

S.F. No. 2673 – Omnibus Public Safety Policy and Supplemental Funding Bill (3rd Engrossment)

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Article 1 Appropriations and Related Provisions

Sections 1 to 8 appropriate money to the supreme court, court of appeals, district courts, Board of Public Defense, Sentencing Guidelines Commission, Department of Corrections, and Department of Public Safety for various public safety initiatives. See spreadsheet for details.

Sections 9 and 21 shift the responsibility for paying for rape kit examinations from the county in which the sexual assault occurred to the state.

Section 10 requires the Sentencing Guidelines Commission to maintain a public website with a searchable database that provides the public with information on criminal sentences stayed or imposed by the courts. All data included in the database must be public data. The database must allow the user to:

- search by individual fields (14 are listed);
- perform a search using at least two fields;
- sort by each field;
- obtain information grouped or aggregated by each field, where groups or subtotals are feasible; and
- download the data into a user-controlled database.

Section 11 requires the Sentencing Guidelines Commission to allow members of the public to participate remotely in commission meetings and to make video and audio recordings of commission meetings available on the internet.

Sections 12 and 19 require county attorneys to report to the Sentencing Guidelines Commission the following information for each case in which a defendant is charged with a felony, but the county attorney subsequently dismisses any part of the criminal action:

- the name of the defendant;
- the date of the offense;
- all crimes charged;
- any charges that were dismissed;
- the name of the assistant county attorney who authorized the dismissal;
- the date of the dismissal; and
- any reason for the dismissal (but not if this would indicate the cooperation of the defendant as a reason).

The information above must be published on the county attorney’s publicly accessible website, and the Sentencing Guidelines Commission must include in its annual report to the legislature a summary analysis of reports received from the state’s county attorneys for that year.

Sections 13, 14, 15, and 23 amend the provisions of law that provide a death benefit (currently, approximately \$167,000) for public safety officers killed in the line of duty to expand eligibility to officers who died by suicide and who suffered from work-related post-traumatic stress disorder. These provisions are effective retroactively from January 1, 2017.

Section 16 requires the commissioner of public safety to award grants to local law enforcement agencies for the purchase, maintenance, support, and storage of portable recording systems (i.e., body-worn cameras) and portable recording system data. Requires a 25 percent local match and reporting to the legislature.

Section 17 increases the amount of the marriage dissolution court filing fee allocated to the Minnesota Family Resiliency Partnership (MFRP) from \$30 to \$60. The marriage dissolution filing fee is \$315. Under this section, \$60 of the fee will be allocated to the MFRP and the remaining \$255 will be credited to the general fund. This will increase MFRP’s allocation by \$408,000 in fiscal year 2023 and \$445,000 each fiscal year thereafter (with a concomitant decrease in general fund revenue).

Section 18 eliminates the \$8 fee to receive an uncertified copy of a court document.

Section 20 increases, from \$25 to \$55, the MFRP allocation of the marriage license fee for applicants who have not completed premarital education, with the general fund allocation decreasing from \$55 to \$25. This will result in an additional \$619,000 in fiscal year 2023, and \$675,000 each year thereafter, being allocated to MFRP (with a concomitant decrease in general fund revenue).

Section 22 authorizes the commissioner of public safety, in consultation with the executive director of the Peace Officer Standards and Training Board, to award bonus payments to eligible peace officers. To be eligible for a bonus payment, the officer must have been nominated by the chief law enforcement officer of the agency employing the officer. The commissioner, in consultation with the executive director, shall develop nomination forms and guidelines for bonus payment eligibility. Final decisions on the actual awarding and amount of the individual bonuses are at the discretion of the commissioner, in consultation with the executive director, and are limited to the funds appropriated for this purpose.

Authorizes the commissioner, in consultation with the executive director, to award bonuses for exemplary service that goes above and beyond the call of duty, including but not limited to acts of heroism or valor. The commissioner, in consultation with the executive director, may also award

bonuses for recognition of meritorious service in which the recipient officer has served for a minimum of five years without having any adverse disciplinary actions taken against the officer. Individual bonus payments may not exceed \$10,000.

Requires the commissioner, by January 15 of each year, to report to the legislature on bonuses awarded, including the amount of each bonus, the agency employing the recipient, and the reason for the award.

Article 2

Criminal Law and Sentencing Changes

Sections 1 and 2 amend Minnesota Statutes, chapter 13A (release of information by financial institutions) by adding cross references to section 35 (authorized disclosure of information about a financial institution's customer's account).

Section 3 amends the law requiring judges to set specified conditions of pretrial release for certain DWI offenders. Authorizes a judge to not require an offender to submit to electronic alcohol monitoring if the offender becomes an ignition interlock device program participant. Prohibits the requiring or suggesting of using a specific device vendor to the offender.

