

CRIMINAL SEXUAL CONDUCT STATUTORY REFORM WORKING GROUP

Report to the Minnesota Legislature

January 2021



Minnesota Department of Public Safety
Office of Justice Programs

EXECUTIVE SUMMARY

In 2019, the Minnesota Legislature directed the Department of Public Safety (DPS) to convene a multidisciplinary working group to examine the statutory framework for criminal sexual conduct crimes.¹ The legislation that created the Criminal Sexual Conduct Statutory Reform Working Group (CSC SRWG) arose from a concern about gaps in the current scheme as well as the concern that the current framework was confusing and unwieldy. The working group was to include the voices of victims and survivors and those from marginalized communities.

In this year-long process, the working group broke into a number of subcommittees for focused discussions on specific topics, such as age-based offenses, incapacitation, and restructuring. From this subcommittee work emerged a series of proposals to clarify provisions and address gaps and shortcomings with the aim of creating a more understandable and consistent statutory framework that addresses problems identified by victims/survivors without creating additional disparities. These proposals were distributed to the entire working group for review and final input. Those proposals that had general agreement in the subcommittees and retained that general agreement after the review process, are included in this report.

The recommendations include the following:

- Modify the definitions of “coercion” and “significant relationship.”
- Address cases involving complainants/victims who are voluntarily intoxicated.
- Create a crime of “sexual extortion.”
- Create a felony-level penetration CSC fifth-degree offense.
- Address the problem of overlapping definitions of “force,” “bodily harm” and “personal injury” and its impact on CSC first- and CSC third-degree cases.
- Modify the age-related offenses to increase the age of the child for the most serious cases, provide consistency in age differentials, and shorten the time frame for when mistake of age defense is available.
- Move the list of prohibited occupational relationships into the definitions section and clarify provisions.
- Provide a short-term and long-term plan for restructuring the statutory scheme.

Some issues brought to the working group’s attention did not result in any suggested proposal. These are noted in the report. In addition, during this process, there were a number of issues presented or discussed related to the victim’s experience prior to charging which, while relevant to the issue of the CSC prosecution, were considered beyond the scope of the statutory mandate. A summary of these is included in Supplement 1. Finally, one of the subcommittees looked at the predatory offender registry statutes and formulated a set of proposals. However, this topic too was outside the scope of the statutory mandate. These proposals are included in full in Supplement 2, it is important to note there was not agreement on these proposals among all working group members. In addition to a summary of the recommendations, a complete set of statutory language with proposed changes is included in Appendix 1 of this report.

These recommendations on the CSC statutory framework are respectfully submitted to the legislature by the CSC SRWG.

¹ Laws of Minnesota 2019, chapter 5, article 4, section 21.

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STATUTORY AUTHORITY

Laws of Minnesota 2019, chapter 5, article 4, section 21.

CRIMINAL SEXUAL CONDUCT STATUTORY REFORM WORKING GROUP; REPORT.

Subdivision 1. Direction. By September 1, 2019, the commissioner of public safety shall convene a working group on criminal sexual conduct statutory reform. The commissioner shall invite representatives from city and county prosecuting agencies, statewide crime victim coalitions, the Minnesota judicial branch, the Minnesota Board of Public Defense, private criminal defense attorneys, the Department of Public Safety, the Department of Human Services, the Sentencing Guidelines Commission, state and local law enforcement agencies, and other interested parties to participate in the working group. The commissioner shall ensure that the membership of the working group is balanced among the various representatives and reflects a broad spectrum of viewpoints, and is inclusive of marginalized communities as well as victim and survivor voices.

Subdivision 2. Duties. The working group must review, assess, and make specific recommendations with regard to substantive and technical amendments to Minnesota Statutes, sections 609.341 to 609.3451, 609.3453 to 609.3455, 609.349, 628.26, and any other related criminal laws.

Subdivision 3. Report to legislature. The commissioner shall file a report detailing the working group's findings and recommendations with the chairs and ranking minority members of the house of representatives and senate committees and divisions having jurisdiction over public safety and judiciary policy and finance by January 15, 2021.

ACKNOWLEDGMENTS

The CSC SRWG, convened by the Minnesota Department of Public Safety Office of Justice Programs, was made up of victims and survivors, victim advocacy and service professionals, and criminal justice professionals from all parts of the system whose work includes CSC crimes in some way. They contributed considerable time over 12 months to review Minnesota's CSC statutory framework and explore ways to make it more understandable and to address identified gaps. In addition, the Steering Committee provided valuable insight and direction in the process, and working group members volunteered to be on the report review team, providing essential feedback and guidance on this report.

INTRODUCTION

In 2019, the Minnesota Legislature directed the Department of Public Safety to convene a CSC SRWG to review, assess, and make specific recommendations for Minnesota’s criminal sexual conduct statutes.² According to this directive, the working group was to include representation from prosecutors, criminal defense attorneys, the Minnesota judicial branch, the statewide victim coalitions, law enforcement, and others. The aim was to include membership that reflected a broad spectrum of viewpoints and was inclusive of marginalized communities as well as victim and survivor voices.

The formation of the working group was prompted by a number of concerns, starting with the confusing nature of current statutory scheme, which made it difficult for criminal justice professionals, victims, and the public to understand. Further, as legislative testimony in support of the working group indicated, there were well-known concerns with some statutory provisions, for example, with the definition of mental incapacitation due to intoxication. Rather than modify and update the statutes in a piecemeal fashion year after year, the legislative direction was to review the statutes as an entire framework, resulting in an updated, cohesive statutory scheme. The goal of forming the working group was to provide sufficient time and attention to examine these problems and come up with possible solutions in a multidisciplinary fashion.

WORKING GROUP FORMATION AND ACTIVITY

In the summer of 2019, the membership of the working group was identified, a steering committee was formed, and the first meeting was held on August 15. There were five subcommittees formed at the beginning of the process, with a sixth added several months later. All working group members were invited to decide whether they wanted to participate in any subcommittees. Some members chose not participate on any subcommittee, but waited until the proposals were developed and weighed in at that stage.

The subcommittees were:

- Consent
- Age
- Capacity
- Force/Coercion/Restructuring
- Professions/Occupations
- Outcomes

The Consent Subcommittee convened first, starting the work with an examination of the definition of consent. From there, the Age, Capacity, Force/Coercion/Restructuring, and Professions/Occupations subcommittees met simultaneously, with the Outcomes Subcommittee added in March.

Over a period of 13 months, these subcommittees met to discuss how to address the identified gaps and problematic statutory framework. For some topics, smaller “sub-subcommittees” were formed to work out language to present to the larger subcommittee. To help inform the discussion, subject matter experts, including some working group members, were ask to present at subcommittee meetings. Members were provided updates periodically and all meeting dates and materials were posted on the public working group website. Any member could attend any of the subcommittee meetings, and the meetings were open to the public.

From these subcommittees emerged a series of proposals that were then distributed to the full working group to review. To rise to the level of a proposal that would move on, there had to be general support from the subcommittee members. To be included in the final slate of recommendations, that support had to continue

² [2019 Minnesota Session Laws, Chapter 5, Article 4, Sec. 21.](#)

without significant opposition in the final vetting process with all working group members. Some of these are offered with the reservations expressed by working group members. In addition, there is one proposal that provides two options for the legislature, and another that is offered as a two-stage proposal.

Ultimately, some proposals did not have the general agreement of the working group members through the final review process, and some ideas were considered outside the scope of the statutory mandate. These are noted below, with a full listing of those ideas included in supplements to the report. In addition, feedback from stakeholders did lead to a few minor refinements in language, without a change in the underlying intent of the proposal. Finally, those issues that did not have sufficient interest and support did not proceed to a more focused discussion on a possible proposal and they are also noted in this report.

CRITICAL ISSUES DURING DISCUSSIONS

The working group was directed to focus on the core criminal sexual conduct (CSC) statutes. However, the discussions inevitably went beyond the CSC statutory framework. Discussions included victim/survivor experiences and barriers to successful engagement with the criminal justice system; the disparities in our criminal justice system and the impact of any recommendations that would further those disparities; and the impact of the predatory offender registration requirements on offenders, particularly juveniles. Whether discussed alongside or intertwined with the conversation about statutory reform, these issues were present throughout the working group process. Given this, it was important to working group members that these concerns and perspectives be acknowledged and prominently highlighted in the report.

Victim/Survivor experience

Starting in the summer of 2018 and throughout the rest of that year, the issue of the criminal justice response to sexual assault in Minnesota was front and center in the media through a series of articles the Star Tribune published called [Denied Justice](#). The series described the negative experiences of victims and survivors, many of whom self-identified, when they reported their sexual assault to a law enforcement agency. This series prompted a number of multi-disciplinary efforts to consider ways to improve the criminal justice system response to sexual assault cases³ and calls for a multidisciplinary working group to review and make recommendations to improve Minnesota's criminal sexual conduct statutes.

Subsequently, in 2019, the legislature directed the formation of the CSC SRWG with membership to include the voices of individuals from marginalized and traditionally underserved communities and victims/survivors in its examination of the CSC statutory scheme and considerations for reform. The working group prioritized these voices, setting the stage to hear from members of these communities at the outset of their work. During the launch meeting of the working group on Aug. 15, two stakeholder groups — the Victim/Survivor Group and the Underrepresented Communities Service Providers Group — presented to the full working group.⁴ These presentations highlighted the continuing concerns about how sexual assault victims are treated, how their cases are handled, and the barriers and challenges victims face in seeking justice through the criminal justice system. Most importantly, these groups underscored how people of color, indigenous/native people, people who identify as LGBTQIA+, people with disabilities, and other marginalized groups of Minnesotans do not have equal access to the criminal justice system.

³ See Minnesota Attorney General's Working Group on Sexual Assault [Report](#); Minnesota Peace Officer Standards and Training (POST) Board Model Policy/Standards Working Group [Model Policy](#); Minnesota POST Board Training Working Group [Updated Training Objectives](#) (Category 2, section 17).

