the consecutive-sentencing provisions of section 4.

With respect to the remaining provisions of section 4, it is assumed that the intent and effect of the language, "the entire announced sentence imposed by the court" is to eliminate the possibility of supervised release for these defendants, and that every defendant to whom subdivision 2, 3, or 4 applies will serve the entire pronounced sentence, not just the term of imprisonment, in prison, after which they will be released without supervision. The impact of this provision will be applied during the discussion about each subdivision.

With respect to Minn. Stat. § 609.1095, subd. 2 (dangerous offenders), it is assumed that the subdivision will continue to apply in cases where the current offense is a felony "violent crime" (as listed); where the defendant was an adult on the offense date; where, before the current offense date, the defendant was convicted of two "prior" (defined to require the second prior offense to have occurred after the date of the first prior conviction) violent crimes (not necessarily felonies); and where the factfinder (a jury or, with the defendant's consent, a judge) finds the defendant to be a danger to public safety. It is assumed the intent and effect of the bill is to expand the subdivision by (1) making it applicable to all cases in which the Sentencing Guidelines recommend executed prison, not just the subset of such cases where the judge imposes an executed prison sentence; and (2) requiring, not merely permitting, an aggravated durational departure. It is assumed that neither requirement will be waivable, but must and will be imposed in all required cases. The magnitude of the required durational departure is not specified.

The bill will prohibit mitigated dispositional departures, and require aggravated durational departures, in dangerous-offender cases. The number of such mitigated departures granted, or aggravated departures not imposed, is not known. In 2019, there were seven aggravated durational departures in which the judge cited the dangerous-offender provision as the reason for departure. It is assumed that, among qualifying cases where the prosecutor proves to a jury or judge that the defendant is a danger to public safety, the number of mitigated dispositional departures (to be prohibited by this bill) is very small, and most likely zero in a typical year. It is further assumed that, among qualifying cases where the prosecutor proves to a jury or judge that the defendant is a danger to public safety, the number of aggravated durational departures now permitted by subd. 2 (to be required by this bill) but not granted is also very small, perhaps 1 in a typical year. Among the seven aggravated durational departures under the dangerous-offender provision, the average durational increase above the presumptive sentence was 21 months. It is therefore assumed that the bill will cause one additional pronounced sentence to increase by 21 months, two-thirds of which would be **14 months**. (The one-third will be added back in in the following paragraph.)

In addition, the application of the new subd. 5 will require service of the entire pronounced sentence. The total sentence pronounced among the eight dangerous-offender cases (the 7 actual cases and the 1 additional case, assumed to be an average of the 7) is 993 months. By eliminating the one-third supervised release term, the bill is assumed to cause an increase in the time to be served equal to one-third of that total pronounced sentence, resulting in an additional total of **331 months** in prison.

With respect to subdivision 3 (repeat violent felons), it is assumed that the bill makes no material policy changes. Subdivision 3 is similar to subdivision 2, except that it applies to any defendant sentenced in adult court, not just adult defendants; it requires that the two prior offenses be felonies; it excludes controlled substance crime in the 3rd or 4th degree from the meaning of "violent crime"; and it applies regardless of whether the Sentencing Guidelines recommend executed prison. When subdivision 3 applies, an executed prison sentence of at least the presumptive Guidelines duration must be imposed; waiver is not permitted. It is assumed that the intent and effect of the bill is to leave these provisions unchanged.

Among the 2019 violent-crime cases (excluding controlled substance crime in the 3rd or 4th degree) receiving an executed sentence of at least the Guidelines duration (as required by subd. 3) that were not already executed sentences under subd. 2 or 4, MSGC staff examined those cases coded as having a true prior person offense. Among those cases, MSGC



staff found 67 cases with two “prior” violent crimes (excluding controlled substance crime in the 3rd or 4th degree). Those pronounced sentences contained a total of 6,691 months in prison. By eliminating the one-third supervised release term, the bill is assumed to cause an increase in the time to be served equal to one-third of that total pronounced sentence, resulting in an additional total of **2,230 months** in prison.

