

Staff Information Paper

Estimated Impact of Aggravated Sex Trafficking and Prostitution Proposals

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Data Note

Impact estimates are based on 2016–2020 MSGC monitoring data. It is assumed that future cases will be similar in terms of offenses, offense severity, offense distribution, criminal history scores (CHS), departure rates, and demographic characteristics to those sentenced in 2016–2020. A preliminary look at cases sentenced in 2021 suggests an unusually low number of prostitution and sex trafficking cases compared with 2016–2019, particularly aggravated sex trafficking offenses. Because the backlog in sentencing due to

This document was prepared by the staff of the Minnesota Sentencing Guidelines Commission for the Commission’s review. This document has not been adopted by the Commission and does not necessarily represent its views.

the pandemic has not yet been cleared,¹ and in order not to underestimate the impact of the various proposals, the 2021 data are not being used.

Aggravated Sex Trafficking Proposals

A1. Maintain Current Policy – Aggravated Sex Trafficking Sentence Modifier

Proposal:

Proposal A1 would keep the current policy related to sex trafficking under Guidelines section 2.G.9. Current policy states that when an offender is sentenced for Sex Trafficking under Minn. Stat. § 609.322, subd. 1(b), the presumptive sentence is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender’s criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:

- 48 months, if the underlying crime was completed; or
- 24 months, if the underlying crime was an attempt or conspiracy

Assumptions:

Keeping the current policy will not result in a change to the bed impact.

From 2016–2020, there were 12 aggravated sex trafficking cases. Two of 12 cases did not receive prison sentences; therefore, they did not contribute to the impact. The current aggravated sex trafficking sentencing scheme requires an estimated 43 prison beds.

The demographic characteristics of the occupants of the prison beds resulting from the current aggravated sex trafficking sentencing scheme is as follows.

- **Gender:** Male (81%); Female (19%).
- **Race & Ethnicity:** White (31%); Black 60%); Asian (9%).
- **Judicial District:** Second (26%); Fourth (4%); Seventh (57%); and Tenth (14%).

¹ For a discussion of the history and current state of the backlog, refer to the Chief Justice’s 2022 State of the Judiciary Address at <https://mncourts.gov/About-The-Courts/NewsAndAnnouncements/ItemDetail.aspx?id=2127>

A2. Rank Aggravated Sex Trafficking at Severity Levels A and B

Proposal:

With respect to First-Degree Aggravated Sex Trafficking, Proposal A2 would rerank the offense from Severity Level (SL) B with a 48-month modifier, to SL A without the modifier. The proposal would rerank Second-Degree Aggravated Sex Trafficking from SL C with a 48-month modifier, to SL B without the modifier. Below, for illustration, are the durations on the Sex Offender Grid at SL A through SL C. The presumptive dispositions are commitment.

Table 1. 2021 Guidelines section 4.B. Sex Offender Grid, Severity Levels A – C

SEVERITY LEVEL	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
A	144 123-172	156 133-187	168 143-201	180 153-216	234 199-280	306 261-360	360 306-360
B	90 77-108	110 94-132	130 111-156	150 128-180	195 166-234	255 217-306	300 255-360
C	48 41-57	62 53-74	76 65-91	90 77-108	117 100-140	153 131-183	180 153-216

Assumptions:

From 2016–2020, 10 aggravated sex trafficking cases received prison. The estimated impact of this proposal is an increase in the need for prison capacity of 5 estimated prison beds.

It is estimated that the demographic characteristics of the occupants of the prison beds resulting from this proposal would be very similar to the demographic characteristics of the current occupants of prison beds.

- **Gender:** Male (83%); Female (17%).
- **Race/Ethnicity:** White (33%); Black (59%); Asian (8%).
- **Judicial District:** Second (25%); Fourth (3%); Seventh (57%); and Tenth (15%).

Therefore, there would be only minimal demographic changes in the prison population that would result from this proposal, if staff’s assumptions are accurate.

A3. Rank Aggravated Sex Trafficking at Severity Level A

Proposal:

Proposal A3 would rerank both First- and Second-Degree Aggravated Sex Trafficking at SL A, with no modifier (currently ranked at SL B and SL C, with a 48-month modifier). The statutory maximum sentence is 360 months. The presumptive dispositions are commitment.