⁴ The reports from each presentation are posted on the CSC Statutory Report Working Group website: [Victim/Survivor Group](#); [Underrepresented Communities Victim Service Providers Group](#).

The presentations provided an important starting point in the work, grounding the members in the core focus: the sexual assault victim/survivor. The presentations focused on the “front end” response in the victim’s experience with the criminal justice system prior to charging. While the statutory directive of the working group was to look at the CSC statutory scheme, the working group members recognized that what happens in a case before it reaches a prosecutor’s desk greatly influences a victim’s interest in participating in prosecution as well as the ability of the prosecutor to file charges. For these reasons, the concerns and suggestions the presentations raised initially, as well as those brought up along the way, were documented and compiled for inclusion. Supplement 1 outlines the identified concerns raised and suggestions offered.

Acknowledging disparities in the criminal justice system

Throughout the discussions of the working group, the racial and economic disparities in the criminal justice system were brought up repeatedly, from how Black, indigenous and people of color (BIPOC) enter the system, to the barriers created by collateral consequences of criminal sexual conduct convictions, to the disproportionate number of BIPOC individuals who are incarcerated. Further disparities are recognized based on socio-economic status, immigration status and the rural/urban divide. A number of members were reluctant to support adding to or expanding the existing set of criminal laws related to criminal sexual conduct crimes as long as racial and economic disparities in the criminal justice system exist. As one member said, “In order to construct statutes and a legal system that provide safety for all those experiencing violence, the system must first address racial bias.”

Alongside conversations about the disparate impacts on defendants, the working group also discussed the disparate treatment of victims of sexual violence. Individuals who experience sexual violence have less access to justice because of race, ethnicity, immigration status, language, physical or cognitive ability, sexual orientation, and/or gender identity. These individuals also experience a disproportionately high level of sexual violence victimization. These and other barriers to victims were also considered by the working group.

The statutory reforms that emerged from this process are aimed at improving the criminal justice system’s response to CSC crime, providing an easier framework for all practitioners, and providing better outcomes for victims. At the same time, there is an acknowledgement that these are reforms to an existing system for which there are broader concerns about fairness and equity.

Many members of the working group and the steering committee expressed the desire that, while moving ahead with offering recommendations for CSC statutory reform, the underlying concern of racial disparities be clearly reflected in this report to the legislature. Further, to acknowledge the significant concerns of those members about expanding the criminal justice “footprint” and the resultant disproportionate impact, those proposals that involve the expansion or addition of a new crime are clearly delineated.

Predatory offender registration

During nearly all of the working group subcommittee meetings, members consistently expressed concerns about the predatory offender registration (POR) requirements for those convicted of CSC crimes. Given that the working group would be putting forward proposals that would increase the number of persons brought into the system and the concern that this would disproportionately impact BIPOC and other marginalized communities, working group members urged consideration of POR reform proposals in this process. These concerns were uniformly expressed by working group members, including prosecutors, advocates and victim/survivors, and consequently, POR reform became the focus of the Outcomes Subcommittee.

During the first meeting of the Outcomes Subcommittee, there was a panel presentation on Minnesota’s POR scheme, the impact on offenders, and the concerns about its effectiveness in achieving the goal of public safety. There were many concerns raised that the current scheme casts too wide a net, requiring many convicted persons

to register who do not pose a risk to public safety, resulting in a registry that is so large that it is not an effective tool for public safety. During subsequent meetings, ideas for POR reform were discussed, with particular attention focused on juvenile offenders given their age, level of maturity and development, and nature of offenses (for example, those based on age differential rather than predatory behavior).

From these discussions emerged a set of statutory reform proposals that members wanted to include in this report. However, during the final review process with the full working group, concerns were raised that the unintended consequences of these recommendations were not considered, that there was a need for broader input involving more stakeholders, especially law enforcement, and that POR reform was outside the statutory mandate for the working group. There was, however, general agreement of the need for a legislatively mandated working group devoted to examining Minnesota's POR framework. Consequently, a proposal for such is included in the proposal section below. The remaining POR reform proposals are included in Supplement 2 of this report to reflect the viewpoints of working group members and to provide a starting point for future discussions.

PROPOSALS

This section contains a summary of the proposals that emerged from the working group. The statutory language is contained in Appendix 1.

Revise definition of coercion

This proposal clarifies the language of coercion and provides for the situation where the complainant may fear infliction of bodily harm by someone other than the actor, such as an accomplice.

609.341, subd. 14. **Coercion.** "Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear ~~that the actor will inflict~~ the infliction of bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant to accomplish the act. ~~that causes the complainant to submit to sexual penetration or contact against the complainant's will.~~ Proof of coercion does not require proof of a specific act or threat.

Sexual extortion

This proposal creates a new crime of sexual extortion, where an actor uses the threat of harm other than physical harm, which results in unwanted sexual contact. It was created in recognition of the experiences of many survivors who felt compelled to comply with unwanted sexual conduct because of extortion or blackmail. The threats under this proposal are regularly experienced by victims/survivors of sexual violence and are unable to be charged because they are not prohibited acts under Minnesota's CSC statutes:

- A threat related to a complainant's profession or employment, including withholding, eliminating or damaging.
- A threat related to a complainant's housing such as withholding a housing opportunity, increasing the cost, or losing current housing.
- A threat to report that the complainant committed a crime, whether true or false.
- A threat to report the complainant's immigration status to immigration or law enforcement authorities that could expose the complainant to legal action.
- A threat to disseminate private sexual images of the complainant.
- A threat to expose any fact or piece of information about the complainant, such as sexual orientation or gender identity, whether true or false, that would tend to subject the complainant to hatred, contempt,

ridicule, discrimination, or to the disruption of the complainant's significant relationships or faith practice.

This proposal is put forward without a specific recommendation regarding placement or penalty.

The sexual extortion statute is modeled, in part, on the criminal coercion statute, Minnesota Statutes, section 609.27. Following the crafting of this proposal, the Minnesota Supreme Court decided in [State v. Jorgenson](#), A19-0323 (Minn. July 22, 2020) that a portion of the criminal coercion was unconstitutional. Further consideration of the sexual extortion proposal would need to examine the portion of the proposal related to the threat to expose any fact or piece of information about the complainant that would subject to them hatred, contempt, ridicule, or discrimination.

✓ *This proposal adds a new crime to the statutory scheme, which would bring more persons into the criminal justice system.*

Remove "force" from CSC 3 and CSC 4

Under the current statutory scheme, a person is guilty of CSC first degree (penetration) or CSC second degree (contact) if the actor causes personal injury to the complainant and the actor uses force or coercion. In contrast, CSC third and fourth degree only require that the actor uses force or coercion. Because of the overlapping definitions of force, bodily harm and personal injury,⁵ there is a concern that the same conduct could be charged under both CSC first degree and CSC third degree, or under both CSC second degree and fourth degree, raising a constitutional issue. That is, two persons who commit the same acts could be charged differently, with significantly different sentences.⁶

To resolve this problem, this proposal removes the element of "force" from CSC third and fourth degrees, sections 609.344, subdivision 1(c) and 609.345, subdivision 1(c).

Fifth degree CSC 5

One gap in the statutory scheme identified by members of the working group was the difficulty addressing incidents of nonconsensual sexual penetration where there is no proof of force or coercion. These are offenses that the public generally recognizes as criminal behavior but are not codified in our current statute. Absent proof of force or coercion, the only potential charge is fifth-degree criminal sexual conduct – a gross misdemeanor. This proposal amends CSC fifth degree to create a felony-level fifth-degree CSC penetration crime that does not require a showing of force or coercion.

✓ *This proposal adds a new crime to the statutory scheme, which would bring more persons into the criminal justice system.*

⁵ "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition (Minnesota Statutes, section 609.02, subdivision 7); "personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy condition (Minnesota Statutes, section 609.02, subdivision 7); "force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm (Minnesota Statutes, section 609.02, subdivision 7).

⁶ For a discussion on this and other issues related to the statutory framework, see Yauch-Erickson, J. (2013). [Minnesota's Criminal Sexual Conduct Statutes: A Call for Change](#), *William Mitchell Law Review*, 39, 1623.

Restructuring

One of the issues that prompted the creation of the CSC SRWG was the confusing and unwieldy nature of current statutory scheme. Complaints about its understandability came from all corners of the criminal justice system, victims/survivors, and advocates. Through a series of subcommittee and sub-subcommittee meetings, members talked at length about how to approach the task, finally landing on two options for restructuring the CSC statutes: (1) a “wholesale” approach that contemplates a complete rebuild of the statute, and (2) a “revision” approach that keeps much of the current framework intact, but makes refinements and reorganizes to improve understandability of the statute.

Members advocating for the positions prepared statements explaining the rationale for the respective approaches, which are included here:

Revision approach position statement

A common criticism of the current CSC statutes is that they are complicated and difficult to understand. But there are good things about the current statutes too: They are comprehensive, they comport with the laws in other states (which has value for registration and use of convictions, etc.), the case law is well-developed based on the existing framework, and the structure is actually relatively straightforward once one has familiarized themselves with it. CSC 1 and 3 involve penetration offenses; CSC 2 and 4 are the sexual contact statutes. The current statutory language gets complicated in the intermingling of crimes involving children (and different definitions/requirements for crimes for kids under 13), and the rather lengthy descriptions of the elements.

This revision attempts to address those concerns by providing a clean and simple solution to the structure of the current statutory framework, first by creating a second subdivision to apply to Child Victims, and second by adding headers to the elements to better guide the reader to comprehend the essence of the crime. With “Adult Victims” and “Child Victims” distinguished from one another, the reader will receive guidance in identifying the crimes, and it will logically follow the existing separate sentencing guidelines for CSC — the sentencing guidelines consider the age of the victim first in their formula to determine sentences.

Wholesale approach position statement

The current CSC statutes are antiquated and need a wholesale rebuilding to approach modern views on behaviors to be criminalized, punishments received, and accounting for disparities in use and effects on underrepresented populations. The proposed statutory rebuild would operate under entirely new statutes, under the suggestion that they be placed in their own statutory chapter – separate from the criminal code. The purpose of this rather drastic change is to reflect the unique effects and consequences of CSC. This separation would also be reflective of the already existing, and separate, sentencing guidelines for CSC.

