

## S.F. No. 970 – Judiciary and Public Safety Funding Bill (Third Engrossment)

**Author:** Senator Warren Limmer

**Prepared by:** Kenneth P. Backhus, Senate Counsel (651/296-4396)  
Chris Turner, Fiscal Analyst (651/296-4350)

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### Article 1 - Appropriations

This article appropriates money for the criminal justice and public safety-related entities within the budget jurisdiction of the Judiciary and Public Safety Finance and Policy Committee (see spreadsheet for details).

### Article 2 - Budget-Related Changes

**Section 1** clarifies how hazardous material responsible party assessments should be used and deposited. These funds are for reimbursing costs associated with a hazardous materials incident, including the initial cash outlay to the hazardous materials response team that responded to the emergency, and any balance should be deposited in the Fire Safety Account in the special revenue fund.

(Governor proposal, transfer \$123,000 to the Fire Safety Account.)

### Sections 2 and 13

**Section 2** deposits the 2:00 am on-sale liquor permit fee revenue in the general fund. Under current law, fee revenue is deposited in the special revenue fund, from which an annual \$194,000 appropriation to Alcohol and Gambling Enforcement is made and \$500,000 transferred to the general fund. Article 1 of the bill changes the \$194,000 special revenue appropriation to a general fund appropriation and this section deposits all fee revenue directly into the general fund, making the transfer unnecessary.

**Section 13** deletes obsolete language from 2020 session law regarding the transfer from the special revenue fund to the general fund in fiscal year 2022.

(Governor proposal.)

**Sections 3 and 4** raise the fees for obtaining a Workforce Certificate of Compliance or an Equal Pay Certificate of Compliance, which are required for certain large state contractors, from \$150 for four years to \$250 for four years.

(Governor proposal, credits \$73,000 each year to the Workforce Certificate Account in the special revenue fund.)

**Section 5** deletes obsolete statutory language regarding the Emergency Telecommunications Service fee. The amount of the fee is established by the Commissioner of Public Safety with the approval of the Commissioner of Management and Budget. It must be set within the limits specified in this section, which states that the fee shall be no more than 95 cents a month. The Governor is proposing an 80-cent fee in fiscal year 2022, which represents a 15-cent reduction from fiscal year 2021.

(Governor proposal.)

### **Sections 6 to 11 Public Defender County Program Aid**

**Section 6** moves the \$500,000 annual transfer of county program aid for certain public defense costs from Minnesota Management and Budget (MMB) to the Board of Public Defense. Under current law, the Department of Revenue transfers the program aid to MMB, to whom the board forwards invoices from vendors for services rendered. This section cuts MMB out of the process, simplifying the reimbursement. Eligible costs for reimbursement are: 1) appellate public defenders' transcript costs and other necessary expenses in appeal and postconviction cases where the board's own \$500,000 annual allocation has been exhausted, and 2) costs of alternative counsel in cases when a district public defense office indicates it is unable to provide adequate representation.

**Sections 7 to 10** are technical amendments clarifying the process under which the board retains alternative counsel under Minnesota Statutes, section 611.27.

**Section 11** is a technical amendment clarifying that the Board of Public Defense is responsible for processing payment for transcripts in the Appellate Courts rather than MMB.

(Governor proposal.)

### **Sections 12 and 16**

**Section 12** expands the Alternatives to Incarceration Pilot program funded by the Community Services division of the Department of Corrections to three sites and updates and expands the reporting requirement. The program was established by the 2017 Legislature and has an annual base funding of \$160,000. The sole grant recipient is Anoka county. Article 1, section 15, subdivision 3, paragraph (c), permanently funds two additional sites, one in Wright County and another in Crow Wing County.

**Section 16** directs the Revisor of Statutes to codify the Alternatives to Incarceration Program to reflect that it is a permanent program.

(SF 1137-Rarick.)

**Section 14** requires the state court administrator to conduct a feasibility study on requiring courts to order that individuals convicted of felony-level criminal offenses undergo a neuropsychological examination to determine whether, due to a stroke, traumatic brain injury, or fetal alcohol spectrum disorder, the individual had a mental impairment that caused the individual to lack substantial capacity for judgment when the offense was committed. Requires the administrator to consult with specified interested parties and make recommendations to the Legislature by February 15, 2022.

(SF 611-Sen. Ingebrigtsen, as modified. Article 1 appropriates \$30,000 in fiscal year 2022 for this.)

