

SF1478 - 0 - Aiding and Abetting Felony Murder

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Judiciary And Public Safety**  
 Date Completed: **2/27/2023 3:56:59 PM**  
 Lead Agency: **Corrections Dept**  
 Other Agencies:  
     Public Defense Board      Sentencing Guidelines Comm  
     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	FY2023	FY2024	FY2025	FY2026	FY2027
<b>Corrections Dept</b>						
General Fund	-	(140)	(279)	(277)	(277)	
<b>Public Defense Board</b>						
General Fund	-	750	-	-	-	-
<b>State Total</b>						
General Fund	-	610	(279)	(277)	(277)	(277)
<b>Total</b>	-	<b>610</b>	<b>(279)</b>	<b>(277)</b>	<b>(277)</b>	<b>(277)</b>
<b>Biennial Total</b>			<b>331</b>			<b>(554)</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
<b>Corrections Dept</b>					
General Fund	-	(1.8)	(3.1)	(3.1)	(3.1)
<b>Public Defense Board</b>					
General Fund	-	-	-	-	-
<b>Total</b>	-	<b>(1.8)</b>	<b>(3.1)</b>	<b>(3.1)</b>	<b>(3.1)</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.

This fiscal note has been reviewed and meets the LBO requirements for compliance with the fiscal note Uniform Standards and Procedures. The Department of Corrections provided an estimate that includes significant fiscal impacts in years not shown on the State Cost (Savings) Table. Please review the Long-Term Fiscal Considerations section of the Department of Corrections' fiscal note for additional decreases in prison beds in future fiscal years.

**LBO Signature:** Karen McKey    **Date:** 2/27/2023 3:56:59 PM  
**Phone:** 651-284-6429    **Email:** karen.mckey@lbo.mn.gov

**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>	
<b>Dollars in Thousands</b>		<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>	<b>FY2026</b>	<b>FY2027</b>
<b>Corrections Dept</b>						
General Fund	-	(140)	(279)	(277)	(277)	
<b>Public Defense Board</b>						
General Fund	-	750	-	-	-	
<b>Total</b>	<b>-</b>	<b>610</b>	<b>(279)</b>	<b>(277)</b>	<b>(277)</b>	<b>(277)</b>
	<b>Biennial Total</b>		<b>331</b>		<b>(554)</b>	
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
<b>Corrections Dept</b>						
General Fund	-	(140)	(279)	(277)	(277)	
<b>Public Defense Board</b>						
General Fund	-	750	-	-	-	
<b>Total</b>	<b>-</b>	<b>610</b>	<b>(279)</b>	<b>(277)</b>	<b>(277)</b>	<b>(277)</b>
	<b>Biennial Total</b>		<b>331</b>		<b>(554)</b>	
<b>2 - Revenues, Transfers In*</b>						
<b>Corrections Dept</b>						
General Fund	-	-	-	-	-	
<b>Public Defense Board</b>						
General Fund	-	-	-	-	-	
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
	<b>Biennial Total</b>		<b>-</b>		<b>-</b>	

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Chief Author: **Clare Oumou Verbeten**  
 Committee: **Judiciary And Public Safety**  
 Date Completed: **2/27/2023 3:56:59 PM**  
 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	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	(140)	(279)	(277)	(277)	(277)
<b>Total</b>	<b>-</b>	<b>(140)</b>	<b>(279)</b>	<b>(277)</b>	<b>(277)</b>	<b>(277)</b>
<b>Biennial Total</b>			<b>(419)</b>			<b>(554)</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	(1.8)	(3.1)	(3.1)	(3.1)
<b>Total</b>	<b>-</b>	<b>(1.8)</b>	<b>(3.1)</b>	<b>(3.1)</b>	<b>(3.1)</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.

This fiscal note has been reviewed and meets the LBO requirements for compliance with the fiscal note Uniform Standards and Procedures. The Department of Corrections provided an estimate that includes significant fiscal impacts in years not shown on the State Cost (Savings) Table. Please review the Long-Term Fiscal Considerations section of the fiscal note for additional decreases in prison beds in future fiscal years.

