

Demographic Impact Statement

House File 2904-0

Child pornography offenses penalties increased, mandatory minimum sentences created, and Sentencing Guidelines commission directed to modify the sex offender grid.

Statement Date: March 20, 2018

The staff of the Minnesota Sentencing Guidelines Commission (MSGC) prepares demographic impact statements for proposed crime bills when it appears that the bill's policy changes would likely increase or decrease the number of people convicted of felonies each year by 50 or more; when it appears that the bill's policy changes would likely increase or decrease the annual need for prison beds by 10 or more; or upon legislative request.

Bill Description

HF2904, as introduced, increases penalties for use of minors in a sexual performance and child pornography offenses, creates mandatory minimum sentences, and directs the Minnesota Sentencing Guidelines Commission (MSGC) to modify the Sex Offender Grid.

This bill amends Minn. Stat. § 617.246 (use of minors in sexual performance), subdivisions 2, 3 and 4 by increasing the statutory maximum sentence from ten years to 15 years. The bill increases the mandatory conditional release term applicable to those imprisoned for violations of Minn. Stat. § 617.246 from five to ten years, and from ten to at least 50 years if the offender had previously been convicted of a criminal sexual conduct in the first- through fifth-degree, criminal sexual predatory conduct, use of minors in sexual performance, or child pornography. The bill requires the MSGC to increase the severity level of use of minors in sexual performance (Minn. Stat. § 617.246) from E to D.

The bill amends Minn. Stat. § 617.247, subd. 3 (dissemination of child pornography - first time, nonpredatory offender), by increasing the statutory maximum sentence from seven to 10 years. The bill requires the MSGC to increase the offense's severity level from E to D.

The bill amends Minn. Stat. § 617.247, subd. 3 (dissemination of child pornography - subsequent or by predatory offender), by increasing the statutory maximum sentence from 15 to 20 years. The bill requires the MSGC to increase the offense's severity level from D to C.

The bill amends Minn. Stat. § 617.247, subd. 4 (possession of child pornography - first time, nonpredatory offender), by increasing the statutory maximum sentence from five to seven years. The bill requires the MSGC to increase the offense's severity level from G to E.

The bill amends Minn. Stat. § 617.247, subd. 4 (possession of child pornography - subsequent or by predatory offender), by increasing the statutory maximum sentence from 10 to 15 years. The bill requires the MSGC to increase the offense's severity level from F to D.

The bill increases the mandatory conditional release term applicable to those imprisoned for violations of Minn. Stat. § 617.247 from five to ten years, and from ten to at least 50 years if the offender had previously been convicted of a criminal sexual conduct in the first- through fifth-degree, criminal sexual predatory conduct, use of minors in sexual performance, or child pornography

The bill adds new subdivisions to Minn. Stat. §§ 617.246 & 617.247 establishing, for a violation of either section, a mandatory minimum six-month incarceration period, or, if the offender was required to register as a predatory offender, or had a prior conviction for use of minors in sexual performance or child pornography, a mandatory minimum 12-month incarceration period.

The bill is effective August 1, 2018, and applies to offenses committed on or after that date.

Estimated Impact

In its fiscal note, MSGC staff estimated that the bill will result in the need for 73 additional prison beds because of the increases to statutory maximums and severity level re-rankings. Fourteen people who currently do not receive prison sentences will move to a presumptive prison sentence resulting in the need for 47 additional beds; and 17 people, who currently received prison sentences, would serve more time resulting in the need for 26 additional beds.

In making this estimate, it was assumed that the characteristics of offenders sentenced in the future for child pornography offenses will be the same as the characteristics of offenders sentenced for those offenses in 2016.

Current State Demographics

Table 1, shown on page 3, below, displays current demographic information pertaining to three populations within the state: the felony population (that is, the population of offenders sentenced for felony offenses in 2016); the adult prison population (as of July 1, 2016); and the general population, age 15 and older (on July 1, 2016, as estimated by the U.S. Census Bureau).

Table 1 breaks down those populations by the following demographic categories: Gender; race and ethnicity; and judicial district. A map of Minnesota's ten judicial districts may be found at <http://www.mncourts.gov/Find-Courts.aspx>.

Demographic Impact

Demographic Characteristics – New Felony Population

No change is estimated to occur in the population of felons sentenced as a result of this bill. No change in the demographic composition of the felony population is therefore estimated.

Demographic Characteristics – New Prison Population

It is estimated that the bill will result in 31 offenders expected to occupy an additional 73 prison beds. If the bill's provisions had been in effect in for offenders sentenced in 2016, it is estimated that the demographic characteristics of the occupants of those prison beds would have been as follows:

- **Gender:** Male (100%); and Female (0%).
- **Race & Ethnicity:** White (100%); Black (0%); American Indian (0%); Hispanic (0%); Asian (0%); and Other/Unknown (0%).
- **Judicial District:** First (23%); Second (13%); Third (3%); Fourth (13%); Fifth (7%); Sixth (7%); Seventh (10%); Eighth (0%); Ninth (7%); and Tenth (19%).

It may be assumed that the demographic characteristics of the offenders sentenced in the future will be similar to the demographic characteristics of those offenders sentenced in 2016. If so, we would expect that the occupants of the estimated 73 additional prison beds would share similar demographic characteristics with those characteristics listed in the preceding paragraph. Table 2, below, shows the demographic change in prison population that would result from the enactment of this bill, assuming that future offenders’ demographic characteristics are similar to those of offenders sentenced in 2016.

