

Preliminary

Consolidated Fiscal Note

2021-2022 Legislative Session

SF3448 - 0 - Jury Required; Mitigated Departure Court Cases

Chief Author: **Scott Newman**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed:
 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) Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept					
General Fund	-	-	1,691	3,419	4,070
Public Defense Board					
General Fund	-	-	5,125	9,936	9,936
Supreme Court					
General Fund	-	-	2,599	2,467	2,467
State Total					
General Fund	-	-	9,415	15,822	16,473
Total	-	-	9,415	15,822	16,473
Biennial Total			9,415		32,295

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept					
General Fund	-	-	18.8	38	45.2
Public Defense Board					
General Fund	-	-	-	-	-
Supreme Court					
General Fund	-	-	12	12	12
Total	-	-	30.8	50	57.2

Lead LBO Analyst's Comment

LBO Signature: Date:
 Phone: Email:

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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.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept						
General Fund	-	-	1,691	3,419	4,070	
Public Defense Board						
General Fund	-	-	5,125	9,936	9,936	
Supreme Court						
General Fund	-	-	2,599	2,467	2,467	
Total		-	-	9,415	15,822	16,473
Biennial Total				9,415		32,295
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Corrections Dept						
General Fund	-	-	1,691	3,419	4,070	
Public Defense Board						
General Fund	-	-	5,125	9,936	9,936	
Supreme Court						
General Fund	-	-	2,599	2,467	2,467	
Total		-	-	9,415	15,822	16,473
Biennial Total				9,415		32,295
2 - Revenues, Transfers In*						
Corrections Dept						
General Fund	-	-	-	-	-	-
Public Defense Board						
General Fund	-	-	-	-	-	-
Supreme Court						
General Fund	-	-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-

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Fiscal Note

2021-2022 Legislative Session

SF3448 - 0 - Jury Required; Mitigated Departure Court Cases

Chief Author: **Scott Newman**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed:
 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
General Fund	-	-	2,599	2,467	2,467	
Total	-	-	2,599	2,467	2,467	
Biennial Total			2,599		4,934	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	12	12	12
Total	-	-	12	12	12

LBO Analyst's Comment

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

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Preliminary

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.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	2,599	2,467	2,467
Total		-	-	2,599	2,467	2,467
Biennial Total					2,599	4,934
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	-	2,599	2,467	2,467
Total		-	-	2,599	2,467	2,467
Biennial Total					2,599	4,934
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total		-	-	-	-	-
Biennial Total					-	-

Bill Description

SF3448 amends Minn. Stat. § 244.10, which governs sentencing hearings and deviation from the Sentencing Guidelines, by adding a new subdivision 5b, which requires that if the court intends to consider a mitigated departure from the Sentencing Guidelines and the defendant caused the death of another in the commission of the crime or any identifiable victim has communicated objections to a mitigated departure, the court shall allow a sentencing jury of 12 members to determine whether there is proof beyond a reasonable doubt to support the existence of any mitigating factor that may be used as a reason for departure. The court shall allow a unitary trial when the evidence in support of the mitigating factors would be admissible as part of the trial on the offense and would not result in unfair prejudice to the defendant, otherwise the court shall bifurcate the proceedings. The existence of each mitigating factor shall be determined by use of a special verdict form, and the court may only impose a mitigated sentence based on the factor found by the jury.

The bill also amends Minn. Stat. § 611A.03, subd. 1, which requires the prosecutor to make a reasonable and good faith effort to inform the victim of any plea agreement to also require the victim be informed of the right to object to a mitigated departure; amends Minn. Stat. § 611A.037, subd. 1, which governs the victim impact statement, to also require that it include whether the victim objects to a mitigated departure; and amends Minn. Stat. § 611A.038, which governs the right of a victim to submit a statement at sentencing, to provide that the statement may include whether the victim objects to a mitigated departure.