**LBO Signature:** Karen McKey    **Date:** 2/27/2023 2:05:06 PM  
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**State Cost (Savings) Calculation Details**

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\*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		FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	(140)	(279)	(277)	(277)	(277)
<b>Total</b>		<b>-</b>	<b>(140)</b>	<b>(279)</b>	<b>(277)</b>	<b>(277)</b>
<b>Biennial Total</b>				<b>(419)</b>		<b>(554)</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund	-	(140)	(279)	(277)	(277)	(277)
<b>Total</b>		<b>-</b>	<b>(140)</b>	<b>(279)</b>	<b>(277)</b>	<b>(277)</b>
<b>Biennial Total</b>				<b>(419)</b>		<b>(554)</b>
<b>2 - Revenues, Transfers In*</b>						
General Fund	-	-	-	-	-	-
<b>Total</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>				<b>-</b>		<b>-</b>

**Bill Description**

H.F. 1406 limits liability for felony murder committed by another person and extends the task force on aiding and abetting felony murder.

**Section 2** establishes a retroactive action for a person to have their conviction vacated if they were convicted of a violation under section 609.185, paragraph (a), clause (3), or 609.19, subdivision 2, clause (1). By October 1, 2023, the commissioner of corrections must notify eligible people of their right to apply for relief and may coordinate with the judicial branch to establish a standardized notification form.

**Section 3** reauthorizes the task force on aiding and abetting felony murder. The commissioner is responsible for providing meeting space and administrative assistance as necessary for the task force to conduct its work.

**Section 4** appropriates an undetermined amount to the commissioner of corrections to implement the task force.

**Assumptions**

The Minnesota Sentencing Guidelines Commission assumes an average savings of 18 beds a year and a retroactive impact of 20 beds that would have been needed in the future no longer being needed.

The Department of Corrections assumes:

- Prison bed costs are based on a marginal cost per diem of \$42.50 for FY2024, \$48.55 for FY2025, \$50.67 for FY2026 and \$50.58 for FY2027 and each subsequent year. This includes marginal costs for all facility, private and public bed rental, health care and support costs.
- 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.
- The Department estimates a \$25,000 need for task force administration in FY 2024.

**Expenditure and/or Revenue Formula**

**Cost of Prison Beds**

Fiscal Year	2024	2025	2026	2027
Number of Prison Beds	-17	-15	-15	-15
Cost of Prison Beds (in 000s)	-165	-279	-277	-277
FTE	-1.8	-3.1	-3.1	-3.1

**Long-Term Fiscal Considerations**

The commission estimates that the expected eventual total prison bed savings to be 21 beds a year, 18 beds from shorter future sentences, and up to 17 beds from the retroactive application of the sentences for predicate offenses rather than murder.

The impact will begin in FY 2024, with a maximum bed reduction of 21 beds in FY 2034, and an eventual bed reduction of 18 beds in FY 2034 and every year thereafter.

**Local Fiscal Impact**

The fiscal impact to local units of government is indeterminate.

**References/Sources**

Department of Corrections Staff

Minnesota Sentencing Guidelines Commission

**Agency Contact:**

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SF1478 - 0 - Aiding and Abetting Felony Murder

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Judiciary And Public Safety**  
 Date Completed: **2/27/2023 3:56:59 PM**  
 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	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	750	-	-	-	-
<b>Total</b>	-	<b>750</b>	-	-	-	-
<b>Biennial Total</b>			<b>750</b>			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	-	-	-
<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:** Karen McKey    **Date:** 2/16/2023 5:06:40 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	FY2023	FY2024	FY2025	FY2026	FY2027	
General Fund	-	750	-	-	-	-
<b>Total</b>	-	<b>750</b>	-	-	-	-
<b>Biennial Total</b>			<b>750</b>			-
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund	-	750	-	-	-	-
<b>Total</b>	-	<b>750</b>	-	-	-	-
<b>Biennial Total</b>			<b>750</b>			-
<b>2 - Revenues, Transfers In*</b>						
General Fund	-	-	-	-	-	-
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

**Bill Description**

The proposed bill revises relevant statutes such that those who aid and abet felonies are not liable for murder where the aider and abettor did not: a. kill another; b. otherwise contribute to the homicidal acts of another while intending to kill; nor, c. act with reckless disregard for human life as a major participant in a felony where a human died.

