

2021 1st Special Session Laws

Amendments to Crime Laws Affecting the Guidelines

July 16, 2021

Background

After each session, the Commission reviews “crime[s] created or amended by the legislature in the preceding session” for possible related modifications to the Sentencing Guidelines. In accordance with Minn. Stat. § [244.09, subd. 11](#), the Commission may make such modifications without advance submission to the Legislature. This paper reviews those changes enacted during the 2021 1st Special Session of the 92nd Minnesota Legislature that appear to affect the Sentencing Guidelines directly.

This paper is to be presented to the Commission on July 22, 2021. Unless the Commission decides otherwise, it is understood that any modifications adopted by the Commission on July 22, 2021, will be subject to a public hearing on September 1, 2021, and to the Commission’s final action on September 9, 2021. It is also understood that the specified effective date of all modifications is September 15, 2021, to apply as provided in section 3.G of the Sentencing Guidelines.

A. Changes to Sex Offenses

The Legislature made a number of changes related to offenses on the Sex Offender Grid: Criminal Sexual Conduct, Sex Trafficking, and Child Pornography. In addition, the Legislature created new Sexual Extortion offenses. This section focuses on these offenses.¹

Because the various staff-recommended changes to the Sex Offender Grid are interrelated, the Sex Offender Grid (Guidelines section 4.B), with recommended modifications, is shown only in Appendix 2 (page 50), with an alternate version in Appendix 3 (page 53).

¹ Although the offense of Engage or Hire a Minor to Engage in Prostitution is not ranked on the Sex Offender Grid, it is included within this section because its age-threshold changes are identical to the age-threshold changes made to Criminal Sexual Conduct and Child Pornography, which are ranked on the Sex Offender Grid.

1. Changes to Criminal Sexual Conduct Offenses Involving Force

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 4, §§ 6, 16–19](#)

Description: Under existing Criminal Sexual Conduct (CSC) law, the use of force to accomplish sexual penetration constitutes CSC Third Degree. The use of force to accomplish sexual contact constitutes CSC Fourth Degree.

The act modifies and reorganizes the definition of “force.” Force involving the infliction of bodily harm is numbered separately from force by attempts or threats.

The act then moves those force offenses involving *infliction of bodily harm* from CSC Third Degree (penetration) and CSC Fourth Degree (contact) to CSC First Degree (penetration) and CSC Second Degree (contact), respectively. The 144-month statutory minimum presumptive sentence applicable to all CSC First Degree offenses applies to the new CSC First Degree force offense. The 90-month statutory minimum presumptive sentence applicable to some CSC Second Degree offenses applies to the new CSC Second Degree force offense.

To conform to this change, the act generally limits the CSC statutes’ remaining references to “force” to uses of force by attempts or threats. The act also generally uncouples the terms “force” and “coercion,” which appear together (as “force or coercion”) throughout the existing CSC statutes.

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [609.341](#); [609.342](#); [609.343](#); [609.344](#); [609.345](#) (2020)

Fiscal & Demographic Impact. The fiscal and demographic impact of changes to CSC offenses and the creation of Sexual Extortion is addressed in Appendix 1 (page 49).

Guidelines Considerations: The existing force or coercion offenses are currently ranked at Severity Level C (CSC Third Degree, penetration) or E (CSC Fourth Degree, contact). When personal injury—defined to include bodily harm—is also proven, force or coercion offenses are currently ranked at Severity Level A (CSC First Degree, penetration) or B (CSC Second Degree, contact).

All CSC First Degree offenses are currently ranked at Severity Level A. All CSC Second Degree offenses to which the 90-month statutory minimum presumptive sentence applies are ranked at Severity Level B.

All CSC offenses are on the list of Offenses Eligible for Permissive Consecutive Sentences (section 6).

The Sentencing Guidelines establish a “Severe Violent Offense List” (Guidelines section 8). For a second or subsequent severe violent offense, the presumptive sentence is increased by at least twelve months (section 2.G.14). In addition, a custody status point derived from a severe violent offense is nonwaivable (section 2.B.2.e(4) & (8)).

Some CSC First Degree and CSC Second Degree offenses are on the Severe Violent Offense List. All CSC Second Degree offenses to which the 90-month statutory minimum presumptive sentence applies (ranked

at Severity Level B) are on the list, with the exception of children under age 16 in a significant relationship to the perpetrator where the offense involved force, coercion, personal injury, or multiple acts committed over an extended period of time. The corresponding CSC First Degree offenses are also listed.

MSGC Staff Recommendations:

- Consistent with other CSC First Degree offenses, rank the new CSC First Degree force offense involving infliction of bodily harm at Severity Level A.
- Consistent with other CSC Second Degree offenses to which the 90-month statutory minimum presumptive sentence applies, rank the new CSC Second Degree force offense involving infliction of bodily harm at Severity Level B.
- Add the new CSC First Degree and CSC Second Degree offenses to the Severe Violent Offense List.
- Maintain existing rankings for those offenses involving force by attempt or threat, and for those coercion offenses uncoupled from force.

The changes resulting from this section’s recommendations are illustrated at the end of the following section, together with the changes that would result from that section’s recommendations.

2. Reorganization of Criminal Sexual Conduct Offenses, Including Changes to Age Thresholds and Creation of Prohibited Occupational Relationship Offenses

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 4, §§ 12, 16–19](#)

Description: The first four degrees of Criminal Sexual Conduct (CSC) are generally reorganized, with penalty provisions unchanged.

A number of age gaps and age thresholds are changed.

- Several CSC offenses involving someone in a position of authority over a child, and offenses involving victims under age 13–16, require that the perpetrator be at least *48 months* older than the child. The act reduces the age gap required in these cases to *36 months*.
- The existing requirement, found in certain CSC First-Degree and CSC Second-Degree offenses, that the victim be *under 13* years of age is modified to *“under 14.”*
- A corresponding change—changing “at least 13” to “at least 14”—is made to CSC Third Degree and CSC Fourth Degree.

The term “prohibited occupational relationship” is created, and new CSC Third Degree and CSC Fourth Degree offenses are established where the actor is in a prohibited occupational relationship with the complainant. These offenses replace a number of existing CSC offenses involving psychotherapists, medical providers, clergy, corrections employees, special transportation service providers, massage providers, and peace officers. The elements of the prohibited occupational relationship offenses are generally similar to the elements of the offenses they replace. In addition, two new prohibited occupational relationship offenses are created: one involving caregivers sexually penetrating or sexually contacting facility residents;

the other involving teachers or staff sexually penetrating or sexually contacting high school students (including adult high school students).

Under existing law, the elements of each CSC crime is contained in various paragraphs under subdivision 1 of the respective statute. The act reorganizes these crimes by creating, within each of the first four CSC degrees, a new subdivision 1a, applicable only to crimes against children under age 18. If the age of the victim is an element of the crime, the offense is moved into subdivision 1a. Offenses where the victim's age is not an element of the crime are placed in both subdivisions: Subdivision 1 (applicable only to adult victims) and subdivision 1a (applicable only to child victims). The paragraphs within each subdivision 1 are rearranged and renumbered.

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [609.341](#); [609.342](#); [609.343](#); [609.344](#); [609.345](#) (2020)

Fiscal & Demographic Impact. The fiscal and demographic impact of changes to CSC offenses is addressed in Appendix 1 (page 49).

Guidelines Considerations.

Age Gaps. The offenses with a 48-month age gap—to become a 36-month age gap under the act—are ranked as follows:

- *CSC 1st Degree (Penetration) – Severity Level A*
 - 609.342 subd. 1(b) – Victim 13–15, Actor 4 years older & in position of authority
- *CSC 2nd Degree (Contact) – Severity Level D*
 - 609.343 subd. 1(b) – Victim 13–15, Actor 4 years older & in position of authority
- *CSC 3rd Degree (Penetration) – Severity Level D*
 - 609.344 subd. 1(b) with reference to subd. 2(1) – Victim 13–15, Actor 4 years older
 - 609.344 subd. 1(e) – Victim 16–17, Actor 4 years older & in position of authority
- *CSC 4th Degree (Contact) – Severity Level F*
 - 609.345 subd. 1(b) – Victim 13–15, Actor 4 years older
 - 609.345 subd. 1(e) – Victim 16–17, Actor 4 years older & in position of authority

If the offense is a CSC Third Degree involving the sexual penetration of a child age 13–15, a limited age gap now exists, with a reduced statutory maximum penalty: a gap of more than 24 months, but not more than *48 months*. That offense is ranked at *Severity Level G*. Under the act, the age gap for that lesser offense (changed to apply to a child age 14 or 15), is limited to more than 24 months, but not more than *36 months*. Mathematically, perpetrators of the revised offense must be age 16, 17, or 18.

Offenses involving twelve- and thirteen-year-old victims. Under the act, offenses involving thirteen-year-old victims are classified as offenses involving twelve-year-old victims are classified now. Offenses involving twelve- and thirteen-year-old victims are presently ranked as follows.

- *CSC 1st Degree (Penetration) – Severity Level A*
 - 609.342 subd. 1(a) – Victim under 13, Actor 3 years older
 - 609.342 subd. 1(b) – Victim 13–15, Actor 4 years older & Pos. Authority
- *CSC 2nd Degree (Contact) – Severity Level D*
 - 609.343 subd. 1(a) – Victim under 13, Actor 3 years older
 - 609.343 subd. 1(b) – Victim 13–15, Actor 4 years older & Pos. Authority
- *CSC 3rd Degree (Penetration) – Severity Level D*
 - 609.344 subd. 1(b) with reference to subd. 2(1) – Victim 13–15, Actor 4 years older
- *CSC 4th Degree (Contact) – Severity Level F*
 - 609.345 subd. 1(b) – Victim 13–15, Actor 4 years older

Offenses involving twelve- and thirteen-year-old victims with juvenile perpetrators. Not included on the above list are two CSC offenses for which the perpetrator is, by definition, a juvenile. Those offenses are CSC Third Degree under Minn. Stat. § 609.344, subd. 1(a) (penetration), and CSC Fourth Degree under § 609.345, subd. 1(a) (contact). For each offense, the victim must be under age 13 (changing to age 14 under the act), and the perpetrator must be no more than 36 months older than the victim. The perpetrator cannot, therefore, be older than age 15 (changing to age 16 under the act). The Commission ranks these offenses at *Severity Level D* (CSC Fourth Degree) and *Severity Level F* (CSC Fourth Degree).

Also, there is a special version of CSC Third Degree, with a lower statutory maximum penalty, that now applies to victims age 13–15 when the age gap is between 24 and 48 months. That offense is ranked at *Severity Level G*. When this offense is now committed against a thirteen-year-old victim, the perpetrator is also, by definition, a juvenile.

Prohibited occupational relationships. The act creates new offenses requiring that the perpetrator be in a prohibited occupational relationship with the victim. The same conduct is now prohibited under several statutory paragraphs, each of which the Commission has ranked identically. If the offense is CSC Third Degree (penetration), it is ranked at *Severity Level C*. If the offense is CSC Fourth Degree (contact), it is ranked at *Severity Level E*.