Table 1. Minnesota’s 2016 Felony Population, Prison Population, and General Population, by Gender, Race and Ethnicity, and Judicial District

		Felony Population		Prison Population		General Population		
MSGC Category		Offenders Sentenced in 2016		2016 Adult Inmate Population		U.S. Census Category	2016 Estimated Pop. Age 15 & Older	
		Number	Percent	Number	Percent		Number	Percent
Male		13,702	80.9%	9,384	92.8%	Male	2,199,515	49.5%
Female		3,225	19.1%	730	7.2%	Female	2,247,439	50.5%
Race & Ethnicity	White	9,813	58.0%	4,711	46.6%	White*	3,763,894	84.6%
	Black	4,209	24.9%	3,537	35.0%	Black or African American*	263,625	5.9%
	American Indian	1,472	8.7%	960	9.5%	American Indian*	69,224	1.6%
	Hispanic**	903	5.3%	631	6.2%	Hispanic**	193,435	4.3%
	Asian	525	3.1%	259	2.6%	Asian*	221,996	5.0%
	Other/Unknown	5	0.0%	16	0.2%	Native Hawaiian/Other Pacific Islander*	4,781	0.1%
Judicial District	First	2,192	12.9%	870	8.7%	First	621,377	14.0%
	Second	1,784	10.5%	1,389	13.9%	Second	433,849	9.8%
	Third	1,344	7.9%	767	7.7%	Third	384,440	8.6%
	Fourth	3,341	19.7%	2,599	26.0%	Fourth	1,002,248	22.5%
	Fifth	1,075	6.4%	441	4.4%	Fifth	233,217	5.2%
	Sixth	862	5.1%	556	5.6%	Sixth	210,929	4.7%
	Seventh	1,689	10.0%	1,052	10.5%	Seventh	390,911	8.8%
	Eighth	432	2.6%	302	3.0%	Eighth	129,504	2.9%
	Ninth	1,688	10.0%	1,017	10.2%	Ninth	274,234	6.2%
	Tenth	2,520	14.9%	1,014	10.1%	Tenth	766,245	17.2%
Total		16,927	100.0%	10,114	100.0%	Total	4,446,954	100.0%

Source of July 1, 2016, Adult Inmate Population: Minn. Department of Corrections. Judicial district populations exclude 107 inmates whose governing sentences were for offenses committed in non-Minnesota jurisdictions.

Source of July 1, 2016, population estimate: U.S. Census Bureau (June, 2017).

*Not Hispanic, alone or in combination with one or more other races. The sum of percentages of residents in each racial or ethnic category exceeds 100 percent (101.6%) because residents of more than one race are counted in more than one category.

** Lists all Hispanic offenders and residents as Hispanic, regardless of race.

***The MSGC category of “Other/Unknown” is not a valid comparison group to the U.S. Census category of “Native Hawaiian/Other Pacific Islander.”

Table 2. Minnesota’s Existing Prison Population, Estimated Prison Population Change, and Estimated Resulting Prison Population, by Gender, Race and Ethnicity, and Judicial District

Existing Prison Population			Estimated Change in Prison Population		Estimated Resulting Prison Population			
MSGC Category	2016 Adult Inmate Population		Assuming future offenders’ demographic characteristics are similar to those of offenders sentenced in 2016		Assuming future offenders’ demographic characteristics are similar to those of offenders sentenced in 2016			
	Number	Percent	Number	Percent	Number	Percent	% Point Change	
Male	9,384	92.8%	+73	100%	9,457	92.8%	+0.1%	
Female	730	7.2%			730	7.2%	-0.1%	
Race & Ethnicity	White	4,711	46.6%	+73	100%	4,784	47.0%	+0.4%
	Black	3,537	35.0%			3,537	34.7%	-0.3%
	American Indian	960	9.5%			960	9.4%	-0.1%
	Hispanic**	631	6.2%			631	6.2%	
	Asian	259	2.6%			259	2.5%	
	Other/Unknown	16	0.2%			16	0.2%	
Judicial District	First	870	8.7%	+17	23%	887	8.8%	+0.1%
	Second	1,389	13.9%	+9	13%	1,398	13.9%	
	Third	767	7.7%	+2	3%	769	7.6%	
	Fourth	2,599	26.0%	+9	13%	2,608	25.9%	-0.1%
	Fifth	441	4.4%	+5	7%	446	4.4%	
	Sixth	556	5.6%	+5	7%	561	5.6%	
	Seventh	1,052	10.5%	+7	10%	1,059	10.5%	
	Eighth	302	3.0%			302	3.0%	
	Ninth	1,017	10.2%	+5	7%	1,022	10.1%	
	Tenth	1,014	10.1%	+14	19%	1,028	10.2%	+0.1%
Total	10,114	100.0%	+73	100%	10,187	100.0%		

Source of July 1, 2016, Adult Inmate Population: Minn. Dep’t of Corrections. Judicial district populations exclude 107 inmates whose governing sentences were for offenses committed in non-Minnesota jurisdictions.

** Lists all Hispanic offenders and residents as Hispanic, regardless of race.