This change would prohibit a participant in the perpetration or attempted perpetration of a felony where a death occurs from being liable for murder, unless that person was the actual killer, or that person was not the actual killer but, with intent to kill, aided, abetted, counseled, commanded, induced, solicited, requested, or assisted the actual killer, or that person was a major participant in the underlying felony and acted with reckless disregard for human life.

The proposed bill revises relevant statutes such that people previously convicted of aiding and abetting felony murder may petition the court for relief. Those convicted of aiding and abetting felony murder, whether at trial or through acceptance of a plea offer, may, in limited circumstances, petition the court for relief.

Those eligible to petition include:

(a) A person convicted of a violation of Minnesota Statutes, section 609.185, paragraph (a), clause (2), (3), and did not actually cause the death of a human being or intentionally aid, advise, hire, counsel, or conspire with or otherwise procure another with the intent to cause the death of a human being; or

the person was convicted of a violation of Minnesota Statutes 609.19 sub 2 clause (1) and did not actually cause the death of a human being or was not a major participant in the underlying felony who acted with extreme indifference to human life

**Assumptions**

Public defenders will likely be assigned to all the cases in one way or another. The conviction record is what would be used to screen and determine if the person qualified for relief. There would be a need to use the charging information for the facts of the offense if there is no transcript available. If someone was charged but not convicted of aiding and abetting felony murder.

Without reviewing the case, there would be no way of knowing if the person was the principal. If the principal was convicted of aiding and abetting a felony murder, they would qualify for the initial screening to make that determination. If facts reveal that the person was the principal, then it is likely that person would not get a hearing.

Just as in most any pro se filing, the court or special master will want a public defender appointed to review the case. There will also be inquiries and requests to help with the applications from former clients and others who need additional help/information.

**Expenditure and/or Revenue Formula**

The task force on Felony Aiding and Abetting found that between 2010 and 2019 there were 138 cases that would fall under this statute. Assuming a 90% representation rate for these cases we would expect that there would be 124 public defender cases. An appellate attorney should handle no more than 20-22 cases per year. Given this there would be a need for the equivalent of 5.5 FTE attorneys. This would be one time funding. Contracting for these at a rate of \$75\* per hour for 1,820 hours per year would mean a cost of \$750,000.

\* Over the last year we have found it quite difficult to get contractors, consequently we have had to raise the per our rate in a number of counties to attract contractors.

**Long-Term Fiscal Considerations**

It is possible that some of these cases could extend beyond the end of the biennium which would necessitate that the funding be available until expended.

**Local Fiscal Impact**

**References/Sources**

**Agency Contact:**

**Agency Fiscal Note Coordinator Signature:** Kevin Kajer

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**Fiscal Note**

**2023-2024 Legislative Session**

**SF1478 - 0 - Aiding and Abetting Felony Murder**

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Judiciary And Public Safety**  
 Date Completed: **2/27/2023 3:56:59 PM**  
 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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<b>State Cost (Savings)</b>	Biennium			Biennium		
	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

<b>Full Time Equivalent Positions (FTE)</b>	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
<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:** Karen McKey    **Date:** 2/14/2023 10:44:19 AM  
**Phone:** 651-284-6429    **Email:** karen.mckey@lbo.mn.gov

**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	FY2023	FY2024	FY2025	FY2026	FY2027	
<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**

Section 1 amends Minn. Stat. § 609.05 (liability for crimes of another) by adding subdivision 2a, which adds requirements for criminal liability in cases of aiding and abetting first-degree murder under Minn. Stat. § 609.185(a)(3) (intentional murder while committing certain crimes) or second-degree murder under Minn. Stat. § 609.19, subd. 2(1) (felony murder). In the case of the first-degree crime, the bill provides that an accomplice is not liable unless the accomplice acted with intent to cause death. In the case of the second-degree crime, the bill provides that an accomplice is not liable unless the accomplice was a major participant in the underlying felony and acted with extreme indifference to human life.