Two new CSC offenses involving prohibited occupational relationships are not presently ranked. One, involving caregivers sexually penetrating or sexually contacting facility residents, is not ranked because it is presently a *gross misdemeanor* under Minn. Stat. § 609.2325, subd. 1(b). The other, involving teachers or staff sexually penetrating or sexually contacting high school students (including adult high school students), is not ranked because it is not necessarily a crime—particularly if the victim is an adult high school student. If the victim is a child, it may be a crime if the perpetrator is more than four years older and is in a position of authority over the student. If the victim is age 16 or 17, such a crime is ranked at *Severity Level D* (CSC

Third Degree, penetration) or *Severity Level F* (CSC Fourth Degree, contact). If the victim is age 13, 14, or 15, such a crime is ranked at *Severity Level A* (CSC First Degree, penetration), *Severity Level D* (CSC Second Degree, contact), or *Severity Level F* (CSC Fourth Degree, contact, but with no age gap required).

Identical offenses in both subdivisions 1 and 1a. With respect to a number of CSC First- through Fourth-Degree offenses, the age of the victim is immaterial. The act takes each of these offenses and divides it in two, depending on whether the victim is an adult or a child. Adult-victim offenses remain in subdivision 1. Child-victim offenses are placed in subdivision 1a. Penalties are unchanged.

Table 1 displays those offenses that the act divides, depending on the victim’s age, between subdivisions 1 and 1a of the respective statute. The table describes the offense and shows where it is presently codified and how it is presently ranked. The table then shows how it is to be newly codified—for both adult victims (subd. 1) and child victims (subd. 1a)—and how staff recommends ranking the newly codified offense. Within each cell, the top line pertains to those offenses involving penetration—CSC First Degree (Minn. Stat. § 609.342) and CSC Third Degree (§ 609.344)—and the bottom line pertains to those offenses involving contact—CSC Second Degree (§ 609.343) and CSC Fourth Degree (§ 609.345).

If age is currently an element of an offense (an “age case”), the act places that offense in subdivision 1a only. Because Table 1 displays only those offenses that the act divides between subdivisions 1 and 1a, age cases are not shown in Table 1. Except for the age-gap and age-threshold changes described above, the elements and penalties of age cases are entirely unchanged.

Table 1. Offenses to be Codified Under Both Adult-Victim and Child-Victim CSC Subdivisions

Offense Description	Presently Codified at	Presently Ranked at	New Codification		Staff-Recommended Ranking	
			Adult Victim	Child Victim	Adult Victim	Child Victim
Fear of great bodily harm	609.342 1(c)	A	609.342 1(a)	609.342 1a(a)	A	A
	609.343 1(c)	B	609.343 1(a)	609.343 1a(a)	B	B
Dangerous weapon	609.342 1(d)	A	609.342 1(b)	609.342 1a(b)	A	A
	609.343 1(d)	B	609.343 1(b)	609.343 1a(b)	B	B
Personal injury with force,* coercion, or MI/PH**	609.342 1(e)	A	609.342 1(c)	609.342 1a(c)	A	A
	609.343 1(e)	B	609.343 1(c)	609.343 1a(c)	B	B
Force (inflict bodily harm)	609.344 1(c)	C	609.342 1(d)	609.342 1a(i)	A	A
	609.345 1(c)	E	609.343 1(d)	609.343 1a(i)	B	B

Offense Description	Presently Codified at	Presently Ranked at	New Codification		Staff-Recommended Ranking	
			Adult Victim	Child Victim	Adult Victim	Child Victim
Accomplice with force, coercion, or weapon	609.342 1(f) 609.343 1(f)	A B	609.342 1(e)	609.342 1a(d)	A	A
			609.343 1(e)	609.343 1a(d)	B	B
Coercion	609.344 1(c) 609.345 1(c)	C E	609.344 1(a)	609.344 1a(c)	C	C
			609.345 1(a)	609.345 1a(c)	E	E
MI/PH**	609.344 1(d) 609.345 1(d)	C E	609.344 1(b)	609.344 1a(d)	C	C
			609.345 1(b)	609.345 1a(d)	E	E
Force*	609.344 1(c) 609.345 1(c)	C E	609.344 1(c)	609.344 1a(h)	C	C
			609.345 1(c)	609.345 1a(h)	E	E
Prohibited occupational relationship	609.344 1(h)(i)(j) (k)(l)(m)(n)(o)(p) 609.345 1(h)(i)(j) (k)(l)(m)(n)(o)(p)	C E	609.344 1(d)	609.344 1a(i)	C	C
			609.345 1(d)	609.345 1a(i)	E	E

Notes: *Force by threat or attempt only; excludes force involving infliction of bodily harm

** Mentally impaired, mentally incapacitated, or physically helpless

Consecutive Sentences. All CSC offenses are on the list of Offenses Eligible for Permissive Consecutive Sentences (section 6).

MSGC Staff Recommendations:

- Make no Guidelines changes, other than conforming changes, as a result of statutory changes to CSC age gaps—thus treating new CSC offenses involving perpetrators at least 36 months older than their child victims like existing CSC offenses involving perpetrators at least 48 months older than their child victims.
- Make no Guidelines changes, other than conforming changes, as a result of statutory changes to CSC age thresholds—thus treating new CSC offenses involving 13-year-old victims like existing CSC offenses involving 12-year-old victims.
- Rank prohibited occupational relationship CSC offenses at Severity Level C (CSC Third Degree) and Severity Level E (CSC Fourth Degree).

- Treat reorganized offenses in the same way that corresponding offenses with identical elements are treated in the existing Guidelines.²
- Make conforming technical changes.

The changes resulting from these recommendations are shown below, except for the changes to the Sex Offender Grid (Sentencing Guidelines section 4.B). The changes to the Sex Offender Grid are shown in Appendix 2 (page 50) and Appendix 3 (page 53).

Proposed Amendments to 2020 Minn. Sentencing Guidelines sections 2.G.5, 5, 6 & 8:

* * *

[2.]G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

* * *

5. Attempt or Conspiracy to Commit Criminal Sexual Conduct in the First or Second Degree. The Commission regards the provisions in Minn. Stat. § 609.342, subd. 2(b) and 609.343, subd. 2(b) as statutorily created presumptive sentences, not mandatory minimums. When an offender is sentenced for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree under Minn. Stat. § 609.342 or Criminal Sexual Conduct in the Second Degree under Minn. Stat. § 609.343, ~~subd. 1(c), (d), (e), (f), and (h)~~ subd. 1(a), 1(b), 1(c), 1(d), 1(e), 1a(a), 1a(b), 1a(c), 1a(d), 1a(h), or 1a(i), the presumptive duration is one-half of that found in the appropriate cell on the Sex Offender Grid for the underlying offense or any mandatory minimum, whichever is longer.

* * *

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
9	Criminal Abuse of Vulnerable Adult (Death)	609.2325, subd. 3 (a) (1)
8	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	609.2325, subd. 3 (a) (2)

² Due to some Commission members’ interest in treating newly divided offenses more severely when committed against child victims, a separate staff paper (“Special Topic – Dividing Criminal Sexual Conduct Offenses by Adult & Child Victims,” dated July 13, 2021) has been prepared that contains a different option.

Severity Level	Offense Title	Statute Number
4	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	609.2325, subd. 3(a)(3)
A	Criminal Sexual Conduct 1st Degree	609.342
B	Criminal Sexual Conduct 2nd Degree	609.343 subd. 1(c)(d)(e)(f)(h) <u>609.343, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)</u>
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	609.322, subd. 1(a)
C	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) <u>609.344, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)</u>
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	609.322, subd. 1a
D	Criminal Sexual Conduct 2nd Degree	609.343 subd. 1(a)(b)(g) <u>609.343, subd. 1a(e)(f)(g)</u>
	Criminal Sexual Conduct 3rd Degree	609.344 subd. 1a(a)(e)(f) or subd. 1a(b) with ref. to subd. 2(1)
	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 3(b)
	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)	617.246, subd. 2(b), 3(b), 4(b)
E	Criminal Sexual Conduct 4th Degree	609.345, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) <u>609.345, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)</u>
	Dissemination of Child Pornography	617.247, subd. 3(a)
	Use of Minors in Sexual Performance	617.246, subd. 2(a), 3(a), 4(a)

Severity Level	Offense Title	Statute Number
F	Criminal Sexual Conduct 4th Degree	609.345 subd. 1 <u>a</u> (a)(b)(e)(f)
	Criminal Sexual Conduct 5th Degree	609.3451, subd. 3
	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 4(b)
G	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 36 48 mos. older than Complainant)	609.344 subd. 1 <u>a</u> (b) with ref. to subd. 2(2)

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Statute Number	Offense Title	Severity Level
609.2325 subd. 3 (a) (1)	Criminal Abuse of Vulnerable Adult (Death)	9
609.2325 subd. 3 (a) (2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)	8
609.2325 subd. 3 (a) (3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)	4
609.342	Criminal Sexual Conduct 1st Degree	A
609.343 subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)	<u>Criminal Sexual Conduct 2nd Degree</u>	<u>B</u>
609.343 subd. 1(a)(b)(g) 609.343 subd. 1a(e)(f)(g)	Criminal Sexual Conduct 2nd Degree	D
609.343 subd. 1(c)(d)(e)(f)(h)	Criminal Sexual Conduct 2nd Degree	B
609.344 subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)	<u>Criminal Sexual Conduct 3rd Degree</u>	<u>C</u>
609.344 subd. 1 <u>a</u> (a)	Criminal Sexual Conduct 3rd Degree (By Definition Perpetrator Must be a Juvenile)	D

Statute Number	Offense Title	Severity Level
609.344 subd. 1 <u>a</u> (e)(f) or subd. 1 <u>a</u> (b) with ref. to subd. 2(1)	Criminal Sexual Conduct 3rd Degree	D
609.344 subd. 1 <u>a</u> (b) with ref. to subd. 2(2)	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and <u>36</u> 48 mos. older than Complainant)	G
609.344 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 3rd Degree	C
<u>609.345 subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)</u>	<u>Criminal Sexual Conduct 4th Degree</u>	<u>E</u>
609.345 subd. 1 <u>a</u> (a)	Criminal Sexual Conduct 4th Degree (By Definition Perpetrator Must be a Juvenile)	F
609.345 subd. 1 <u>a</u> (b)(e)(f)	Criminal Sexual Conduct 4th Degree	F
609.345 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 4th Degree	E

* * *

6. Offenses Eligible for Permissive Consecutive Sentences

- A.** Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.
- B.** Under section 2.F.2.a(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

* * *

Statute Number	Offense Title
609.342, subd. 1	Criminal Sexual Conduct 1st Degree
609.343, subd. 1	Criminal Sexual Conduct 2nd Degree
609.344, subd. 1	Criminal Sexual Conduct 3rd Degree
609.345, subd. 1	Criminal Sexual Conduct 4th Degree

* * *

8. Severe Violent Offense List

Each of the following is a “severe violent offense” within the meaning of sections 2.B.2.e and 2.G.14. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

* * *

Statute Number	Offense Title
609.342, subd. 1(c)(d) (e)(f) <u>609.342, subd. 1(a)(b)</u> <u>(c)(d)(e) & 1a(a)(b)(c)</u> <u>(d)(i)</u>	Criminal Sexual Conduct 1st Degree
609.343, subd. 1(c)(d) (e)(f) <u>609.343, subd. 1(a)(b)</u> <u>(c)(d)(e) & 1a(a)(b)(c)</u> <u>(d)(i)</u>	Criminal Sexual Conduct 2nd Degree

3. New Offense: Criminal Sexual Conduct Fifth Degree (Nonconsensual Penetration)

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 4, §§ 3 & 20](#)

Description: The act establishes a new Fifth-Degree CSC felony under Minn. Stat. § 609.3451, subd. 1, for engaging in nonconsensual sexual penetration. The maximum penalty is two years’ imprisonment and/or a \$10,000 fine. The existing subdivision 1 is renumbered as subdivision 1a, with its title is amended to “Sexual contact; child present.” The gross misdemeanor penalties of subd. 2 are applied to subd. 1a, rather than subd. 1. In subd. 3, the penalty for the new felony is inserted into para (a), and new para (b) is created referencing subsequent offenses under both subd. 1 and subd. 1a. The lookback time is lengthened from seven years to 10 years.

