

HF226 - 0 - Prosecutor-Initiated Sentence adjustments

Chief Author: **Kelly Moller**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/27/2023 11:59:07 AM**
 Lead Agency: **Sentencing Guidelines Comm**
 Other Agencies:
 Corrections Dept Public Defense Board
 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
Public Defense Board						
General Fund	-	150	82	82	82	82
State Total						
General Fund	-	150	82	82	82	82
Total	-	150	82	82	82	82
Biennial Total			232			164

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
Public Defense Board					
General Fund	-	1	1	1	1
Total	-	1	1	1	1

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: Karen McKey **Date:** 2/27/2023 11:59:07 AM
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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		FY2023	FY2024	FY2025	FY2026	FY2027
Public Defense Board						
General Fund	-	150	82	82	82	82
Total	-	150	82	82	82	82
	Biennial Total		232			164
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Public Defense Board						
General Fund	-	150	82	82	82	82
Total	-	150	82	82	82	82
	Biennial Total		232			164
2 - Revenues, Transfers In*						
Public Defense Board						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
	Biennial Total		-			-

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 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/27/2023 11:59:07 AM**
 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

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
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
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: Karen McKey **Date:** 2/16/2023 11:37:44 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	FY2023	FY2024	FY2025	FY2026	FY2027	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

The bill establishes prosecutor-initiated sentence adjustment under newly enacted Minn. Stat. § 609.133, allowing the prosecutor responsible for the conviction to initiate a proceeding to reduce a sentence post-conviction. If an adjustment is granted, the Court must determine whether there are substantial and compelling reasons to adjust the sentence. If an adjustment is granted, the Court must state reasons for the adjustment in writing or on the record and complete and forward a sentencing worksheet as provided in Minn. Stat. § 609.115, subd. 1. The bill amends Minn. Stat. § 244.09, and directs the Sentencing Guidelines Commission (MSGC) to summarize and analyze sentence adjustments and report on them and case demographics in its annual Report to the Legislature. The bill is effective August 1, 2023

Assumptions

It is assumed that prosecutor-initiated sentence adjustments are not departures from the sentencing guidelines as defined in 2022 Minn. Sentencing Guidelines section 1.B.5.

It is assumed that the “sentencing worksheet” described in the bill would be different than the sentencing worksheet in Minn. Stat. § 609.115, subd. 1(e), which is designated to “facilitate the application of the Minnesota Sentencing Guidelines.” It is assumed that the prosecutor-initiated sentence adjustment worksheet would be a different worksheet because it would reflect a sentence that is less than the Guidelines presumptive sentence.

It is assumed that the bill’s mandate would be similar to that in Minn. Stat. § 244.09, subd. 14 (Report on mandatory minimum sentences), and that MSGC staff would be responsible for initially designing a “prosecutor-initiated sentence adjustment” form on which prosecutor would be required to report district court case number, count number, initial sentence date, reasons the adjustment was granted, and the defendant’s name, sex, race, date of birth. It is assumed that MSGC would not be responsible for requesting reasons for the adjustment or verifying the accuracy of information. It is assumed that the bill’s focus is on the demographics in order to give the Legislature some idea of whether this discretionary benefit is being applied in a racially disparate way.

According to “For the People,” an advocacy group that has lobbied for similar prosecutor-initiated resentencing laws in other states, five states have now adopted such laws: California, Washington State, Oregon, Illinois, and Louisiana. For the People estimates re-sentencings in each state as referenced in Table 1, below.

Table 1. States with Prosecutor-Initiated Resentencing Laws, Enactment Year, Number of Cases

State	Enactment Year	Est. Prison Population (in thousands)	Number of Resentences Since Enactment	Average Resentences (Per Month)
CA	2019	95	300	6
WA	2021	13	65	2-3
OR	2022	12	20	1-2

IL*	2022	29	---	---
LA	2022	27	120	4-5

Source: For the People

* According to For the People, Illinois is still implementing; therefore, there have been no resentencing as of yet.

It is assumed that the bill will require MSGC staff to summarize, analyze, and report geographic and demographic information about 10 cases per year, and that the geographical and demographic information on these 10 cases will be provided to MSGC by the Judicial Branch.

Due to the recent enactment of these laws, some implementation delay is assumed. Because California's law was implemented first, it is assumed that it is now fully implemented. For the People reports that California resented about 130 cases in the past year.