Assumptions

It is assumed that the provisions of the bill that amend various sections in chapter 611A will not have any significant impact on the judicial branch. It is unknown whether the provisions of this bill will result in an overall increase in the felony jury trial rate, which is consistently around 4% of all felony cases. It is possible that the parties and the process would adjust as needed to continue to keep felony jury trial rates at a manageable level, and that the vast majority of cases will continue to be resolved by agreement. However, for purposes of this fiscal note, the court has been instructed by the Legislative Budget Office to use the assumptions of the Minnesota Sentencing Guidelines Commission that the provisions of this bill will result in 294 additional jury trials per year.

Although not a specific measurable fiscal cost, it is important to note that given the current major criminal case backlog resulting from the COVID-19 pandemic, a significant increase in the jury trial rate will likely result in a setback to the progress the court is making toward eliminating the backlog, and will instead increase the backlog, severely impacting the justice system's ability to provide timely resolution of criminal cases and speedy trials.

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Expenditure and/or Revenue Formula

Based on 3 years of judicial branch data, there are an average of 1,086 jury trials held statewide per year. There are an average of 703 felony jury trials per year, accounting for 65% of the total number of jury trials. An additional 294 jury trials per year would be a 42% increase in the current felony jury trial rate.

The primary impact of an additional 294 felony jury trials per year would be the increased need for jurors and the increased costs associated with summoning and utilizing more jurors, and the increased judge and judicial staff time needed. There would also be an increase in district court jury staff and related costs associated with managing the additional jury trials but that cannot be accurately estimated. The anticipated annual cost increase, based on judicial branch data, is below.

Per diem juror costs: with an average cost of \$2,007.87 for each felony jury trial, an additional 294 felony jury trials per year will increase juror per diem costs by \$590,313.78 per year.

Jury summons mailing costs: the annual judicial branch vendor contract for printing and mailing juror summonses is \$296,000. Assuming 65% of that cost represents summoning for felony jury trials, the annual cost for felony jury trials is \$192,400. A 42% increase would cost the judicial branch an additional \$80,808 per year.

Based on the above, the total jury program cost increase is $\$590,313.78 + \$80,808 = \underline{\$671,122 \text{ per year}}$

Judge time: with an average trial time of 2.78 days for a felony jury trial, an additional 294 felony jury trials per year will require an additional 817.32 days of judge time, or an additional 4 judge FTE per year (based on a 215- day judge year in days). The annual cost of a judge unit, which includes the cost of a judge, law clerk, and court reporter is \$482,000 for the initial year, which includes \$33,000 in initial chamber set-up costs, and \$449,000 each subsequent year. An additional 4 judge FTE statewide will cost \$1,928,000 in FY23, and \$1,796,000 in FY24, and FY25.

The total jury program costs plus the judge unit costs per year are:

FY23: \$2,599,122 (\$1,928,000 + \$671,122)

FY24: \$2,467,122 (\$1,796,000 + \$671,122)

FY25: \$2,467,122 (\$1,796,000 + \$671,122)

Long-Term Fiscal Considerations

The increased cost is permanent.

Local Fiscal Impact

A 42% increase in the felony jury trial rate will also increase the need for bailiff/sheriff resources to staff the trials and require increased county attorney resources.

References/Sources

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Fiscal Note

2021-2022 Legislative Session

SF3448 - 0 - Jury Required; Mitigated Departure Court Cases

Chief Author: **Scott Newman**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed:
 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	-	-	1,691	3,419	4,070	
Total	-	-	1,691	3,419	4,070	
Biennial Total			1,691		7,489	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	18.8	38	45.2
Total	-	-	18.8	38	45.2

LBO Analyst's Comment

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

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Preliminary

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.

State Cost (Savings) = 1-2 Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	1,691	3,419	4,070
Total	-	-	1,691	3,419	4,070
Biennial Total			1,691		7,489
1 - Expenditures, Absorbed Costs*, Transfers Out*					
General Fund	-	-	1,691	3,419	4,070
Total	-	-	1,691	3,419	4,070
Biennial Total			1,691		7,489
2 - Revenues, Transfers In*					
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

Bill Description

The proposed legislation would give crime victims the right to object to mitigated departures, and would establish procedures that must be followed in the event of such an objection, or in the event of the death of a victim, before granting such a departure.