Section 4 requires the commissioner of public safety to revoke the driver's license of a person convicted of a violation of the new crime created in section 28 (fleeing in a culpably negligent manner) for four years. Current law already requires revocation for other fleeing offenses with the revocation period based on the severity of the underlying offense.

Section 5 amends the ignition interlock device program law to prohibit the requiring or suggesting of using a specific device vendor to the participant.

Sections 6, 10, 11, and 12 extend the term of imprisonment for individuals committed to the commissioner of corrections from two-thirds of their executed sentence to three-fourths of their executed sentence.

Sections 7, 8, 15, and 22 address an oversight in current law relating to first-degree murder of an unborn child.

Under current law, a person found guilty of this crime must receive a sentence of life imprisonment (the same as first-degree murder). However, the law does not indicate whether the person is eligible for release from prison at any point. For first-degree murder, the law provides that certain violations require life without release while others allow release after serving a minimum of 30 years.

These sections resolve the current lack of guidance by providing for a life without release term for first-degree murder of an unborn child committed with premeditation or while committing a violent rape of the mother and a 30-year minimum term of imprisonment for offenses involving intentional death while committing specified felony offenses. This resolution is consistent with how similar first-degree murder crimes are treated.

The sections address only the applicable terms of imprisonment for first-degree murder of an unborn child. They do not change the pronounced or maximum sentence or elements of the offense and do not affect any of the other murder of an unborn child crimes (i.e., second- or third-degree).

This oversight in law was brought to the Legislature’s attention in the 2020 annual report of the Minnesota Sentencing Guidelines Commission. The commission recommended that the law be clarified to address the gap but did not contain a specific recommendation on how to do this.

Section 9 requires senate confirmation of Sentencing Guidelines Commission member appointments (not including the commissioner of corrections and supreme court chief justice, both of whose memberships are set in statute, and also not including the district court and court of appeals judge members).

Sections 13, 14, and 32 provide for higher statutory maximum penalties (see table below) for thefts of a motor vehicle in situations where the vehicle was then used by the thief within seven days in furtherance of a crime of violence (a defined term in section 32). They also provide that a prosecution or conviction for violating this new crime is not a bar to conviction of or punishment for any other crime committed by the offender as part of the same conduct.

	Current Law	Section 32
Motor vehicle valued at \$5,000 or less	Five years of imprisonment and/or fine of up to \$10,000	Ten years of imprisonment and/or fine of up to \$20,000
Motor vehicle valued at more than \$5,000	Ten years of imprisonment and/or fine of up to \$20,000	15 years of imprisonment and/or fine of up to \$30,000

Section 16 amends the aggravated durational departure sentencing provision applicable to certain third-time violent offenders in Minnesota Statutes, section 609.1095, subdivision 2, by converting it from a permissive sentence to a mandatory one.

Under current law, a judge, who is sentencing an offender who was 18 or older at the time of committing a violent crime (defined term) that is a felony and imposing an executed sentence based upon a Sentencing Guidelines presumptive imprisonment sentence, *may* sentence the offender to an aggravated durational departure (i.e. more time in prison than what the Guidelines call for) up to the statutory maximum sentence if the offender has two or more prior convictions for violent crimes and is determined to be a danger to public safety (based on listed factors).

Section 17 amends the presumptive sentence mandatory minimum sentencing provision applicable to certain third-time violent offenders under Minnesota Statutes, section 609.1095, subdivision 3. Provides that this sentence applies unless the judge is imposing and executing a longer sentence under section 16 or 18. Also strikes language prohibiting the offender from being released from prison early (this language is reinserted in section 19).

Section 18 amends the aggravated durational departure sentencing provision applicable to offenders convicted of a felony offense who have five or more prior felony convictions in Minnesota Statutes, section 609.1095, subdivision 4, by converting it from a permissive sentence to a mandatory one.

Under current law, a judge who is imposing an executed sentence based upon a Guidelines presumptive imprisonment sentence *may* impose an aggravated durational departure up to the statutory maximum sentence if the present offense is a felony that was committed as part of a pattern of criminal conduct and the offender has five or more prior felony convictions.

Section 19 requires that sentences under Minnesota Statutes, section 609.1095 (i.e., sections 16 to 19) must be served consecutively to any unexpired portions of previously imposed sentences unless this would result in a shorter total time to serve in prison.

Sections 20 and 21 amend Minnesota Statutes, section 609.11, which provides for mandatory minimum prison sentences for offenders convicted of committing certain specified violent crimes involving a firearm or other dangerous weapon or of unlawfully possessing a firearm in certain situations. The mandatory sentence applies to cases where the offender or an accomplice at the time of the offense used a non-firearm dangerous weapon or possessed or used a firearm.