Notwithstanding the two-year statutory maximum penalty, the act amends Minn. Stat. § 609.3451 to provide for a six-year maximum period of probation, equal to the statutory maximum period of probation for gross misdemeanor Fifth-Degree CSC (including nonconsensual sexual contact).

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [609.3451](#) & [609.135](#) (2020)

Fiscal & Demographic Impact. The fiscal and demographic impact of changes to CSC offenses and the creation of Sexual Extortion is addressed in Appendix 1 (page 49).

Guidelines Considerations: The existing felony Fifth-Degree CSC offenses are ranked at Severity Level F, have a 7-year statutory maximum, and are exempt from the 5-year probation cap.

One of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether they should be added to the Guidelines' offense lists (e.g., offenses eligible for permissive consecutive sentences and severe violent offenses). The Commission bases its decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered. For the new offense, the Commission may decide:

1. What severity level should be assigned?
2. Should the offense be added to the list of Offenses Eligible for Permissive Consecutive Sentences (section 6)?
3. Should the offense be added to the list of Severe Violent Offenses (section 8)?
4. Should there be an exception to the length of stay (section 3.A.2)?

If Severity Level H assigned to the new offense, or if a new severity level is created for the offense due to the low statutory maximum penalty, it will also be necessary to consider how the offense (or severity level) should be weighted in criminal history. (This consideration is necessary for Severity Level H because that severity level uniquely assigns one of two different weights to a prior Failure to Register as a Predatory Offender offense, depending on whether the prior was a first offense or a subsequent offense.)

The recommendations below assume that the Commission will wish to assign the new CSC offense the weight of a full point in criminal history toward a subsequent sex offense, unless doing so would violate the Guidelines principle that lesser-severity offenses have lesser criminal history score weights than greater-severity offenses.

The recommendations below make no changes to sections 2.B.2.b or 2.B.2.e(4)(ii), sections that treat the custody status of Failure to Register as a Predatory Offender different from the custody status of all other sex offenses. By making no change, custody status for CSC Fifth Degree (Nonconsensual Penetration) *will* cause a future sex offense to receive two custody status points, and custody status from CSC Fifth Degree (Nonconsensual Penetration) *will not* be waivable—both of which are true of all offenses on the Sex Offender Grid other than Failure to Register as a Predatory Offender.

Because of the wording of section 3.A.2.d, no change is necessary to keep all Criminal Sexual Conduct 5th Degree offenses, including the new one, on the list of exceptions to the 5-year probation cap rule. It will be necessary to change the language of section 6 to place the new offense on the list of offenses eligible for permissive consecutive sentences.

MSGC Staff Recommendations:

- Create a new severity level (Severity Level I) on the Sex Offender Grid (section 4.B) at which the two-year statutory maximum penalty equals the grid maximum (24 months) at a Criminal History

Score of 6 or more, and assign Criminal Sexual Conduct Fifth Degree (Nonconsensual Penetration) to that severity level.

- Assign ½ point in criminal history for the prior commission of a Severity Level I offense.
- Add the new offense to section 6, Offenses Eligible for Permissive Consecutive Sentences.
- Make conforming technical changes.

The changes resulting from these recommendations are shown below, except for the changes to the Sex Offender Grid (Sentencing Guidelines section 4.B). The changes to the Sex Offender Grid are shown in Appendix 2 (page 50).

Alternative MSGC Staff Recommendations:

- Rather than create a new Severity Level I, rank the new offense at Severity Level H and change that severity level on the Sex Offender Grid so that the cells are shaded at criminal history scores 0 through 4. The presumptive sentence for Failure to Register as a Predatory Offender would remain a presumptive commit by operation of Guidelines section 2.E.1 and Appendix 1 and Minn. Stat. § 243.166, subd. 5(b) and (c).
- If the current offense is on the Sex Offender Grid, assign 1 point in criminal history for a prior Criminal Sexual Conduct Fifth Degree (Nonconsensual Penetration) conviction. If the current offense is on the Standard Grid or the Drug Offender Grid, assign ½ point in criminal history for a prior conviction of the new offense.
- Make all other changes described in the previous paragraph.

The alternative is displayed beginning on page 17, except for the changes to the Sex Offender Grid (Sentencing Guidelines section 4.B). The changes to the Sex Offender Grid are shown in Appendix 3 (page 53).

Proposed Amendments to 2020 Minn. Sentencing Guidelines sections 1.B.17, 2.B.1, 5, & 6, and Comment 2.B.202:

* * *

[1.B.]17. Severity Level. The “severity level” is a ranking assigned to each felony offense by the Sentencing Guidelines Commission to indicate the seriousness of the offense. The vertical axis on the applicable grid represents the severity of the conviction offense. Felony offenses, other than sex and drug offenses, are arranged on the Standard Grid into eleven levels of severity, ranging from high (Severity Level 11) to low (Severity Level 1). Sex offenses are arranged on the Sex Offender Grid into ~~eight~~ nine severity levels, ranging from high (Severity Level A) to low (Severity Level ~~H~~ I). Drug offenses are arranged on the Drug Offender Grid

into nine levels of severity, ranging from high (Severity Level D9) to low (Severity Level D1). Offenses listed within each severity level are deemed equally serious.

* * *

[2.B.]1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing.

The severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense.

a. Current Offense on Standard Grid or Drug Offender Grid. If the current offense is **not** on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Standard Grid or Drug Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1 ½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	2
	B – E	1 ½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)
	I	½

b. Current Offense on Sex Offender Grid. If the current offense is on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Sex Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	3
	B – C	2
	D – E	1½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses)
	I	½

* * *

2.B.202. *The Commission intended to avoid criminal history scores in which a prior offense's custody status point outweighed the criminal history of the prior offense itself. Accordingly, when the criminal history weight of a prior felony is one-half point (but excluding severity level H or I offenses; see generally section 2.B.1) or the prior gross misdemeanor or misdemeanor contributes one or two misdemeanor units (see section 2.B.3), the custody status from that prior offense results in one-half, rather than one, custody status point.*

* * *

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
F	Criminal Sexual Conduct 5th Degree (<u>2nd or Subsequent Violation</u>)	609.3451, subd. 3(b)
I	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	609.3451, subd. 3(a)

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Statute Number	Offense Title	Severity Level
609.3451 subd. 3(a)	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	I
609.3451 subd. 3(b)	Criminal Sexual Conduct 5th Degree <u>(2nd or Subsequent Violation)</u>	F

* * *

6. Offenses Eligible for Permissive Consecutive Sentences

- A. Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.
- B. Under section 2.F.2.a(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

* * *

Statute Number	Offense Title
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree

* * *

Alternative Guidelines amendments ranking the new offense at Severity Level H (see page 14 for description; see Appendix 3 (page 53) for the changes to the Sex Offender Grid (Guidelines section 4.B)).

Proposed Amendments to 2020 Minn. Sentencing Guidelines sections 2.B.1, 5, & 6, Comment 2.B.406, and Appendix 3:

* * *

[2.B.]1. Prior Felonies. Assign a particular weight, as set forth in paragraphs a and b, to each extended jurisdiction juvenile (EJJ) conviction and each felony conviction, provided that a

felony sentence was stayed or imposed before the current sentencing or a stay of imposition of sentence was given before the current sentencing.

The severity level ranking in effect at the time the current offense was committed determines the weight assigned to the prior offense.

- a. Current Offense on Standard Grid or Drug Offender Grid. If the current offense is **not** on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Standard Grid or Drug Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	2
	B – E	1½
	F – G	1
	H	½ (for first offense); 1 (for subsequent offenses) <u>1 (for 243.166 subd. 5(c) only);</u> ½ (for other offenses)

- b. Current Offense on Sex Offender Grid. If the current offense is on the Sex Offender Grid, determine the weight assigned to each prior felony sentence according to its severity level, as follows:

Current Offense on Sex Offender Grid	SEVERITY LEVEL	POINTS
	1 – 2, D1 – D2	½
	3 – 5, D3 – D5	1
	6 – 8, D6 – D7	1½
	9 – 11, D8 – D9	2
	Murder 1st Degree	2
	A	3
	B – C	2
	D – E	1½
	F – G	1
	H	½ (for first offense 243.166 subd. 5(b) only); 1 (for subsequent other offenses)

* * *

2.B.406. *The Commission decided that it would take two juvenile adjudications to equal 1 point on the criminal history score, and generally, an offender may not receive more than 1 point on the basis of prior juvenile adjudications. This point limit does not apply to offenses committed and prosecuted as a juvenile for which the Guidelines would presume imprisonment, regardless of criminal history, if committed by an adult. This includes offenses in the non-shaded portions of the applicable Grids at a Criminal History Score of 0 (e.g., Severity Level 8 or H), offenses subject to mandatory minimum laws (e.g., Assault in the Second Degree), or any other applicable policies under section 2.C. The criminal history record is not used to determine whether the juvenile offense carries a presumptive imprisonment sentence because of the difficulty in applying criminal history score computations to prior juvenile offenses. Two juvenile adjudications are required for each additional point. Again, no partial points are allowed, so an offender with only one juvenile adjudication meeting the above criteria would receive no point on the criminal history score.*

* * *

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
F	Criminal Sexual Conduct 5th Degree (<u>2nd or Subsequent Violation</u>)	609.3451, subd. 3(b)
<u>H</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>609.3451, subd. 3(a)</u>

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Statute Number	Offense Title	Severity Level
243.166 subd. 5(b)	Registration of Predatory Offenders	H ₋ *
243.166 subd. 5(c)	Registration of Predatory Offenders (2nd or Subsequent Violations)	H ₋ *
<u>609.3451 subd. 3(a)</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>H**</u>
609.3451 subd. 3(b)	Criminal Sexual Conduct 5th Degree (<u>2nd or Subsequent Violation</u>)	F

* The presumptive disposition is commitment. See section 2.E and Appendix 1.