Under this new model, there would be essentially five “base” crimes. Each base crime would criminalize penetration or contact on a victim that is either adult or underage. The specific factual circumstance of the CSC would be accounted for by “adjustments.” These adjustments would rest in statutory subdivisions that allow them to be added to the base crime to enhance factual specifics and potential punishments. Adjustments would include (non-exclusively): age, capacity, professions, positions of authority, severity of injury, weapons, group conduct, etc. These adjustments could be added to any of the base crimes,

provided they do not contradict the base crime itself, and allow for factual specificity and punishment options that have not previously existed.

There was general support from the subcommittee for the wholesale approach: however, because of the amount of work needed for a complete rebuild, the subcommittee felt there was not enough time to accomplish this task because it would involve a significant shift in starting point, terminology, and structure, along with considerations related to sentencing provisions.⁷ Instead, it is proposed that the minor refinements and reorganization from the revision approach be recommended at this stage, and that the legislature form another CSC work group to craft a new CSC statutory framework.

The refinements and reorganization made are reflected in the proposed bill language included in Appendix 1. The other proposals that emerged from the working group are not at odds with potential subsequent work on a new CSC statutory framework.

Age related

Three major changes to CSC statutes emerged where an element of the crime is the age of the complainant or the age differential between the actor and the complainant. These proposals were considered by the Age Subcommittee.

The age of consent in Minnesota is 16; however, the current statutory scheme provides protections to complainants age 16-17 in situations where the actor is in a position of authority or in a significant family or household relationship.⁸ In general, the statutory scheme places greater penalties on crimes against young victims/complainants (especially age 12 and under), and greater penalties when the age differential between actor and complainant is more than 24 or 36 months, and in some cases, more than 48 months.⁹

1. **Increase age of victim/complainant in category of greatest protection:** The first proposal raises the defining age in certain age-based offenses from age 12 and under to age 13 and under.¹⁰ This places complainants who are age 13 or younger in a greater protected category than those complainants age 14 or older. If the actor is more than 36 months older than the complainant, then the crime is either CSC first degree (penetration/contact) or CSC second degree (contact). If the actor is less than 36 months older (the actor is a teenager), the crime is CSC third degree (penetration) or CSC fourth degree (contact). The goal of this recommendation is to protect the youngest victims/survivors.
2. **Age differential:** The second proposal makes the age differentials consistent throughout CSC first to fourth degrees to 36 months between the age of the actor and the age of the complainant. Standardizing the age ranges makes the statute more understandable and impacts criminalization in several different ways.
 - a. **Position of authority:** This change impacts those provisions where the actor is in a position of authority, reducing the age differential for committing the offense from 48 months to 36 months.

⁷ The working group, while touching on, in general, the sentencing implications of the proposals, did not address the sentencing provisions. For a review of CSC sentencing data, see [Criminal Sexual Conduct Sentencing Practices](#), Minnesota Sentencing Guidelines Commission, 2018.

⁸ While the age of consent, in general, is 16, the Minnesota Legislature has extended protections to youth age 16 and 17 through the recently-passed prohibition on marriage by those under 18 in all circumstances. Minnesota Statutes, section 517.03, subdivision 1(4).

⁹ A helpful table showing the changes can be found [here](#).

¹⁰ CSC first degree (contact/penetration), Minnesota Statutes, section 609.342, subd. 1(a); CSC second degree (contact), Minnesota Statutes, section 609.343, subd. 1(a); CSC third degree (penetration), Minnesota Statutes, section 609.344, subd. 1(a); CSC fourth degree (contact), Minnesota Statutes, section 609.345, subd. 1(a).

While this potentially expands criminalization, prosecutors report that the majority of offenders in these cases are not young adults.

- b. Solely age-based cases (colloquially known as statutory rape): For CSC third degree, the proposal raises the age differential required for prohibited conduct from 24 months to 36 months. In other words, peers within 36 months (raised from 24 months) of the same age are not subject to criminal punishment for consensual conduct. The goal of this is to minimize the criminalization of young people who have consensual sexual contact with other young people.

✓ *While these changes in age-related crimes are sought to provide greater protection of victims, there is a recognition that many of those who commit these offenses are youthful offenders. These proposals are brought forward with a request by some members that such changes be accompanied by a statutory “vent” for youthful offenders, such as stays of adjudication and rehabilitative supports, along with an examination ultimately of the sentencing scheme for age-based cases that do not involve force, coercion, or position of authority.*

- 3. **Mistake of age:** The third proposal reduces the age span for which the mistake of age defense is available from 120 months to 60 months between the actor and complainant. Currently, the defense is only available in two provisions:

- (1) for complainants who are age 14 or 15, and the actor is more than 24 months older (to be changed to 36 months under proposal 2); and
- (2) for complainants ages 14-15, and the actor is either 48 months older (to be changed to 36 months under proposal 2) **OR** the actor is in a position of authority.

✓ *These proposals expand the current statutory scheme, which would bring more persons into the criminal justice system.*

Prohibited occupational relationships

The area of “prohibited occupational relationships” within the statutory scheme refers to those situations where the sexual act occurs between the complainant and a person with a particular professional or occupational relationship to the complainant and under certain circumstances. Three primary changes are being proposed related to this area of the statutory scheme.

Clarifying the provision

This proposal moves the list of prohibited occupational relationships currently in CSC third and fourth degrees¹¹ to the definitions section,¹² and clarifies the language of some prohibited occupational relationships for greater understandability.

Education related

This proposal expands the current list of prohibited relationships to include certain actors in educational settings, including teachers and other employees not in a position of authority over the student. This provision would cover

¹¹ Minnesota Statutes, sections 609.344 and 609.345, subds. 1(h)-(p).

¹² See Minnesota Statutes, section 609.341.

students ages 16-21 enrolled in a secondary school.¹³ The provisions includes all students at the secondary school, which can include students up to the age of 21.¹⁴ Students under the age of 16 are already covered by other statutory provisions.

This proposal has three parts, prohibiting sexual contact and penetration under the following circumstances:

Part	Status of actor	Age of actor	Actor employed/contracted to provide services	Age of complainant/student
i	Licensed educator	Any age	Same secondary school as complainant/student	16-21
ii	Employee or contractor	At least age 18 and at least four years older than complainant.	Same secondary school as complainant/student	16-21
iii	Licensed educator	At least four years older than complainant	Employed at any school	16-21

The age range includes students who are not minors, which aligns with the Minnesota Department of Education's authority under the Reporting of Maltreatment Act to assess and investigate allegations of maltreatment involving students age 18-21 years.¹⁵

In these provisions, consent is not a defense, which is consistent with all of the other prohibited professional relationship provisions except for massage therapists.

During the discussions on this proposal, many examples were raised that suggested this proposal could go even further, for example, by applying to situations where the complainant/student is in the same school district as the actor, or by narrowing the age differential between the actor and complainant. The proposal settled on was determined to be a good first step, and that further refinements would be left for future discussion.

Provide consistency with other occupations

The current criminal sexual conduct statutory structure addresses prohibited occupational relationships where the state has determined that sexual conduct between persons in a particular professional or occupational relationship with the complainant are prohibited from engaging in sexual conduct with that complainant. These crimes are CSC third degree (penetration) and CSC fourth degree (contact), which are felony-level offenses. Currently, under section 609.2325, Criminal Abuse, sexual contact or penetration between a vulnerable adult and certain persons hired and entrusted to care for them,¹⁶ face a consequence of a gross misdemeanor.

The purpose of this proposal is to provide consistency between prohibited occupational relationships, to ensure that CSC crimes based on the occupational relationship between the actor and complainant are located in one place, and to bring attention to this lesser-known offense affecting vulnerable adults.¹⁷

✓ *This proposal adds a new crime to the statutory scheme, which would bring more persons into the criminal justice system.*

¹³ See Minnesota Statutes, section 120A.05 (definitions of elementary, middle, and secondary school).

¹⁴ See Minnesota Statutes, section 120.20 (general education student eligibility); Minnesota Statutes, section 125A.03 (students receiving special education services); and [School Attendance Age Limitations](#), Minnesota Department of Education.

¹⁵ Minnesota Statutes, section 626.556, subdivision 3b.

¹⁶ Specifically, this provision covers "facility staff," including those in hospitals, nursing homes, assisted living, foster care, home care, or other provider of services licensed by DHS or Minnesota Department of Health, regardless of if the service is provided in a facility. It does not include personal care attendants for medical assistance programs. A preexisting consensual sexual relationship between the vulnerable adult and the facility provider creates an exception to this provision.

¹⁷ Abuse under the Vulnerable Adult Act includes criminal sexual conduct in the first through fifth degrees. Minnesota Statutes, section 626.5572, subd. 2(4).

Voluntary intoxication and capacity

One of the primary issues that prompted the creation of the CSC SRWG was the problem with the definition of mentally incapacitated. Under a common reading of the statute, a complainant can only be considered mentally incapacitated if they became intoxicated involuntarily—that is, another person had administered the intoxicant and that as a result of being under the influence of the intoxicant, the complainant lacked the judgment to give reasoned consent to the sexual act. The current definition posed a significant roadblock to prosecuting those cases where complainants were intoxicated through voluntary consumption to the point where they could not give reasoned consent.

Two proposals emerged from the Capacity Subcommittee on how to address the gap in the statute related to incapacity due to voluntary intoxication. While there was an agreement that some fix is necessary, there was disagreement as to how it should be accomplished. The subcommittee recommended that the two proposals that emerged from this subcommittee be presented to the legislature.

First option

The first proposal closes the gap through expansion of the definition of mentally incapacitated. Currently, in CSC first and second degrees (personal injury to the victim) and third and fourth degrees (no personal injury), an actor is guilty of criminal sexual conduct if “the **actor knows or has reason to know** that the complainant is mentally impaired, **mentally incapacitated**, or physically helpless” (emphasis added).¹⁸ The proposal adds an additional section to the definition of mentally incapacitated:

Section 609.341, subd. 7. Mentally incapacitated. "Mentally incapacitated" means

(a) that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration, or

(b) that a person is under the influence of an intoxicating substance to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct.

