

Consolidated Fiscal Note

2023-2024 Legislative Session

HF9033 - 0 - Felony Violations of Certain Protective Orders

Chief Author: **Dave Pinto**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/2/2024 3:07:49 PM**
 Lead Agency: **Sentencing Guidelines Comm**
 Other Agencies:
 Corrections Dept Public Defense Board

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
Corrections Dept						
General Fund	-	-	569	1,155	1,378	
Public Defense Board						
General Fund	-	-	1,388	3,392	3,392	
State Total						
General Fund	-	-	1,957	4,547	4,770	
	Total	-	-	1,957	4,547	4,770
				1,957		9,317

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
	FY2023	FY2024	FY2025	FY2026	FY2027	
Corrections Dept						
General Fund	-	-	6	13	15	
Public Defense Board						
General Fund	-	-	9	20.5	20.5	
	Total	-	-	15	33.5	35.5

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:** 2/2/2024 3:07:49 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

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
Corrections Dept						
General Fund		-	-	569	1,155	1,378
Public Defense Board						
General Fund		-	-	1,388	3,392	3,392
Total		-	-	1,957	4,547	4,770
Biennial Total				1,957		9,317
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Corrections Dept						
General Fund		-	-	569	1,155	1,378
Public Defense Board						
General Fund		-	-	1,388	3,392	3,392
Total		-	-	1,957	4,547	4,770
Biennial Total				1,957		9,317
2 - Revenues, Transfers In*						
Corrections Dept						
General Fund		-	-	-	-	-
Public Defense Board						
General Fund		-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-

HF9033 - 0 - Felony Violations of Certain Protective Orders

Chief Author: **Dave Pinto**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/2/2024 3:07:49 PM**
 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:** 1/24/2024 4:14:46 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

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 expands the list defined as a “crime of violence” in Minn. Stat. § 624.712, subd. 5, by adding three offenses: violation of an order for protection (“VOFP,” Minn. Stat. § 518B.01, subd. 14); violation of a restraining order (“VHRO,” Minn. Stat. § 609.748, subd. 6); and violation of a domestic abuse no contact order (“VDANCO,” Minn. Stat. § 629.75, subd. 2).

The bill is effective August 1, 2024.

Assumptions

Only felony VOFP, VHRO, and VDANCO offenses are added to the “crime of violence” list because Minn. Stat. § 624.712, subd. 5, limits the term to “felony convictions.”

A person previously convicted of a crime of violence, adjudicated delinquent for a crime of violence, or convicted as an EJJ for a crime of violence is banned from possessing a firearm or ammunition (Minn. Stat. § 624.713, subd. 1(2)). No lookback period is defined, so the ban is a lifetime ban.

The possession of a firearm or ammunition on or after August 1, 2024, by anyone having previously been convicted of a crime on the new list, is a violation of the ban. Thus, while the ban applies only to future firearm or ammunition possession, a felony VOFP, VHRO, or VDANCO conviction that occurred prior to August 1, 2024, will be sufficient to cause the ban to apply. (Tapia v. Leslie, Minn. 2020.)

A violation of the ban is a felony, with a statutory maximum penalty of 15 years imprisonment and/or a \$30,000 fine (Minn. Stat. § 609.165, subd. 1b(a) or 624.713, subd. 2(b)). This felony is subject to mandatory minimum prison sentences under Minn. Stat. § 609.11, including a five-year mandatory minimum penalty in subd. 5(b). This mandatory minimum penalty is waivable under certain circumstances described in subd. 8.

The addition of three new felonies to the “crime of violence” list will cause some increase in the number of violations of the ban. Because the ban is implicated by prior convictions of felonies on the list, the degree of the increase is assumed to be related to the degree to which the number of annual convictions on the new list has historically exceeded the number of annual convictions on the old list. Due to the COVID-19 health pandemic, the cases sentenced in 2020 and 2021 are not necessarily fair approximations of cases sentenced in the future.

According to MSGC monitoring data, from 2018 to 2022, 39,763 people were sentenced for felony-level offenses on the existing statutory “crime of violence” list (an average of 7,953 people a year). During the same time period, 4,247 people were sentenced for felony-level offenses on the bill’s “crime of violence” list, with felony VOFP, VHRO, and VDANCO added (an average of 849 people a year), which represents 10.6 percent of the case volume of the offenses on the existing list (849 ÷ 7,953). If the previously stated assumptions are accurate, then, the number of convictions and sentences for violations of the ban after August 1, 2024, will increase by 10.6 percent.