** See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

* * *

6. Offenses Eligible for Permissive Consecutive Sentences

- A. Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.
- B. Under section 2.F.2.a(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

* * *

Statute Number	Offense Title
609.3451, subd. 3	Criminal Sexual Conduct 5th Degree

* * *

Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

* * *

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
<u>609.3451, subd. 3(a)</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>H</u>	<u>24</u>	<u>CHS 5</u>

4. New Offenses: Sexual Extortion

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 4, § 22](#) (also §§ [21](#) & [31](#))

Description: Sexual Extortion under Minn. Stat. § 609.3458 is created. The offense occurs when a person engages in sexual penetration or sexual contact with another person and compels the other person to submit by making direct or indirect threats to withhold or harm a job or business, cause criminal charges to be made, report immigration status, disseminate private sexual images, expose a secret, or change housing or rent. The contact offense is a felony carrying a maximum penalty of 10 years imprisonment and/or a \$20,000 fine. The penetration offense is a felony carrying a maximum penalty of 15 years imprisonment and/or a \$30,000 fine. Persons are subject to conditional release and no person may be charged with an attempt.

The new crime is added to a multitude of statutory lists that now include CSC offenses. Most notably, Sexual Extortion is defined as a “sex offense” within Minn. Stat. § [609.3455](#), which contains enhanced penalties for committing a sex offenses in a repeated or aggravated manner. There are at least three important exceptions, however: the new offense is not added to the list of “crime[s] of violence” resulting in firearms disqualification (Minn. Stat. § [624.712, subd. 5](#)), nor to the list of “violent crime[s]” resulting in

enhanced penalties for repeat offenses (Minn. Stat. § [609.1095](#)), nor to the list of offenses requiring predatory offender registration (Minn. Stat. § [243.166](#)).

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.3455](#).

Fiscal & Demographic Impact. The fiscal and demographic impact of changes to CSC offenses and the creation of Sexual Extortion is addressed in Appendix 1 (page 49).

Guidelines Considerations: One of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether they should be added to the Guidelines' offense lists (e.g., offenses eligible for permissive consecutive sentences and severe violent offenses). The Commission bases its decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered. For the new offense, the Commission may decide:

1. What severity level should be assigned?
2. Should the offense be added to the list of Offenses Eligible for Permissive Consecutive Sentences (section 6)?
3. Should the offense be added to the list of Severe Violent Offenses (section 8)?
4. Should there be an exception to the length of stay (section 3.A.2)?

One of the elements of Sexual Extortion is that submission to the sexual contact or penetration is compelled by a threat (to disclose harmful information or withhold a benefit). The enactment of this crime was recommended by the CSC Statutory Reform Working Group, which included the following rationale in its report: "This proposal ... 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"

The Sexual Extortion offenses carry the same statutory maximum penalties as CSC Third Degree and CSC Fourth Degree.

In its fiscal note, staff assumed that the Commission would rank the penetration offense at Severity Level C and the contact offense at Severity Level E. Compared to CSC Third Degree and CSC Fourth Degree offenses ranked at those severity levels, the compulsion involved in these offenses is less than force or coercion, but the Commission may consider it to be similar to the power imbalances in prohibited occupational relationship offenses that make consent legally irrelevant.

Alternatively, the Commission may consider the compulsion involved in these offenses to be similar to that of CSC Third Degree and CSC Fourth Degree offenses involving teenage victims and older perpetrators, where consent is also deemed to be legally irrelevant. Those offenses are ranked at Severity Level D (penetration) and Severity Level F (contact).

MSGC Staff Recommendations:

- Rank Sexual Extortion (Penetration) at Severity Level C.
- Rank Sexual Extortion (Contact) at Severity Level E.
- Add Sexual Extortion to the list of Offenses Eligible for Permissive Consecutive Sentences.
- Add Sexual Extortion to the list of exceptions to the length of stay.

Alternatives MSGC Staff Recommendation (not displayed): Rank the Sexual Extortion (Penetration) at Severity Level D and Sexual Extortion (Contact) at Severity Level F—or leave both offenses unranked and monitor how the courts rank the offenses—and make the changes to sections 6 and 3.A.2 described above.

Proposed Amendments to 2020 Minn. Sentencing Guidelines sections 3.A.2.d, 5, & 6:

* * *

[3.]A. Establishing Conditions of Stayed Sentences

* * *

2. Length of Stay.

- a. When the court stays execution or imposition of sentence for a felony offense, including an attempt or conspiracy, the pronounced length of stay must not exceed five years or the length of the statutory maximum punishment, whichever is less, unless the court identifies and articulates substantial and compelling reasons to support a departure from this rule.

* * *

- d. The limitation in section 3.A.2.a does not apply to a sentence for a violation of Minn. Stat. § 609.19 (Murder 2nd Degree), 609.195 (Murder 3rd Degree), 609.20 (Manslaughter 1st Degree), 609.2112 (Criminal Vehicular Homicide), 609.2662 (Murder of an Unborn Child 2nd Degree), 609.2663 (Murder of an Unborn Child 3rd Degree), 609.2664 (Manslaughter of an Unborn Child 1st Degree), 609.268 (Death or Injury of an Unborn Child in Comm. of Crime), 609.342 (Criminal Sexual Conduct 1st Degree), 609.343 (Criminal Sexual Conduct 2nd Degree), 609.344 (Criminal Sexual Conduct 3rd Degree), 609.345 (Criminal Sexual Conduct 4th Degree), ~~or 609.3451 (Criminal Sexual Conduct 5th Degree), or 609.3458 (Sexual Extortion).~~

* * *

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
C	<u>Sexual Extortion (Penetration)</u>	<u>609.3458, subd. 1(b)</u>
E	<u>Sexual Extortion (Contact)</u>	<u>609.3458, subd. 1(a)</u>

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Statute Number	Offense Title	Severity Level
<u>609.3458 subd. 1(a)</u>	<u>Sexual Extortion (Contact)</u>	<u>E</u>
<u>609.3458 subd. 1(b)</u>	<u>Sexual Extortion (Penetration)</u>	<u>C</u>

* * *

6. Offenses Eligible for Permissive Consecutive Sentences

- A. Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.
- B. Under section 2.F.2.a(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

* * *

Statute Number	Offense Title
<u>609.3458</u>	<u>Sexual Extortion</u>

* * *

5. Sex Trafficking Added to “Violent Crime” Definition

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 29](#)

Description: Adds Minn. Stat. § 609.322 (Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking) to the definition of “violent crime” in Minn. Stat. § 609.1095. Persons who repeatedly commit crimes on this list face enhanced penalties.

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.1095](#) (2020); Minn. Stat. § [609.322](#) (2020)

Long-Term Fiscal Impact (H.F. 613-1UE): Estimated 10 additional prison beds.

Demographic Impact (H.F. 613-1UE): ([Link to full DIS](#)).

- **Gender:** Male (100.0%); Female (0%).
- **Race & Ethnicity:** White (9.6%); Black (90.4%); American Indian (0%); Hispanic (0%); Asian (0%).
- **Judicial District:** First (0%); Second (0%); Third (0%); Fourth (24.4%); Fifth (27.8%); Sixth (0%); Seventh (16.6%); Eighth (0%); Ninth (0%); and Tenth (31.1%).

Guidelines Considerations: Sex Trafficking becomes subject to the sentencing enhancements provided in Minn. Stat. section 609.1095, subdivision 2 (aggravated durational departure for dangerous offender who commits third violent crime up to the statutory maximum if the offender has two or more prior convictions for violent crimes) and subdivision 3 (mandatory commitment to the commissioner of corrections for at least the length of the presumptive sentence for a dangerous offender who commits third violent felony). The addition of Sex Trafficking to the list of violent crimes could impact the sentences imposed for these offenses. Minn. Stat. § 609.1095, subd. 2, provides for an optional durational departure up to the statutory maximum for a third violent crime when the offender is found to be a danger to public safety, which finding may be supported either by the offender’s past criminal behavior or the facts of the present offense involving an aggravating factor that would justify a durational departure.

The Sentencing Guidelines establish a “Severe Violent Offense List” (Guidelines section 8). For a second or subsequent severe violent offense, the presumptive sentence is increased by at least twelve months (section 2.G.14). In addition, a custody status point derived from a severe violent offense is nonwaivable (section 2.B.2.e(4) & (8)). Sex Trafficking is not presently on that list, although Labor Trafficking is.

The proponents’ [rationale](#) for adding sex trafficking to the statutory list of violent crimes is threefold:

- “Sex trafficking regularly involves violence (to the victim by the trafficker/patrons, as codified in the aggravating factor of infliction of bodily harm).
- “As a lucrative and illicit enterprise requiring ongoing human contact in private locations where victims are most vulnerable, the danger to the victim and others is high.
- “Sex trafficking is certainly as dangerous an ongoing activity as other ‘violent crimes’— *i.e.* simple robbery, burglary in the first degree, criminal sexual conduct in the first through fourth degrees,

and controlled substance crimes in the first through fourth degrees. Minn. Stat. § [609.1095](#), subd. 1(d).”

Not all offenses classified as “violent crimes” appear in the Guidelines’ Severe Violent Offense List; compare the second and sixth columns of Table 1 in [MSGC Staff Information Paper: Selected Violence-Related Crime Lists \(March 2, 2021\)](#). In light of the particular applicability of the proponents’ rationale to aggravated sex trafficking offenses, staff recommends adding aggravated sex trafficking offenses (involving repeat offenses, bodily harm, debt bondage or forced work for over 180 days, or multiple victims) to the Severe Violent Offense List.

MSGC Staff Recommendation: Add Minn. Stat. § 609.322, subd. 1(b) (aggravated sex trafficking), to the Severe Violent Offense List.

Alternative to MSGC Staff Recommendation: Add all sex trafficking offenses (Minn. Stat. § 609.322) to the Severe Violent Offense List, by adopting the following changes without “subd. 1(b).”

Proposed Amendments to 2020 Minn. Sentencing Guidelines section 8:

8. Severe Violent Offense List

Each of the following is a “severe violent offense” within the meaning of sections 2.B.2.e and 2.G.14. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

* * *

Statute Number	Offense Title
609.185	Murder 1st Degree
609.19	Murder 2nd Degree
609.195(a)	Murder 3rd Degree (Depraved Mind)
609.221	Assault 1st Degree
609.222, subd. 2	Assault 2nd Degree (Dangerous Weapon, Substantial Bodily Harm)
609.245, subd. 1	Aggravated Robbery 1st Degree
609.25, subd. 2(2)	Kidnapping (Great Bodily Harm/Unsafe Release/Victim Under 16)
609.2661	Murder of an Unborn Child 1st Degree
609.2662	Murder of an Unborn Child 2nd Degree
609.2663	Murder of an Unborn Child 3rd Degree

Statute Number	Offense Title
609.282	Labor Trafficking
<u>609.322, subd. 1(b)</u>	<u>Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking</u>
609.342, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(i)	Criminal Sexual Conduct 1st Degree
609.343, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(i)	Criminal Sexual Conduct 2nd Degree
609.498, subd. 1b	Tampering with Witness, Aggravated 1st Degree
609.561, subd. 1 or 2	Arson 1st Degree
609.66, subd. 1e(b)	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)

* * *

6. Statutory Maximums Increased for Sex Trafficking Offenses

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, §§ 32 & 33](#)

Description: For first-degree sex trafficking offenses in Minn. Stat. section 609.322 subd. 1(a), the maximum is increased from 20 to 25 years (300 mos.). For second-degree offenses in Minn. Stat. section 609.322, subd.1a, the maximum is increased from 15 to 20 years (240 mos.). For either first- or second-degree offenses with aggravating circumstances under subd. 1(b), the maximum is increased from 25 to 30 years (360 mos.).

