



Legal Services Advocacy Project

May 2, 2021

The Honorable Warren G. Limmer, Chair
Jud. & Pub. Safety Finance & Policy Comm.
Minnesota Senate
3221 Minnesota Senate Building
St. Paul, MN 55155

The Honorable Carlos Mariani, Chair
Pub. Safety & Crim. Justice Reform Finance & Policy Comm.
Minnesota House of Representatives
479 State Office Building
St. Paul, MN 55155

Re: S.F. 970 (HF 1078) Omnibus Judiciary and Public Safety Policy and Finance Bill

Dear Chairs Limmer and Mariani and Conferees:

The Legal Services Advocacy Project (LSAP) appreciates the opportunity to present our positions in the many provisions contained in SF 970 and HF 1078 that affect our clients. LSAP is a statewide division of Legal Aid, providing policy advocacy in legislative and administrative forums on issues affecting low-income Minnesotans, children, seniors, and Minnesotans with disabilities.

PUBLIC SAFETY PROVISIONS

LSAP enumerates below the particular provisions it supports under the Public Safety portion of the House and Senate Omnibus Bills that we ask the committee to adopt as part of the final Conference Report. If enacted into law, they will improve the lives of our clients. Of utmost urgency, many will also serve to address systemic and inherent biases against Minnesotans who are Black, Indigenous and People of Color (BIPOC).

While Legal Aid's mission is to help our clients with legal problems impacting their housing and economic well-being, we also know our clients for the human beings they are and see how their housing, economic, physical, and psychological well-being are interrelated with their encounters with the criminal justice system – and how their lives and the lives of their families and children, perhaps for generations to come – are adversely affected by those encounters.

Much focus of this committee will be on the criminal justice reforms on issues under discussion and on which LSAP has not directly worked. However, as a general matter, these proposals seek to redress and root out longstanding and unacceptable systemic racial bias in the criminal justice system, and we urge in the strongest possible manner that the final Conference Committee Report include as many provisions as possible that directly affect the daily lives of our Legal Aid's clients – including life itself – and significantly advance racial equity in this state.

More specifically, LSAP strongly urges the adoption in the final Conference Committee Report of the following provisions:

Same and Similar Public Safety Provisions in SF 970 and HF 1078

A. **Criminal Sexual Conduct Reform**

SF 970, Article 4 / HF 1078, Article 13

LSAP appreciates the bipartisan urgency to make changes to criminal sexual conduct crimes and implement many of the recommendations of the legislatively created Criminal Sexual Conduct Statutory Reform Working Group. In particular, the establishment of the new crime of sexual extortion will better protect Legal Aid's clients who are survivors of violence and expanding the definition of "prohibited occupational relationship" will benefit Legal Aid's elderly and other clients who suffer violation.

B. **Assistance to Soon-to-be-Released Inmates**

SF 970, Article 3, Section 2 / HF 1078, Article 11, Section 24

Enactment of this provision would be of great benefit to Minnesotans who are trying to obtain housing, open a bank account, and otherwise build their lives. LSAP urges the conferees to adopt, at a minimum, House language in HF 1078 that would have the Department of Corrections: (1) provide assistance to obtain a Social Security card; (2) provide information about the Supplemental Nutrition Assistance Program (SNAP), including eligibility and the application process; (3) offer assistance in completing an application for Medical Assistance or MinnesotaCare. It is important to provide information about critical basic needs supports to provide every opportunity for reintegration into the community and avoid reincarceration.

C. **Alternatives to Incarceration Pilot Program**

SF 970, Article 2, Section 12 / HF 1078, Article 11, Section 45

Conditional Release of Pregnant Women from Prison

SF 970, Article 3, Section 4 / HF 1078, Article 11, Section 31

Homeless Mitigation Plan for Persons Released from Prison

SF 970, Article 3, Section 3 / HF 1078, Article 11, Section 25

LSAP supports the policies to prevent incarceration and also to give pregnant women and new mothers the opportunity for conditional release. All pregnant women, regardless of incarceration status, deserve to have a safe and dignified pregnancy and delivery. Furthermore, mother-child bonding is critical to long-term healthy child development and such bonding is far more difficult in prison and jail spaces. Finally, LSAP supports better assisting persons released from incarceration to avoid housing instability and to increase their chances at long-term success in employment and the community.

Public Safety Provisions in HF 1078

LSAP strongly urges adoption by the conferees in the final Conference Committee Report of the following Public Safety provisions found in HF 1078:

A. Clean Slate

HF 1078, Article 14, Sections 36-45

Criminal records for nonserious offenses, after the offender has satisfied the conditions of release, can haunt a person for years, even decades and pose an unfair and insurmountable barrier to productive reentry. Further, there is no dispute that persons who find themselves caught up in the criminal justice system, especially for lower level offenses, are disproportionately from BIPOC communities. The Clean Slate legislation would allow for automatic expungements and help rectify the injustices and systemic racism that have infected our criminal justice system.