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. Data from 2017 to 2019 is used to estimate the impact of this bill.

The MSGC assumes the provisions of this bill would apply to offenses resulting in death or offenses involving an identifiable victim.

The MSGC assumes the number and distribution of cases in the future would resemble the cases sentenced in the three most recent years of available data (53,907 cases from 2017-2019).

The MSGC assumes the provisions of this bill would result in a decrease in the number of mitigated departures, which would result in an increase in the need for prison beds.

The MSGC assumes there would be a 12 percent reduction in the number of mitigated dispositional departures, which would result in the need for 266 additional prison beds per year. The reduction of mitigated dispositional departures would also result in some local correctional savings, estimated to be a decreased need of approximately 9 jail beds and 32 fewer probation cases per year.

The MSGC assumes there would also be a 12 percent reduction in the number of mitigated durational departures where victim agreement is not already indicated, which would result in the need for 87 additional prison beds per year.

In total, the MSGC estimates the provisions of this bill would result in the eventual need for 353 additional prison beds (266 from more dispositional departures and 87 from more durational departures) each year. The estimated year-by-year prison bed impact would be 177 beds in FY2023, 247 beds in FY2024, 265 beds in FY2025, eventually reaching 353 beds in FY2032 and each subsequent year.

Prison bed costs are based on a marginal cost per diem of \$41.80 in FY2023, \$42.42 in FY2024 and \$43.18 in FY2025. This includes marginal costs for all facility, private and public bed rental, health care and support costs. (It should be noted

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these per diem costs are calculated annually, and will be updated before the 2022 Legislature is in session.)

The annual cost is estimated by multiplying the number of prison beds needed by the subsequent annual per diem. Unless otherwise noted, prison beds are phased in 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 per year including benefits.

This bill would be effective August 1, 2022 and would apply to crimes committed on or after that date.

Expenditure and/or Revenue Formula

Costs for Prison Beds - DOC

Fiscal Year	2021	2022	2023	2024	2025
Number of Prison Beds	0	0	177	247	265
Cost of Prison Beds (in 000s)	\$0	\$0	\$1,691	\$3,419	\$4,070
FTEs	0	0	18.8	38.0	45.2

Long-Term Fiscal Considerations

Estimated prison bed costs would increase to \$5,564,000 in FY2033 (353 additional prison beds) and continue into subsequent years.

Local Fiscal Impact

There would be some decrease in local correctional confinement and statewide probation caseloads statewide. The MSGC estimates a decrease of 32 probation cases and a decreased need of 9 jail beds per year.

References/Sources

Minnesota Sentencing Guidelines Commission

Department of Corrections staff

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Fiscal Note

2021-2022 Legislative Session

SF3448 - 0 - Jury Required; Mitigated Departure Court Cases

Chief Author: **Scott Newman**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed:
 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

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	5,125	9,936	9,936	
Total	-	-	5,125	9,936	9,936	
Biennial Total			5,125			19,872

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

LBO Signature: Date:
 Phone: Email:

Preliminary

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.

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State Cost (Savings) = 1-2 Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	5,125	9,936	9,936
Total	-	-	5,125	9,936	9,936
Biennial Total			5,125		19,872
1 - Expenditures, Absorbed Costs*, Transfers Out*					
General Fund	-	-	5,125	9,936	9,936
Total	-	-	5,125	9,936	9,936
Biennial Total			5,125		19,872
2 - Revenues, Transfers In*					
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

Bill Description

Under the bill if the court intends to consider a mitigated departure from the Sentencing Guidelines based on agreement of the parties, the defendant's motion, or the court's own initiative:

1. Court shall determine if the defendant caused the death of another.
2. And whether any identifiable victim has communicated objections to a mitigated departure directly to the court, to a prosecutor, or to an officer conducting a presentence or pre dispositional investigation pursuant to section 611A.037.

If the defendant caused the death of another in the commission of the crime or any identifiable victim has communicated objections to a mitigated departure, the district court shall allow a sentencing jury of members to determine whether there is proof beyond a reasonable doubt to support the existence of any mitigating factor that may be used as a reason for departure.