This change addresses the identified problem of voluntary vs. involuntary administration of the intoxicant, as well as describes the level of intoxication necessary for culpability. No other problem had been previously identified with the existing language. The proposal leaves the remainder of the statutory framework intact, maintaining the requirement of proof of the actor's level of knowledge—that the “actor knew or had reason to know” that the victim was mentally incapacitated, without increasing the state's burden regarding the state of mind of the actor.

Second option

Under the second proposal, the crime would be specifically listed within CSC third degree (penetration) and CSC fourth degree (contact), and the current definition of mentally incapacitated would remain unchanged:

Section 609.344/345, subdivision 1. Crime defined. A person who engages in sexual penetration /contact with another person is guilty of criminal sexual conduct in the third/fourth degree if any of the following circumstances exists:

...

¹⁸ Minnesota Statutes, sections 609.342, subdivision 1(e)(ii), 609.343, subdivision 1(e)(ii), 609.344, subdivision 1(d), and 609.345, subdivision 1(d).

(#) the actor has the intent (or purpose) to have sexual penetration/contact with the complainant while the actor knows (or has actual knowledge) that the complainant is under the influence of an intoxicating substance to a degree that renders them incapable of consenting or incapable of appraising or controlling the complainant's conduct.

Members advocating for this second option agreed with the need to address the current gap in the statutes, but sought a different approach, explaining as follows:

The second proposal is a hybrid version of Wisconsin's version of sexual assault due to voluntary intoxication¹⁹ and the agreed-upon language that came out of the drafting sub-subcommittee defining the level of intoxication that would render one incapable of consenting.

The Wisconsin statute reads:

Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.

Wisconsin's version of the voluntary intoxication statute specifically targets predatory behavior. It requires the state to show that the defendant has the purpose to have sexual contact or penetration with an individual while they know that person is incapable of consenting.

The proposed language in this version of voluntary intoxication also includes some of the agreed-upon language from the drafting committee. Specifically, the drafting committee agreed upon using the language to define the level of intoxication at which one could not consent to sexual contact or penetration: "... under the influence of an intoxicating substance to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct."

This proposal came as an alternative due to the concern that with the expanded definition approach, in the situation where two intoxicated people had sexual contact or penetration and neither could remember what happened, only one would be held responsible and be required to register. The alternative proposal takes this into consideration and requires the state to show that the defendant had the purpose or intent to have sexual contact or penetration knowing that the alleged victim was incapable of consenting rather than a general intent statute. This would also leave the door open for the defense to raise intoxication as a defense.

There was a concern that this language placed too high a burden on the prosecution. However, a review of recent Wisconsin cases showed that Wisconsin prosecutors charge this subdivision with regularity, are successful at trial and that convictions are commonly upheld on appeal for sufficient evidence.

The working group requests that the legislature consider these two options for resolving the current gap in the statute.

✓ *This proposal adds a new crime to the statutory scheme, which would bring more persons into the criminal justice system.*

¹⁹ Wis. Stat. section 940.225(2)(cm).

Court of appeals decision

After settling on this two-option approach, a decision came down from the Minnesota Court of Appeals that held that the current definition of mentally incapacitated under section 609.341, subdivision 7, includes voluntary intoxication. *State. v. Francois Momulu Khalil*, (Minn. Ct. App. A19-1281, *petition for review granted* Sept. 29, 2020). Following the decision, the Capacity Subcommittee reconvened to discuss the case and, given the likelihood that it would go to the Minnesota Supreme Court for review, decided that the proposal should continue to move forward as originally planned.

Predatory Offender Registration

The CSC SRWG recommends that the legislature create a working group to examine the predatory offender registration (POR) laws, including the requirements placed on offenders, the crimes for which POR is required, the method by which POR requirements are applied to offenders, and the effectiveness of the POR system in achieving its stated purpose. As part of this process, the working group recommends that data related to POR offenses and offenders be collected from the relevant governmental agencies and the state court administrator's office. The working group should provide recommendations back to the legislature on any identified reforms on the POR system.

Clarify and expand the definition of "significant relationship"

This proposal makes clear that half- and step-relations are included in the definition of "significant relationship," and it expands the definition of significant relationship to include an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complainant. The change addresses the common situation of a child being abused by their parent's intimate partner who does not live in the home.

Repeal archaic provisions

Three statutes related to criminalized sexual activity were identified as archaic and unconstitutional: Minnesota Statutes, sections 609.293 (sodomy), 609.36 (adultery),²⁰ and 609.34 (fornication). The working group recommends that these statutes be repealed.

OTHER ISSUES WITH NO RECOMMENDATIONS

There were several issues within the statutory mandate that were discussed but did not generate any recommendations from the working group.

Revise definition of "sexual penetration" to include anogenital contact: One theme brought up throughout the working group activity was the current statutory distinction between sexual contact and sexual penetration, and the significant differences in penalties associated with these crimes even though the harm experienced by the victims can be similar. One suggestion was the expansion of the definition of penetration to include the same contact as defined for complainants under 13 under Minnesota Statutes, section 609.341, subdivision 11(c).

The current statute differentiates offenses that involve sexual penetration from those that involve sexual contact. Penetration is currently defined, *inter alia*, as "any intrusion however slight into the genital or anal openings."²¹ In cases in which the offender's genitals touched the complainant's genital or anal opening, the complainant must be able to identify whether they were "penetrated." If the victim cannot do so because of intoxication, sleep, or

²⁰ In 2019, [HF 2023](#) was introduced to repeal the crime of adultery.

²¹ Minnesota Statutes, section 609.341, subdivision 12.

inexperience, the state may have proof “merely” of a sexual contact offense. This would be the same offense as if the actor, for example, touched the complainant’s buttocks over the clothing.

A revision like this would expand to all victims an existing definition of anogenital contact that currently applies only to children under the age of 13.²² The idea is that, no matter the age of the victim, anogenital contact is so similar to penetration that it should be treated the same. This would better justify the differences in penalty between penetration and contact, treating similar actions more similarly in punishment.

Although discussion of this concept did not lead to a recommendation, it is expected to be addressed and subsumed in the wholesale restructuring effort.

Definition of “consent”: The Consent Subcommittee met twice at the beginning of the process; however, no recommendation regarding the definition of consent emerged. Legal professionals recognize the current statute as an affirmative consent statute that is preferred over definitions reviewed from other states. More information needs to be provided to advocates and law enforcement to enable victims to feel as if their lack of consent is taken seriously.

Definition of “mentally impaired”: The Capacity Subcommittee looked at the current definition, and, while acknowledging that the terminology is inconsistent with current nomenclature, the assessment based on discussions with prosecutors was that it was not an impediment to charging under the statute. There was insufficient support for modifying the definition during this process, however, this remains a consideration for future review.

Stealthing: Stealthing refers to a man removing or damaging a condom during intercourse without knowledge or consent of the sex partner.²³ Bills to address this have been introduced in other states, however, no state has passed a law related to stealthing.²⁴ While it was presented and discussed in several subcommittee meetings, there was no support for moving forward with a recommendation from the working group.

Involuntary pelvic exams: The issue of pelvic examinations of unconscious/anesthetized persons without consent²⁵ was brought to the attention of the CSC SRWG. In a review of the laws of states that have addressed this issue, it is clear that the majority of them have taken a regulatory approach rather than a criminal approach.²⁶ This

²² Minnesota Statutes, section 609.341, subdivision 11(c).

²³ Brodsky, A. (2017). [Rape-Adjacent: Imagining Legal Responses to Nonconsensual Condom Removal](#), *Columbia Journal of Gender and Law*, 32(2); Blanco, M. M. (2018). [Sex Trend or Sexual Assault?: The Dangers of “Stealth” and the Concept of Conditional Consent](#), *Penn State Law Review*, 123(1).

²⁴ [Wisconsin](#): Language applies to removing or tampering with a "male or female condom, spermicide, diaphragm, cervical cap, contraceptive sponge, dental dam, or any other physical device intended to prevent pregnancy or sexually transmitted infection." 2017 Assembly Bill 425; [California](#): This bill more specifically applies to condoms, but also would make it a crime for a person to knowingly misrepresent that they are using a type of birth control other than a condom. AB-10333 (2017-18); [New York](#): Private cause of action for nonconsensual removal or tampering with a sexual protective device. 7157—A (January 3, 2018).

²⁵ Tsai, J. (2019, June 24). [Medical Students Regularly Practice Pelvic Exams on Unconscious Patients. Should They?](#) *Elle*; Goldberg, E. (2020, Feb. 17). [She Didn’t Want a Pelvic Exam. She Received One Anyway](#), *New York Times*; Coleman, E. (2020, Feb. 4); [States Move to Protect Anesthetized Women from Non-Consensual Pelvic Exams](#), *Route Fifty*.

²⁶ In 2019, [HF 2713](#) proposed a prohibition on involuntary pelvic exams to be included in the Public Health Provisions (chapter 145) under “Sexual Assault Victims.” This proposal, modeled after an Iowa regulatory provision, includes a criminal penalty for medical professionals who perform involuntary pelvic examinations.

issue was presented and discussed in several subcommittee meetings, but there was no support for moving forward with a recommendation from the working group.

Statute of limitations: The issue of eliminating the statutes of limitations on CSC crimes was touched on very briefly during some working group discussions. This is a topic that has been raised several times over the past few years by survivor-led movements and supported by advocacy organizations. Given the clear lack of consensus within the working group, the group did not address it.²⁷

CONCLUSION

The CSC SRWG was made up of representatives from criminal justice professionals, victims and survivors, service providers of underserved communities, and others whose work touches on criminal sexual conduct crimes and victims. The statutory reforms that emerged from this process are aimed at improving the criminal justice system's response to CSC crime, providing an easier framework for all practitioners, and providing better outcomes for victims. They are the result of thoughtful and thorough discussions by working group members and are offered with the reservations expressed by members about the disparities in our justice system.

