

Tuesday, March 29, 2022

To: Angela Cook  
Committee Administrator  
Judiciary and Public Safety Finance and Policy Committee  
G-15 Capitol  
St. Paul, MN 55155

RE: MACDL Comments Regarding SF 3224

Dear Judiciary and Public Safety Finance and Policy Committee,

The Minnesota Association of Criminal Defense Lawyers (MACDL) thanks the Committee for the opportunity to offer feedback on SF 3224 the Senate Judiciary and Public Safety Omnibus bill. We would like to thank the Committee for the inclusion of SF 3029 by Senator Latz in Article 1, Section 14 of the bill. The elimination of fees for court copies will provide indigent clients more equal access to justice.

We also write with some concerns about some of the provisions of SF 3224, currently in Section 2, Articles 14-16 of the Omnibus Bill for Judiciary and Public Safety. These provisions would make hard mandatory minimum and consecutive sentencing directives to the judges sentencing a person with a conviction for a third felony crime of violence or sixth felony generally. While MACDL and this writer understand the sentiment of these provisions in the face of present public safety concerns, the application of them is likely to lead to some unintended consequences we would like to point out for your consideration.

First, nonintuitively, mandatory minimum sentencing generally can cause more problems than it solves in criminal court. If an offense or the aggregate of an offender's offenses truly shock the conscious or present a clear public safety risk, the sentences available to the court under the Guidelines or through an upward departure are more than sufficient to allow the court to sentence the defendant to a lengthy term of imprisonment. That is before the State starts using tools like civil commitment or intensive supervision. In more than ten years of doing criminal defense and working closely with judges on a range of issues, I've not heard of a judge that wanted to send a defendant to prison but was unable to under the law. Conversely, however, judges do come across defendants that find redemption in response to their case despite a lengthy criminal history. In those cases, it is helpful for the judge to have a wide range of options to use in using the sentence to promote rehabilitation of the defendant.

Second, we must keep in mind that, as the Committee is aware, felony crimes of violence are defined not by an act of actual violence but by Minn. Stat. § 624.712, which includes controlled substance offenses such as possession or sale. In the same line of concern, felonies generally are very far ranging from DWI or check forgery to murder. I would urge discretion in delineating which offenses are included in these aggravated sentences. For example, it may be wise to expand the exempted offenses under Subd. 3(c) (Lines 34.1-2 of the Omnibus Bill) to exempt all controlled substance offenses rather than just third- and fourth-degree offenses.

Finally, consecutive sentencing can be more draconian in application than most people have in mind at the policy level, so we would strongly urge against the addition of Subd. 5 beginning at line 34.17. Consider a person who is being sentenced for convictions on a series of lower-level felonies, each in the mid-range of severity level 5. At maximum criminal history, the

guideline sentence is 48 months for that offense, which would almost always be sentenced concurrently. Often, a defendant will compile multiple of these cases in a short period of time. I'm reminded of a recent case in which my client was in a toxic relationship with the mother of his children. She was not letting him see his children and he would have emotional outbursts where he showed up at her apartment acting in a threatening or harassing manner. Unacceptable conduct that the courts should take seriously, for sure. However, is it worthy of 16 years in prison as punishment? I don't think so and I doubt many Minnesotans would either, but that is what would have happened had his cases been sentenced under Subd. 3 of this proposal because each one of the violations of orders for protection and harassment charges that he plead to would have to be sentenced consecutively. Beyond its cruelty, it is expensive. Under this same scenario, which is not a rarity, we would have no choice but to go to trial on the many counts my client racked up. Then, after the costly trial, the State would have had to pay to imprison him for all that time. These are the cases that require the judge to make hard decisions on a case-by-case basis, evaluating the defendant. In the case discussed above, our client was given probation and is doing very well in court-ordered treatment in the community, working his way to being a productive father in his kids' lives. I think we can all agree that is a better outcome than the State paying to incarcerate him for more than a decade and dealing with the societal costs of his fatherless children.

Thank you very much for your thoughtful consideration of this important information and thank you for all the hard work you are doing to promote the public safety of Minnesotans. If the Committee Chair or Members have additional questions or concerns, please let me know.

My email is [ryan@brockhunterlaw.com](mailto:ryan@brockhunterlaw.com) and my cell is 612-232-8767. Thank you for your consideration of this information.

Sincerely,

Ryan Else –  
Legislative Chair for Minnesota Association of Criminal Defense Lawyers (MACDL)