

HF306 - 0 - Indigency or Hardship Considered; Notice Required

Chief Author: **Cedrick Frazier**
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**
 Date Completed: **2/19/2021 4:50:52 PM**
 Lead Agency: **Supreme Court**
 Other Agencies:
 Public Safety 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
Public Safety Dept	-	-	-	-	-	-
General Fund	-	-	-	-	-	-
Supreme Court	-	889	1,186	1,186	1,186	1,186
General Fund	-	889	1,186	1,186	1,186	1,186
Game And Fish (Operations)	-	3	4	4	4	4
State Total	-	892	1,190	1,190	1,190	1,190
General Fund	-	889	1,186	1,186	1,186	1,186
Game And Fish (Operations)	-	3	4	4	4	4
Total	-	892	1,190	1,190	1,190	1,190
Biennial Total			2,082			2,380

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Public Safety Dept	-	-	-	-	-
General Fund	-	-	-	-	-
Supreme Court	-	-	-	-	-
General Fund	-	-	-	-	-
Game And Fish (Operations)	-	-	-	-	-
Total	-	-	-	-	-

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.

LBO Signature: Maren Bardal **Date:** 2/19/2021 4:50:52 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.

State Cost (Savings) = 1-2	Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Public Safety Dept	-	-	-	-	-
General Fund	-	-	-	-	-
Supreme Court					
General Fund	-	889	1,186	1,186	1,186
Game And Fish (Operations)	-	3	4	4	4
Total	-	892	1,190	1,190	1,190
Biennial Total			2,082		2,380
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Public Safety Dept	-	-	-	-	-
General Fund					
Expenditures	-	1	-	-	-
Absorbed Costs	-	(1)	-	-	-
Supreme Court					
General Fund	-	-	-	-	-
Game And Fish (Operations)	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-
2 - Revenues, Transfers In*					
Public Safety Dept	-	-	-	-	-
General Fund	-	-	-	-	-
Supreme Court					
General Fund	-	(889)	(1,186)	(1,186)	(1,186)
Game And Fish (Operations)	-	(3)	(4)	(4)	(4)
Total	-	(892)	(1,190)	(1,190)	(1,190)
Biennial Total			(2,082)		(2,380)

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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
General Fund	-	889	1,186	1,186	1,186
Game And Fish (Operations)	-	3	4	4	4
Total	-	892	1,190	1,190	1,190
Biennial Total			2,082		2,380

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-
Game And Fish (Operations)	-	-	-	-	-
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.

LBO Signature: Maren Bardal **Date:** 2/19/2021 4:50:26 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.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
General Fund	-	889	1,186	1,186	1,186	
Game And Fish (Operations)	-	3	4	4	4	
Total	-	892	1,190	1,190	1,190	1,190
Biennial Total			2,082			2,380
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	-	-	-	-
Game And Fish (Operations)	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
General Fund	-	(889)	(1,186)	(1,186)	(1,186)	(1,186)
Game And Fish (Operations)	-	(3)	(4)	(4)	(4)	(4)
Total	-	(892)	(1,190)	(1,190)	(1,190)	(1,190)
Biennial Total			(2,082)			(2,380)

Bill Description

HF 306-0

Section 1: amends the current notice of surcharge requirement in section 169.99, subd. 1c.

Section 2: adds a new subdivision in section 169.99, requiring language be added to the uniform traffic ticket notifying the offender that all or part of the costs of the summons may be waived upon a showing of indigency or undue hardship on the person or person's family, and directs the person to the Minnesota Court Payment Center (CPC) to schedule a hearing.

Section 3: amends section 357.021, subd. 6, by deleting the provision requiring court staff to impose the surcharge if the judge does not; changing the waiver prohibition to permit the court to reduce or waive the surcharge upon a showing of indigency or undue hardship; and permitting the performance of community work service in lieu of a surcharge.

Section 4: Requires the court to make findings on the record as to a person's ability to pay money for fines, fees, and surcharges before sentencing a person convicted of a felony, gross misdemeanor, misdemeanor or petty misdemeanor. Requires the court to consider six factors in determining a person's ability to pay. Creates an exception to these requirements if a person has been charged with a violation included on the uniform fine schedule, has paid all the fines, fees and surcharges on the case without appearing in court, and does not request a hearing before the court before making all payments and being convicted of the violation.