The working group asks the Minnesota Legislature to consider these recommendations and move forward with continued examination of the CSC statutory framework.

²⁷ For a review of the arguments for eliminating the statute of limitations, see Palmer, C. (2019). [Advocating at the Intersection of Law, Science, and Culture Change: Options for Changing Minnesota's Statute of Limitations Change: Options for Changing Minnesota's Statute of Limitations for Criminal Sexual Conduct Felonies for Criminal Sexual Conduct Felonies](#), *Mitchell Hamline Law Rev.* 45(3).

SUPPLEMENT 1

Improving the response to sexual assault crimes

This section includes the issues and suggestions for change identified in the working group process. It does not represent formal recommendations to the legislature.

The *Denied Justice* series in the Star Tribune highlighted the shortcomings of the criminal justice system's response to sexual assault cases.²⁸ These issues were fresh in the minds of the working group members as they began their work and continued to be a theme in many subsequent working group discussions. While the focus of the working group remained primarily on the statutory language, the reality of the victims' experience was voiced throughout.

The proposed language that emerged from the working group effort aims to improve the criminal justice system's ability to successfully investigate and prosecute criminal sexual conduct cases. Many factors beyond the statutory language also influence this ability, such as the culture within criminal justice agencies, the poor understanding of this type of victimization and its impact on victims, long-ingrained practices, a lack of resources to prosecute complex cases, a lack of coordination between law enforcement and prosecutors, and the attitudes of jurors. Addressing these factors warrants additional effort to improve the knowledge, attitudes, and skills of those who work directly with sexual assault victims and to educate the public about the dynamics of these crimes.

Some key areas for improvement are to change outdated attitudes and biases in the criminal justice system about sexual assault survivors, to facilitate access to the criminal justice system for these survivors, and to ensure that they are treated appropriately throughout their experience. To that end, suggestions focus on removing barriers to reporting, improving investigative strategies, changing the culture of law enforcement and prosecutorial agencies, and employing strategies that do not re-victimize victims.

The following is a list of suggestions that were put forth at the beginning of the working group effort and in subsequent discussions.

Training

Members of the criminal justice system with a role in sexual assault cases should be required to receive the appropriate victim-centered and trauma-informed training. Depending on their role, this could include training on forensic experiential trauma-informed (FETI) interviewing, trauma-informed service provision, best practices in sexual assault investigations, and understanding the nature and impact of this type of victimization. Any training requirement should be accompanied by funding and a timeline to ensure that it is carried out.

Law enforcement officers, prosecutors, victim service providers, and other professionals who interact with sexual assault victims, should have an understanding of the range of victim reactions to trauma that allows them to facilitate communication and support for these victims. It is well recognized that the way victims are treated greatly impacts their interest in participating in the criminal justice process and increases their satisfaction with case outcomes. Consequently, trauma-informed training, as well as good communication practices, are encouraged for all personnel.

²⁸ A critical examination of sexual assault cases in Ramsey County, also highlighted issues and areas for improvement in the criminal justice response to reported sexual assaults. [Ramsey County Sexual Assault Systems Review](#), Ramsey County Attorney's Office (April 27, 2018).

Law enforcement response

Improving an agency's response to sexual assault cases must come from the top, with command leadership prioritizing CSC cases; instituting best practices; and changing agency culture to promote effective investigations, remove barriers to reporting, and reduce re-victimization. This will entail significant investments in training and supervision. To support this type of paradigm shift, agencies should:

- Train all personnel involved with sexual assault cases, from dispatchers to responding officers to investigators to command staff, in the dynamics of sexual assault and best practices in investigations at every stage.
- Improve the initial response to and treatment of victims who report a sexual assault, especially victims from marginalized communities; sex workers; and those with a history of substance abuse, mental health issues, or a criminal history.
- Acknowledge and address the bias toward “good victims” and the prevailing presumption that some victims cannot be believed or will not make a credible witness.
- Improve communication with the victim while the case is being investigated and prosecuted.
- Establish credible policies for responding to complaints from victims about how their case was handled or how they were treated.
- Establish POST model policies for investigating officer-involved reports, and require referral of officer-involved sexual assaults to the newly-created unit within the BCA.²⁹
- Establish a policy for timely referral of reports made to an agency without jurisdiction to the appropriate investigative agency.
- Ensure good cross-jurisdictional communication and practices, including data sharing, for cases with cross-jurisdictional components.
- Add clear enforcement mechanisms and penalties to violations of the Crime Victim Bill of Rights, Minnesota Statutes, chapter 611A.

Forensic exams

The many issues related to forensic exams have long been on the radar of the Minnesota victim advocacy community,³⁰ and concerted efforts have been underway to address some of these issues for a number of years.³¹ Nevertheless, the need still remains for:

²⁹ The responsibilities of the Independent Use of Force Investigations Unit, created in 2020, includes investigation all criminal sexual conduct cases involving peace officers. Laws of Minnesota 2020, 2nd Spec. Sess. [chapter 1](#), section 5, subdivision 3.

³⁰ Gonsalves, S. (2011). Sexual Violence Justice Institute at the Minnesota Coalition Against Sexual Assault, *Minnesota Model Policies for Forensic Compliance: How to Ensure that Victims of Sexual Assault in Your Community Receive the Care that Federal and State Law Require*; Ogradowski, K. (2016). Sexual Violence Justice Institute at the Minnesota Coalition Against Sexual Assault, *Summary Report: Medical Forensic Response in Minnesota – How are we doing? Survey*.

³¹ See the [Minnesota Sexual Assault Kit Initiative \(SAKI\) Project](#), funded under 2018 and 2019 SAKI grants from the Bureau of Justice Assistance to test previously unsubmitted sexual assault kits in Minnesota and improve the response to sexual assault investigations and advocacy in cold hit cases.

- A statewide policy on uniform access to forensic exams to ensure that victims/survivors receive immediate medical care, maintain forensic evidence in case they choose to report later, and connect with advocacy.
- Uniformity in billing practices and billing amounts across the state.
- An option for forensic exam with evidence retention without report to law enforcement.
- A statewide approach to kit retention, testing, tracking and storage.³²

While advances have been made in forensic exams in Minnesota, further reforms are needed.³³

Crime victim rights and protections

Throughout the presentations and subsequent working group discussions, members expressed a general concern that crime victim rights are not being upheld and should be expanded, and that more can be done to ensure the safety of sexual assault victims.

The following are suggestions to enforce or expand the rights of victims during a criminal case, as well as provide for better safety for victims:

- Establish the right for a victim to have an advocate during the law enforcement interview and to be notified of this right.
- Establish the right for a victim to have an attorney during the law enforcement interview and subsequent legal process and to be notified of this right.
- Clarify the right of a victim under Minnesota Statutes, section 609.3459 to report a sexual assault to a law enforcement agency in another jurisdiction and specify what information the victim has a right to receive from that agency.
- Clarify the expectations under Minnesota Statutes, section 609.3459 for a timely referral to the appropriate investigative agency when a law enforcement agency takes a report of a sexual assault that occurred in another jurisdiction.
- Clarify the right of the victim's attorney to have standing during criminal proceedings.
- Establish the right for a victim to meet with the prosecutor when the prosecutor's office has declined prosecution (expanding 611A.015) or has directed law enforcement not to submit a sexual assault kit for forensic testing (expanding section 299C106, subdivision 2).
- Expand the privacy protections that currently apply to minor victims of CSC crimes under Minnesota Statutes, section 609.3471 to include adult victims. Information about these victims would not be publicly accessible.
- Enable minor victims to access advocacy support without requiring parental/guardian consent.

³² As this report was being prepared, the governor signed into law legislation that addresses issues regarding the testing, storage, and tracking of forensic exam kits. 2020 Minnesota Session Laws (5th Special Session), [Chapter 3](#), Article 9, secs. 1-3, 8.

³³For an overview of recommendations, see Minnesota Coalition Against Sexual Assault (2019). [Sexual Assault Kits: Minnesota: Must Standardize the Processing of Sexual Assault Kits](#).

- Provide sexual assault victims access to law enforcement reports while their case is under investigation similar to the right of domestic abuse victims under Minnesota Statutes, sections 629.341, subdivision 3 and 13.82, subdivision 4.
- For reparations eligibility, consider modifying the requirement that the victim must report the crime and cooperate with law enforcement given the unique nature of sexual assault cases and the barriers victims face when trying to report to law enforcement agencies and communicate during the course of an investigation. Allow fact that victim underwent a forensic exam as evidence that a crime occurred.
- Ensure that courthouses are safe and accessible, and require a physically separate space for victims/survivors to wait, by providing a clearer directive under Minnesota Statutes, section 611A.034.
- Ensure that court proceedings are accessible to persons with limited English proficiency and with disabilities in communication as required by state and federal law.³⁴
- Establish a sexual assault protective order designed to address the unique nature of the crime.
- Limit the use of contempt of court in those situations where the victim/survivor refuses to obey a subpoena.
- Add clear enforcement mechanisms and penalties to violations of the Crime Victim Bill of Rights, Minnesota Statutes, chapter 611A.

Prevention

Finally, no discussion about sexual assault is complete without addressing the need for prevention and education. As the working group forged through difficult conversations about the statutory language, victims/survivors and victim service providers spoke up and reminded the group about the need to have an equally committed desire to work on prevention and education efforts, which must be comprehensive, centered on marginalized communities, and sufficiently funded. Further, the need for offender treatment and meaningful pathways to stability were identified as critical avenues of prevention.

Conclusion

This supplement reflects the voices of victims/survivors who wish to remind stakeholders and decision-makers about the additional issues that need consideration for CSC statutory reforms to work effectively, for victims to receive the support they deserve throughout the criminal justice process, and for prevention of sexual assaults and violence in the first place to finally take hold.

³⁴ Minnesota Statutes, sections 546.42-43 and 611.31-33; Title VI of the Civil Rights Act of 1964, Title VI implementing regulations; and Executive Order 13166.