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.322](#) (2020)

Long-Term Fiscal Impact (H.F. 613-1UE): Two of the three cases with statutory maximum presumptive sentences are accounted for by either the required sentence for two prior violent offenses or by a consecutive sentence that resulted in a sentence greater than 300 months. It is estimated the increases to the statutory maximums for First-Degree Sex Trafficking for the other offender with a CHS of 6 or more will result in the eventual need for one additional prison bed.

Demographic Impact (H.F. 613-1UE): ([Link to full DIS](#)).

- **Gender:** Male (100.0%); Female (0%).
- **Race & Ethnicity:** White (9.6%); Black (90.4%); American Indian (0%); Hispanic (0%); Asian (0%).

- **Judicial District:** First (0%); Second (0%); Third (0%); Fourth (24.4%); Fifth (27.8%); Sixth (0%); Seventh (16.6%); Eighth (0%); Ninth (0%); and Tenth (31.1%).

Guidelines Considerations: Increases to the statutory maximums will require changes to grid ranges and notations.

- First-Degree Sex Trafficking (involving children under age 18) is ranked at Severity Level B; the changes bring the statutory maximum (25 years) in line with the other identically ranked offense on the Sex Offender Grid (certain subdivisions of 2nd Degree Criminal Sexual Conduct). Because the statutory maximum will now be equal to the maximum penalty displayed on the Sex Offender Grid, references to policy applicable when the presumptive sentence durations exceed the statutory maximum sentence—found in section 5.B and Appendix 3—will no longer be necessary.
- Second-Degree Sex Trafficking (involving adults) is ranked at Severity Level C. Heretofore, the greatest statutory maximum penalty for a Severity Level C offense was 15 years; for this reason, the Sex Offender Grid did not display durations greater than 180 months, even in the upper ranges. Due to the larger statutory maximum penalty, it will be necessary to modify the Sex Offender Grid to display the upper ranges required by Minn. Stat. § 244.09, subd. 5(2) (20% increase). Because this change will cause certain Criminal Sexual Conduct 3rd Degree offenses to have presumptive durations (upper range only) that exceed the statutory maximum, those Criminal Sexual Conduct 3rd Degree ranked at Severity Level C should be added to the list of offenses in Appendix 3, Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table; and a footnote referencing this limitation should be added in section 5.B.
- Aggravated Sex Trafficking is not a separately ranked offense; instead, the Guidelines treat the aggravating circumstance (prior offense, bodily harm, long-term debt bondage or forced labor, or multiple victims) as a sentence modifier under Guidelines section 2.G.9 (increasing the presumptive duration by 48 months for a completed offense). No Guidelines changes are required as a result of the increased statutory maximum penalty.

In addition to these provisions, the act ([2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 54](#)) requires the Commission to “comprehensively review and consider modifying how the Sentencing Guidelines and the sex offender grid address the crimes described in Minnesota Statutes, section 609.322.” Further Guidelines changes may result from this review.

MSGC Staff Recommendation: Make conforming technical changes.

The changes resulting from these recommendations are shown below, except for the changes to the Sex Offender Grid (Sentencing Guidelines section 4.B). The changes to the Sex Offender Grid are shown in Appendix 2 (page 50) and Appendix 3 (page 53).

Proposed Amendments to 2020 Minn. Sentencing Guidelines section 5.B and Appendix 3:

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

Statute Number	Offense Title	Severity Level
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B*
609.344 subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)	Criminal Sexual Conduct 3rd Degree	C*

* See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.

* * *

Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

* * *

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
609.322, subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B	240	CHS 5
609.344, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)	Criminal Sexual Conduct 3rd Degree	C	180	CHS 5 (upper-range)

* * *

7. Engage or Hire a Minor to Engage in Prostitution Age Threshold Adjustment

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 4, § 5](#)

Description: The act adjusts the age limits for the offenses found in Minn. Stat. section 609.324, subds. 1(a) & 1(b), Engage or Hire a Minor to Engage in Prostitution.³ The subd. 1(a) offense, which has a statutory maximum of 20 years and currently applies to acts involving someone under the age of 13, is amended to apply to someone under the age of 14. The subd. 1(b) offense, which has a statutory maximum of 10 years and currently applies to acts involving someone under the age of 16 but at least 13, is amended to apply to someone under the age of 16 but at least 14.⁴ Subd. 1(c), which applies to children at least 16 years old, is unchanged.

Note: Although these offenses are not included on the Sex Offender Grid, they are listed in the “Sex Offense” section of this paper because these age-threshold changes are identical to age-threshold changes made to sex offenses (namely, CSC and child pornography offenses).

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.324](#) (2020)

Long-Term Fiscal Impact (H.F. 613-1UE): If one person a year receives a prison sentence of 86 months for Minn. Stat. section 609.324, subd. 1(a), the estimated prison bed impact is 5 beds.

Demographic Impact (H.F. 613-1UE): Not applicable.

Guidelines Considerations:

Prostitution offenses contained in Minn. Stat. section 609.324, subd. 1 (Engage or Hire a Minor to Engage in Prostitution) are felonies presently ranked on the Standard Grid as follows:

- Subd. 1(a), involving children under age 13: 20-year statutory maximum, ranked at Severity Level 9.
- Subd. 1(b), involving children age 13–15: 10-year statutory maximum, ranked at Severity Level 5.
- Subd. 1(c), involving children age 16 & 17: 5-year statutory maximum, ranked at Severity Level 3.

Because the statutory maximums are unchanged by this amendment, it is assumed that the severity levels will remain the same.

³ Unlike the other offenses in this section, Engage or Hire a Minor to Engage in Prostitution is not ranked on the Sex Offender Grid. For an explanation of why this offense is included in the “Changes to Sex Offenses” section of this paper, see footnote **Error! Bookmark not defined.**

⁴ There is one exception: the act does not change “at least 13” to “at least 14” in Minn. Stat. § 609.324, subd. 1(b)(3), which applies to an individual reasonably believed to be the specified age—for example, an adult police officer masquerading as a child of the specified age. Because the act did change the corresponding provision in subd. 1(a)(3) to “under the age of 14,” this omission appears to have been a legislative oversight. Nevertheless, read literally, **both** offenses—each with a different statutory maximum penalty and severity level—will now apply to sexually hiring an individual reasonably believed to be age 13.

MSGC Staff Recommendation: Make no Guidelines changes as a result of statutory changes to child prostitution age thresholds—thus treating new child prostitution offenses involving 13-year-old victims like existing child prostitution offenses involving 12-year-old victims.

8. Child Pornography Age Threshold Adjustment and Directed Ranking Increases

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 52 & art. 4, §§ 25 & 26](#)

Description: Currently, the maximum penalty for a child pornography offense (Use of Minors in Sexual Performance, Dissemination of Child Pornography, or Possession of Child Pornography) is increased if committed by a repeat child pornography offender, committed by a registered predatory offender, or involving a minor under the age of 13 years. The act raises this age threshold to “under the age of 14 years.”

The act also directs the Commission to increase severity rankings for enhanced child pornography possession and dissemination crimes, as recommended in the [minority report](#) contained within the Commission’s January 15, 2021, Report to the Legislature, as follows:

- The severity level assigned to Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13) is to be increased from severity level D (presumptive 36 month stayed sentence at zero criminal history points) to C (presumptive 48-month prison commit at zero criminal history points);
- The severity level assigned to Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13) is to be increased from severity level F (presumptive 18 month stayed sentence at zero criminal history points) to E (presumptive 24-month stayed sentence at zero criminal history points).

The report itself contained [proposals to increase](#) the severity levels assigned to Use of Minors in Sexual Performance offenses (Minn. Stat. § 617.246) effective August 1, 2021. The act explicitly adopts “[t]he other modifications to the grid relating to child pornography crimes proposed in the main report.”

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

Guidelines Considerations: The act approves both the majority and the minority reports of January 15, 2021. The severity level for each child pornography crime will be increased by one level, with the exception of the two most common offenses: possession and dissemination crimes where enhancing circumstances are absent. The age-thresholds changes do not alter the statutory maximum penalties or otherwise alter the elements of the offenses.

References: Minn. Stat. §§ [617.246](#) & [617.247](#) (2020)

Long-Term Fiscal Impact: It is estimated that an increase in severity-level rankings for the enhanced dissemination cases will result in the eventual need for 10 additional prison beds, and that the increase in severity-level rankings for the enhanced possession cases will result in the eventual need for 45 additional prison beds, for a total of 55 beds.

No fiscal impact estimate of the change in age thresholds was requested or prepared.

Demographic Impact: Not prepared.

MSGC Staff Recommendations:

- Adjust the severity levels of Use of Minors in Sexual Performance proposed to the Legislature on January 15, 2021.
- With respect to the enhanced dissemination and possession offenses, adjust the severity levels as directed.
- Make no Guidelines changes, other than conforming changes, as a result of statutory changes to child pornography age thresholds—thus treating new child pornography offenses involving 13-year-old victims like existing child pornography offenses involving 12-year-old victims.

The changes resulting from these recommendations are shown below, except for the changes to the Sex Offender Grid (Sentencing Guidelines section 4.B). The changes to the Sex Offender Grid are shown in Appendix 2 (page 50) and Appendix 3 (page 53).

Proposed Amendments to 2020 Minn. Sentencing Guidelines section 5:

* * *

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
C	<u>Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)</u>	<u>617.247, subd. 3(b)</u>
	<u>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 14)</u>	<u>617.246, subd. 2(b), 3(b), 4(b)</u>
D	<u>Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)</u>	<u>617.247, subd. 3(b)</u>
	<u>Use of Minors in Sexual Performance</u>	<u>617.246, subd. 2(a), 3(a), 4(a)</u>

Severity Level	Offense Title	Statute Number
	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)	617.246, subd. 2(b), 3(b), 4(b)
E	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)	617.247, subd. 4(b)
	Use of Minors in Sexual Performance	617.246, subd. 2(a), 3(a), 4(a)
F	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 4(b)

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

Statute Number	Offense Title	Severity Level
617.246 subd. 2(a) 3(a) 4(a)	Use of Minors in Sexual Performance	E D
617.246 subd. 2(b) 3(b) 4(b)	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13 14)	D <u>C</u>
617.247 subd. 3(a)	Dissemination of Child Pornography	E*
617.247 subd. 3(b)	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13 14)	D <u>C</u>
617.247 subd. 4(a)	Possession of Child Pornography	G
617.247 subd. 4(b)	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13 14)	F <u>E</u>

* * *

9. Statutory Maximums Increased for Solicitation of Children to Engage in Sexual Conduct

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 38](#)

Description: The statutory maximum for violations under Minn. Stat. § 609.352 (Solicitation of Children to Engage in Sexual Conduct) is increased from three to five years (60 mos.).

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.352](#) (2020)

Long-Term Fiscal Impact (H.F. 613-1UE): It is estimated that one case per year will receive a sentence increase from 36 months to 60 months. Given that two-thirds of the sentence will be served in prison, this would result in the need for 1 additional prison bed. This bed would be needed in year three and every year after. The impact may be greater if, in the future, some cases with high CHSs do not receive departures.