Under current law, a prosecutor may make a motion to have the defendant sentenced without regard to the mandatory minimum sentence required in Minnesota Statutes, section 609.11. The court, either based on the prosecutor's motion or upon its own motion, may sentence without regard to the mandatory minimum if it finds substantial and compelling reasons to do so. This authority does not apply if the offender has previously been convicted of a violent crime while using or possessing a firearm or other dangerous weapon. Thus, the mandatory sentence in Minnesota Statutes, section 609.11, is considered a "soft" mandatory minimum sentence for first time offenders but a "hard" minimum for repeat offenders.

These sections remove the authority to sentence without regard to the mandatory minimum sentence for cases in which a *firearm* was involved (not including cases where the offender's accomplice possessed a firearm and the offender was unaware of this) but retains that authority for other (non-firearm) dangerous weapon cases.

Section 23 addresses stays of sentences for certain felony offenses.

Under current law (Minnesota Statutes, section 609.135), the maximum period for a stayed felony sentence is generally four years or the statutory maximum sentence for the offense, whichever is longer. This means that for more serious felonies, the maximum stay can be significantly longer than four years.

In 2020, the Minnesota Sentencing Guidelines Commission proposed a change to the lengths of felony stayed sentences. This change went into effect on August 1, 2020. Under this change, the presumptive duration of most felony stays of sentence, absent a sentencing departure based on substantial and compelling reasons, is five years or the statutory maximum sentence, whichever is less. The commission provided that certain offenses (homicides and sex offenses) were not subject to this presumptive "cap."

This section provides that the 2020 change does not apply to certain listed offenses. The list includes all of the crimes that the Commission included, as well as a number of other offenses.

Section 24 broadens the fourth-degree assault crime relating to victims who are health care workers. Strikes the current requirement that the worker be providing health care services in a hospital emergency room at the time of the assault. Also expands the crime to include instances in which the offender intentionally throws or transfers bodily fluids or feces at the victim.

Section 25 makes technical corrections to the fourth-degree assault crime related to assaults against criminal justice personnel.

Section 26 expands the criminal abuse of a vulnerable adult crime to include a caregiver who intentionally administers a controlled substance to a vulnerable adult without a valid prescription or in a manner inconsistent with a prescription. The penalty for a violation ranges from a gross misdemeanor to a five-, ten-, or 15-year felony depending on the harm caused to the victim.

Section 27 establishes the crime of carjacking and requires a mandatory minimum prison sentence for its violation. Provides that a person who commits robbery where the property taken is a motor vehicle is guilty of carjacking. Carjacking is a felony, and the statutory maximum sentence ranges from 15 years of imprisonment to 25 years depending on the circumstances of the underlying robbery (i.e., whether it would otherwise be considered simple robbery or first- or second-degree aggravated robbery). These maximum sentences are five years longer than those of the corresponding robbery crime. Provides for a mandatory minimum prison sentence of two, four, or six years (currently, robbery crimes do not have a mandatory minimum sentence).

Section 28 establishes the crime of fleeing a peace officer in a motor vehicle while operating the vehicle in a culpably negligent manner whereby the perpetrator takes an unreasonable risk and consciously takes chances of causing death or great bodily harm to another. Of note, the culpable negligence standard is used in the second-degree manslaughter crime (and a few others) and is described in the Minnesota Criminal Jury Instruction Guide as “intentional conduct that the defendant may not have intended to be harmful, but that an ordinary and reasonably prudent person would recognize as involving a strong probability of injury to others.”

Under current law, the base level crime of fleeing in a motor vehicle carries a three-year statutory maximum sentence. If the fleeing results in injury to another, the penalties are higher (40-year statutory maximum for death, seven years for great bodily harm, and five years for substantial bodily harm). The new crime established in this section has a statutory maximum sentence of four years imprisonment and/or payment of an \$8,000 fine.

Sections 29 and 38 make conforming changes relating to the new fleeing crime established in section 28.

Section 30 expands the scope of the doxing crime to protect prosecutors, defense attorneys, judges, and correctional employees from being doxed.

Section 31 adds a cross reference to the new organized retail theft crime established in section 33 in the general theft law’s penalty subdivision for repeat thefts. This results in the new crime being treated the same as other listed theft-related crimes in terms of determining the applicable criminal penalty and required value threshold for repeat offenses.

Section 33 establishes the crime of organized retail theft. This crime occurs when a person steals or fraudulently obtains retail merchandise from a retailer and: resells or intends to resell it; advertises or displays it for sale; returns it to a retailer for anything of value; or the act occurs within five years of a previous conviction under this section. In addition, receiving stolen retail merchandise with the intent to resell it and possessing shoplifting-related devices with the intent to use them to shoplift are also violations.