1. A sentencing jury will be unified or bifurcated. Unified if can introduce mitigation evidence in the case in chief and no prejudice to the accused, otherwise a bifurcated trial. The defendant cannot waive a jury trial and ask the court to rule on the mitigation issue.
2. Defendant bears the burden to prove a mitigating factor beyond a reasonable doubt.
3. On every durational/dispositional departure contemplation, agreement, or motion by the defendant there will be a jury trial: either unitary or for sentencing.
4. Takes discretion away from the prosecutor on plea agreements
5. Would apply to agreed upon departures: durational and dispositional.
6. Takes away the district court's discretion for a mitigated departure

Assumptions

It is our experience that during the pendency of the case, up to and including plea negotiations, the identifiable victim conveys objections to any leniency (mitigated departure) given to the defendant. After discovery is tendered and reviewed by both the prosecution and defense, and the case is fully investigated, plea negotiations occur. During the negotiations,

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both parties better see the strengths and weaknesses or their respective positions. If there is an identifiable victim, the prosecution discusses the pros and cons of trial/litigation. While an identifiable victim may want the full penalty at the outset, the potential consequences of trial are better understood. It is during these discussions, that a mitigated departure is discussed. While agreed upon by the identifiable victim and the prosecution at the time of plea/sentencing, that is not an indicator that an identifiable victim does not object to a departure.

With the proposal, on every durational/dispositional departure contemplation, agreement, or motion by the defendant, there shall be a unified or bifurcated jury trial. A unified trial will only occur if the defense can introduce mitigated evidence in its case in chief. For this to occur, the mitigation evidence must be relevant to be admitted. If not unified, the trial shall be bifurcated. The Defendant cannot waive a jury trial for the sentencing phase and ask the court to rule on the mitigation issue(s). In the sentencing phase, the defendant bears the burden of proof to prove a mitigating factor beyond a reasonable doubt.

The proposal includes If the court intends to consider a mitigated departure from the Sentencing Guidelines based on agreement of the parties, the defendant's motion, or the court's own initiative, Court shall determine if the defendant caused the death of another, and whether any identifiable victim has communicated objections to a mitigated departure directly to the court, to a prosecutor, or to an officer conducting a presentence or pre dispositional investigation pursuant to section 611A.037. Based on the bill language and the provision for victim objections there would be a need to convene a sentencing jury in all cases where there was previously a dispositional or durational departure.

In its analysis the MSGC uses the rate at which prosecutors to departures (17.3%) to project the number of cases where victims might object. As discussed above, it is our experience that this does not give a true picture of the victim objections. In fact, trial and appellate public defenders who have done this work for many years indicated that they believed almost all if not all of these cases would include victim or family objections.

Based on the bill language and the provision for victim objections, there would be a range of possible impacts and cases that may require a sentencing jury.

According to the Minnesota Sentencing Guidelines Commission, between 2017 and 2019 there were 5,029 departures in felony cases for an average of 1,676 per year. Those numbers would not include the cases where a mitigated departure was requested, the prosecutor objected or remained silent, and the court did not give the mitigated departure. Assuming that there would be an objection in 75% of the cases there would be 1,257 case annually where this change would apply. Public defenders represent approximately 90% of all felony defendants in the state. This would mean that there would be 1,131 public defender cases. In these cases, there would be a need to have a separate sentencing jury. In cases that are tried, there would be a need for a second phase of the trial that would be the mitigation phase.

Approximately 5% of felony cases go to trial. This would mean that in 56 cases a jury would need to sit for the mitigation phase. Mitigating evidence is typically not germane/relevant to the prosecution - so not allowed during the trial phase - so each of these cases would be bifurcated to include a separate mitigation hearing. It is estimated that these cases would take an additional two days in trial along with two days of preparation, for a total of 224 additional days or 1,792 hours.

In the 1,075 cases where there is a proposed plea agreement contemplating a departure, a sentencing jury would need to be impaneled to hear the mitigation phase of the case. It is estimated that along with the two days of presenting mitigation at trial and two days of preparation, there would also be two days of voir dire/jury selection for a total of six days per case (prep, jury selection, trial). This would mean an additional 6,450 days or 51,600 hours of public defender time.