Section 2 establishes conditions for retroactive application of these changes. These conditions apply to people who, after being convicted under Minn. Stat. § 609.185(a)(3) or 609.19, subd. 2(1), are under court supervision or in Department of Corrections custody. Such prisoners or probationers are entitled to petition Ramsey County District Court for relief in the form of vacation of the murder conviction and either resentencing for any other offense for which the petitioner was convicted, or conviction of and resentencing for any other predicate felony arising out of the course of conduct that served as a factual basis for the vacated murder conviction. Such relief will be granted if the petitioner did not cause death and would not have been liable for the murder if the requirements of section 1 had been in effect at the time of the offense.

Sections 1 and 2 are effective August 1, 2023. Section 1 applies to crimes committed on or after that date.

Sections 3 and 4 extend the Task Force on Aiding & Abetting Felony Murder (AAFMTF) until January 16, 2024.

**Assumptions**

It is assumed that due to the COVID-19 health pandemic, the cases sentenced in 2020 and 2021 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 the long-term fiscal considerations come from sections 1 and 2. Appendix C of the AAFMTF Report contains several data tables pertaining to felony murder cases in Minnesota for ten years, from 2010 through 2019. It is assumed that future cases will be like those cases. The first table in Appendix C lists 126 cases within 57 case cohorts, where at least one actor within the cohort was convicted of aiding and abetting felony murder as a top-line offense. The exclusion of cases in which the defendant’s role is described as “principal,” “unclear,” or “unknown,” or where the role description implies the defendant’s personal participation in violence (including threats and intimidation, but not including restraint) or a weapon, yields a remainder of 23 cases. It is assumed that many or most of these 23 defendants would have qualified, or will qualify, for relief under the bill’s provisions. While it is likely that some of these 23 defendants would not have qualified for relief under the bill’s provisions, it is also likely that some of the excluded defendants (particularly in the “unclear” or “unknown” categories) would have qualified for relief under the bill’s provisions. Thus, it is assumed that these 23 cases are plausibly representative of the number and type of cases that would qualify for relief within a given ten-year timeframe.

Based on the descriptions of the predicate offenses in Appendix C, it appears that the typical predicate offense for aiding and abetting felony murder is burglary or robbery. Because these cases involved the death of a victim, it is specifically

assumed that the predicate offenses are either Burglary 1st Degree (w/Weapon or Assault) or Aggravated Robbery 1st Degree, both identically ranked at Severity Level 8. It is therefore assumed that defendants qualifying for relief under this bill will receive sentences at Severity Level 8, rather than at Severity Level 10 (for second-degree murder) or for Life (for first-degree murder).

Future Impact: The future impact is based on the assumption that persons sentenced in the future will resemble these 23 cases in terms of predicate offenses and criminal history scores and will be sentenced for the predicate offense rather than murder. This will eventually result in an average savings of 18 beds a year.

Retroactive Impact: It is assumed that people sentenced for first-degree murder would have served 30 years unless their expected time until death is less than 30 years (based on Social Security Periodic Life Tables). It is assumed that the retroactive impact of this bill will be due to these 23 cases being resentenced and bed occupants being released at the end of their terms of imprisonment for their predicate offenses. Given their sentence dates and the new sentence lengths, these people will be eligible for release as soon as they can get through the resentencing process. This will result in 20 beds that would have been needed in the future, no longer being needed.