According to MSGC monitoring data, from 2018 to 2022, 2,450 people were convicted and sentenced for violating the lifetime ban under the provisions in Minn. Stat. §§ 609.165, subd. 1b(a); or 624.713, subd. 2(b) (“Certain Persons Not to Have Firearms or Ammunition”) (an average of 490 people a year). As stated above, it is assumed that this number will increase by 10.6 percent to 542 people (an increase of 52 people) with the bill’s additions of felony VOFP, VHRO, and VDANCO to the “crime of violence” list.

The prison rate, from 2018 to 2022, for Certain Persons Not to Have Firearms or Ammunition, was 60 percent. This is an annual average of 294 people who received prison sentences. The average pronounced sentence was 56.3 months (serve 2/3 term of imprisonment = 37.5 mos.). It is estimated that those currently receiving prison sentences occupy 919 prison beds ($37.5 \times 294 \div 12$). Based on the 10.6 percent estimated increase in convictions and sentences for Certain Persons Not to Have Firearms or Ammunition cases, it likewise is assumed that there will also be a 10.6 percent increase in the number of prison beds needed, resulting in the need for 97 additional prison beds ($919 \times 10.6\%$).

The remaining 21 new annual sentences for Certain Persons Not to Have Firearms or Ammunition ($52 \times 40\%$) will not receive prison sentences because of downward dispositional departures. Most will, instead, receive probation sentences with local conditional confinement being a possible condition of probation. From 2018 to 2022, the average rate of conditional confinement for Certain Persons Not to Have Firearms or Ammunition was 89 percent with an average 76 days pronounced (serve 2/3 term = 51 days). It is assumed that these rates and durations will apply to the 21 new annual probationary sentences.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Based on the assumptions above, there will be an eventual need for 97 additional prison beds: 49 beds in FY2025, 68 beds in FY2026, 75 beds in FY2027, for a total of 97 beds by FY2034, and every year after. The timing of the total beds needed is displayed in the table, below.

Table 1. Prison-Bed Timing

Fiscal Year	Implementation Timing (%)	Prison Beds
2025	50	49
2026	70	68
2027	75	73
2028	80	78
2029	85	82
2030	87	84
2031	90	87
2032	95	92
2033	97	94
2034	100	97

Local Fiscal Impact

Based on the assumptions above, three additional local correctional beds will be needed statewide: 19 people ($21 \times 89\%$) will receive local confinement as a condition of felony probation. ($19 \text{ people} \times 51 \text{ days to serve} = 969 \div 365 = 3 \text{ local correctional beds.}$)

References/Sources

2018-2022 MSGC Monitoring data.

Tapia v. Leslie, 950 N.W.2d 59 (Minn. 2020).

Agency Contact:

Agency Fiscal Note Coordinator Signature: Jill Payne

Phone: 651-757-1725

Date: 1/22/2024 3:13:57 PM

Email: jill.payne@state.mn.us

HF9033 - 0 - Felony Violations of Certain Protective Orders

Chief Author: **Dave Pinto**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/2/2024 3:07:49 PM**
 Agency: **Corrections 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	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	569	1,155	1,378	
Total	-	-	569	1,155	1,378	
Biennial Total			569		2,533	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	6	13	15
Total	-	-	6	13	15

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:** 1/31/2024 8:34:11 AM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

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 Dollars in Thousands	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	569	1,155	1,378
Total	-	-	569	1,155	1,378
Biennial Total			569		2,533
1 - Expenditures, Absorbed Costs*, Transfers Out*					
General Fund	-	-	569	1,155	1,378
Total	-	-	569	1,155	1,378
Biennial Total			569		2,533
2 - Revenues, Transfers In*					
General Fund	-	-	-	-	-
Total	-	-	-	-	-
Biennial Total			-		-

Bill Description

H.F. 9033 expands the definition of "crime of violence" under Minnesota statutes 624.712, subdivision 5 to include violation of an order of protection; violating a restraining order; and violation of a domestic abuse no contact order.

Assumptions

Prison bed costs are based on a marginal cost per diem of \$42.50 for FY 2024, \$50.82 for FY 2025, \$51.95 for FY 2026 and \$53.06 for FY 2027 and each subsequent year. This includes marginal costs for all facility, private and public bed rental, health care and support costs.

The annual cost is estimated by multiplying the number of prison beds needed by the subsequent annual per diem. Unless otherwise noted, prison beds are phased in on a quarterly basis.

Prison bed FTE impact for the increase in the offender population assumes 80 percent of the ongoing bed impact is personnel-related and the average salary per FTE is \$72,000 per year including benefits.

This bill is effective August 1, 2024.

Expenditure and/or Revenue Formula

Cost of Prison Beds

Fiscal Year	2024	2025	2026	2027
Number of Prison Beds	0	49	68	73
Cost of Prison Beds (in 000s)	0	569	1,155	1,378
FTE	0	6	13	15

Long-Term Fiscal Considerations

The Minnesota Sentencing Guidelines Commission (MSGC) estimates that there will be an eventual need for 97 additional

prison beds beginning in FY 2034 and each year thereafter.