Together there would be a need for an additional 53,392 hours of public defender time, or 29 FTE attorney staff. Board of Public Defense Weighted Caseload Standards call for 1 legal secretary/assistant for every four attorneys, 1 investigator for every 4 felony attorneys, 1 paralegal for every 8 attorneys, and 1 dispositional advisor for every 7 attorneys. This equates to the following additional support staff positions- 7 legal secretary assistants, 7 investigators, 3.5 paralegals and 4 dispositional advisors. In addition, Board policy calls for one managing attorney for every 10 attorneys, for a need of 3 additional managing attorneys.

There is also a right to appeal these cases. The experience of the Board is that the vast majority of these cases are appealed. Assuming a 75% appeal rate, we would estimate 848 appeals. An appellate attorney handles 20-22 cases per year, requiring an additional 38 appellate attorneys, 9.5 additional Legal Secretary/Assistant positions, and 4 managing attorneys. In addition, trial transcripts would need to be ordered in each of these cases.

Expenditure and/or Revenue Formula

The salary for an attorney at step 3 of the range is \$73,523. With benefits and associated non personnel costs the annual

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cost is \$111,000. The salary for an investigator at step 3 is \$54,510. With benefits and associated non personnel costs the annual cost is \$89,000. The salary for a paralegal at step 3 of the range is \$54,510. With benefits and associated non personnel costs the annual cost is \$89,000. The salary for a dispositional advisor at step 3 of the range is \$55,670. With benefits and associated non personnel costs the annual cost is \$91,000. The salary for a legal secretary/assistant at step 3 is \$45,126. With benefits and associated non personnel costs the annual cost is \$79,000. The salary for a managing attorney at step 3 is \$121,297. With benefits and associated non personnel costs the annual cost is \$164,000.

On the trial level the total cost of positions would be \$5,562,000 phased in during the first year estimated costs would be \$2,781,000.

On the appellate level the total cost of positions would be \$5,624,000 phased in during the last quarter of the year estimated personnel costs would be \$1,406,000.

At the current transcript rate (\$4.25 per page) and approximately 200 pages per day of trial this equates to a cost of \$850 per trial day or \$3,750,000 (56 cases x 2 days per case x \$850 per day) plus 1,075 cases x 4 days(trial and voir dire) x \$850. Again, phased in during the first year would be \$938,000.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

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Preliminary

Fiscal Note

2021-2022 Legislative Session

SF3448 - 0 - Jury Required; Mitigated Departure Court Cases

Chief Author: **Scott Newman**
 Committee: **Judiciary And Public Safety Finance And Policy**
 Date Completed:
 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	

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

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-

LBO Analyst's Comment

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

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State Cost (Savings) Calculation Details

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

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	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-
Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Total	-	-	-	-	-
Biennial Total			-		-
2 - Revenues, Transfers In*					
Total	-	-	-	-	-
Biennial Total			-		-

Bill Description

This bill gives crime victims the right to object to mitigated departures, and establishes procedures that must be followed in the event of such an objection, or in the event of the death of a victim, before granting such a departure.

Section 4 amends Minn. Stat. § 611A.38 to give a crime victim the right to object at sentencing to a mitigated departure from the Sentencing Guidelines. Section 2 amends Minn. Stat. § 611A.03 to require the prosecuting attorney to make a good-faith effort to inform the victim of that right prior to the entry of the factual basis for a plea pursuant to a plea agreement recommendation. Section 3 amends Minn. Stat. § 611A.037 subdivision 1 to provide that the victim impact statement must include a statement of whether the victim objects to a mitigated departure.

Section 1 amends Minn. Stat. § 244B.10 by adding subd. 5b. Before granting a mitigated departure, the court must determine whether a victim has communicated objections directly to the court to a mitigated departure or the defendant's crime caused the death of another. If either of those conditions is true, the court shall allow a twelve-member jury to determine, subject to specified procedures, whether there is proof beyond a reasonable doubt to support the existence of any mitigating factor that may be used as a reason for departure. The court may only impose or stay a sentence that deviates from the Sentencing Guidelines applicable to the case and impose a mitigated sentence based on a mitigating factor found by the jury.