Assumptions:

From 2016–2020, 10 aggravated sex trafficking cases received prison. The estimated impact of this proposal is an increase in the need for prison capacity of 11 estimated prison beds.

It is estimated that the demographic characteristics of the occupants of the prison beds resulting from this proposal would be very similar to the demographic characteristics of the current occupants of prison beds.

- **Gender:** Male (84%); Female (16%).
- **Race/Ethnicity:** White (33%); Black (57%); Asian (10%).
- **Judicial District:** Second (24%); Fourth (4%); Seventh (55%); and Tenth (16%).

Therefore, there would be only minimal demographic changes in the prison population that would result from this proposal, if staff's assumptions are accurate.

Prostitution Proposals

Currently, prostitution offenses are ranked at:

- Severity Level 9 – the individual is actually or believed to be under 14 years of age. For crimes committed prior to September 15, 2021, the age threshold was under 13 years of age.
- Severity Level 5 – the individual is actually or believed to be 14 or 15 years of age. For crimes committed prior to September 15, 2021, the ages were 13, 14, or 15 years of age.
- Severity Level 3 – the individual is actually or believed to be 16 or 17 years of age.

Though the age thresholds have changed, staff assumes that the numbers in the age groups will be very similar due to the vast majority of the cases being a result of undercover operations.

From 2016–2020, there were 218 prostitution cases sentenced. Two of 218 cases (both at SL 3) received prison. Table 4 displays sentencing information for prostitution cases by severity level.

Table 2. Prostitution Cases by Severity Level, Sentenced 2016–2020

Severity Level	Number of Cases	Presumptive Commit		Received Mitigated Dispositional Departure (presumpt. commit only)		Received Prison		Received Misdemeanor/Gross Misd. Sentence	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
9	0	---	---	---	---	---	---	---	---
5	159	3	1.9%	3	100%	0	---	15	9.4%
3	59	3	5.1%	1	33.3%	2	3.4%	16	27.1%
Total	218	6	2.8%	4	66.7%	2	0.9%	31	14.2%

In the following analyses, it is assumed that cases that received mitigated dispositional departures would likely receive one in the future.

B1. Prostitution Ranked on the Standard Grid (Current Policy)

Proposal:

Keep the current severity level rankings for prostitution on the standard grid at SL 9, SL 5, and SL 3.

Assumptions:

Keeping the current policy will not result in a change to the bed impact. The current prostitution sentencing scheme requires an estimated 0.7 prison beds.

The demographic characteristics of the occupants of the prison beds resulting from the current prostitution sentencing scheme is as follows.

- **Gender:** Male (100%).

- **Race & Ethnicity:** White (100%).
- **Judicial District:** Fifth (100%).

B2. Rank Prostitution on Sex Offender Grid by Victim Age and by Child vs. Undercover Officer at Severity Levels C, D; E, F; and G, H

Proposal:

Proposal B2 would re-rank prostitution on the Sex Offender Grid based on the age of the victim and whether they were a child or an undercover officer (UC) posing as a child (e.g., a sting operation).

- Current SL 9 with child victim would be re-ranked at SL C.
- Current SL 9 with UC would be re-ranked at SL D.
- Current SL 5 with child victim would be re-ranked at SL E.
- Current SL 5 with UC would be re-ranked at SL F.
- Current SL 3 with child victim would be re-ranked at SL G.
- Current SL 3 with UC would be ranked at SL H.

Below, for illustration, are the durations on the Sex Offender Grid at SL C – H. The presumptive dispositions are stay in the shaded cells and commitment in the non-shaded cells.

Table 3. 2021 Guidelines section 4.B. Sex Offender Grid, Severity Levels C – H

SEVERITY LEVEL	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
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>
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>
E	24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120²</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>
G	15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60²</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

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.

Of the 159 cases ranked at SL 5, two (1.3%) involved a child. Eight (13.6%) of the 59 cases ranked at SL 3 involved a child.

In this proposal, two of the 159 SL 5 cases would be re-ranked at SL E and 157 cases would be ranked at SL F. Eight of the 59 cases at SL 3 would be re-ranked at SL G and 51 cases would be re-ranked at SL H.