Demographic Impact (H.F. 613-1UE): ([Link to full DIS](#)).

- **Gender:** Male (100.0%); Female (0%).
- **Race & Ethnicity:** White (9.6%); Black (90.4%); American Indian (0%); Hispanic (0%); Asian (0%).
- **Judicial District:** First (0%); Second (0%); Third (0%); Fourth (24.4%); Fifth (27.8%); Sixth (0%); Seventh (16.6%); Eighth (0%); Ninth (0%); and Tenth (31.1%).

Guidelines Considerations: The statutory maximum for Solicitation of Children to Engage in Sexual Conduct under Minn. Stat. § 609.352 is increased from three to five years. It was assumed that the increase would have no impact on the severity-level ranking for Minn. Stat. § 609.352. This offense is ranked at Severity Level G where the presumptive sentence for offenders with a CHS of six or more is 60 months. Currently, offenses with a CHS of four or more are limited to a presumptive sentence of 36 months (because the presumptive sentence must not exceed the statutory maximum). Raising the statutory maximum to 60 months will result in an increase in the presumptive durations for offenses with a CHS of four or more.

Because the statutory maximum will no longer exceed the grid maximum, the offense will no longer need to be listed in Appendix 3 (“Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table”).

MSGC Staff Recommendation: Make conforming technical changes (no ranking changes recommended).

The changes resulting from these recommendations are shown below, except for the changes to the Sex Offender Grid (Sentencing Guidelines section 4.B). The changes to the Sex Offender Grid are shown in Appendix 2 (page 50) and Appendix 3 (page 53).

Proposed Amendments to 2020 Minn. Sentencing Guidelines sections 5.B and Appendix 3:

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

Statute Number	Offense Title	Severity Level
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct	G*
609.352 subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G*

~~* See section 2.C.2 and Appendix 3 to determine the presumptive duration. Depending on the offender's criminal history score, the presumptive duration may exceed the statutory maximum.~~

* * *

Appendix 3. Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table

This table is for convenience when determining if a presumptive duration exceeds the statutory maximum sentence as described in section 2.C.2. Offenses identified in the table below have presumptive durations that exceed the statutory maximums at the Criminal History Score (CHS) indicated on the table. These are offenses for which the applicable grid does not adjust the duration or range to be at or below the statutory maximum. The table may not be exhaustive.

* * *

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct	G	36	CHS-4
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G	36	CHS-4

* * *

B. Other Changes to Criminal Offenses & Sentencing Policy

1. New Offense: Child Torture

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 39](#)

Description: The act creates a felony, with a statutory maximum penalty of 25 years imprisonment, a \$35,000 fine, or both, for torturing a child under age 18. “Torture” is defined as the intentional infliction of extreme mental anguish, or extreme psychological or physical abuse, when committed in an especially depraved manner. This definition is copied from Minn. Stat. § 609.3455, which establishes torture as a “heinous element” qualifying certain sex offenses for mandatory life sentences.

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [609.25](#); [609.3455](#), subd. 1(d)(1), 1(i), 2 & 3.

Long-Term Fiscal Impact (S.F. 868): Estimated 3 additional prison beds.

Demographic Impact (S.F. 868): Not applicable.

Guidelines Considerations: One of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether they should be added to the Guidelines’ offense lists (e.g., offenses eligible for permissive consecutive sentences and severe violent offenses). The Commission bases its decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered. For the new offense, the Commission may decide:

1. What severity level should be assigned?
2. Should the offense be added to the list of Offenses Eligible for Permissive Consecutive Sentences (section 6)?
3. Should the offense be added to the list of Severe Violent Offenses (section 8)?
4. Should there be an exception to the length of stay (section 3.A.2)?

Among the several means by which the crime of Kidnapping (Minn. Stat. § 609.25) may be committed is the confinement or removal of a child under age 16 for the purpose of terrorizing the victim, an offense ranked at Severity Level 8. Because of the common aspects of this offense to Child Torture (purposefully terrorizing a child victim), MSGC staff assumed that the Commission would rank Child Torture at Severity Level 8 also. Child Torture has a lower statutory maximum (25 years of imprisonment for Child Torture vs. 40 years of imprisonment for Kidnapping (Victim Under 16)) and Kidnapping has an additional element of confinement or removal. On the other hand, most Severity Level 8 offenses carry a statutory maximum penalty of 10, 15, or 20 years.

The staff recommendations below include the new offense on the permissive-consecutive list as it is clearly a crime against the person, which was the original basis for membership on the list. The staff recommendations also list Child Torture as a Severe Violent Offense, although reasonable minds may disagree. Because it is not a homicide or sex offense, the recommendations below do not add Child Torture

to the list of exceptions to the five-year presumptive cap on the length of stay (section 3.A.2), although, again, reasonable minds may disagree.

MSGC Staff Recommendations:

- Rank Child Torture at Severity Level 8.
- Add Child Torture to the list of Offenses Eligible for Permissive Consecutive Sentences.
- Add Child Torture to the list of Severe Violent Offenses. (The Complete Severe Violent Offense List is reproduced beginning on page 26).

Alternative MSGC Staff Recommendation (not displayed): Leave Child Torture unranked and monitor how the courts rank the offenses and make the changes to sections 6 and 8 described above.

Proposed Amendments to 2020 Minn. Sentencing Guidelines sections 5, 6, & 8:

* * *

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
8	<u>Child Torture</u>	<u>609.3775</u>

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Statute Number	Offense Title	Severity Level
<u>609.3775</u>	<u>Child Torture</u>	<u>8</u>

* * *

6. Offenses Eligible for Permissive Consecutive Sentences

- A.** Convictions for attempted offenses or conspiracies to commit offenses listed below are eligible for permissive consecutive sentences as well as convictions for completed offenses.

- B. Under section 2.F.2.a(1)(i), it is permissive for a current felony conviction to run consecutively to a prior felony sentence from a jurisdiction other than Minnesota if the non-Minnesota conviction is for a crime that is equivalent to a crime listed below.

* * *

Statute Number	Offense Title
<u>609.3775</u>	<u>Child Torture</u>

* * *

8. Severe Violent Offense List

Each of the following is a “severe violent offense” within the meaning of sections 2.B.2.e and 2.G.14. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

Statute Number	Offense Title
<u>609.3775</u>	<u>Child Torture</u>

* * *

2. New Offense: Patrons of Prostitution (2nd or Subsequent Violation)

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, §§ 34 & 57](#)

Description: For the offense of Patrons of Prostitution (Minn. Stat. § 609.324, subs. 2 & 3), the act elevates the general offense from a misdemeanor to a gross misdemeanor, abolishing the gross misdemeanor penalty enhancement for committing the offense in public. It also creates a new felony Patrons of Prostitution crime, with a five-year statutory maximum penalty, for a violation within 10 years of a previous conviction under Minn. Stat. § 609.324 or 609.322.

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.322](#) (2020); Minn. Stat. § [609.324](#) (2020)

Long-Term Fiscal Impact (H.F. 613-1UE): In its fiscal note, MSGC estimated no impact with respect to the new felony. Currently repeat violations of Minn. Stat. § 609.324, subd. 3 within two years of a prior offense are gross misdemeanors. Minn. Judicial Branch information indicated there were no such convictions from 2017 to 2019.

Guidelines Considerations:

Prostitution offenses contained in Minn. Stat. section 609.324, subd. 1 (Engage or Hire a Minor to Engage in Prostitution) are felonies presently ranked on the Standard Grid as follows:

- Subd. 1(a), involving children under age 13: 20-year statutory maximum, ranked at Severity Level 9.
- Subd. 1(b), involving children age 13–15: 10-year statutory maximum, ranked at Severity Level 5.
- Subd. 1(c), involving children age 16 & 17: 5-year statutory maximum, ranked at Severity Level 3.

MSGC Staff Recommendation: Because the new Patrons of Prostitution (2nd or Subsequent Violation) offense felony has the same statutory maximum penalty (five years imprisonment) as an existing prostitution offense (Engage or Hire a Minor to Engage in Prostitution (Child Age 16–17)), staff recommends ranking it the same, at Severity Level 3. At that severity level, cases with a CHS of four or more are recommended prison sentences.

Staff does not recommend adding Patrons of Prostitution (2nd or Subsequent) to the list of permissive consecutive offenses (section 6). Although Sex Trafficking and Child Prostitution are currently on the list, most would not likely consider the new crime—involving a presumably consensual, albeit illegal, transaction between adults—to be a crime against the person, which was the original basis for membership on the list.

Proposed Amendments to 2020 Minn. Sentencing Guidelines section 5:

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
3	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(c)
	<u>Patrons of Prostitution (2nd or Subsequent Violation)</u>	<u>609.324, subd. 2(b)</u>

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Statute Number	Offense Title	Severity Level
609.324 subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution	3
<u>609.324 subd. 2(b)</u>	<u>Patrons of Prostitution (2nd or Subsequent Violation)</u>	<u>3</u>

3. Expansion of Assault 1st Degree (Officer Arik Matson’s Law)

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 31](#)

Description: In its current form, the Assault 1st Degree statute (Minn. Stat. § [609.221](#)) prohibits two types of assault: assaulting another and inflicting great bodily harm (subd. 1); and assaulting a peace officer, prosecuting attorney, judge, or correctional employee (hereinafter “official”) by using or attempting to use deadly force against the official while the official is engaged in the performance of duty (subd. 2). Both offenses carry the same statutory maximum penalty (20 years and/or \$30,000) and both are ranked equally, at Severity Level 9, although the assault against the official with deadly force carries a mandatory executed prison term of at least ten years.

The act adds two new subdivisions, each containing a new felony. Each new felony requires, as an element, the infliction of great bodily harm upon an official engaged in the performance of duty. Subdivision 3, which carries a mandatory minimum prison term of 15 years, does not specify a particular means or weapon by which the assault must be committed. Subdivision 4, which carries a mandatory minimum prison term of 25 years, requires that the assault be committed with a dangerous weapon or by the use or attempted use of deadly force.

The table below summarizes the elements of Assault 1st Degree under the act.

Minn. Stat. § 609.221	Victim	Means	Harm	Mandatory Minimum	Statutory Maximum	Severity Level
Subd. 1	Anyone	None specified	Great bodily harm	None	20 years and/or \$30,000	9
Subd. 2	Peace officer, prosecuting attorney, judge, or correctional employee while engaged in the performance of duty	By using or attempting to use deadly force against the official	None required	10 years executed	20 years and/or \$30,000	9
Subd. 3		None specified	Great bodily harm	15 years executed	25 years and/or \$35,000	(New)
Subd. 4		With a dangerous weapon or by using or attempting to use deadly force against the official	Great bodily harm	25 years executed	30 years and/or \$40,000	(New)

The terms “great bodily harm” and “dangerous weapon” (defined in Minn. Stat. § [609.02](#)) are common terms in Minnesota assault law. “Great bodily harm” is the highest degree of harm short of death. It means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm.

Some things are automatically dangerous weapons, such as a firearm, a combustible or flammable liquid, or something designed as a weapon and capable of producing death or great bodily harm. On the other hand, nearly any object may be considered to be a dangerous weapon if, in the manner it is used or intended to be used, it is calculated or likely to produce death or great bodily harm.