Local Fiscal Impact

MSGC estimates that an additional 3 local correctional beds will be needed statewide.

References/Sources

Department of Corrections Staff

MSGC

Agency Contact:

Agency Fiscal Note Coordinator Signature: Kwesi Pasley

Phone: 651-259-3667

Date: 1/30/2024 6:03:43 PM

Email: kwesi.pasley@state.mn.us

HF9033 - 0 - Felony Violations of Certain Protective Orders

Chief Author: **Dave Pinto**
 Committee: **Public Safety Finance & Policy**
 Date Completed: **2/2/2024 3:07:49 PM**
 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

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
General Fund	-	-	1,388	3,392	3,392	
Total	-	-	1,388	3,392	3,392	
Biennial Total			1,388		6,784	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2023	FY2024	FY2025	FY2026	FY2027
General Fund	-	-	9	20.5	20.5
Total	-	-	9	20.5	20.5

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:** 2/2/2024 2:47:18 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

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	
General Fund	-	-	1,388	3,392	3,392	
Total	-	-	1,388	3,392	3,392	
Biennial Total			1,388			6,784
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	-	1,388	3,392	3,392	
Total	-	-	1,388	3,392	3,392	
Biennial Total			1,388			6,784
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	
Total	-	-	-	-	-	
Biennial Total			-			-

Bill Description

The bill amends M.S. 624.712(5) defining crimes of violence to include felony violations of Order for Protection (518B.01(5)), felony violation of a Restraining Order (609.748(6)), and a felony violation of a domestic abuse no contact order 629.75(2)). If these are included in the crimes of violence and prohibit gun possession we would expect that many of these cases will go to trial.

Assumptions

In CY 2023 public defenders opened 1,789 cases under the statutes referenced in the bill. This does not include the potential for a significant increase in the number of cases filed against ineligible persons who can possess a firearm/ammunition (624.713(2)).

With a new consequence of not being allowed to possess a firearm, the trial rate rate will increase significantly. If we assume that of the 1,789 cases 25% will now go to trial (current felony trial rate is approximately 5%) this would mean an additional 358 trials annually. Assuming a three day trial and three days to prepare this would require an additional 17,184 hours (9 FTEs) of attorney time on the trial level. Board standards call for one FTE investigator for every six FTE attorneys, one paralegal for every 9 FTE attorneys, one dispositional advisor for every 8 FTE attorneys, and one legal secretary/assistant for every 4 FTE attorneys. Based on this there would be a need for an additional 1.5 FTE investigators, 1 paralegal, 1 dispositional advisor, and 2 legal secretary/assistants.

Appellate Level

Assuming a success rate at trial of 25% and assuming that 50% of the guilty verdicts are appealed there would be a total of 134 appellate files opened annually. The appeals would more than likely begin in the second year after the effective date, and we would not expect to reach this level until later in the second year. Assuming an attorney could open 25 direct appeals in a year there would be a need for 5 FTE attorneys, as well as 1 FTE Legal Assistants. In addition, every appellate case has to have a transcript of the proceedings. The average is approximately 200 pages per day, at \$750 or \$2,250 per trial, for a total of \$301,000 annually.

The positions would be phased in during the first year with 9 FTE positions in FY 2025 and 20.5 FTE positions in the out years.

Expenditure and/or Revenue Formula

At the district court level there would be a need for 9 FTE attorney positions. The estimated cost of an attorney in the middle of the range is \$163,500 with salary, benefits and associated non personnel costs; 1.5 investigator positions at a cost of \$133,000 per FTE; 1 paralegal position at a cost of \$133,000; 1 dispositional advisor position at \$136,000; 2 legal office assistant positions at \$111,372 per FTE. Total annual district level cost \$2,163,000. Phased in over the last half of the fiscal year would result in a cost of \$1,081,000 in the first year.

On the appellate level there would be a need for 5 FTE attorney positions. The estimated cost of an attorney in the middle of the range is \$163,500 with salary, benefits and associated non personnel costs; 1 legal office assistant position at \$111,372 per FTE. In addition, every appellate case has to have a transcript of the proceedings. The average is approximately 200 pages per day, at \$750 or \$2,250 per trial, for a total of \$301,000 annually. Total annual cost of \$1,229,000. We would not expect to see the first appeals before the last quarter of the fiscal year. Phased in costs on the appellate level during the first year would be \$307,000.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact:

Agency Fiscal Note Coordinator Signature: Kevin Kajer

Phone: 612-279-3508

Date: 2/2/2024 9:12:26 AM

Email: Kevin.kajer@pubdef.state.mn.us