As between California's law and the bill, the prosecutor's degree of authority to initiate resentencing is assumed to be similar. The resentencing case volume is assumed to be approximately proportional to each state's prison population. Because California's prison population is 12.7 times larger than Minnesota's, MSGC assumes that Minnesota's annual resentencing case volume under the bill will be approximately $130 \div 12.7$, or 10 cases per year.

Expenditure and/or Revenue Formula

Based on the above assumptions, MSGC will absorb the costs of receiving, summarizing, analyzing, and reporting geographical and demographic data on 10 cases annually.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

2022 Minn. Stat. § 609.115.

2022 Minn. Sentencing Guidelines.

California Penal Code § 1172.1.

Staff resources estimated based on costs associated with mandated reporting under Minn. Stat. § 244.09, subd. 14.

E. Ann Carson, "Prisoners in 2021 Statistical Tables" (NCJ 305125) (Bureau of Justice Statistics (BJS), Dec. 2022), Table 7 (retrieved Feb. 14, 2023, at <https://bjs.ojp.gov/content/pub/pdf/p21st.pdf>)

Lim, May (forthepl.org) emails to Reitz, Nate (MSGC), Feb. 14, 2023.

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HF226 - 0 - Prosecutor-Initiated Sentence adjustments

Chief Author: **Kelly Moller**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/27/2023 11:59:07 AM**
 Agency: **Corrections 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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	Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
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: Karen McKey **Date:** 2/16/2023 11:38:29 PM
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State Cost (Savings) Calculation Details

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Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

H.F. 226 establishes a process for prosecutor-initiated sentence adjustments.

Under section 609.133, subdivision 3, the commissioner of corrections, a supervising agent, or an offender may request that a prosecutor review an individual case for a sentencing adjustment.

Under subdivision 6, the court must hold a hearing on a petition for a sentencing adjustment. At the hearing, department representatives and supervising agents may submit an oral or written statement to the court.

Assumptions

The bill's fiscal impact on the department would be negligible: the department assumes no IT impact, and other requirements are already accomplished under similar statutes such as when the department requests early discharge on probation cases. Other requirements such as submitting oral or written statements to the court would be a negligible cost.

The Minnesota Sentencing Guidelines Commission estimates that the new requirements will have a minimal correctional impact.

Expenditure and/or Revenue Formula

N/A

Long-Term Fiscal Considerations

N/A

Local Fiscal Impact

N/A

References/Sources

Department of Corrections staff
Minnesota Sentencing Guidelines Commission

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HF226 - 0 - Prosecutor-Initiated Sentence adjustments

Chief Author: **Kelly Moller**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/27/2023 11:59:07 AM**
 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

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Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	1	1	1	1
Total	-	1	1	1	1

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:** 2/27/2023 11:57:01 AM
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General Fund	-	150	82	82	82	82
Total	-	150	82	82	82	82
Biennial Total			232			164
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

HF 226 would authorize that the prosecuting authority responsible for the prosecution of an individual convicted of a crime may commence a proceeding, by filing a petition, to adjust the sentence of that individual at any time after the initial sentencing, provided the prosecutor does not seek to increase the period of confinement or, if the individual is serving a stayed sentence, increase the period of supervision.

The court shall hold a hearing on the petition no sooner than 60 days after service of the petition.

Assumptions

While the bill does not specifically provide the right to counsel at either the district court level or for an appeal, individuals who did not previously have a review with counsel, will be entitled to counsel as a first review under *State v. Deegan* (holding that a defendant's right to the assistance of counsel under Article I, section 6 of the Minnesota Constitution extends to one review of a criminal conviction, whether by direct appeal or a first review by postconviction proceeding). There will also be those cases where assistance would be provided to a former client since this re-sentencing option is now potentially available.

Since the prosecutors have complete control of the cases eligible under this bill, there will be fewer cases that actually go before the court. The impact public defenders will face is that almost all of the individuals who are ostensibly eligible will want to have their cases reviewed. The MSGC numbers are inclusive of cases that will go through the entire process after a petition is filed. This fiscal note is inclusive of all cases that will begin the process.” There will be a number of former clients and defendants who will want their cases looked at for help with the application and to try to get the prosecutor to proceed with a petition. For example, the Attorney General Conviction Review Unit had 824 applications of persons who wanted sentencing relief.

According to figures compiled by a workgroup of Minnesota attorneys formed to address Rule 27 and make recommendation to the Minnesota Supreme Court’s Criminal Rules Committee - familiar with the data and comprised of prosecutors and defense attorneys, examples of those individuals who could be impacted by this legislation include:

- MN’s aging population - 183 incarcerated people are over age 65, and 27 of them are incarcerated on non-violent and non-sex offenses.
- People incarcerated for crimes committed as youth - 54 committed their crimes at age 18 or under and have been incarcerated for 15 years or more.