“Deadly force,” on the other hand, is not a commonly used term in Minnesota assault law. The term is borrowed from the statute that authorizes peace officers to use such force when necessary to protect the officer or another from death or great bodily harm, or to stop a very dangerous felon (Minn. Stat. § [609.066](#)). “Deadly force” means force used for the purpose of causing death or great bodily harm, or which creates a substantial risk of causing death or great bodily harm. Intentionally shooting someone constitutes deadly force.

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.221](#).

Long-Term Fiscal Impact (S.F. 82-1E): If one offender every 10 years receives a sentence of 360 months for assaulting an official with a weapon and inflicting great bodily harm, the result will be a need for one additional prison bed in FY2032 - FY2041.

Demographic Impact (S.F. 82-1E): Not estimated.

Guidelines Considerations: The elements and penalties of the existing Assault 1st Degree offenses remaining unchanged, staff assumes that the Commission will not wish to alter Sentencing Guidelines policy with respect to those offenses.

With respect to the new offenses, one of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether they should be added to the Guidelines’ offense lists (e.g., offenses eligible for permissive consecutive sentences and severe violent offenses). The Commission bases its decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered. For the new offense, the Commission may decide:

1. What severity level should be assigned?
2. Should the offense be added to the list of Offenses Eligible for Permissive Consecutive Sentences (section 6)?
3. Should the offense be added to the list of Severe Violent Offenses (section 8)?
4. Should there be an exception to the length of stay (section 3.A.2)?

Because the existing subdivision 1 offense (assault with great bodily harm) is ranked at Severity Level 9 and is a lesser included offense of the new subdivision 3 and 4 offenses, it would be reasonable to rank the subdivision 3 and 4 offenses higher than Severity Level 9.

For purposes of the fiscal note, staff assumed that the Commission would rank subdivision 3 at Severity Level 10, where second-degree felony murder is ranked. The 15-year mandatory minimum seems to fit at that severity level—the 180-month duration is found somewhere within the presumptive ranges at criminal history scores 0 through 4—and all presumptive durations at that severity level are within the 300-month statutory maximum.

It is less clear where subdivision 4 should be ranked. On one hand, its 25-year (300-month) minimum penalty exceeds all recommended durations at Severity Level 10. On the other hand, its 30-year (360-month) maximum penalty is less than most recommended durations at Severity Level 11. It is possible the Commission may rank the offense at Severity Level 10, create a new row between Severity Level 10 and Severity Level 11, or rank the offense at Severity Level 11. Because none of these options is compatible with the existing sentencing grid, and because range between the statutory mandatory maximum and minimum sentences is relatively narrow (the entire legally permissible 60-month sentencing range would fit comfortably within a single cell on the sentencing grid), staff assumed, when preparing the fiscal note, that the Commission would leave the subdivision 4 offense unranked.

Because the existing offenses are described broadly, no Guidelines change is necessary to add the new offenses to the list of Offenses Eligible for Permissive Consecutive Sentences (section 6) or to the list of Severe Violent Offenses (section 8). Because the new offenses are not homicide or sex offenses—and because probation is not legally possible for these offenses—staff is not recommending adding them as an exception to the length of stay (section 3.A.2).

Each severity level on the sentencing grids contains example offenses. At Severity Level 9 on the Sentencing Guidelines Grid (section 4.A), “Assault, 1st Degree” is an example offense. Because not all Assault 1st Degree offenses will be Severity Level 9 under these recommendations, a clarifying addition of “(Great Bodily Harm)” is recommended on the grid example offense. This is intended to be a reference to the most common Assault 1st Degree offense, Minn. Stat. § 609.221, subd. 1. For space, it is also recommended to shorten “Murder, 3rd Degree (Controlled Substances)” to “Murder, 3rd Degree (Drugs)” in the same example cell.

MSGC Staff Recommendations:

- Rank Assault 1st Degree (Great Bodily Harm Upon Official) at Severity Level 10.
- Leave unranked Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force).
- Clarify and edit offenses listed at Severity Level 9 in Sentencing Guidelines Grid.
- Clarify and distinguish offenses listed in section 5.
- Include the new offenses in Appendix 1, Mandatory and Presumptive Sentences Reference Table.

Proposed Amendments to 2020 Minn. Sentencing Guidelines sections 4.A & 5 and Appendix 1:

* * *

4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (Intentional; Drive-By-Shootings)</i>	11	306 <i>261-367</i>	326 <i>278-391</i>	346 <i>295-415</i>	366 <i>312-439</i>	386 <i>329-463</i>	406 <i>346-480²</i>	426 <i>363-480²</i>
<i>Murder, 2nd Degree (Unintentional)</i> <i>Murder, 3rd Degree (Depraved Mind)</i>	10	150 <i>128-180</i>	165 <i>141-198</i>	180 <i>153-216</i>	195 <i>166-234</i>	210 <i>179-252</i>	225 <i>192-270</i>	240 <i>204-288</i>
<i>Murder, 3rd Degree (Controlled Substances) (Drugs)</i> <i>Assault, 1st Degree (Great Bodily Harm)</i>	9	86 <i>74-103</i>	98 <i>84-117</i>	110 <i>94-132</i>	122 <i>104-146</i>	134 <i>114-160</i>	146 <i>125-175</i>	158 <i>135-189</i>

* * *

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
10	<u>Assault 1st Degree (Great Bodily Harm Upon Official)</u>	<u>609.221, subd. 3</u>
9	<u>Assault 1st Degree (Deadly Force Against Official)</u>	<u>609.221, subd. 2</u>
	<u>Assault 1st Degree (Great Bodily Harm)</u>	<u>609.221, subd. 1</u>
UNRANKED	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>	<u>609.221, subd. 4</u>

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Statute Number	Offense Title	Severity Level
609.221 <u>subd. 1</u>	Assault 1st Degree (Great Bodily Harm)	9
609.221 <u>subd. 2</u>	<u>Assault 1st Degree (Deadly Force Against Official)</u>	<u>9</u>
609.221 <u>subd. 3</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official)</u>	<u>10</u>
609.221 <u>subd. 4</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>	<u>Unranked</u>

* * *

Appendix 1. Mandatory and Presumptive Sentences Reference Table

* * *

Statute	Offense	Prerequisite or Conditions	Minimum Duration
609.221, <u>subd. 2</u> (b)	Assault 1st Degree, <u>(Deadly Force Against Official) – Peace Officer or Correctional Employee</u>		120 Months
<u>609.221, subd. 3</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official)</u>		<u>180 Months</u>
<u>609.221, subd. 4</u>	<u>Assault 1st Degree (Great Bodily Harm Upon Official by Dangerous Weapon or Deadly Force)</u>		<u>300 Months</u>
609.221, 609.222, 609.223, 609.2231 or 609.224	Assault 1st through 5th Degree	Committed by State prison inmate while confined (609.2232)	Grid Time, Consecutive

* * *

4. Reorganization of Drive-By Shooting Offenses

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 42](#)

Description: The act abrogates *State v. Hayes*, 826 N.W.2d 799 (Minn. 2013), and clarifies the ambiguity *Hayes* identified in the drive-by shooting statute. In *Hayes*, the State unsuccessfully argued that Minn. Stat. § 609.66, subd. 1e(b) (drive-by shooting toward a person or occupied motor vehicle or building), modifies the elements of subd. 1e(a) (drive-by shooting at another motor vehicle or building) to create a separate, aggravated offense. The Minnesota Supreme Court instead adopted a narrower construction: that subd. 1e(b) sets forth enhanced penalties for aggravated violations of subd. 1e(a). Because subd. 1e(a) applies only to shooting “at or toward another motor vehicle or a building,” *Hayes* held, it does not apply to shootings of a person who was not in another motor vehicle or a building—such as a pedestrian or an occupant of the shooter’s vehicle. By the logic of *Hayes*, the law is similarly inapplicable to shootings at the same motor vehicle the shooter was in or had just exited, as subd. 1e(a) requires shooting at “another” motor vehicle.

The act enacts the State’s position in *Hayes*, and therefore encompasses the following behaviors within the drive-by shooting statute, excluded by the *Hayes* interpretation: the shooting of a person who was not in another motor vehicle or building; and shooting at the same, occupied motor vehicle that the shooter was in or had just exited.

The act accomplishes this by separating the offense definitions from the penalty provisions. It lists the possible targets as (1) an unoccupied motor vehicle or building, (2) an occupied motor vehicle or building, and (3) a person. The statutory maximums for the offenses remain the same: three years and/or \$6,000 for drive-by shooting at an unoccupied motor vehicle or building; and ten years and/or \$20,000 for drive-by shooting at an occupied motor vehicle or building, or at a person.

Effective Date: September 15, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.66, subd. 1e](#); *State v. Hayes*, 826 NW 2d 799 (Minn. 2013).

Long-Term Fiscal Impact (H.F. 290): Fiscal note not requested.

Demographic Impact (H.F. 290): Not estimated.

Guidelines Considerations: Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building) (stat. max. 10 years) is ranked at Severity Level 8, where executed prison is presumed regardless of criminal history. Drive-By Shooting (Unoccupied Motor Vehicle or Building) (stat. max. 3 years) is ranked at Severity Level 3.

Either offense is eligible for permissive consecutive sentences (section 6). Only the more severe offense is classified as a severe violent offense (section 8).

Murder 2nd Degree (Intentional Murder; Unintentional Drive-By Shootings) is ranked at Severity Level 11.

MSGC Staff Recommendation: Make conforming technical changes.

Proposed Amendments to 2020 Minn. Sentencing Guidelines sections 5 & 8:

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
8	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	609.66, subd. 1e(b) <u>subd. 1e(a)(2) & (3)</u>
3	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	609.66, subd. 1e(a)(1)

* * *

5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Statute Number	Offense Title	Severity Level
609.66 subd. 1e(a)(1)	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	3
609.66 subd. 1e(b) <u>subd. 1e(a)(2) & (3)</u>	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	8

* * *

8. Severe Violent Offense List

Each of the following is a “severe violent offense” within the meaning of sections 2.B.2.e and 2.G.14. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

Statute Number	Offense Title
609.66, subd. 1e(b) <u>subd. 1e(a)(2) & (3)</u>	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)

* * *

5. Veterans Restorative Justice Act

Act: [2021 Minn. Laws 1st Sp. Sess. ch. 12, art. 3, § 13](#)

Description: The act requires courts to grant stays of adjudication to service members or veterans whose misdemeanor, gross misdemeanor, or felony offense was committed as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or a mental health condition caused by military service. This requirement does not apply to offenses ranked at Severity Level 8, D8, or above; nor to offenses on the Sex Offender Grid; nor to offenses for which predatory offender registration is required. If the defendant has previously received a stay of adjudication under this section, the court may deny the use of this section on subsequent felony offenses. The act establishes criteria for revocation or discharge.

In the event of the conviction of a veteran whose offense was committed as the result of a service-caused condition, and who has engaged in substantial rehabilitative efforts, the act provides a mitigated Sentencing Guidelines departure factor on the grounds of particular amenability to probation. This provision does not apply to offenses for which predatory offender registration is required.

Effective Date: August 1, 2021.