SUPPLEMENT 2

Predatory Offender Registration Reform

This section includes the issues and suggestions for change identified in the working group process. It does not represent formal recommendations to the legislature.

POR reform came up in nearly all of the working group subcommittees, with reform related to juveniles receiving particular attention given their age, level of maturity, brain development, and nature of offenses (those based on age differential rather than predatory behavior). In the Outcomes Subcommittee, there was uniform support for eliminating the registration requirement for adjudicated juveniles, but not Extended Juvenile Jurisdiction (EJJ) or juveniles tried as adult cases.

Currently offenders who are convicted of offenses beyond those listed in Minnesota Statutes, section 243.166 are still required to register if the offense for which the offender was convicted arose out of the “same set of circumstances” as a registerable offense. This language loops in cases in which there has been a dismissal for lack of probable cause, acquittal at trials, or the offense was supported at charging but new evidence emerges making it less supported, as well as cases where the parties agree a conviction for that crime should not be the resolution. The subcommittee strongly favored eliminating registrations triggered by initial probable cause determinations.

There was extensive discussion of the impact of the additional five-year registration period for registrants convicted of failure to register and the restart provisions for subsequent convictions. After much discussion, the subcommittee agreed on the suggestion to limit extension of registration through the period of supervision for the new conviction (when registrant is “off paper”) as opposed to a complete restart of the registration period.

Finally, Minnesota has no specific provision for early termination of the predatory offender obligation or ability to petition for relief from the registration requirements. Having an avenue of relief from the registration requirement, some argue, may provide an incentive to comply with the conditions of release and for the person to remain law abiding. While there was support for the concept of an avenue for relief, the subcommittee did not fully discuss the proposed language crafted by some members of the subcommittee. What is included below is an example of possible language, based on the framework found in the expungement statute (section 609A.03).

In summary, there was general agreement to recommend to the legislature that a working group be formed to examine the predatory offender registration system in Minnesota. This formal recommendation is included in the report. In addition, four other suggestions for POR reform were agreed upon by the Outcomes Subcommittee that did not, ultimately, have general agreement by all members of the working group. They are:

1. Eliminate registration requirement for adjudicated juveniles.
2. Apply registration requirement to convictions only (not same or similar circumstances/probable cause determination).
3. Eliminate/modify the restart provisions.
4. Provide an avenue of relief.

The suggested statutory language is listed below:

243.166, subd. 1b. **Registration required.**

(a) A person shall register under this section if:

(1) the person was ~~charged with or petitioned for~~ convicted of a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following; ~~and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:~~

...

(2) the person was ~~charged with or petitioned for~~ convicted of a violation of, or attempt to violate, or aiding, abetting, or conspiring to commit any of the following ~~and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances:~~

...

(4) the person was ~~charged with or petitioned for~~, including pursuant to a court martial, convicted of violating a law of the United States, including the Uniform Code of Military Justice, similar to the offenses described in clause (1), (2), or (3), and convicted of ~~or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances.~~

(b) A person also shall register under this section if:

(1) the person was ~~charged with or petitioned for~~ convicted of an offense in another state that would be a violation of a law described in paragraph (a) if committed in this state and convicted ~~of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances~~

Note: Would also need to amend 243.167. Would need to explicitly state that registration still required in EJJ and certified cases. Prospective application only—for convictions on or after a specific date.

243.166, subd. 6. **Registration period.**

...

(c) If a person required to register under this section is incarcerated due to a conviction for a new offense or following a revocation of probation, supervised release, or conditional release for any offense, the person shall continue to register until ~~ten years have elapsed since the person was last released from incarceration or until the person's probation, supervised release, current registration period, or conditional release period expires,~~ whichever occurs later.

Subd. XX. **Petition for Relief.** A person who is required to register as a predatory offender under this section may commence a proceeding to terminate their registration requirements by filing a petition in the district court in the county in which the person was convicted or adjudicated of an offense that requires current registration.

(a) A petition for early termination of the registration requirement shall state the following:

1. Why early termination is consistent with public safety;
2. What steps the petitioner has taken since the time of the offense toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation.
3. Petitioner's criminal conviction record indicating all convictions for misdemeanors, gross misdemeanors, or felonies in this state, and for all comparable convictions in any other state, federal court, or foreign country, whether the convictions occurred before or after the arrest or conviction for the offense that prompted the registration requirement, including all criminal charges that have been continued for dismissal or stayed for adjudication, or have been the subject of pretrial diversion;
4. All pending criminal charges against the petitioner in this state or another jurisdiction; and
5. All prior requests for early termination made by the petitioner, whether for the present offense requiring registration or for any other offenses, in this state or any other state or federal court.

- (b) The petitioner shall serve by mail the petition for early termination and a proposed early termination order on the prosecutorial office that had jurisdiction over the offense that triggered the petitioner's current registration requirement, and all other state and local government agencies and jurisdictions whose records would be affected by the proposed order.
- (c) The prosecutorial office that had jurisdiction over the offense that prompted the registration requirement shall serve by mail the petition for early termination and a proposed termination order on any victims of the offense.
- (d) A victim of the offense for which early termination is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether early termination should be granted or denied. The judge shall consider the victim's statement when making a decision.
- (e) A hearing on the petition shall be held no sooner than 60 days after service of the petition. A victim of the offense for which early termination is sought has a right to submit an oral or written statement to the court at the time of the hearing describing the harm suffered by the victim as a result of the crime and the victim's recommendation on whether early termination should be granted or denied. The judge shall consider the victim's statement when making a decision.
- (f) The Court shall grant the petition following the hearing if:
 - a. Petitioner has completed, or has been discharged from, probation; or
 - b. Petitioner received an executed prison sentence, Petitioner has completed conditional and supervised release; and
 - c. The Court finds by clear and convincing evidence that terminating the registration requirement is consistent with public safety.

APPENDIX 1 PROPOSED STATUTORY LANGUAGE

609.341 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 609.341 to 609.351, the terms in this section have the meanings given them.

Subd. 2. **Actor.** "Actor" means a person accused of criminal sexual conduct.

Subd. 3. **Force.** "Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Subd. 4. **Consent.** (a) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.

(b) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.

(c) Corroboration of the victim's testimony is not required to show lack of consent.

Subd. 5. **Intimate parts.** "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 6. **Mentally impaired.** "Mentally impaired" means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.

Subd. 7. **Mentally incapacitated.** "Mentally incapacitated" means

(a) that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration, or

(b) that a person is under the influence of an intoxicating substance to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct.

[This is option 1 for addressing voluntary intoxication]

Subd. 8. **Personal injury.** "Personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.

Subd. 9. **Physically helpless.** "Physically helpless" means that a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor.

Subd. 10. **Current or recent position of authority.** "Current or recent position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with or assumes any of a parent's rights, duties or responsibilities to a child, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of or within 120 days immediately preceding the act. For the purposes of subdivision 11, "current or recent position of authority" includes a psychotherapist.

Subd. 11. **Sexual contact.** (a) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e), and (h) to (p), includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

- (i) the intentional touching by the actor of the complainant's intimate parts, or
- (ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a current or recent position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or
- (iii) the touching by another of the complainant's intimate parts effected by coercion or by a person in a current or recent position of authority, or
- (iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts, or
- (v) the intentional touching with seminal fluid or sperm by the actor of the complainant's body or the clothing covering the complainant's body.

(b) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (g) and (h), and 609.345, subdivision 1, clauses (f) and (g), includes any of the following acts committed with sexual or aggressive intent:

- (i) the intentional touching by the actor of the complainant's intimate parts;
- (ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts;
- (iii) the touching by another of the complainant's intimate parts;
- (iv) in any of the cases listed above, touching of the clothing covering the immediate area of the intimate parts; or
- (v) the intentional touching with seminal fluid or sperm by the actor of the complainant's body or the clothing covering the complainant's body.

(c) "Sexual contact with a person under 13" means the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent.

Subd. 12. **Sexual penetration.** "Sexual penetration" means any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:

- (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or

(2) any intrusion however slight into the genital or anal openings:

- (i) of the complainant's body by any part of the actor's body or any object used by the actor for this purpose;
- (ii) of the complainant's body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a current or recent position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or
- (iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a current or recent position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.

Subd. 13. **Complainant.** "Complainant" means a person alleged to have been subjected to criminal sexual conduct, but need not be the person who signs the complaint.

Subd. 14. **Coercion.** "Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear ~~that the actor will inflict~~ the infliction of bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant to accomplish the act. ~~that causes the complainant to submit to sexual penetration or contact against the complainant's will.~~ Proof of coercion does not require proof of a specific act or threat.

Subd. 15. **Significant relationship.** "Significant relationship" means a situation in which the actor is:

- (1) the complainant's parent, stepparent, or guardian;
- (2) any of the following persons related to the complainant by blood, marriage, or adoption, including half and step relationships: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or
- (3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.
- (4) an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complainant.

Subd. 16. **Patient.** "Patient" means a person who seeks or obtains psychotherapeutic services.

Subd. 17. **Psychotherapist.** "Psychotherapist" means a person who is or purports to be a physician, psychologist, nurse, chemical dependency counselor, social worker, marriage and family therapist, licensed professional counselor, or other mental health service provider; or any other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

Subd. 18. **Psychotherapy.** "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

Subd. 19. **Emotionally dependent.** "Emotionally dependent" means that the nature of the former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the former patient is unable to withhold consent to sexual contact or sexual penetration by the psychotherapist.

Subd. 20. **Therapeutic deception.** "Therapeutic deception" means a representation by a psychotherapist that sexual contact or sexual penetration by the psychotherapist is consistent with or part of the patient's treatment.

Subd. 21. **Special transportation.** "Special transportation service" means motor vehicle transportation provided on a regular basis by a public or private entity or person that is intended exclusively or primarily to serve individuals who are vulnerable adults or disabled. Special transportation service includes, but is not limited to, service provided by buses, vans, taxis, and volunteers driving private automobiles.