Assumptions

Section 1: The uniform traffic ticket is the statewide standard citation (citation). The citation is scheduled to be revised in 2021, effective January 1, 2022. It is assumed that the additional notices required in sections 1 and 2 can be added to the citation without cost to the Minnesota Judicial Branch (Branch). It also is assumed that law enforcement agencies will update the notices in their eCitation systems to add these notices to citations and that other agencies will order new paper citations containing these notice, and they may incur costs to make these updates. Notices that are currently contained on the citation are included on the Branch web site and telephone payment systems. It is assumed that the Branch will need to update the noticing information on its web site and in the telephone payment system to add these additional notices and will need to pay its vendor for the changes to the telephone payment system. Based on past updates, the cost will be

absorbed by the Branch.

Section 2: It is assumed that if a citation is payable a person may choose to schedule a hearing or pay the fines, fees, surcharges without appearing in court as they are able to do now. It is assumed that the information on the possible waiver of costs will result in an increase in the number of hearings for payable cases. It is unknown how many additional hearings will result.

It is assumed that the "waivable costs" includes fines, criminal/traffic surcharge, parking surcharge, \$1 Ramsey County surcharge, speeding surcharge, school zone surcharge, wildlife restitution, county law library fee, and any other applicable assessments or penalties. It is assumed there will be a decrease in revenue to the state general fund, special accounts, municipalities, and county law libraries if the costs are waived on a showing of indigency or undue hardship.

The bill provides that offenders can contact the Court Payment Center (CPC) to schedule a hearing. Because the CPC is not authorized to schedule hearings and does not have the technical capability to schedule court hearings in 87 counties, it is assumed that the CPC will continue to direct callers to the court administrator's office in the county in which the offense occurred for purposes of scheduling hearings. The CPC Call Center currently handles 1000-1,400 calls per day. It is assumed this notice will increase the number of calls to the CPC for this information. It is unknown how many additional calls will result.

Section 3: The surcharges in section 357.021, subd. 6, apply once per case in all criminal cases and in petty misdemeanor cases in which there is conviction. For the purpose of this note, it is assumed the surcharges will be imposed unless a judge waives or reduces the surcharge at the time of sentencing upon conviction. It is assumed that offenders who qualify for a public defender are indigent and that the criminal traffic surcharge will be waived by the court in these cases. It is unknown how many offenders not appointed a public defender may be able to make a showing undue hardship. It is assumed that this section will apply to sentences that are imposed on or after August 1, 2021. It is assumed there will be a decrease in surcharge revenue.

Section 4: Under the new language of the bill, persons convicted of felony, gross misdemeanor, misdemeanor, or petty misdemeanor cannot be sentenced unless a judge makes findings on the record as to indigency or ability to pay without undue hardship. The district courts will not have the information a judge would be required to consider before sentencing, unless that person had applied for a public defender in the case. It is assumed that if the person is not represented by a public defender, it will be necessary for the person to have a completed indigency form at the hearing or the judge will not be able to sentence the person and the sentencing hearing will need to be rescheduled. It is unknown how many people will have the ability to fill out the form prior to sentencing or how many hearings would need to be rescheduled.

It is assumed that the exception in paragraph (e) of section 4 is intended to apply to all payable cases, including payable ordinance violations.

Sections 1 and 2 are effective August 1, 2021; changes to the uniform traffic ticket must be reflected on the citation the next time it is revised. Sections 3 and 4 are effective August 1, 2021.

Expenditure and/or Revenue Formula

Estimated impact on Judicial Branch Resources:

Some people who currently pay or see a hearing officer in Dakota, Hennepin, Ramsey and Washington Counties (119,882 hearing officer appointments in 2019 and 56,986 in 2020) may choose to appear before a judge. It is not possible to estimate the resulting impact on judge and staff need.

The bill provides that offenders can contact the CPC to schedule a hearing. This will increase the number of calls placed to the Center. It is estimated that it will take 100 calls daily or approximately 25,200 per year to require an additional staff person for the CPC. It is assumed that the volume will not reach that level of activity.

Estimated impact on revenue:

It is assumed there will be a decrease in revenue to the state general fund, special accounts, municipalities, and county law libraries if the costs are waived on a showing of indigency or undue hardship. The loss of revenue cannot be reasonably estimated. The loss of \$75 criminal and traffic surcharge revenue is addressed below.

Estimated Decrease in Surcharge Revenue:

Surcharges were imposed upon conviction in 872,884 cases in 2017, and 837,091 cases in 2018, 772,816 cases in 2019 for an average of 827,597 cases per year. Public defenders were appointed in the following number of cases resulting in convictions: 67,028 in 2017, and 64,724 in 2018, and 60,827 in 2019 for an average of 64,193 cases per year. It is assumed that, on average, 8% (67,028 / 827,597 round to nearest whole number) of the surcharges are imposed in cases with public defenders.

