

Sex Trafficking & Prostitution Review

Ranking Aggravated Sex Trafficking

May 4, 2022

The Central Minnesota Human Trafficking Task Force (CMHTTF) recommends that the Commission replace aggravated sex trafficking’s existing 48-month sentencing modifier with a new severity ranking at severity level (SL) A, recommended to apply both to aggravated first degree and to aggravated second degree. This paper discusses this topic and provides preliminary staff recommendations. (These recommendations are “preliminary” because full evaluation of their merit will be possible only after reviewing draft implementing language and estimating the impact of each.)

Using a Sentencing Modifier vs. a Severity Ranking

Aggravated sex trafficking is now sentenced through the application of a sentencing modifier—Guidelines section 2.G.9—that adds 48 months to the imprisonment duration recommended for the underlying first- or second-degree offense.

As discussed in the April Commission meeting, [most sentencing modifiers](#) apply to a broad range of crimes. For example, the Criminal Sexual Predatory Conduct modifier (+25%; Guidelines section 2.G.8) applies to any [predatory crime](#) that was sexually motivated, and echoes the 25-percent increase found in [statute](#). If an aggravating circumstance applies to one crime only, on the other hand, the sentence for the aggravated crime is typically enhanced by ranking the aggravated crime a higher severity level, not by applying a sentencing modifier. As discussed in April, the two exceptions—aggravated offenses with their very own modifier—are: prior DWI conviction with criminal vehicular homicide; and aggravated sex trafficking.

In addition to being unusual in its application to only one section of the Minnesota Statutes, the 48-month modifier arguably violates the spirit of the statutory requirement that the Guidelines provide for a 20-percent increase and a 15-percent decrease in the presumptive sentence. The modifier’s discretionary ranges are narrower than the range provided in the law.¹

¹ Minn. Stat. § [244.09, subd. 5\(2\)](#). In Figure 2 (p. 5), for example, compare the modifier (**dark blue**) with the SL B ranking (**green**): At Criminal History Score (CHS) 1, the presumptive durations are identical (110 mo.), but the discretionary range is narrower under the modifier (101–122 mo.) than at SL B (94–132 mo.). This is because the 48-month modifier is added to upper and lower ends of a smaller range calculated from a shorter presumptive duration (62 mo., **purple**).

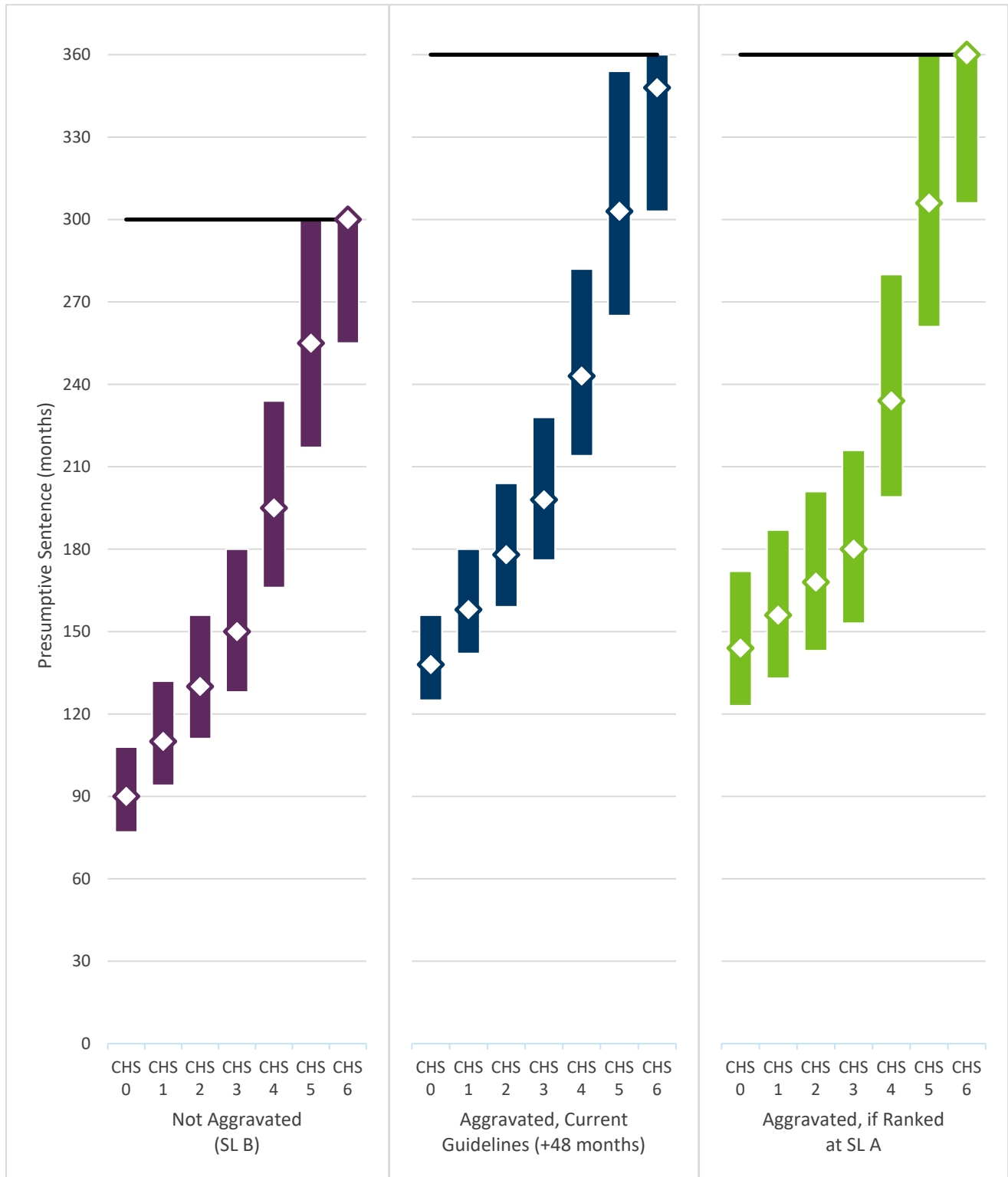
Repealing the modifier and replacing it with one or more severity-level rankings would make the Guidelines simpler and more coherent. It would also bring the ranges in line with the 20-percent increase and 15-percent decrease required by statute. For these reasons, **the preliminary staff recommendation is to repeal the 48-month modifier** and replace it with a severity-level ranking. This is consistent with the CMHTTF recommendation.