With respect to subdivision 4 (career offenders), it is assumed that the subdivision will continue to apply in cases where the current offense is a felony; where, before the current offense date, the defendant was convicted of five “prior” (defined to require each offense, in turn, to have occurred after the date of the preceding prior conviction) felonies; and where the factfinder (a jury or, with the defendant’s consent, a judge) finds the defendant the current offense to have been committed as part of a pattern of criminal conduct. It is assumed the intent and effect of the bill is to expand the subdivision by (1) making it applicable to all cases in which the Sentencing Guidelines recommend executed prison, not just the subset of such cases where the judge imposes an executed prison sentence; and (2) requiring, not merely permitting, an aggravated durational departure. It assumed that neither requirement will be waivable, but must and will be imposed in all required cases. The magnitude of the required durational departure is not specified.

The bill will prohibit mitigated dispositional departures, and require aggravated durational departures, in career-offender cases. The number of such mitigated departures granted, or aggravated departures not imposed, is not known. In 2019, there were 17 aggravated durational departures in which the judge cited the career-offender provision as the reason for departure.

Among those 17 aggravated durational departures were five mitigated dispositional departures. It is assumed that, in the future, those five aggravated durations would be executed instead of stayed, as required by the bill. The sum of those five stayed sentences was 270 months. It is therefore assumed that the bill will cause five additional executed sentences for a total pronounced duration of 270 months, two-thirds of which would be **180 months**. (The one-third will be added back in a subsequent paragraph.)

It is further assumed that, among qualifying cases where the prosecutor proves to a jury or judge that the offense was committed as part of a pattern of criminal conduct, the number of aggravated durational departures now permitted by subd. 4 (to be required by this bill) but not granted is also very small, perhaps 3 in a typical year. Among the 17 aggravated durational departures under the career-offender provision, the average durational increase above the presumptive sentence was 22.6 months. It is therefore assumed that the bill will cause three additional pronounced sentences to increase by 22.6 months each, for a total of 68 months, two-thirds of which would be **45 months**. (The one-third will be added back in in the following paragraph.)

In addition, the application of the new subd. 5 will require service of the entire pronounced sentence. The total sentence pronounced among the 20 career-offender cases (the 12 executed cases, the 5 stayed cases to be executed under the bill, and the 3 additional aggravated-departure cases assumed to be required by the bill and assumed to be of a duration equal an average of the 17 actual cases) is 1,558 months. By eliminating the one-third supervised release term, the bill is assumed to cause an increase in the time to be served equal to one-third of that total pronounced sentence, resulting in an additional total of **519 months** in prison.

It is therefore assumed that the bill will require, in total, an additional 3,319 months in prison (14 + 331 + 2,230 + 180 + 45 + 519), which, divided by 12, results in the need for **277 additional prison beds**.

**Expenditure and/or Revenue Formula**

**Long-Term Fiscal Considerations**

Based on the assumptions above, there will be a need of 277 additional prison beds annually: 12 beds in FY2024, 58 beds in FY2025, 115 beds in FY2026, for a total of 277 beds by FY2049, and every year after. The timing of the total beds needed is displayed in the table, below.

**Table 1. Prison-Bed Timing**

Fiscal Year	Beds
2024	12
2025	58
2026	115

2027	132
2028	161
2029	176
2030	189
2031	220
2032	232
2033	248
2034	252
2035	256
2036	260
2037	260
2038	260
2039	260
2040	264
2041	264
2042	264
2043	272
2044	272
2045	272
2046	272
2047	272
2048	272
2049	277

**Local Fiscal Impact**

Based on the assumptions above, there will be minimal impact on local correctional resources because the majority of the bill's impact will be from longer prison durations for cases already receiving executed prison sentences. Because it will also prohibit some mitigated dispositional departures, there may be some local correctional savings from fewer cases being supervised on probation (because those cases will be receiving prison sentences) and from fewer cases receiving local confinement as a condition of their probation. As described above, there were five such mitigated dispositional departures from the career offender statute (under subd. 5) that did not receive executed prison sentences in 2019.

**References/Sources**

2019 MSGC Monitoring Data.

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