**Section 15** establishes a 911 telecommunicator working group, under the charge of the Commissioner of Public Safety.

**Subdivision 1** lists the membership of the group.

**Subdivision 2** requires the working group to submit a report to the Legislature by January 15, 2022. The report must include:

- a statutory definition of 911 telecommunicators;
- minimum training and continuing education standards for certification of 911 telecommunicators;
- standards for certification of 911 telecommunicators;
- funding options for mandated 911 telecommunicators training, and
- other recommendations the group deems appropriate.

**Subdivision 3** requires the commissioner to convene the first meeting of the group by August 1, 2021.

**Subdivision 4** stipulates that members serve without compensation.

**Subdivision 5** requires the commissioner to provide administrative support for the group.

**Subdivision 6** provides a January 15, 2022, sunset.

(SF 565-Sen. Ingebrigtsen. Article 1 appropriates \$9,000 in fiscal year 2022 for this.)

### **Article 3 – Criminal and Public Safety Policy Changes Relating to the Budget**

**Sections 1 and 18** reestablish the Legislative Commission on Data Practices and Personal Data Privacy that was initially established in 2014 and expired in 2019. The commission is created to study issues relating to government data practices and individuals' personal data privacy rights, review legislative proposals, and make recommendations on legislative proposals.

The commission consists of four senators and four members of the house of representatives. Two members from each chamber must be appointed from the majority party and two from the minority party. The ranking senator from the majority party must convene the first meeting of the biennium by February 15 in the odd-numbered year. The commission may elect up to four former legislators, who are not registered lobbyists, who have a demonstrated interest or history of working on data privacy issues to serve as nonvoting members of the commission.

Terms run from the beginning of an appointment to the beginning of the regular legislative session in the next odd-numbered year. The commission must elect a chair and may elect other officers. The chair alternates between a member of the senate and a member of the house in January of each odd-numbered year.

Legislative staff must provide administrative and research assistance to the commission. The Legislative Coordinating Commission may appoint staff to provide research assistance pending availability of funds.

Initial appointments must be made by June 1, 2021, and the first meeting must convene by June 15, 2021. Initial members shall serve until January 2023. A member of the house of representatives shall serve as the first chair, followed by a member of the senate beginning in January 2023.

(SF 1467-Sen. Limmer. Article 1 appropriates \$60,000 per year for this.)

**Section 2** requires the Commissioner of Corrections to facilitate the provision of a state identification card to an inmate under certain specified circumstances. Also provides that when releasing an inmate from prison, the commissioner must supply the inmate with a one-month supply of non-narcotic medications that have been prescribed to the inmate, along with a prescription for two 30-day refills.

(SF 519-Sen. Osmek, as modified. Article 1 appropriates \$60,000 in fiscal year 2022 and \$48,000 in fiscal year 2023 for sections 2 and 3.)

**Section 3** requires the Commissioner of Corrections to implement a homelessness mitigation plan for individuals released from prison. The commissioner must submit the plan to the Legislature by October 31, 2022. Starting in 2022, the commissioner must report annually to the Legislature regarding the number of inmates released to homelessness. The reports starting in 2024 and ending in 2033 must include information on the implementation of the homelessness mitigation plan.

(SF 519-Sen. Osmek, as modified. Article 1 appropriates \$60,000 in fiscal year 2022 and \$48,000 in fiscal year 2023 for sections 2 and 3.)

**Section 4** authorizes the Commissioner of Corrections to conditionally release:

- for up to one year postpartum, an inmate who gave birth within eight months of the date of commitment; and
- for the duration of the pregnancy and up to one year postpartum, an inmate who is pregnant.

The inmate may be conditionally released to community-based programming that provides prenatal or postnatal care, as well as parenting skills, employment, educational, chemical dependency, or mental health services.

The commissioner must develop policy and criteria to implement this section. By April 1 of each year, the commissioner must report to the Legislature on the number of inmates released and the duration of the release under this section for the prior calendar year.

(SF 1315-Sen. Kiffmeyer. Article 1 appropriates \$100,000 each year to supplement this.)

**Section 5** requires the Bureau of Criminal Apprehension’s (BCA) Use of Force Investigative Unit to investigate criminal sexual conduct cases where one member of the Minnesota National Guard accuses another member of the Minnesota National Guard of criminal sexual conduct.

(Sen. Bigham amendment, SF 1034-Sen. Duckworth. Article 1 appropriates \$160,000 in fiscal year 2022 and fiscal year 2023 for this.)