Subd. 22. **Predatory crime.** "Predatory crime" means a felony violation of section 609.185 (first-degree murder), 609.19 (second-degree murder), 609.195 (third-degree murder), 609.20 (first-degree manslaughter), 609.205 (second-degree manslaughter), 609.221 (first-degree assault), 609.222 (second-degree assault), 609.223 (third-degree assault), 609.24 (simple robbery), 609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 609.498 (tampering with a witness), 609.561 (first-degree arson), or 609.582, subdivision 1 (first-degree burglary).

Subd. 23. **Secure treatment facility.** "Secure treatment facility" has the meaning given in sections 253B.02, subdivision 18a, and 253D.02, subdivision 13.

Subd. 24. **Prohibited occupational relationship.** A "prohibited occupational relationship" exists when the actor is in one of the following occupations and the act takes place under the specified circumstances,

(a) the actor performed massage or other bodywork for hire, the sexual penetration or sexual contact occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant, and the sexual penetration or sexual contact was nonconsensual; or

(b) the actor and the complainant were in one of the following occupational relationships at the time of the act. Consent by the complainant is not a defense:

- (i) the actor was a psychotherapist, the complainant was the actor's patient, and the sexual penetration or sexual contact occurred during a psychotherapy session or during a period of time when the psychotherapist-patient relationship was ongoing;
- (ii) the actor was a psychotherapist and the complainant was the actor's former patient who was emotionally dependent on the actor;
- (iii) the actor was or purported to be a psychotherapist, the complainant was the actor's patient or former patient, and the sexual penetration or sexual contact occurred by means of therapeutic deception;
- (iv) the actor was or purported to be a provider of medical services to the complainant and the sexual penetration or sexual contact occurred by means of deception or false representation that the sexual penetration or sexual contact was for a bona fide medical purpose;
- (v) the actor was or purported to be a member of the clergy, the complainant was not married to the actor, the complainant met with the actor in private seeking or receiving religious or spiritual advice, aid, or comfort from the actor, and the sexual penetration or sexual contact occurred during the course of such a meeting or during a period of time when such meetings were ongoing;
- (vi) the actor provided special transportation service to the complainant and the sexual penetration or sexual contact occurred during or immediately before or after the actor transported the complainant;
- (vii) the actor was or purported to be a peace officer, as defined in section 626.84, the actor physically or constructively restrained the complainant or the complainant did not reasonably feel free to leave the actor's presence, and the sexual penetration or sexual contact was not pursuant to a lawful search or lawful use of force; or

- (viii) the actor was an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant was a resident of a facility or under supervision of the correctional system;
- (ix) The complainant is enrolled in a secondary school and
- (x) the actor is a licensed educator employed or contracted to provide service for the secondary school at which the complainant is a student,
- (xi) the actor is age 18 or older and at least 4 years older than the complainant and is employed or contracted to provide service for the secondary school at which the complainant is a student, or
- (xii) The actor is age 18 or older and at least 4 years older than the complainant, and is licensed educator employed or contracted to provide services for any elementary, middle, or secondary school.
- (xiii) the actor was a caregiver, facility staff person, or person providing services in a facility, as defined under section 609.2323, and the complainant was vulnerable adult who was a resident, patient, or client of the facility who was impaired in judgment or capacity by mental or emotional dysfunction or undue influence.
- (xiv) the actor was a caregiver, facility staff person, or person providing services in a facility, and the complainant was a resident, patient, or client of the facility. This clause does not apply if a consensual sexual personal relationship existed prior to the caregiving relationship or if the actor was a personal care attendant.

With the addition of parts xiii and xiv, the following subdivisions of Criminal Abuse, Minnesota Statutes, section 609.2325, would need to be repealed: 1(b) and 2(3) and 3(b).

NOTE: The CSC 1 through 4 sections were reorganized so that crimes related to adult victims were separated from crimes related to minor victims. Subheadings have been added to improve understandability.

The new subheadings and reorganization are not tracked. Substantive changes are shaded.

609.342 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

Subdivision 1A: **Adult Victim.** Crime defined.

A person who engages in sexual penetration with another person, is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

- (a) **Fear of Great Bodily Harm.** Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;
- (b) **Dangerous Weapon.** The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;
- (c) **Personal Injury.** The actor causes personal injury to the complainant, and either of the following circumstances exist:
 - (i) the actor uses force or coercion to accomplish the act; or
 - (ii) the actor knows or has reason to know that the complainant is: mentally impaired, mentally incapacitated, or physically helpless;
- (d) **Aided or Abetted.** The actor is aided or abetted by one or more accomplices within the meaning of section [609.05](#), and either of the following circumstances exists:
 - (i) the actor or an accomplice uses force or coercion to cause the complainant to submit; or
 - (ii) the actor or an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

Subdivision 1B: **Child Victim.** Crime defined.

A person who engages in penetration with anyone under the 18 years of age or sexual contact with a person under ~~13~~14 years of age as defined in section [609.341, subdivision 11](#), paragraph (c), is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

- (a) **Fear of Great Bodily Harm.** Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;
- (b) **Dangerous Weapon.** The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;
- (c) **Personal Injury.** The actor causes personal injury to the complainant, and either of the following circumstances exist:
 - (i) the actor uses force or coercion to accomplish the act; or

(ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(d) **Aided or Abetted**. The actor is aided or abetted by one or more accomplices within the meaning of section [609.05](#), and either of the following circumstances exists:

(i) the actor or an accomplice uses force or coercion to cause the complainant to submit; or

(ii) the actor or an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

(f) **Victim Under 14**. The complainant is under [1314](#) years of age and the actor is more than 36 months older than the complainant.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) **Victim 14-15; Position of Authority**. The complainant is at least [1314](#) years of age but less than 16 years of age AND:

- i. The actor is more than [4836](#) months older than the complainant AND
- ii. The actor is in a current or recent position of authority over the complainant.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(h) **Victim Under 16; Significant Relationship**. The complainant was under 16 years of age at the time of the act AND:

- i. The actor has a significant relationship to the complainant

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(i) **Victim Under 16; Significant Relationship Enhanced**. The complainant was under 16 years of age at the time of the act, AND:

- i. The actor has a significant relationship to the complainant AND any of the following circumstances exist:
 - a) the actor or an accomplice used force or coercion to accomplish the act;
 - b) the complainant suffered personal injury; or
 - c) the sexual abuse involved **multiple acts** committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

[Penalty and stay portions not included]

609.343 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE.

Subdivision 1A. **Adult Victim**. Crime defined.

A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the second degree if any of the following circumstances exists:

- (a) **Fear of Great Bodily Harm**. Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;
- (b) **Dangerous Weapon**. The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit;
- (c) **Personal Injury**. The actor causes personal injury to the complainant, and either of the following circumstances exist:

- (i) the actor uses force or coercion to accomplish the sexual contact; or
 - (ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

- (d) **Aided and Abetted**. The actor is aided or abetted by one or more accomplices within the meaning of section [609.05](#), and either of the following circumstances exists:

- (i) the actor or an accomplice uses force or coercion to cause the complainant to submit; or
 - (ii) the actor or an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

Subdivision 1B. **Child Victim**. Crime defined.

A person who engages in **sexual contact** with another person is guilty of criminal sexual conduct in the second degree if any of the following circumstances exists:

- (a) **Fear of Great Bodily Harm**. Circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;
- (b) **Dangerous Weapon**. The actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit;
- (c) **Personal Injury**. The actor causes personal injury to the complainant, and either of the following circumstances exist:

- (i) the actor uses force or coercion to accomplish the sexual contact; or
 - (ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

- (d) **Aided and Abetted**. The actor is aided or abetted by one or more accomplices within the meaning of section [609.05](#), and either of the following circumstances exists:

- (i) an accomplice uses force or coercion to cause the complainant to submit; or

(ii) an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

(e) **Victim under 14.** The complainant is under ~~13~~14 years of age and the actor is more than 36 months older than the complainant.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;

(f) **Victim under 14; Position of Authority.** The complainant is at least ~~13~~14 but less than 16 years of age and the actor is more than ~~48~~36 months older than the complainant AND

(i) in a current or recent position of authority over the complainant.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) **Victim under 16; Significant Relationship.** The complainant was under 16 years of age at the time of the sexual contact AND

(i) the actor has a significant relationship to the complainant and

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(h) **Victim under 16; Significant Relationship Aggravated.** The actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual contact, and:

(i) the actor or an accomplice used force or coercion to accomplish the contact;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

[Penalty and stay portions not included]

609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.

Subdivision 1A. **Adult Victim. Crime defined.**

A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

- (a) Coercion. The actor uses ~~force or~~ coercion to accomplish the penetration;
- (b) Vulnerable Victim. The actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;
- (c) Professional Occupational Relationship. At the time of the act, the actor is in a prohibited occupational relationship with the complainant.
- (d) Title. the actor has the intent (or purpose) to have sexual penetration/contact with the complainant while the actor knows (or has actual knowledge) that the complainant is under the influence of an intoxicating substance to a degree that renders them incapable of consenting or incapable of appraising or controlling the complainant's conduct. [This is option 2 for addressing voluntary intoxication]

Subdivision 1B. **Child Victim. Crime defined.**

A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

- (a) Victim under 14. The complainant is under ~~13~~14 years of age and the actor is no more than 36 months older than the complainant.
 - Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense.
- (b) Victim 14-15. The complainant is at least ~~13~~14 but less than 16 years of age and the actor is more than ~~24~~36 months older than the complainant.
 - In any such case if the actor is no more than ~~120~~60 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older.
 - In all other cases, mistake as to the complainant's age shall not be a defense.
 - Consent by the complainant is not a defense.
- (c) Coercion. The actor uses ~~force or~~ coercion to accomplish the penetration;
- (d) Vulnerable Victim. The actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless.
- (e) Title. the actor has the intent (or purpose) to have sexual penetration/contact with the complainant while the actor knows (or has actual knowledge) that the complainant is under the influence of an intoxicating substance to a degree that renders them incapable of consenting or incapable of appraising or controlling the complainant's conduct. [This is option 2 for addressing voluntary intoxication]
- (f) Victim 16-17; Position of Authority. The complainant is at least 16 but less than 18 years of age and the actor is more than ~~48~~36 months older than the complainant and in a current or recent position of authority over the complainant.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

(g) Victim 16-17; Significant Relationship. The actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

(h) Victim 16-17; Significant Relationship Enhanced. The actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:

- (i) the actor or an accomplice used force or coercion to accomplish the penetration;
- (ii) the complainant suffered personal injury; or
- (iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

609.345 CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE.

Subdivision 1A. Adult Victim. Crime defined.