**Expenditure and/or Revenue Formula**

**Long-Term Fiscal Considerations**

Based on the above assumptions, the expected eventual total prison bed savings is 21 beds a year, 18 beds from shorter future sentences and up to 17 beds from the retroactive application of the sentences for predicate offenses rather than murder.

The impact will begin in FY2024, with a maximum bed reduction of 21 beds in FY2034, and an eventual bed reduction of 18 beds in FY2034 and every year thereafter. The estimated timing for the bed savings is displayed in Table 1.

Table 1. Timing of Prison Bed Impact

Fiscal Year	Beds Saved- New Sentences Based on Predicate Offenses	Beds from Retroactivity	Total Bed Reduction
2024	0	17	17
2025	0	15	15
2026	1	14	15
2027	3	12	15
2028	5	9	14
2029	7	5	12
2030	9	5	14
2031	11	5	16
2032	13	4	17
2033	15	3	18
2034	18	3	21
2035	18	0	18

**Local Fiscal Impact**

The extent of any local impact has not been assessed by MSGC.

**References/Sources**

MSGC Monitoring Data

Task Force on Aiding and Abetting Felony Murder: Report to the Minnesota Legislature (Feb. 1, 2022), retrieved 2/9/2023

at [https://mn.gov/doc/assets/AAFM-LegislativeReport\\_ACCESSIBLE\\_2-1-22\\_tcm1089-518411.pdf](https://mn.gov/doc/assets/AAFM-LegislativeReport_ACCESSIBLE_2-1-22_tcm1089-518411.pdf)

Actuarial Life Table (state.mn.us), retrieved 2/9/2023 at  
file://edc1adminfs01.admin.state.mn.us/MSGC/Intranet/FiscalNotes/Leg2022/Actuarial%20Life%20Table.html

**Agency Contact:**

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SF1478 - 0 - Aiding and Abetting Felony Murder

Chief Author: **Clare Oumou Verbeten**  
 Committee: **Judiciary And Public Safety**  
 Date Completed: **2/27/2023 3:56:59 PM**  
 Agency: **Supreme Court**

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	FY2023	FY2024	FY2025	FY2026	FY2027
<b>Total</b>	-	-	-	-	-	-
<b>Biennial Total</b>			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
<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:** Karen McKey    **Date:** 2/21/2023 3:44:45 PM  
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**State Cost (Savings) Calculation Details**

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\*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	FY2023	FY2024	FY2025	FY2026	FY2027	
<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**

HF1406 adds a new subdivision 2a to section 609.05 (Liability for Crimes of Another) to provide that a person may not be held criminally liable: 1) for a violation of section 609.185(a)(3) (felony murder) committed by another unless the person intentionally aided, advised, hired, counseled, conspired with or otherwise procured the other with the intent to cause the death of a human being; or 2) for a violation of section 609.19, subdivision 2(1) (2<sup>nd</sup> Degree Unintentional Murder) committed by another unless the person was a major participant in the underlying felony and acted with extreme indifference to human life.

The bill also provides a process for a person convicted of a violation of section 609.185(a)(3) or section 609.19, subdivision 2(1) and in the custody of the commissioner of corrections or under court supervision to petition to have the conviction vacated.

The bill requires that by October 1, 2023, the commissioner of corrections shall notify individuals who qualify of the right to file a preliminary application for relief if the person was convicted of a violation of section 609.185(a)(3) and did not actually cause the death of a human being or intentionally aid, advise, hire, counsel, conspire with or otherwise procure another with the intent to cause the death of a human being; or was convicted of a violation of section 609.19, subdivision 2(1) and did not actually cause the death of a human being or was not a major participant in the underlying felony who acted with extreme indifference to human life. The bill requires that the notice include the address of the Ramsey County District Court, and provides that the commissioner of corrections may coordinate with the judicial branch to establish a standardized notice.

The bill provides that an applicant must submit a preliminary application to the Ramsey County District Court by October 1, 2024, and that there is no cost or fee for the petition.