Ranking Aggravated First-Degree Sex Trafficking

Because first-degree sex trafficking is ranked at SL B, the only more serious SL at which aggravated first-degree sex trafficking could be ranked (without modifying the grid) would be at SL A. Although not a precise fit, a SL A ranking (Figure 1, green) would provide similar durations to those available with the 48-month modifier (Figure 1, dark blue). It would also follow the Sex Offender Grid’s principle of ranking the most serious version of a sex offense in such a way that, at maximum criminal history, the presumptive sentence equals the statutory maximum penalty (in this case, imprisonment for 30 years). For these reasons, **the preliminary staff recommendation is to rank aggravated first-degree sex trafficking at SL A**. This is consistent with the CMHTTF recommendation.

Figure 1, below, visually displays the presumptive sentences, in months, applicable to aggravated first-degree sex trafficking. For each of the seven criminal history scores (CHS), a white square indicates the presumptive executed duration, with colored bars above and below the square indicating the discretionary range. **Purple bars reflect the presumptive sentences for the non-aggravated offense; dark blue shows the presumptive sentences for the aggravated offense under current Guidelines policy (48-month modifier); and green represents the staff-recommended reranking.** The space between horizontal gridlines represents 30 months (2½ years). The black horizontal line shows the statutory maximum penalty.

Figure 1. Presumptive Sentences for First Degree Sex Trafficking: Not Aggravated; Aggravated, Under the Current Guidelines Modifier; and If Aggravated Were Ranked at Severity Level (SL) A



Ranking Aggravated Second-Degree Sex Trafficking

Because second-degree sex trafficking is ranked at SL C, aggravated second-degree sex trafficking could be ranked more seriously at SL B or SL A. The CMHTTF recommendation is SL A, the same as its recommendation for aggravated first-degree sex trafficking.

The statute makes a rational penalty distinction between adult and child victims, and the Guidelines incorporate that distinction in ranking first-degree offenses at a higher severity than second-degree offenses. While the statute does provide the same penalty for all aggravated sex trafficking offenses, staff views the aggravating circumstances as more severe when applied to a child than to an adult. If aggravated second-degree sex trafficking (applicable to adult victims) were ranked at SL B, the ranges would provide access to greater penalties than the existing modifier at all criminal history scores—and, at maximum criminal history, the range would provide access to the 30-year statutory maximum penalty. For these reasons, **the preliminary staff recommendation is to rank aggravated second-degree sex trafficking at SL B**, contrary to the CMHTTF recommendation.

Figure 2, below, visually displays the presumptive sentences applicable to aggravated second-degree sex trafficking. Like Figure 1, Figure 2 displays the non-aggravated offense in **purple**, the status quo modifier for the aggravated offense in **dark blue**, and the staff recommendation in **green**. The CMHTTF recommendation is shown in **light blue** for comparison.

Figure 2. Presumptive Sentences for Second Degree Sex Trafficking: Not Aggravated; Aggravated, Under the Current Guidelines Modifier; If Aggravated Were Ranked at SL B; and If Aggravated Were Ranked at SL A