· People who are incarcerated for non-violent offenses - for example, 58 are incarcerated on drug offenses and have served 7 years or more.

There could be many more due to the lengthy probation periods that people are serving in most of the judicial districts.

While the number of cases brought to and handled in District Court will be controlled by actions of the prosecutor's offices and may be minimal, the external impact on the appellate division of the public defenders office will be disproportionately high. _

Expenditure and/or Revenue Formula

Given the numbers and potential cases, there would be a need for one support staff position to assist with the intake of these cases. The cost of a Legal Office Assistant position at the mid-range of the salary range including salary and associated benefits is \$82,000. The review/intake of the initial surge of cases would also require the addition of the equivalent of a one half time contract attorney position (910 hours). Since this need would be one time there would be a need to contract for this. 910 hours at \$75 per hour or a total of \$68,250.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact:

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HF226 - 0 - Prosecutor-Initiated Sentence adjustments

Chief Author: **Kelly Moller**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/27/2023 11:59:07 AM**
 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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Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2023	FY2024	FY2025	FY2026	FY2027
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: Karen McKey **Date:** 2/16/2023 11:38:06 PM
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Dollars in Thousands	FY2023	FY2024	FY2025	FY2026	FY2027	
Total	-	-	-	-	-	-
Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

HF226 adds a new Minn. Stat. § 609.113, Sentence Adjustment, which authorizes the prosecutor to commence a proceeding to adjust a defendant’s sentence at any time provided the prosecutor does not seek to increase the period of confinement or supervision. The bill requires the prosecutor to make a reasonable and good faith effort to seek input from any identifiable victim, and authorizes the commissioner of corrections, a supervising agent, or the defendant to request that a prosecutor review a case. The bill provides that the petition for adjustment must include the defendant’s full name and any aliases, date of birth, and address, and a brief statement of the reason for the petition and details of the offense, including the court file number, date of conviction, and the names of any victims and whether there are any current or prior orders for protection, restraining orders, or no contact orders between the individuals. The petition must also include the defendant’s offense and criminal conviction history and information on any prior defendant requests for pardon or expungement. Filing fees are waived.

The bill requires the court to hold a hearing no sooner than 60 days after service of the petition. Representatives of the department of corrections, supervising agents, community treatment providers, and any other individual with relevant information may submit an oral or written statement to the court. If the court determines that substantial and compelling reasons exist to adjust the defendant’s sentence the court may modify the sentence in any way that does not increase the period of confinement or supervision, reduce or eliminate the amount of court-ordered restitution, or reduce or eliminate a term of conditional release required by law when a defendant is committed to the commissioner of corrections. The court under this process may not vacate the conviction, enter conviction for a different offense, or impose sentence for any other offense. The court must state its reasons for its decision in writing or on the record, and must complete and forward a sentence worksheet to the Sentencing Guidelines Commission as provided in Minn. Stat. § 609.115, subd. 1. Orders issued are treated as an order imposing or staying sentence.

The bill also amends Minn. Stat. § 244.09, subd. 15 (Report on sentencing adjustments) to require the Sentencing Guidelines Commission to include any sentence adjustments in its annual report to the legislature.

Assumptions

It is assumed that the court will not complete a sentencing worksheet but that consistent with section 609.115 the court will “cause a sentencing worksheet to be completed” and that the worksheet will be submitted by the prosecutor or the local agency in each county that is responsible for completing such worksheets as part of a presentence investigation report.

Although there is no specific venue or filing requirement in the bill it is assumed that all petitions will be filed into the criminal case at issue and that therefore much of the information required to be included in the petition, including the date of offense, jurisdiction, and date of conviction, will already be in the case record.

Because there are no requirements that prosecutors file these petitions in any case, and it is unknown how many cases might exist that would meet the requirements and whether the prosecutor in that case might file a petition, it is unknown

how many petitions will be filed with the court. It is assumed that although the bill applies to any crime, the petitions are likely to only be filed in cases with a felony conviction and sentence. It is assumed for purposes of this fiscal note, consistent with the information provided by the Sentencing Guidelines Commission, that the bill may result in 10 sentence adjustments per year statewide, which would not measurably impact the judicial branch resources required to process felony cases.

Expenditure and/or Revenue Formula

This bill is not anticipated to have a significant fiscal impact on the judicial branch.

Long-Term Fiscal Considerations

None

Local Fiscal Impact

None

References/Sources

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