Penalties for the new crime range from a gross misdemeanor to a two-, seven-, or 15-year statutory maximum felony depending on the value of the property stolen and whether the offender has been convicted of committing the crime in the past. These penalties are enhanced versions of what would be applicable under the general theft crime. Also provides for enhanced penalties for violations that create a reasonably foreseeable risk of bodily harm to others and allows aggregation of the value of retail merchandise stolen in a six-month period for charging purposes.

Sections 34 and 35 amend the identity theft crime to authorize financial institutions to release certain specified information (name and last known address/phone numbers of account holders) to law enforcement and prosecutors who certify that it is related to an identity theft crime investigation or prosecution. Gives complying financial institutions immunity for so doing.

Sections 36 and 37 amend the third- and fourth-degree burglary crimes to include situations in which a person enters a building that is open to the public with intent to steal while inside or does steal while inside (regardless of original intent). Currently, this type of activity is not considered burglary since the crime generally requires that the building involved be one that the person is not allowed to enter.

Section 39 requires a judge, when sentencing an offender convicted of a child pornography crime to probation, to consider sentencing the offender to jail time, requiring sex offender evaluation/treatment, and ordering that the offender have no contact with minors.

Section 40 amends the law specifying how long a search warrant is valid. Provides that a search warrant on a financial institution is valid for 30 days (rather than the general ten-day period).

Section 41 requires law enforcement to report on carjackings. Defines “carjacking” via a cross reference to the new carjacking crime established in section 27. Requires local law enforcement agencies and state law enforcement departments to forward the following information to the commissioner of public safety at least quarterly each year:

- the number of carjacking attempts;
- the number of carjackings;
- the number of persons injured in each offense;
- the number of persons killed in each offense; and
- weapons used in each offense, if any.

Also requires the commissioner to include the data received in a separate carjacking category in the department’s annual uniform crime report.

Sections 42 and 43 prohibit retaliation against a peace officer who, as required by law, intercedes against another officer who is using excessive force or who reports this to a superior.

Section 44 requires law enforcement agencies to retain any recordings of custodial interviews, bookings, or implied consent or breath testing procedures for 60 days or until criminal proceedings relating to it are complete, whichever is later.

Section 45, paragraph (a) authorizes the commissioner of public safety to design, plan, and implement a pilot project intended to determine the efficacy of oral fluid roadside testing to determine the presence of a controlled or intoxicating substance in individuals stopped or arrested for driving impaired offenses.

Paragraph (b) requires the project to run from September 1, 2022, to August 31, 2023.

Paragraph (c) requires the commissioner to consult with law enforcement officials, prosecutors, and criminal defense attorneys when designing, implementing, and evaluating the project.

Paragraph (d) requires all fluid samples obtained by the project to be obtained by a certified drug recognition evaluator and only be collected with the express voluntary consent of the person stopped or arrested for suspicion of driving while impaired. Results may only be used to determine the efficacy of the testing instrument, may not be used to decide whether an arrest should be made, and are not admissible in court proceedings.

Paragraph (e) requires a February 1, 2024, report to the legislature on the results of the pilot project. The report must include information on how accurate the instruments were when tested against lab results, how often the participants were found to have controlled substances in their systems, whether there was comingling of controlled substances with alcohol, and the types of controlled substances found. Finally, the report must assess the practicality and reliability of using the instruments in the field and make recommendations on continuing the project permanently.

Section 46 provides a revisor’s instruction to add cross references in statute to the new carjacking crime established in section 27.

Article 3 Driving While Impaired Search Warrant Changes

Sections 1, 2, and 4 to 9 make conforming changes to references to search warrants in the DWI laws consistent with sections 3 and 10.

Sections 3 and 10 define “search warrant” for the purposes of the DWI laws addressing revocation of a person’s driver’s license based on a chemical test obtained via a search warrant to include search warrants obtained from adjacent states whose search warrant statutes conform to Minnesota’s.

Article 4 Fentanyl-Related Changes

This article assigns the same weight and penalty thresholds for fentanyl as heroin, with respect to first-degree, second-degree, third-degree, and fifth-degree controlled substance crimes. Defines fentanyl.

Section 1 defines fentanyl for the purposes of the first- to fifth-degree controlled substance crimes to include fentanyl, carfentanil, and any fentanyl analogs and fentanyl-related substances listed as Schedule I or II controlled substances.

Sections 2 and 3 make the changes for first-degree felony sale and possession.

Sections 4 and 5 make the changes for second-degree felony sale and possession.

Section 6 makes the change for third-degree felony possession.

Section 7 makes the change in the fifth-degree crime related to the reduced penalty for possession of small amounts by first-time offenders.