A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

- (a) Force or Coercion. The actor uses ~~force or~~ coercion to accomplish the sexual contact;
- (b) Vulnerable Victim. The actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;
- (c) Professional Occupational Relationship. At the time of the act, the actor is in a prohibited occupational relationship with the complainant.
- (d) Title. the actor has the intent (or purpose) to have sexual penetration/contact with the complainant while the actor knows (or has actual knowledge) that the complainant is under the influence of an intoxicating substance to a degree that renders them incapable of consenting or incapable of appraising or controlling the complainant's conduct. [This is **option 2** for addressing voluntary intoxication]

Subdivision 1B. Child Victim. Crime defined.

(a) Victim under 14. The complainant is under ~~13~~ 14 years of age and the actor is no more than 36 months older than the complainant.

Neither mistake as to the complainant's age or consent to the act by the complainant is a defense.

In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;

(b) Victim 14-15; Position of Authority. The complainant is at least ~~13~~ 14 but less than 16 years of age and the actor is more than ~~48~~ 36 months older than the complainant or in a current or recent position of authority over the complainant.

Consent by the complainant to the act is not a defense.

Mistake of age is not a defense UNLESS actor less than ~~120~~ 60 months older. In any such case, if the actor is no more than 60 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense;

(c) Force or Coercion. The actor uses force or coercion to accomplish the sexual contact;

(d) Vulnerable Victim. The actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(e) Victim 16-17; Position of Authority. The complainant is at least 16 but less than 18 years of age and the actor is more than 48 36 months older than the complainant and in a current or recent position of authority over the complainant.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

(f) Victim 16-17; Significant Relationship. The actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) Victim 16-17; Significant Relationship Aggravated. The actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual contact, and:

(i) the actor or an accomplice used force or coercion to accomplish the contact;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

[Penalty and stay portions not included]

609.3451 CRIMINAL SEXUAL CONDUCT IN THE FIFTH DEGREE

Subdivision 1. Sexual penetration. Crime defined. A person is guilty of criminal sexual conduct in the fifth degree: if the person engages in nonconsensual sexual penetration.

Subdivision 2. Sexual Contact; Child present. Crime defined.

A person is guilty of criminal sexual conduct in the fifth degree if

- (1) ~~if~~ the person engages in nonconsensual sexual contact; or
- (2) the person engages in masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16, knowing or having reason to know the minor is present.

For purposes of this section, "sexual contact" has the meaning given in section 609.341, subdivision 11, paragraph (a), clauses (i), (iv), and (v). Sexual contact also includes the intentional removal or attempted removal of clothing covering the complainant's intimate parts or undergarments, and the nonconsensual touching by the complainant of the actor's intimate parts, effected by the actor, if the action is performed with sexual or aggressive intent.

~~2~~ **3. Gross misdemeanor.** A person convicted under subdivision 1 may be sentenced to imprisonment for not more than one year or to a payment of a fine of not more than \$3,000, or both.

Subd. ~~3-4~~ **Felony.** ~~(a)~~ A person is guilty of a felony and may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both, if the person violates ~~this section~~ subdivision 1 or subdivision 2 within ~~seven~~ ten years of:

- (1) Conviction or adjudication under subdivision 1; or
- ~~(2)(1)~~ a previous conviction or adjudication for violating subdivision ~~1~~ 2 clause(2), ~~a crime described in paragraph b,~~ or a statute from another state in conformity with any of these offenses; or
- ~~(3) (2)~~ the first of two or more previous convictions or adjudications for violating subdivision ~~1~~ 2, clause (1), or a statute from another state in conformity with this offense.

(b) A previous conviction for violating section 609.342; 609.343; 609.344; 609.345; 609.3453; 617.23, subdivision 2, clause (2), or subdivision 3; or 617.247 may be used to enhance a criminal penalty as provided in subdivision 2. ~~in paragraph (a).~~

[Penalty and stay portions not included]

609.32##, **Sexual Extortion.** A person who engages in sexual [penetration]/[contact] with another person and compels the other person to submit to such penetration by making any of the following threats, directly or indirectly, is guilty of sexual extortion in the [first]/[second] degree:

- (a) A threat to withhold or harm the complainant's trade, business, profession, position, employment, or calling; or
- (b) A threat to make or cause to be made a criminal charge against the complainant, whether true or false;
- (c) A threat to report the complainant's immigration status to immigration or law enforcement authorities that could result in legal action against the complainant;
- (d) A threat to disseminate private sexual images of the complainant as specified in section 617.261 (nonconsensual dissemination of private sexual images);
- (e) A threat to expose or publicize any fact or piece of information about the complainant, whether true or false, that would tend to subject the complainant to hatred, contempt, ridicule, discrimination, or to the disruption of the complainant's significant relationships or faith practice; or
- (f) A threat to withhold complainant's housing, or to cause complainant a loss or disadvantage in the complainant's housing, or a change in the cost of complainant's housing.

Note: No recommendation was made regarding sentencing. Also, with enactment, cross-referencing would need to take place in other statutes that reference CSC statutes, for example Minnesota Statutes, §§ 609.3455 and 609.101, subdivision 2.

APPENDIX 2

Working Group Members

Megan Arriola , Survivors Speak	Kyra Ladd, Wadena County Attorney
Shane Baker, Kandiyohi County Attorney	Donald E. Lannoye, Sibley County Attorney's Office
Scott Baker, Office of Public Defender, 1st Judicial District	Janine LePage, Crow Wing County Attorney's Office
Maret Banks, Standpoint	Aspen Lofgren
Mary Barron, Southwest Crisis Center	Kaarin Long, The Advocates for Human Rights
Stephanie Beckman, Minnesota Judicial Branch	Lisa Lovering, Isanti County Sheriff's Office
Mike Berger, Office of Public Defender, 10th Judicial District	Ashli Lyseng, Support Within Reach
Stacy Bettison, Minnesota Assoc. of Criminal Defense Lawyers	Nicole Mathews, Minnesota Indian Women's Sexual Assault Coalition
Andy Birrell, Minnesota Assoc. of Criminal Defense Lawyers	Sarah McGuire, Mid-Minnesota Legal Aid
Kristin Boomer, Bloomington Police Department	Renee Meerkins, MN Assoc. of Community Correction Act Counties
Lindsay Brice, Minnesota Coalition Against Sexual Assault	Carly Melin, Office of the Minnesota Attorney General
Sarah Colford, Break the Silence	Beatriz Menanteau, Injury & Violence Prevention Unit, MN Dept of Health
Kenosha Davenport, Sexual Violence Center	Liz Mendez Ochoa, Central Minnesota Sexual Assault Center
Katy Eagle, Mending the Sacred Hoop	Mak Miller-Tanner, Program for Aid to Victims of Sexual Assault
Sarah Edstrom, Minnesota Indian Women's Resource Center	Marcia Milliken, Minnesota Children's Alliance
Suzanne Elwell, Minnesota Office of Justice Programs	Asma Mohammed, Reviving the Islamic Sisterhood
Nikki Engel, Violence Free Minnesota	Kelly Olmstead, Minnesota Judicial Branch
Drew Evans, Bureau of Criminal Apprehension, Minnesota DPS	Colleen Olson
Heather Evans-Salmi	Luis Rangel Morales, Neighborhood Justice Center
Trisha Fisher	Nate Reitz, Minnesota Sentencing Guidelines Commission
James Fleming, Office of Public Defender, 2nd Judicial District	Elisabeth Samson Lee
Therese Galatowitsch, Hennepin County Attorney's Office (retired)	Sam Schmitt
Melia Garza, Minnesota Judicial Branch	Lindsay Siolka, Office of Public Defender, 4th Judicial District
Jessica Geil, Department of Human Services	Nathan Sosinski, Office of Public Defender, 10th Judicial District
Jill Gerber, Ramsey County Attorney's Office	Michael Spindler-Krage, Rochester City Attorney's Office
KiloMarie Granda, Unspoken Voices	Rebecca St. George, Fond du Lac Band of Lake Superior Chippewa
Erin Gustafson, Olmsted County Attorney's Office	Lisa Stratton, Stratton Law Firm
Aaron Gutzke, ThinkSelf	Ashley Sturtz-Griffith, Minnesota Coalition Against Sexual Assault
Alla Hassan, SOS Sexual Violence Services	Thi Synavone, Standpoint
Troy Heck, Benton County Sheriff	Michael Thompson, Association for the Treatment of Sexual Abusers
Tonja Honsey, Minnesota Sentencing Guidelines Commission	Kathy Thurston, Sexual Violence Center
Amy Isenor, Standpoint	Julia Tindell, Minnesota Alliance on Crime
Karen Jaszewski, Minnesota Judicial Branch	Joe Van Thomme, Eckberg Lammers
Andrew Kaehler, Central Minnesota Sexual Assault Center	PaHoua Vang, SOS Sexual Violence Services
Kathryn Karjala, Faribault County Attorney	Christina Warren, Hennepin County Attorney's Office
Kelly Keegan, Minnesota Assoc. of Criminal Defense Lawyers	Paul Young, Anoka County Attorney's Office
Katrina Kensy	Siv Yurichuk, Washington County County Attorney's Office

Steering Committee Members

Lindsay Brice, MN Coalition Against Sexual Assault	Rebecca St. George, Fond du Lac Band of Lake Superior Chippewa
Suzanne Elwell, MN Office of Justice Programs	Kaarin Long, The Advocates for Human Rights
James Fleming, Office of Public Defender, 2nd Judicial District	Thi Synavone, Standpoint
KiloMarie Granda, Unspoken Voices	Christina Warren, Hennepin County Attorney's Office