B. Presentence Investigations for Persons with Disabilities

1. Disability Impact Statement

HF 1078, Article 14, Section 15

This provision that would address the impact of a sentence on the person's disability by requiring the court to inquire whether the person has a disability and directing the court to consider the least restrictive environment that would meet the state's penal objective.

2. Conviction of a Defendant with Traumatic Brain Injury

HF 1078, Article 14, Section 16

This provision that requires the court to: (1) consider, when a person is convicted of a felony, to inquire whether the defendant has a history of stroke, traumatic brain injury, or fetal alcohol spectrum disorder; (2) if so, order a neuropsychological examination; and (3) consider the results at sentencing to determine whether the offender, because of mental impairment resulting from a stroke, traumatic brain injury, or fetal alcohol spectrum disorder, lacked substantial capacity for judgment when the offense was committed.

C. Standards Regarding the Safety, Health, Treatment, and Discipline of Incarcerated Persons

HF 1078, Article 11, Sections 5 – 11 and 14

These provisions add welcome specificity to standards to which correctional facilities are held regarding the safety, health, treatment, and discipline of persons in their custody. Of particular importance are the standards requiring screening for mental illness, a policy regarding identification of persons with special needs, and a procedure for disseminating a statement of rights to incarcerated persons. Equally important is the clarification that "correctional facilities" include group homes used for court-ordered placement.

D. Reforms Regarding Detention/Restraint of Youth

Many of our clients are children facing significant challenges because of disability or the result of trauma. Nevertheless, they often have to face punitive consequences that are the result of their disability or other factors. Children whose brains are still in development should not be detained, shackled, or being held back by delinquencies on their records that may be caused by factors that call for treatment moving them toward a productive life. Three important provisions in HF 1078 address these issues:

1. Use of Restraints

HF 1078, Article 11, Sections 34

This provision sets appropriate parameters for the use of restraints ordered by a court in delinquency proceedings by limiting their use when necessary to prevent physical harm to the child or another or where the child presents a substantial risk of flight from the courtroom. The provision also requires that these restraints be employed only when there are no less restrictive alternatives.

2. Detention for Delinquency for Children 12 Years Old or Younger

HF 1078, Article 11, Sections 38

This provision increases protection of youth by prohibiting the detention of persons 12 years of age or younger.

3. Increasing Age of Delinquency for CHIPS Proceedings

HF 1078, Article 11, Sections 39

This provision moves up the age of delinquency for the purposes of CHIPS proceedings to 13 years of age.

Judiciary Provisions in HF 1078

A. Civil Forfeiture Reform

HF 1078, Article 9

The average vehicle and property seized is relatively small but has an outsized adverse impact on those whose property is impounded. Seizing a vehicle that is not the instrument of the crime and withholding its use for an indeterminate amount of time while a minor criminal case works its way through the cumbersome system denies Legal Aid's clients and others the means to get to work or school, or take their child to daycare, further exacerbates poverty, and is counterproductive to individuals being able to survive economically. This provision is bipartisan and represents a hard-won compromise among advocates across the political spectrum and the Minnesota County Attorneys Association, the Minnesota Peace and Police Officers Association, and the Minnesota Sheriffs Association.

B. Surcharge Waiver on Traffic Fines

HF 1078, Article 4, Sections 4 – 6

As the headline in the Star Tribune's in-depth article on Fines and Fees aptly captures, "*Minnesota's criminal justice fees often fall hardest on poor.*"¹ As the article further describes, these fines and fees "disproportionately burden people of color and ensnare people in the criminal justice system just as they are hoping to leave it."² This provision would allow a court to consider ability to pay and waive or provide community service alternatives to counterproductive fines and fees that would also help alleviate systemic bias in the system.

C. Post-Conviction Relief

HF 1078, Article 4, Section 6

This provision would waive the two-year statute of Limitations if the petitioner is either placed into immigration removal proceedings, or detained for the purpose of removal from the United States, or received notice to report for removal, as a result of a conviction that was obtained by relying on incorrect advice or absent advice from counsel on immigration consequences. This provision would foster justice when someone faces removal and separation from their family for a minor offense when they received inaccurate advice from counsel or no advice whatsoever.

D. Post-Conviction Relief

HF 1078, Article 4, Section 6

This would waive the two-year statute of limitations if the petitioner is subject to removal as a result of a conviction that was obtained by relying on incorrect advice or absent advice from counsel on immigration consequences. This provision would foster justice when someone faces removal and separation from their family for a minor offense when they received inaccurate advice from counsel or no advice whatsoever.

