

Sex Trafficking & Prostitution Review

CMHTTF Recommendations & Background Information

May 5, 2022

The Commission is currently undergoing a [legislatively mandated review](#) of how the Sentencing Guidelines and the Sex Offender Grid address sex trafficking crimes, a review that has since expanded to include prostitution offenses (see discussion below). This paper introduces the recommendations from the Central Minnesota Human Trafficking Task Force (CMHTTF)—the entity that asked the Legislature to mandate the review—and provides some general background information.

Central Minnesota Human Trafficking Task Force Recommendations

On April 14, 2022, the Commission heard from Ole Tvedten, the Chief of the Criminal Division of the Stearns County Attorney's Office. Mr. Tvedten, a member of the CMHTTF, [explained](#) why CMHTTF asked the Legislature to mandate the Commission's review. Mr. Tvedten described several CMHTTF recommendations to the Commission. These recommendations involved both sex trafficking offenses and felony prostitution offenses. Based on the scope of the CMHTTF recommendations, and the fact that some members [have expressed interest](#) in expanding the scope of the review beyond the legislative mandate to include prostitution offenses not on the Sex Offender Grid, staff assumes that the scope of the sex trafficking review has expanded to include felony prostitution (Minn. Stat. §§ [609.322](#) & [609.324](#)) as well.¹

Mr. Tvedten discussed four outstanding² CMHTTF recommendations with the Commission:

1. For aggravated sex trafficking offenses, replace the existing 48-month sentencing modifier with a new severity ranking at severity level (SL) A, applicable to both aggravated first- and second-degree.
2. Add sex trafficking to the Severe Violent Offense List.
3. Rerank the prostitution offenses now ranked at SL 9, SL 5, and SL 3 on the Sex Offender Grid as SL B, SL F, and SL G, respectively.
4. Add Patrons of Prostitution (2nd or Subsequent Violation) to the list of Offenses Eligible for Permissive Consecutive Sentences.

¹ It is assumed that Minn. Stat. § [609.324](#), subd. 1a (gross misdemeanor penalties for housing an unrelated minor engaged in prostitution), and § [609.3242](#) (increased penalties for prostitution crimes in school or park zones) remain outside the scope of the sex trafficking review.

² The Commission already implemented some of the CMHTTF recommendations on September 15, 2021, as part of its [2021 Guidelines modifications](#). It is assumed that the 2021 changes are outside the scope of the current review.

This paper provides background information regarding the elements of the offenses (p. 2), how the Commission ranks offenses (p. 3), and how it has placed them on the Sex Offender Grid (p. 4). The first and third recommendations are addressed in separate papers. Staff proposes to address the second and fourth recommendations in future meetings.

Offense Descriptions

Prostitution Defined

“Prostitution” means hiring, offering to hire, or agreeing to hire another individual to engage in sexual penetration or sexual contact, or being hired, offering to be hired, or agreeing to be hired by another individual to engage in sexual penetration or sexual contact. Minn. Stat. § [609.321, subd. 9](#).

Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking

As established in Minn. Stat. § [609.322](#), the offense of Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking encompasses any of the following acts:

- Soliciting or inducing someone to practice prostitution;
- Promoting the prostitution of an individual;
- Receiving profit known to have been derived from prostitution; or
- Engaging in [sex trafficking](#) (e.g., recruiting someone to aid in that person’s prostitution).

The offense does not apply to a prostitute or a patron.

Sex Trafficking Degrees and Aggravation

The basic offense, second degree, is a 20-year felony (subd. 1a).

If the person being prostituted is a child under age 18, the offense is first degree, a 25-year felony (subd. 1(a)).

For either first or second degree, the offense is a 30-year felony if any of the following aggravating factors is present (subd. 1(b)):

- The defendant has a prior human trafficking offense conviction;
- A victim suffered bodily harm;
- Debt bondage or forced services lasted over 180 days; or
- There was more than one victim.

Prostitution Offenses Other Than Sex Trafficking

Minn. Stat. § [609.324](#) establishes the following prostitution offenses:

- A misdemeanor for a prostitute who engages in prostitution with, or is hired by, an adult (subd. 5). Such an offense is a gross misdemeanor if committed in a public place (subd. 6).

- A gross misdemeanor for a patron who engages in prostitution with an adult, or hires an adult for prostitution (subd. 2(a)). A repeat offense within ten years is a five-year felony (subd. 2(b)).
- A five-year felony for a patron or prostitute who engages in prostitution with a **16- or 17-year-old** (subd. 1(c)(1)). The same penalty applies to a patron hiring or offering to hire a 16- or 17-year-old (subd. 1(c)(2)), or someone reasonably believed to be 16 or 17 years old (subd. 1(c)(3)).
- A ten-year felony for a patron or prostitute who engages in prostitution with a **14- or 15-year-old** (subd. 1(b)(1)). The same penalty applies to a patron hiring or offering to hire a 14- or 15-year-old (subd. 1(b)(2)), or someone reasonably believed to be 13,³ 14, or 15 years old (subd. 1(b)(3)).
- A twenty-year felony for a patron or prostitute who engages in prostitution with child age **13 or younger** (subd. 1(a)(1)). The same penalty applies to a patron hiring or offering to hire a child age 13 or younger (subd. 1(a)(2)), or someone reasonably believed age 13 or younger (subd. 1(a)(3)).