**Section 6** provides for a stay of adjudication and potential dismissal of criminal charges for certain criminal defendants who allege that the offense was committed as a result of sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health conditions stemming from service in the United States military. Describes the process for this and the offenses for which it is applicable. The provision allows eligible defendants to be put on probation upon specified conditions, including receiving treatment, and to demonstrate rehabilitation, which would lead to the eventual dismissal of charges with only a nonpublic record being kept of the offense.

(Sen. Cwodzinski amendment, see also SF 116-Sen. Chamberlain and SF 1633-Sen. Rarick.)

**Section 7** amends the definition of “violent crime” in the section of law that provides for increased sentences for certain dangerous and repeat felony offenders by adding the crime of solicitation, inducement, and promotion of prostitution/sex trafficking.

(SF 765-Sen. Anderson. Article 1 appropriates \$10,000 in fiscal year 2023 (and more in the tails) for sections 7, 9, 10, and 15.)

**Section 8** makes a conforming change by striking the reference to the prostitution crime being repealed in section 21.

(SF 765-Sen. Anderson.)

**Sections 9 and 10** increase by five years the statutory maximum sentences for the solicitation, inducement, and promotion of prostitution/sex trafficking crimes.

(SF 765-Sen. Anderson. Article 1 appropriates \$10,000 in fiscal year 2023 (and more in the tails) for sections 7, 9, 10, and 15.)

**Section 11** increases the penalty for a prostitution offense committed by a patron from a misdemeanor to a gross misdemeanor. Strikes the current gross misdemeanor penalty applicable to a patron engaging in prostitution in a public place. (Under the bill, there would be no distinction between engaging in prostitution in a public versus a nonpublic place while acting as a patron.) Adds an enhanced felony penalty (statutory maximum sentence of five years imprisonment and/or \$10,000 fine) for a person who violates the prostitution crime while acting as a patron provision within ten years of a previous conviction for a prostitution-related offense. (Under the bill, the penalties for engaging in prostitution while acting as a prostitute remain unchanged.)

(SF 765-Sen. Anderson.)

**Sections 12 and 13** make conforming changes by striking the references to the prostitution crime being repealed in section 21.

(SF 765-Sen. Anderson.)

**Section 14** requires a law enforcement agency that receives a report of a sexual assault where both parties are members of the Minnesota National Guard to forward the matter to the BCA (see section 5).

(Sen. Bigam amendment, SF 1034-Sen. Duckworth.)

**Section 15** increases the statutory maximum sentences for the crimes of solicitation of a child to engage in sexual conduct/communication of sexually explicit images to a child from three years imprisonment and/or a \$5,000 fine to five years imprisonment and/or a \$10,000 fine.

(SF 765-Sen. Anderson. Article 1 appropriates \$10,000 in fiscal year 2023 (and more in the tails) for sections 7, 9, 10, and 15.)

**Section 16** establishes the crime of child torture.

**Subdivision 1. Definition.** Defines “torture” as “the intentional infliction of extreme mental anguish, or extreme psychological or physical abuse, when committed in an especially depraved manner.” This is identical to the definition of torture used in Minnesota Statutes, chapter 609.3455 (Dangerous Sex Offenders; Life Sentences; Conditional Release).

**Subdivision 2. Crime.** Creates a 25-year felony for the crime of child torture.

**Subdivision 3. Proof; evidence.** Provides the following.

- Expert testimony as to the existence or extent of mental anguish or psychological abuse is not a requirement for a conviction.
- A child’s special susceptibility to mental anguish or abuse does not constitute an independent cause of the condition so that a defendant is exonerated from criminal liability.
- Proof that a victim suffered pain is not an element of the crime.

(SF 868-Sen. Carlson. Article 1 appropriates \$9,000 in fiscal year 2022, \$15,000 in fiscal year 2023 (and more in the tails) for this.)

**Section 17** makes it a gross misdemeanor to trespass upon the grounds of a facility that provides emergency shelter services or transitional housing for sex trafficking victims.

(SF 765-Sen. Anderson.)

**Section 19** directs the Minnesota Sentencing Guidelines Commission (MSGC) to comprehensively review and consider modifying how the guidelines and the sex offender grid address solicitation, inducement, and promotion of prostitution/sex trafficking.

(SF 765-Sen. Anderson.)

**Section 20** requires the MSGC to increase the severity level rankings in the Sentencing Guidelines grid for two child pornography crimes.

