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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3407

02/14/2022

Authored by Novotny

The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; requiring jury trial for certain criminal sentences; amending
1.3 Minnesota Statutes 2020, sections 244.10, by adding a subdivision; 611A.03,
1.4 subdivision 1; 611A.037, subdivision 1; 611A.038.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2020, section 244.10, is amended by adding a subdivision
1.7 to read:

1.8 Subd. 5b. Procedure in cases where court intends to consider mitigated departure. (a)
1.9 If the court intends to consider a mitigated departure from the Sentencing Guidelines based
1.10 on agreement of the parties, the defendant's motion, or the court's own initiative, the court
1.11 shall allow a sentencing jury of 12 members to determine whether there is proof beyond a
1.12 reasonable doubt to support the existence of any mitigating factor that may be used as a
1.13 reason for departure if:

1.14 (1) the defendant caused the death of another in the commission of the crime; or

1.15 (2) any identifiable victim has communicated objections to a mitigated departure directly
1.16 to the court, to a prosecutor, or to an officer conducting a presentence or predispositional
1.17 investigation under section 611A.037.

1.18 (b) The district court shall allow a unitary trial and final argument to a jury regarding
1.19 both evidence in support of the elements of the offense and evidence in support of mitigating
1.20 factors when the evidence in support of the mitigating factors would:

1.21 (1) be admissible as part of the trial on the elements of the offense; and

1.22 (2) not result in unfair prejudice to the defendant.

2.1 (c) The district court shall bifurcate the proceedings, or impanel a resentencing jury, to
2.2 allow for the production of evidence, argument, and deliberations on the existence of factors
2.3 in support of a mitigated departure after the return of a guilty verdict when the evidence in
2.4 support of a mitigated departure:

2.5 (1) includes evidence that is otherwise inadmissible at a trial on the elements of the
2.6 offense; and

2.7 (2) would result in unfair prejudice to the defendant.

2.8 (d) Under the procedure described in paragraphs (b) and (c), the existence of each
2.9 mitigating factor shall be determined by use of a special verdict form.

2.10 (e) Following a hearing held under this section, the court may only impose or stay a
2.11 sentence that deviates from the Sentencing Guidelines applicable to the case and impose a
2.12 mitigated sentence based on a mitigating factor found by a jury.

2.13 Sec. 2. Minnesota Statutes 2020, section 611A.03, subdivision 1, is amended to read:

2.14 Subdivision 1. **Plea agreements; notification of victim.** Prior to the entry of the factual
2.15 basis for a plea pursuant to a plea agreement recommendation, a prosecuting attorney shall
2.16 make a reasonable and good faith effort to inform the victim of:

2.17 (1) the contents of the plea agreement recommendation, including the amount of time
2.18 recommended for the defendant to serve in jail or prison if the court accepts the agreement;
2.19 and

2.20 (2) the right to be present at the sentencing hearing and at the hearing during which the
2.21 plea is presented to the court and to express orally or in writing, at the victim's option, any
2.22 objection to the agreement or to the proposed disposition including the right to object to a
2.23 mitigated departure from the Sentencing Guidelines. If the victim is not present when the
2.24 court considers the recommendation, but has communicated objections to the prosecuting
2.25 attorney, the prosecuting attorney shall make these objections known to the court.

2.26 Sec. 3. Minnesota Statutes 2020, section 611A.037, subdivision 1, is amended to read:

2.27 Subdivision 1. **Victim impact statement.** A presentence investigation report prepared
2.28 under section 609.115 shall include the following information relating to victims:

2.29 (1) a summary of the damages or harm and any other problems generated by the criminal
2.30 occurrence;

3.1 (2) a concise statement of what disposition the victim deems appropriate for the defendant
3.2 or juvenile court respondent, including reasons given, if any, by the victim in support of
3.3 the victim's opinion and whether the victim objects to a mitigated departure from the
3.4 Sentencing Guidelines; and

3.5 (3) an attachment to the report, consisting of the victim's written objections, if any, to
3.6 the proposed disposition if the victim provides the officer conducting the presentence
3.7 investigation with this written material within a reasonable time prior to the disposition.

3.8 Sec. 4. Minnesota Statutes 2020, section 611A.038, is amended to read:

3.9 **611A.038 RIGHT TO SUBMIT STATEMENT AT SENTENCING.**

3.10 (a) A victim has the right to submit an impact statement to the court at the time of
3.11 sentencing or disposition hearing. The impact statement may be presented to the court orally
3.12 or in writing, at the victim's option. If the victim requests, the prosecutor must orally present
3.13 the statement to the court. Statements may include the following, subject to reasonable
3.14 limitations as to time and length:

3.15 (1) a summary of the harm or trauma suffered by the victim as a result of the crime;

3.16 (2) a summary of the economic loss or damage suffered by the victim as a result of the
3.17 crime; and

3.18 (3) a victim's reaction to the proposed sentence or disposition and whether the victim
3.19 objects to a mitigated departure from the Sentencing Guidelines.

3.20 (b) A representative of the community affected by the crime may submit an impact
3.21 statement in the same manner that a victim may as provided in paragraph (a). This impact
3.22 statement shall describe the adverse social or economic effects the offense has had on persons
3.23 residing and businesses operating in the community where the offense occurred.

3.24 (c) If the court permits the defendant or anyone speaking on the defendant's behalf to
3.25 present a statement to the court, the court shall limit the response to factual issues which
3.26 are relevant to sentencing.

3.27 (d) Nothing in this section shall be construed to extend the defendant's right to address
3.28 the court under section 631.20.