Overview of Offense Severity Rankings

One of the responsibilities of the Commission is to assign severity-level rankings to new crimes. For already-ranked crimes, the Commission is required continually to meet as necessary to modify and improve the Guidelines. The Commission bases its severity-level ranking decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered.

As the Commission considers Guidelines modifications, the Legislature provides the following directions:

In establishing and modifying the Sentencing Guidelines, the primary consideration of the commission shall be public safety. The commission shall also consider current sentencing and release practices; correctional resources, including but not limited to the capacities of local and state correctional facilities; and the long-term negative impact of the crime on the community.

Minn. Stat. § [244.09, subd. 5](#).

³ Because people reasonably believed to be 13-year-old children are also covered under the 20-year penalties of subd. 1(a)(3), staff believes the inclusion of people reasonably believed to be 13-year-old children in subd. 1(b)(3) was a legislative drafting error ([2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 4, § 5](#)). The remainder of staff's analysis will treat subd. 1(b)(3) as if it only covered someone reasonably believed to be 14 or 15 years old.

History of Offenses on the Sex Offender Grid

One of the CMHTTF recommendations is to rank prostitution offenses on the Sex Offender Grid. This section, which describes the Commission's process in creating the Sex Offender Grid and placing new offenses on it, provides historical context to that recommendation.

Origins of the Sex Offender Grid

In 2004, the Commission appointed a subcommittee to [“explore options that would more appropriately address the difficult public safety issue surrounding sex offenders, particularly recidivism.”](#) The subcommittee developed a separate [new Sex Offender Grid](#) with [“significantly enhanced sentence lengths.”](#) As a change from past practice, the proposed grid would display both mandatory minimum and statutory maximum sentence lengths. Criminal history score calculations for sex offenders were designed to [“weigh prior sex offense convictions more heavily,”](#) recommending executed sentences at the statutory maximum for those with two prior sex offense convictions, and at two-thirds the statutory maximum penalty for those with one prior sex offense conviction.

In January 2005, the Commission proposed the Sex Offender Grid to the Legislature. The Commission also [recommended](#) that the Legislature authorize indeterminate life sentencing for certain repeat and particularly predatory sex offenders. After implementing the Commission's recommendation, the 2005 Legislature asked the Commission again to propose a separate sex offender sentencing grid in light of the Legislature's action.⁴ The Commission complied. The 2006 Sex Offender Grid was similar in most respects to the 2005 proposal, but with some durations adjusted [“to focus on the danger posed by the recidivist sex offenders.”](#) The new grid took effect August 1, 2006.

Changes to Offenses Placed on the Sex Offender Grid Over Time

The Commission ranked the following offenses on the original Sex Offender Grid:

- Criminal sexual conduct (CSC) offenses,
- Offenses related to child pornography and use of minors in sexual performance,
- Indecent exposure,
- Solicitation of children to engage in sexual conduct, and
- Failure to register as a predatory offender.

The Commission also acknowledged that incest was a sex offense, but declined to assign it a severity level on the original Sex Offender Grid due to its infrequent prosecution.

⁴ The Legislature created Minn. Stat. § 609.3455, which authorized life sentences for certain repeat or heinous “sex offenses” (defined as criminal sexual conduct or criminal sexual predatory conduct). Some of these life sentences were without the possibility of release, while others carried a minimum term of imprisonment based on the Sentencing Guidelines. Rather than let the proposed Sex Offender Grid take effect, the Legislature required the Commission again to “propose a separate sex offender grid based on the sentencing changes made in this act relating to sex offenders.” 2005 Minn. Laws ch. [136](#), art. 2, §§ 21 & 22.

While acknowledging that failure to register as a predatory offender⁵ [“is not itself a sex offense,”](#) the Commission proposed to include it in the new sex offense sentencing policy because it believed “predatory sex offenders that fail to register pose a serious threat to public safety.”

Since 2006, the list of offenses ranked on the Sex Offender Grid has remained fairly stable. Only three offenses (some with multiple degrees) have been added. The chronology follows:

- **2009:** The Legislature redefined the term “sex trafficking” and [grafted it](#) onto the existing offense of solicitation, inducement, and promotion of prostitution. The Legislature also established aggravating factors with a higher statutory maximum penalty. In response, the Commission created the 48-month modifier for aggravated sex trafficking offenses. Although it later [considered](#) ranking other prostitution offenses on the Sex Offender Grid, the Commission [decided to rank](#) only sex trafficking offenses on that grid, with a delayed implementation date.⁶ First degree, formerly ranked at SL 9, was reranked at SL B. Second degree, formerly ranked at SL 5, was reranked at SL C.
- **2019:** In response to the establishment of a surreptitious observation device crime involving minor victims and sexual intent, the Commission ranked the offense on the Sex Offender Grid.
- **2021:** In response to the creation the crime of Sexual Extortion, the Commission ranked it on the Sex Offender Grid.

⁵ Although referred to in the Commission’s report as “Failure to Register as a Sex Offender,” the Legislature replaced the term “sex offender”—as used in the title of Minn. Stat. § [243.166](#)—with “predatory offender” in [1995](#), when it created the felony offense for repeatedly failing to register.

⁶ The 2010 Report to the Legislature [stated](#) that the modifications were to have been effective [August 1, 2010](#), but they did not appear in the Sentencing Guidelines until the [August 1, 2011, edition](#).