The bill requires that upon receipt of an application the Ramsey County Court Administrator shall immediately direct the filing to the chief judge or designee who shall promptly assign it to a judge in that district, or the judicial branch may appoint a special master. The reviewing judge shall determine if there is a reasonable probability the applicant is entitled to relief. The court may summarily deny the application if appropriate. If the judge determines there is a reasonable probability the applicant is entitled to relief the judge shall send notice to the applicant, the applicant’s attorney, the prosecutor, and to the state public defender if the applicant is without counsel, providing notice to the applicant of such referral. If the judge determines there is not a reasonable probability the applicant is entitled to relief, notice shall be sent to the applicant and applicant’s attorney if any.

The bill provides that within 60 days of receiving the notice the applicant may be entitled to relief, the applicant shall file and serve a petition to vacate the conviction. The prosecutor shall respond within 30 days of filing, unless extended for good cause. No fees or costs shall be charged to either party. The petitioner may file a response.

Within 30 days of receipt of the response from the prosecutor, the court shall set the matter for resentencing if the prosecutor supports the petition, deny the petition if the submissions establish there is not a reasonable probability the applicant is entitled to relief, or schedule the matter for hearing.

If the court determines the petitioner is entitled to relief the court shall vacate the conviction and resentence the petitioner for any other offense for which the petitioner was convicted or enter a conviction and impose a sentence for any other predicate felony arising from the same course of conduct. If the court intends to resentence, the court must hold a hearing at a time that allows any victim the opportunity to submit a statement. The prosecutor shall make a good faith effort to notify any victim of the right to make a statement. Relief under this section shall not be treated as exoneration for purposes of the Incarceration and Exoneration Remedies Act.

The bill revives the Task Force on Aiding and Abetting Felony Murder, directs that the task force shall submit a report to the legislature on or before January 15, 2024, and appropriates funds to the commissioner of corrections to implement the task force.

### **Assumptions**

It is assumed that the provisions of this bill may reduce case filings but that it is also possible the impact of the bill will not reduce case filings and instead only change the arguments made and defenses raised. If the impact is a reduction in case filings, the reduction is estimated to be 13 fewer cases filed statewide per year based on the Task Force on Aiding and Abetting Felony Murder report which found that from 2010 through 2019, there were 130 people charged with aiding and abetting felony murder in Minnesota. A reduction of 13 cases filed statewide per year would not have a measurable fiscal impact on the judicial branch.

The Task Force report also found that 84 people were convicted of aiding and abetting felony murder as the most severe conviction during that 10-year period. Based on that report it is assumed that approximately 84 to 100 defendants may be eligible to have their conviction vacated under the provisions of this bill and are likely to file petitions. The one-time impact on the court of processing and hearing 84 to 100 petitions to vacate and resentence is not anticipated to have a significant fiscal impact on the judicial branch.

Regarding the provisions requiring a preliminary application to the Ramsey County District Court, it is assumed that because the workload will be concentrated in a single county, depending on the rate and volume of filings, the judges in that county may not have capacity for the extra work in which case the work would likely be assigned to a Senior Judge who would be paid the per diem rate. It is unknown whether that cost will be incurred and the total that could be incurred. The administrative work of mailing the notices would be absorbed.

It is assumed that that many defendants will mistakenly file petitions in Ramsey County rather than the county of venue based on the earlier notice they received from DOC containing that address and those petitions will be rejected for having been filed in the wrong county. It is assumed that because the petition is not required to be filed with a copy of the notice sent pursuant to subdivision 4(f), the court will need to maintain a master list of the determinations made by Ramsey County District Court on the preliminary applications to confirm the petition filing was appropriate.

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

This bill is not anticipated to have a significant fiscal impact on the judicial branch as it will not significantly impact case filing rates or the judicial branch resources required to process these cases.

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

None

### **Local Fiscal Impact**

None

### **References/Sources**

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