Note: Due to the COVID-19 pandemic has significantly reduced the number of cases with surcharges imposed on conviction (477,877) and the number cases in which public defenders were appointed (36,573) in CY 2020. It is assumed that 2020 is not a normal year and that use of the CY 2020 data would significantly lower the three year averages. Therefore, for purposes of this fiscal note, we are using 3 year averages for the calendar years 2017, 2018, and 2019.

Surcharge revenue in collected was \$32,996,932 in FY18, \$30,711,045 in FY19 and \$27,326,126 in FY20 and for an average of \$30,344,701 per fiscal year.

In a preliminary draft of a report prepared by the Minnesota Justice Research Center on Criminal and Traffic Surcharges Imposed and Collected, 2010-2015, the surcharge collection rate for public defender cases ranged from 55.6% for 2010 cases to 41.7% for 2015 cases, for an average of 49%. This is the most current data on this collection rate and there is no known reason why this number would have significantly changed since this research was undertaken.

If the average surcharge revenue collection is rate of 49% is applied to 8% of the average surcharges collected in the past three fiscal years, it is estimated that approximately \$ 1,189,512 of the surcharge revenue is attributable to public defender cases per fiscal year ($\$30,344,701 \times 8\% = \$2,427,576 \times 49\% = \$1,189,512$).

The criminal/traffic surcharge distributes as follows: 1% of the first \$25 is credited to the peace officer training account in the game and fish fund and 99% of the first \$25 is credited to the general fund.

Projected Revenue Loss for FY22:

Account	Fiscal Year Loss	Calculation
Game and Fish Account	-\$2,970	$\$3,965/12 = \$330 \times 9 \text{ mos.}$
General Fund:	-\$889,164	$\$1,185,547/12 = \$98,796 \times 9 \text{ mos.}$

The revenue loss for FY19 is discounted by three months: one month to account for the August 1, 2021 effective date and 2 months to account for the cash flow.

Projected Revenue Loss for FY23 and FY24:

Account	Fiscal Year Loss	Calculation
Game and Fish Account	-\$3,965	$\$1,189,512/3 = \$396,504 \times 1\%$
General Fund	-\$1,185,547	$\$1,189,512 - \$3,965$

Long-Term Fiscal Considerations

The revenue loss is permanent.

Local Fiscal Impact

Local governments will incur costs to update notices on the back of their paper citations and to update electronic citation systems. The cost is unknown.

Fine revenue to cities will decrease. County law library revenue will decrease. The amount is unknown.

References/Sources

Agency Contact:

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Chief Author: **Cedrick Frazier**
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**
 Date Completed: **2/19/2021 4:50:52 PM**
 Agency: **Public Safety Dept**

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	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

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

LBO Signature: Laura Cecko **Date:** 2/8/2021 4:08:51 PM
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State Cost (Savings) Calculation Details

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Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund						
Expenditures	-	1	-	-	-	-
Absorbed Costs	-	(1)	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
General Fund						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

Section 1: Requires that all parts of the uniform traffic ticket must provide conspicuous notice that, if convicted, the person to whom it was issued may be required to pay a state imposed surcharge.

Section 2: Provides for required language to be added to the uniform traffic ticket.

Section 3: Corrects a cross reference due to the above changes, while also permitting the court to reduce the amount of fines or waive them altogether. Also permits the courts to allow the defendant to perform community service work in lieu of a surcharge.

Section 4: Requires the court to make a finding as to the individual's indigency as well as the factors to be considered as a part of this determination.

The bill language is effective August 1, 2021.

Assumptions

BCA Assumptions

The Bureau of Criminal Apprehension (BCA) is the law enforcement agency that operates the software called eCharging.

ECharging generates a uniform traffic ticket for use by law enforcement. The eCharging software will need to be changed to reflect the changes made by the proposed legislation to the notice in the uniform traffic ticket.

The BCA estimates that the time required to make the change to the uniform traffic ticket is 10 hours. The cost of these 10 hours of work is minimal and can be absorbed.

State Patrol Assumptions

There is no fiscal impact to the State Patrol as we will be able to absorb the minimal cost involved in making a change to our e-citation.

Expenditure and/or Revenue Formula

The BCA estimates that the time required to make the change to the uniform traffic ticket is 10 hours. The cost of these 10 hours of work is \$100.00 per hour. This amount is minimal and can be absorbed.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

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Agency Fiscal Note Coordinator Signature: Rita Wurm

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