The disseminating a pornographic work crime involving an aggravating factor (repeat offense, committed by a registered predatory offender, or victim under 13) is to be increased from severity level D (presumptive 36 month stayed sentence at zero criminal history points) to C (presumptive 48 month prison commit at zero criminal history points) and the possession of a pornographic work crime involving an aggravating factor is to be increased from severity level F (presumptive 18 month stayed sentence at zero criminal history points) to E (presumptive 24 month stayed sentence at zero criminal history points).

These changes were recommended in the MSGC's 2021 Minority Report to the Legislature.

(SF 1457-Sen. Limmer. Article 1 appropriates \$37,000 in fiscal year 2022 and \$127,000 in fiscal year 2023 (and more in the tails) for this.)

**Section 21** repeals the current misdemeanor-level crime for engaging in prostitution as a patron (see section 11, which increases the penalty for this crime to a gross misdemeanor).

(SF 765-Sen. Anderson.)

## **Article 4 - Criminal Sexual Conduct Changes**

### **Overview**

This article implements many of the recommendations from the 2021 legislative report of the Criminal Sexual Conduct Statutory Reform Working Group that was established in 2019. The changes in this article relate to criminal sexual conduct (CSC) crimes and include: addressing situations where the victim was incapacitated due to voluntary intoxication, adding a new sexual extortion crime, adding a new 5<sup>th</sup> degree CSC nonconsensual penetration crime, criminalizing additional situations involving educators who engage in sexual acts with secondary school students, expanding the definition of significant relationship, increasing penalties for caregivers and others who engage in sexual acts with patients, changing some of the age restrictions and age ranges, amending definitions, restructuring the 1<sup>st</sup> to 4<sup>th</sup> degree CSC crimes to separate offenses involving adult victims from those involving child victims, and establishing a work group to review the predator offender registration law. In addition, the article establishes a new judgeship to reflect the costs that the judiciary will incur in implementing it. Finally, the article eliminates the statute of limitations for CSC crimes (this was not a working group recommendation).

(Sen. Latz amendment, SF 1683-Sen. Senjem. Article 1 appropriates \$725,000 in fiscal year 2022 and \$878,000 in fiscal year 2023 (and more in the tails) for this article.)

**Section 1** adds a new judgeship in the 5<sup>th</sup> judicial district. (This is related to the article's fiscal costs.)

**Section 2** provides that a violation of the new felony 5<sup>th</sup> degree CSC nonconsensual penetration crime (see section 18) is not a registrable offense under the predatory offender registration law unless the offender has a prior conviction for a sex crime.

**Section 3** amends the criminal abuse crime to strike language relating to the current gross misdemeanor offense of caregivers/facility staff members who engage in sexual acts with residents/patients. This concept is being moved to the CSC laws later in the article (and the criminal penalty is being increased).

**Section 4** amends the definition of “force” in the CSC laws to strike the requirement that the force causes the victim to submit. Also makes a conforming change.

**Section 5** amends the definition of “mentally incapacitated” in the CSC laws.

### Background

Under the CSC laws, a person who is under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to the person without the person’s agreement, is considered to be mentally incapacitated and legally lacks the judgment to give a reasoned consent to sexual relations. An offender who engages in sexual relations with such a person can be found guilty of CSC in the first, second, third, or fourth degree, depending on the specific circumstances involved.

In a recent case (State v. Khalil), the Minnesota Supreme Court unanimously held that the mentally incapacitated definition requires that the intoxicating substance be given to the victim without the victim’s agreement. Thus, a victim who is voluntarily intoxicated does not fall within the provision’s protection. This was a statutory interpretation case. The court analyzed and construed the mentally incapacitated definition as written in statute. The case did not involve any type of constitutional determination. Thus, the Legislature is free to change the definition if it so chooses.

This section amends the definition to add a new clause providing that a person who is under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct is mentally incapacitated. Thus, an offender who engages in sexual relations with such a person may be held criminally liable for the conduct. The new language does not require that the substance be administered without the person’s consent, so it applies to voluntary intoxication cases.

**Sections 6 and 7** make conforming definitional changes relating to concepts that appear later in the article.

**Section 8** amends the definition of “coercion” in the CSC laws to make the term applicable to situations in which a victim fears the infliction of bodily harm by someone other than the offender (i.e., an accomplice).

**Section 9** expands the definition of “significant relationship” in the CSC laws to include adults who are or were involved in a significant romantic or sexual relationship with the victim’s parent.