¹ Jesse Van Berkel, *Minnesota's criminal justice fees often fall hardest on poor*, STAR TRIBUNE, May 2, 2021; at <https://www.startribune.com/minnesota-s-criminal-justice-fees-often-fall-hardest-on-poor/600050762/>.

² *Id.*

E. Safe at Home Provisions

HF 1078, Article 5, Sections 1-3 and Article 6, Sections 2 – 5

The Safe at Home Program has been essential and invaluable to Legal Aid’s clients and other persons who fear for their safety, including victims of domestic violence, sexual assault, and stalking. These are important updates and clarifications to the Safe at Home law, including protections for survivors of violence who are tenants.

F. Human Rights Department Provisions

HF 1078, Article 6

While all these provisions are important, of particular importance are the following provisions:

1. Inactive Process

Article 6, Section 5

This provision is an important advancement in protections for persons with disabilities and would ensure conformity and consistency with federal law by clarifying that employers, employment agencies, or organizations use an “interactive process” when an employee requests a disability accommodation.

2. Discrimination Based on Receipt of Public Assistance

Article 6, Sections 7 – 9

This provision is an important clarification in anti-discrimination protection for persons seeking to buy a home or rent an apartment who are receiving public assistance.

3. Inquiry into Pay History

Article 6, Section 6

Enactment of this provision would foster would facilitate pay equity, not only gender pay equity, but also pay racial equity. Use of salary history “has a disproportionately negative impact on women and people of color.”³ Twenty-seven states have adopted similar laws.⁴ A Boston University Law School study found that salary history laws are working.⁵ In states where salary history laws exist, the study found that “[w]omen earned 8% to 9% more, and Black workers 13% to 16% more, than similar workers in neighboring states that did not have salary history laws.”⁶

³ National Women’s Law Center, *Asking for Salary History Perpetuates Pay Discrimination From Job to Job*; <https://nwlc.org/resources/asking-for-salary-history-perpetuates-pay-discrimination-from-job-to-job/>

⁴ Paycor, *States with Salary History Bans*, Dec. 2, 2020; at <https://www.paycor.com/resource-center/articles/states-with-salary-history-bans/>.

⁵ James Bessen, Erich Denk, and Chen Meng, , *Perpetuating Inequality: What Salary History Bans Reveal About Wages* (Boston University School of Law, Technology & Policy Research Initiative, June 2020).

⁶ *Id.*

G. U-Visa Amendments

HF 1078, Article 4, Section 8 and Article 6, Section 15

A U-visa is intended to protect crime victims and to ensure that foreign national crime victims are available to assist in the prosecution of those accused of the crimes. Enactment of this provision would facilitate prosecution of heinous crimes, including domestic violence and sexual assault; trafficking; torture; forced prostitution; sexual exploitation; murder; and manslaughter.

H. Criminal Court Process for Indigent Clients

1. Interpreter Services in Criminal Court

Article 4, Section 7

This provision represents an important advancement in protecting civil rights by providing petitioners who are at or below 125% of poverty to request an interpreter.

2. Fines for Criminal Offenses

Article 5, Section 7

This provision enhances existing statute allowing for a reduction of a minimum fine imposed on a person convicted of a crime by requiring the court, before imposing the fine, to make a finding on the record as to indigency or the person's ability to comply with an order to pay without undue hardship.

I. Nondiscrimination in Organ Transplants

HF 1078, Article 6, Sections 2 and 22

In a 2009 study, 44% of organ transplant centers said they would not add a child with some level of neurodevelopmental disability to the organ transplant list and 85% said they might consider the disability as a factor in deciding whether to list the person.⁷ These provisions would ban discrimination, and significantly advance equal protection for persons with disabilities in need of organ transplants. Currently, 16 states have passed similar laws.⁸

Thank you for your consideration of LSAP's advocacy to adopt the provisions noted above in the final Conference Committee Report.

Sincerely,



Ron Elwood
Supervising Attorney

c.c: The Hon. Jamie Becker-Finn; Cedric Frazier; Bill Ingebrigtsen; Mark Johnson; Ron Latz; Kelly Moller; and Tim Miller, Conferees

⁷ Christopher T. Richards, LaVera M. Crawley, David Magnus, *Use of neurodevelopmental delay in pediatric solid organ transplant listing decisions: Inconsistencies in standards across major pediatric transplant centers* (October 2009)

⁸ Sara Reardon, *Push Is On for States to Ban Organ Transplant Discrimination*, KAISER HEALTH NEWS, March 8, 2021; at <https://khn.org/news/article/organ-transplant-discrimination-disabilities-state-legislation/>.