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.

It is assumed that these provisions will apply to offenses resulting in death or offenses involving an identifiable victim. It is assumed that in the future, the number and distribution of cases will resemble the cases sentenced in the three most recent years of available data (53,907 cases from 2017-2019). Based on the elements of each crime as MSGC understands them to exist, it is assumed that death was specified as an element of the offense for 451 offenses (0.8%); 28,331 (52.6%) could have had an identifiable victim; and 25,125 (46.6%) had no identifiable victim. It is assumed that the procedures for mitigated departures outlined in this bill would apply to the 28,782 cases in the death and victim categories that received mitigated departures. (See MSGC Staff Information Paper, "Victim Categories, November 9, 2021.")

It is assumed that there are two types of costs associated with the departure procedures mandated in this bill. The first are costs associated with implementing jury determination of mitigating factors for departure.

Of the 28,782 cases in the death and victim categories, 5,029 had some type of mitigated departure (or 1,676 mitigated departures per year). In 459 of those departures, departure reports submitted by the court indicated that the victim or victim's family agreed to the departure or that the departure was done in order to save the victim or victim's family the trauma from testifying at trial, or that the victim was unwilling, unlikely, or unable to testify. It is assumed that all of the departures in the 106 death cases with departures would require jury determination, regardless of the wishes of the victim's family (in 16% of the cases, the court indicated that the victim's family supported the departure). It is assumed that

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in other 4,923 departure cases with identifiable victims, victims would not object to the departure if the departure report indicated victim or victim's family support for the departure (442 cases). In the other 4,481 non-death departure cases with identifiable victims, the prosecutor or the victim-impact statement writer would need to report to the court as to whether the victim agreed to the departure.

The rate of victim objection in these 4,481 cases is not known. MSGC has data on the frequency at which the prosecutor objected to mitigated departures that were granted, as reported to MSGC by the sentencing court. Among these 4,481 cases, the court provided the position of the prosecutor in 3,457 of the cases. Among those 3,457 cases, the court reported that the prosecutor objected to the departure in 17.3 percent of the cases. Because the interests of the prosecutor and the victim are similar, it is assumed that the unknown rate of victim objection to mitigated departures in the future is likely to be similar to the above rate of prosecutorial objection to mitigated departures. It is therefore assumed that the victim will object to the departure in 17.3 percent of the 4,481 non-death departure cases with identifiable victims where the position of the victim is not known, or 775 cases over the three-year period. In cases resulting in death (106 departures over three years, or 35 cases per year) or where the victim objected (775 departures over three years, or 258 cases per year), jury determination of mitigating factors would be necessary or the mitigated departure could not take place. Therefore, it is estimated that this bill will result in the need for approximately 294 jury trials a year to determine whether mitigating factors support a departure.

This estimate of 294 jury trials may either overstate or understate the actual number of additional jury trials needed. The vast majority of felony cases are now resolved without trial by plea agreement, and it is possible that the two parties in criminal trials will adjust their behavior in order to continue to find ways to reach agreement short of trial, even in cases where the victim has died or objects to a departure. For example, some cases now resolved through an agreement for a mitigated departure may be resolved through an agreement to plead guilty to a lesser charge instead. If practices were to change in this way, the estimate of 294 jury trials may be an overstatement. On the other hand, the estimate may be an understatement because there will be additional jury trials required in cases where mitigated departures are currently sought but denied. Because MSGC's dataset does not include information on mitigated departures sought but denied, the number of additional jury trials is not known. Because it is assumed that the bill's jury-trial procedures will never increase the likelihood of mitigated departures, cases where mitigated departures are currently sought but denied are disregarded for purposes of the prison-bed estimates that follow.