**Section 10** adds a new definition of “prohibited occupational relationship” in the CSC laws. This definition is used as an umbrella term later to avoid having to repeat each specific type of relationship category for the 1<sup>st</sup> to 4<sup>th</sup> degree CSC crimes. Most of the relationships included in this definition mirror (but with some modifications) those already in the CSC laws (and which are being stricken later). Of note, the concepts from the criminal abuse crime (caregiver/facility staff member and resident/patient) are added here (see section 3). This change results in a penalty increase from a gross misdemeanor to a felony (with either a 10- or 15-year statutory maximum sentence depending on the circumstances). In addition, a similar new category is added (caregivers/facility staff members and certain vulnerable adults who are impaired in judgment or capacity). Finally and significantly, three new categories are added, all of which involve victims who are students in secondary schools: (1) licensed educators employed or contracted to provide services at the secondary school where the victim is enrolled; (2) adults who are 48 months or older than the victim



and employed or contracted to provide services at the secondary school where the victim is enrolled; and (3) licensed educators who are 48 months or older than the victim and employed or contracted to provide services for *any* elementary, middle, or secondary school, regardless of location or whether the victim is a student there.

**Sections 11 to 13** add definitions of “caregiver,” “facility,” and “vulnerable adult,” to the CSC laws. The definitions involve cross-references to current definitions from the vulnerable adult crimes. The addition of these definitions facilitates moving the crime of caregivers/facility staff members who engage in sexual acts with patients/residents into the CSC laws (see sections 3 and 10).

**Sections 14 to 17** amend and restructure the 1<sup>st</sup> to 4<sup>th</sup> degree CSC laws. The crimes are restructured by separating offenses with adult victims from those with child victims. Changes the upper age limit for CSC offenses involving particularly young victims from 12 and under to 13 and under. This results in 13-year-old victims receiving the same protections formerly reserved for those 12 and under. Establishes a uniform age range standard of 36 months for certain offenses where the age difference between the offender and victim is relevant. Employs the new defined term of “prohibited occupational relationship” to avoid having to specify numerous different clauses of prohibited conduct. Removes force as an element of 3<sup>rd</sup> and 4<sup>th</sup> degree CSC to avoid a potential conflict of duplicating similar conduct covered by 1<sup>st</sup> and 2<sup>nd</sup> degree CSC. Reduces the age span for which the mistake of age defense is available for certain 3<sup>rd</sup> and 4<sup>th</sup> degree CSC crimes.

**Section 18** amends and restructures the 5<sup>th</sup> degree CSC crime to add a new felony offense (statutory maximum sentence of two years imprisonment/\$10,000 fine) of nonconsensual penetration (where the act does not rise to the level of a more severe CSC crime). Expands the lookback period for past violations that would result in a penalty enhancement for the 5<sup>th</sup> degree crime and allows past juvenile delinquency adjudications to be considered when determining an enhancement.

**Section 19** amends the dangerous sex offender sentencing law to add references to the new crime of sexual extortion (see section 20) and to make conforming changes.

**Section 20** establishes the new crime of sexual extortion to address situations in which an offender directly or indirectly threatens a victim with various types of nonphysical harm (such as exposing the victim’s immigration status, making confidential information about the victim public, threatening the victim’s housing or job status, etc.). The statutory maximum penalty for the crime is 15 years imprisonment /\$30,000 fine if the extortion results in sexual penetration and ten years imprisonment/\$20,000 fine if the extortion results in sexual contact (these penalties mirror the 3<sup>rd</sup> and 4<sup>th</sup> degree CSC crimes). Provides that the crime may not be charged as an attempt crime. Thus, the only way for it to be committed is if the extortion results in sexual contact or penetration.

**Section 21** provides that a violation of 1<sup>st</sup> to 4<sup>th</sup> degree CSC involving a victim who is mentally incapacitated based on voluntary intoxication (see section 5) is considered a specific intent crime for the purposes of invoking the intoxication defense. Under current law, it is not settled whether the defense would be available. This provision clarifies that it is.

**Section 22** eliminates the statute of limitations for 1<sup>st</sup> to 4<sup>th</sup> degree CSC and solicitation, inducement, and promotion of prostitution/sex trafficking (effective only for crimes committed on or after August 1, 2021).

(Sen. Pappas amendment.)

**Section 23** establishes a working group to assess the predatory offender registration law and make recommendations to the Legislature for possible reforms and changes.

**Section 24** provides a revisor's instruction to make necessary cross-referencing and other changes in statute to conform with this article.