Guidelines Considerations: Minn. Sentencing Guidelines (section 3.F, Military Veterans) states: “Under Minn. Stat. § 609.115, subd. 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision.”

References: Minn. Stat. § [609.115](#) (2020)

Long-Term Fiscal Impact (H.F. 478-1UE): 53 beds would be avoided; 24 beds in FY2023, 36 in FY2024, 49 in FY2025, 51 in FY2026, 52 in FY2027, and 53 in FY2028 and every year after.

Demographic Impact: Not prepared. MSGC does not have demographic information on the veterans who would be affected.

MSGC Staff Recommendations:

- Incorporate the statutory departure factor within the Guidelines’ list of departure factors.
- Reference the act in section 3.F, Military Veterans.

Proposed Amendments to 2020 Minn. Sentencing Guidelines sections 2.D.3.a & 3.F:

* * *

[2.D]3. Factors that may be used as Reasons for Departure. The following is a nonexclusive list of factors that may be used as reasons for departure:

a. Mitigating Factors.

* * *

- (7) The offender is particularly amenable to probation. This factor may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.
- (8) In the case of a controlled substance offense conviction, the offender is found by the district court to be particularly amenable to probation based on adequate evidence that the offender is chemically dependent and has been accepted by, and can respond to, a treatment program in accordance with Minn. Stat. § 152.152.
- (9) In the case of a qualifying United States military service member or veteran, the offender is found by the district court to meet the criteria for particular amenability to probation found in Minn. Stat. § 609.1056, subd. 4.

* * *

[3.]F. Military Veterans

Under Minn. Stat. § 609.115, subd. 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision. Minn. Stat. § 609.1056 provides deferred judgment procedures for certain criminal offenses related to service-related disorders if the defendant is a United States military service member or veteran.

* * *

Appendix 1: Fiscal & Demographic Impact of Changes to Criminal Sexual Conduct and Sexual Extortion Laws

The combined fiscal and demographic impact estimated for the legislative changes to criminal sexual conduct statutes, together with the creation of the crime of Sexual Extortion—all of which are described within section A of this document—is as follows:

Long-Term Fiscal Impact (H.F. 707-2E): Estimated 234 additional prison beds.

Demographic Impact (H.F. 707-2E): ([Link to full DIS](#)).

- **Gender:** Male (97.2%); Female (2.8%).
- **Race & Ethnicity:** White (56.3%); Black (18.3%); American Indian (1.4%); Hispanic (16.9%); Asian (7.0%).
- **Judicial District:** First (16.9%); Second (9.9%); Third (11.3%); Fourth (14.1%); Fifth (7.0%); Sixth (7.0%); Seventh (8.5%); Eighth (7.0%); Ninth (7.0%); and Tenth (11.3%).

Appendix 2: Sex Offender Grid – With Staff-Recommended Revisions (Adding New Severity Level I)

This appendix displays the Sex Offender Grid—section 4.B of the Sentencing Guidelines—as it would appear if all staff recommendations in section A (“Changes to Sex Offenses”) of this document were adopted. Example offenses have been edited for the sake of space and style.

This appendix is similar to Appendix 3, except that Appendix 3 adopts the alternate recommendation for ranking the new CSC Fifth Degree (Nonconsensual Penetration) offense. While Appendix 2 assigns a new severity level, Severity Level I, to that offense, Appendix 3 ranks the new offense at the existing Severity Level H.

For clarity, this appendix displays the changes in two versions: The first version shows all changes marked; the second, “clean” version shows the Sex Offender Grid as it would appear if all changes were adopted.



4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144	156	168	180	234	306	360
		<i>144-172</i>	<i>144-187</i>	<i>144-201</i>	<i>153-216</i>	<i>199-280</i>	<i>261-360</i>	<i>306-360²</i>
<i>CSC 2nd Degree–1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i)(j)(k) (e.g., contact, & force, & injury with bodily harm)</i>	B	90	110	130	150	195	255	300
		<i>90³-108</i>	<i>94-132</i>	<i>111-156</i>	<i>128-180</i>	<i>166-234</i>	<i>217-300</i>	<i>255-300²</i>
<i>CSC 3rd Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) (p) (e.g., penetration & force coercion/occupation)</i>	C	48	62	76	90	117	153	180
		<i>41-57</i>	<i>53-74</i>	<i>65-91</i>	<i>77-108</i>	<i>100-140</i>	<i>131-180183</i>	<i>153-180216</i>
<i>CSC 2nd Degree–1a(e)(f)(a)(b)(g) (age) (e.g., contact & victim under 13)</i> <i>CSC 3rd Degree–1a(a)(e)(f) or 1a(b) with 2(1) (age) (e.g., penetration & child victim)</i>	D	36	48	60	70	91	119	140
				<i>51-72</i>	<i>60-84</i>	<i>78-109</i>	<i>102-142</i>	<i>119-168</i>
<i>CSC 4th Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) (p) (e.g., contact & force coercion/occupation)</i> <i>Dissemination of Child Pornography²</i>	E	24	36	48	60	78	102	120
					<i>51-72</i>	<i>67-93</i>	<i>87-120</i>	<i>102-120²</i>

<i>CSC 4th Degree–1a(a)(b)(e)(f) (age) (e.g., contact & child victim) CSC 5th Degree–3(b) (subsequent) Possession of Child Pornography (Subseq./Pred. Off./Under 13)</i>	F	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
<i>CSC 3rd Degree–1a(b) with 2(2) (i.e., penetration & child victim 24–48 mo. younger) Possession of Child Pornography Solicit Child for Sexual Conduct²</i>	G	15	20	25	30	39 34-46	51 44-60	60 51-60 ²
<i>Failure to Register as a Predatory Offender</i>	H	12 ¹ 12 ¹ -14	14 12 ¹ -16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43
<i>CSC 5th Degree–3(a) (nonconsensual penetration)</i>	I	12 ¹	12 ¹	12 ¹	14	17	21 18-24 ²	24 21-24 ²

¹ 12¹=One year and one day

-  Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.
-  Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2.

³ Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77–108.)

4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> ²
<i>CSC 2nd Degree–1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i) (e.g., contact & force with bodily harm)</i>	B	90 <i>90</i> ³ -108	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
<i>CSC 3rd Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., penetra- tion & coercion/occupation)</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-183</i>	180 <i>153-216</i>
<i>CSC 2nd Degree–1a(e)(f)(g) (age) CSC 3rd Degree–1a(a)(e)(f) or 1a(b) with 2(1) (age)</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., contact & coercion/occupation)</i>	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
<i>CSC 4th Degree–1a(a)(b)(e)(f) (age) CSC 5th Degree–3(b) (subsequent)</i>	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree–1a(b) with 2(2) Possession of Child Pornography Solicit Child for Sexual Conduct</i>	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> ²
<i>Failure to Register as a Predatory Offender</i>	H	12 ¹ <i>12¹-14</i>	14 <i>12¹-16</i>	16 <i>14-19</i>	18 <i>16-21</i>	24 <i>21-28</i>	30 <i>26-36</i>	36 <i>31-43</i>
<i>CSC 5th Degree–3(a) (nonconsensual penetration)</i>	I	12 ¹	12 ¹	12 ¹	14	17	21 <i>18-24</i> ²	24 <i>21-24</i> ²

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2.

³ Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77–108.)

Appendix 3: Sex Offender Grid – With Staff-Recommended Revisions (Alternate, Without Severity Level I)

This appendix displays the Sex Offender Grid—section 4.B of the Sentencing Guidelines—as it would appear if all staff recommendations in section A (“Changes to Sex Offenses”) of this document were adopted. Example offenses have been edited for the sake of space and style.

This appendix is similar to Appendix 2, except that Appendix 2 adopts the main recommendation for ranking the new CSC Fifth Degree (Nonconsensual Penetration) offense. While Appendix 2 assigns a new severity level, Severity Level I, to that offense, Appendix 3 ranks the new offense at the existing Severity Level H.

For clarity, this appendix displays the changes in two versions: The first version shows all changes marked, with the new “presumptive stayed” shading for Severity Level H highlighted blue. The second, “clean” version shows the Sex Offender Grid as it would appear if all changes were adopted.

4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360²</i>
<i>CSC 2nd Degree–1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i)(j)(k) (e.g., contact, & force, & injury with bodily harm)</i>	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300²</i>
<i>CSC 3rd Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) (p) (e.g., penetration & force coercion/occupation)</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180183</i>	180 <i>153-180216</i>
<i>CSC 2nd Degree–1a(e)(f)(a)(b)(g) (age) (e.g., contact & victim under 13) CSC 3rd Degree–1a(a)(e)(f) or 1a(b) with 2(1) (age) (e.g., penetration & child victim) Use of Minors in Sexual Performance</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>

<i>CSC 4th Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) (p) (e.g., contact & force coercion/occupation) Possession of Child Pornography (Subseq./Pred. Off./Under 14) Dissemination of Child Pornography²</i>	E	24	36	48	60 51-72	78 67-93	102 87-120	120 102-120 ²
<i>CSC 4th Degree–1a(a)(b)(e)(f) (age) (e.g., contact & child victim) CSC 5th Degree (2nd or Subsequent Violation) Possession of Child Pornography (Subseq./Pred. Off./Under 13)</i>	F	18	27	36	45 39-54	59 51-70	77 66-92	84 72-100
<i>CSC 3rd Degree–1a(b) with 2(2) (i.e., penetration & child victim 24–48 mo. younger) Possession of Child Pornography Solicit Child for Sexual Conduct²</i>	G	15	20	25	30	39 34-46	51 44-60	60 51-60 ²
<i>Failure to Register as a Predatory Offender CSC 5th Degree (Nonconsensual Penetration)</i>	H	12 ¹ 12¹-14	14 12¹-16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43

¹ 12¹=One year and one day



Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2.


³ Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77–108.)


4.B. Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360</i> ²
<i>CSC 2nd Degree–1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i) (e.g., contact & force with bodily harm)</i>	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300</i> ²
<i>CSC 3rd Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., penetra- tion & coercion/occupation)</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-183</i>	180 <i>153-216</i>
<i>CSC 2nd Degree–1a(e)(f)(g) (age) CSC 3rd Degree–1a(a)(e)(f) or 1a(b) with 2(1) (age) Use of Minors in Sexual Performance</i>	D	36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree–1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., contact & coercion/occupation) Possession of Child Pornography (Subseq./Pred. Off./Under 14)</i>	E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120</i> ²
<i>CSC 4th Degree–1a(a)(b)(e)(f) (age) CSC 5th Degree (2nd or Subsequent Violation)</i>	F	18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree–1(b) with 2(2) Possession of Child Pornography Solicit Child for Sexual Conduct</i>	G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60</i> ²
<i>Failure to Register as a Predatory Offender CSC 5th Degree (Nonconsensual Penetration)</i>	H	12 ¹	14	16	18	24	30 <i>26-36</i>	36 <i>31-43</i>

¹ 12¹=One year and one day

 Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.

 Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

² Minn. Stat. § 244.09 requires that the Guidelines provide a range for sentences that are presumptive commitment to state imprisonment of 15% lower and 20% higher than the fixed duration displayed, provided that the minimum sentence is not less than one year and one day and the maximum sentence is not more than the statutory maximum. See section 2.C.1–2.

³ Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree is not subject to a 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (The range is 77–108.)