Assumptions:

From 2016–2020, there were two prostitution cases sentenced that received prison. Under this proposal, one of the 218 cases (SL 3 at CHS 4), would change from a presumptive commitment to a presumptive stay. In none of these cases would the presumptive disposition change from a presumptive stay to a presumptive commitment. The estimated impact of this proposal is an increase in the need for prison capacity of 0.85 estimated prison beds.

If staff’s assumptions are accurate, it is estimated that the demographic characteristics of the occupants of the prison beds resulting from this proposal would be very similar to the demographic characteristics of the current occupants of prison beds.

B3. Rank Prostitution on Sex Offender Grid by Victim Age at Severity Levels C, E, and G

Proposal:

Proposal B3 would re-rank prostitution on the Sex Offender Grid at SL C (moved from SL 9); SL E (moved from SL 5); and SL G (moved from SL 3). All 159 prostitution cases at SL 5 would be ranked at SL E and all 59 cases at SL 3 would be ranked at SL G.

Assumptions:

From 2016–2020, two prostitution cases received prison. This proposal would not change the presumptive disposition of any of the 218 cases. The estimated impact of this proposal is an increase in the need for prison capacity of 1.5 estimated prison beds.

If staff’s assumptions are accurate, it is estimated that the demographic characteristics of the occupants of the prison beds resulting from this proposal would be very similar to the demographic characteristics of the current occupants of prison beds.

Appendix – Current State Demographics

Table 4 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 2019); the adult prison population (as of July 1, 2019); and the adult population (on July 1, 2019, as estimated by the U.S. Census Bureau). Table 15 breaks down those populations by the following demographic categories: Gender; race and ethnicity; and judicial district.

Table 4. Minnesota’s 2019 General Population, Felony Population, and Prison Population, by Gender, Race and Ethnicity, and Judicial District

	General Population		Felony Population			Prison Population		
	U.S. Census Category	2019 Estimated Adult Population		MSGC Category	Offenders Sentenced in 2019		2019 Adult Inmate Population	
		Number	Percent		Number	Percent	Number	Percent
	Male	2,144,041	49.4%	Male	13,937	80.4%	8,941	93.07%
	Female	2,192,434	50.6%	Female	3,398	19.6%	666	6.93%
Race & Ethnicity	White*	3,629,537	83.7%	White	9,853	56.8%	4,427	46.1%
	Black or African American*	278,909	6.4%	Black	4,580	26.4%	3,534	36.8%
	American Indian*	66,414	1.5%	American Indian	1,492	8.6%	843	8.77%
	Hispanic**	197,548	4.6%	Hispanic**	903	5.2%	525	5.5%
	Asian*	228,242	5.3%	Asian	499	2.9%	270	2.8%
	Native Hawaiian/ Other Pacific Islander*	4,975	0.1%	Other/ Unknown***	8	0.0%	8	8.6%
Judicial District	First	608,254	14.0%	First	2,213	12.8%	825	11.4%
	Second	422,368	9.7%	Second	1,902	11.0%	1,096	6.95%
	Third	372,086	8.6%	Third	1,254	7.2%	668	27.54%
	Fourth	989,707	22.8%	Fourth	3,551	20.5%	2,646	5.0%
	Fifth	221,404	5.1%	Fifth	1,064	6.1%	479	5.5%
	Sixth	202,578	4.7%	Sixth	732	4.2%	524	11.2%
	Seventh	379,092	8.7%	Seventh	1,810	10.4%	1,075	3.07%
	Eighth	122,619	2.8%	Eighth	522	3.0%	295	9.8%
	Ninth	264,123	6.1%	Ninth	1,620	9.3%	941	9.93%
	Tenth	754,244	17.4%	Tenth	2,667	15.4%	954	93.07%
	Total	4,336,475	100.0%	Total	17,335	100.0%	9,607	100.0%

Source of July 1, 2019, population estimate: U.S. Census Bureau (Sept. 2020).

*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. **This table 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.”

Source of July 1, 2019, Adult Inmate Population: Minn. Department of Corrections. Judicial district populations exclude 104 inmates whose governing sentences were for offenses committed in non-Minnesota jurisdictions.