It is assumed that the provisions of this bill will result in a decrease in the number of mitigated departures, which will result in an increase in the need for prison beds, a second cost of the bill. It is assumed that among the 294 departure cases annually where a jury trial will be required to determine mitigating factors, that some of these cases will not result in departures as a result of the bill. The rate at which the jury-trial requirement will suppress mitigated departures is not known. It is assumed that the rate will be similar to the rate at which aggravated durational departures decreased after the Blakely and Shattuck cases were decided (in 2004 & 2005). (Aggravated dispositional departures are not being used as a metric because defendant demands for execution were formerly considered aggravated dispositional departures.) Because the 2002 & 2003 pre-Blakely aggravated durational departure rates were nine percent, and the aggravated durational departure rate has been three percent in nearly every year after 2007, it is assumed that the jury-trial requirement will cause the departure rate among those 294 cases to shrink to one-third of its current rate. Therefore, it is estimated that the combination of victim objection and jury-trial determination of mitigating factors will result in a reduction of mitigated departures by two-thirds of the 294 cases submitted to a jury, eliminating 197 departures annually. This number represents 12 percent of the 1,676 mitigated departures observed annually. It is therefore assumed that the bill will cause mitigated departures to decrease by 12 percent.

There are two types of mitigated departures, dispositional and durational. For the 28,782 offenses in the death and victim groups, 33.5 percent had presumptive prison dispositions. Of those with presumptive prison dispositions (9,632 cases), 3,429 (35.6%) received a mitigated dispositional departure (probation when the Guidelines recommended prison); 13.7 percent of the death cases and 36.7 percent of the other victim cases. Those departures saved 6,654 beds for three years' worth of departures. Dividing by three, that is a reduction of 2,218 beds. If it is assumed that the provisions of this bill will result in a 12 percent reduction in the number of mitigated dispositional departures, it is expected that the number of prison beds needed will increase by 12 percent or 266 prison beds per year.

It is assumed that a 12-percent reduction in mitigated dispositional departures will result in some local correctional savings. According to MSGC monitoring data, the jail rate for mitigated dispositional departures is 90 percent and the average jail term is 172 days (2/3 estimated time to serve=115 days). With 266 fewer mitigated dispositional departures expected, it is assumed there will be an estimated statewide jail-bed savings of nine beds (266 prison beds x 0.9 jail rate=239.4 cases x 115 days to serve=27,531/365 days=75.4 x .12 reduction). Similarly, it is estimated that probation caseload will decrease by 12 percent (266 prison beds x .12 reduction=31.92 cases) which is 32 cases.

It is also assumed that the provisions in this bill will result in a decrease in the number of mitigated durational departures.

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There were 1,260 cases sentenced to prison with a mitigated durational departure. If the mitigated durational departure rate decreases as a result of the provisions of this bill, there will be an increase in the need for prison beds. It is estimated that these cases (death and non-death with no victim support for the departure) would occupy 2,178 beds for the three years of data or 726 beds per year. If it is assumed that the provisions of this bill will result in a 12 percent reduction in the number of mitigated durational departures where victim agreement is not already indicated, it is expected that the number of prison beds needed will increase by 12 percent per year or 87 beds per year.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Based on the assumptions above, it is estimated that there will be a need for an additional 353 beds annually (266-bed need from more dispositional departures and an 87-bed need from more durational departures) by 2032 if this bill were to take effect. The timing of the prison-bed need is 177 beds in 2023, 247 beds in 2024, 265 beds in 2025, 282 beds in 2026, 300 beds in 2027, 307 beds in 2028, 318 beds in 2029, 335 beds in 2030, 342 beds in 2031, and 353 beds in 2032, and every year after. There will also be a need for additional jury trials to determine whether mitigating factors support a departure, as discussed above.

Prison-Bed Timing

Year	Estimated Prison-Beds Needed
2023	177
2024	247
2025	265
2026	282
2027	300
2028	307
2029	318
2030	335
2031	342
2032	353

Local Fiscal Impact

Based on the assumptions above, it is estimated that the statewide jail impact will be reduced by 12 percent; therefore, the need for jail beds will be reduced by nine jail beds and the statewide probation caseload will be reduced by 32 cases.

References/Sources

2017-2019 MSGC Monitoring Data.

Blakely v. Washington, 542 U.S. 296 (2004).

State v. Shattuck, 704 N.W.2d 131 (Minn. 2005).

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