

Staff Paper

Sample Draft Language to Rank Aggravated Sex Trafficking

August 29, 2022

The following is staff's attempt to draft language that would rank Aggravated Sex Trafficking on the Sex Offender Grid in place of the 48-month sentence modifier that now exists. While no Commission member has yet proposed this option, neither has the Commission rejected it. Considering the limited decision-making time remaining in 2022, staff has prepared this sample draft language for the sake of efficiency.

Alternative Ranking Options

The sample draft language includes two alternative ranking options: to rank Aggravated Sex Trafficking 1st Degree at Severity Level A and Aggravated Sex Trafficking 2nd Degree at Severity Level B (as [recommended by staff](#)); and to rank all Aggravated Sex Trafficking offenses at Severity Level A (as [recommended by the Central Minnesota Human Trafficking Task Force](#)). Both alternatives share most of the drafted changes in common. Where the language differs, changes required by the staff alternative are indicated by **yellow highlighting** and changes required by the Central Minnesota Human Trafficking Task Force alternative are indicated by **blue highlighting**. Many of the changes highlighted in yellow are caused by the fact that the 30-year statutory maximum penalty for Aggravated Sex Trafficking 2nd Degree exceeds the 25-year (300-month) maximum now displayed at Severity Level B.

"Sex Trafficking"

The sample draft language uses the term "Sex Trafficking" to describe all offenses proscribed by Minn. Stat. § 609.322. The Sentencing Guidelines now generally describe the offense as "Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking" (although inconsistent variations exist). While § 609.322 lists "sex trafficking" as only one of several ways by which one may violate the law, an analysis of the term's broad definition discloses that "sex trafficking," by itself, encompasses nearly all the misbehavior contemplated by the remainder of the statute.* In shortening the offense title, staff considers the information lost to be offset by the clarity gained.

* Promotion of prostitution is the most apparent exception (*i.e.*, listed in § 609.322 but not within the "sex trafficking" definition; *cf.* Minn. Stat. § [609.321, subd. 7a](#), with Minn. Stat. § [609.322](#)). It should be noted, however, that promotion of prostitution is not now generally included in the Guidelines' offense title.

Minnesota Sentencing Guidelines and Commentary

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2. Determining Presumptive Sentences

The presumptive sentence for any offender convicted of a felony committed on or after May 1, 1980, is determined by the Sentencing Guidelines in effect on the date of the conviction offense, except that:

- If multiple offenses are an element of the conviction offense, the date of the conviction offense must be determined by the factfinder.
- If offenses have been aggregated under one of the following statutes, or as otherwise permitted by statute, the date of the earliest offense should be used as the date of the conviction offense:

Statute Number	Offense Title
349.2127, subds. 2 and 6	Gambling Regulations
609.322, subd. 1c	Solicitation, Promotion, and Inducement of Prostitution; Sex Trafficking
* * *	

G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

* * *

9. ~~Solicitation or Promotion of Prostitution; Sex Trafficking.~~ When an offender is sentenced for ~~Solicitation or Promotion of Prostitution or 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:

- a. ~~48 months, if the underlying crime was completed; or~~

b. ~~24 months, if the underlying crime was an attempt or conspiracy.~~

9. ~~10.~~ Offense Committed for the Benefit of a Gang. * * *

10. ~~11.~~ Felony Assault Motivated by Bias. * * *

11. ~~12.~~ Criminal Vehicular Homicide (Death or Death to an Unborn Child, and Qualified Prior Conviction). * * *

12. ~~13.~~ Attempt or Conspiracy to Commit First-Degree Murder. * * *

13. ~~14.~~ Second or Subsequent Severe Violent Offense.

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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>144²-172</i>	156 <i>144²-187</i>	168 <i>144²-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360²³</i>
<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>90²³-108</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> 306	300 <i>255-300²³</i> 360
* * *								
<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>102-120²³</i>
<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>51-60²³</i>
<i>CSC 5th Degree-3(a) (nonconsensual penetration)</i>	H	12 ¹	14	16	18	24	24 ²³ <i>24-24</i>	24 ²³ <i>24-24</i>
<i>Failure to Register as a Predatory Offender</i>	I	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>

* * *

² Sex Trafficking is not subject to a 144- or 90-month minimum statutory presumptive sentence so the standard range of 15% lower and 20% higher than the fixed duration applies. (For Severity Level A, Criminal History Scores 0, 1, & 2, the ranges are 123-172, 133-187, & 143-201, respectively. For Severity Level B, Criminal History Score 0, the range is 77-108.)

²³ 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. For Severity Level H, all displayed durations, including the upper and lower ranges, are constrained by the statutory maximum at criminal history scores above 4.

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.)

* * *

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
* * *		
A	Aggravated Sex Trafficking 1st Degree	609.322, subd. 1(a) with ref. to subd. 1(b)
	Aggravated Sex Trafficking	609.322, subd. 1(b)
	Criminal Sexual Conduct 1st Degree	609.342
B	Aggravated Sex Trafficking 2nd Degree	609.322, subd. 1a with ref. to subd. 1(b)
	Criminal Sexual Conduct 2nd Degree	609.343, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)
	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(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)	617.247, subd. 3(b)
	Sexual Extortion (Penetration)	609.3458, subd. 1(b)
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	609.322, subd. 1a
	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 14)	617.246, subd. 2(b), 3(b), 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
* * *		
609.2112, subd. 1(b)	Criminal Vehicular Homicide (Death, and Qualified Prior Conviction)	8*
* * *		
609.2114, subd. 1(b)	Criminal Vehicular Operation (Death to an Unborn Child, and Qualified Prior Conviction)	8*
* * *		
609.2233	Felony Assault Motivated by Bias	See Note ¹
* * *		
609.229 subd. 3(a)	Crime Committed for Benefit of Gang	See Note ³
* * *		
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B**
<u>609.322 subd. 1(a) with ref. to subd. 1a</u>	<u>Aggravated Sex Trafficking 1st Degree</u>	<u>A</u>
<u>609.322 subd. 1a</u>	<u>Aggravated Sex Trafficking</u>	<u>A</u>
609.322 subd. 1(b)	Aggravating Factors for Solicitation or Promotion of Prostitution; Sex Trafficking	See Note⁴
609.322 subd. 1a	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	C
<u>609.322 subd. 1(b) with ref. to subd. 1a</u>	<u>Aggravated Sex Trafficking 2nd Degree</u>	<u>B</u>
* * *		

* See section ~~2.G.12~~ 2.G.11 to determine the presumptive sentence.

¹ See section ~~2.G.11~~ 2.G.10 to determine the presumptive sentence.

³ See section ~~2.G.10~~ 2.G.9 to determine the presumptive sentence.

**** 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.**

~~⁴ See Guidelines section 2.G to determine the presumptive sentence.~~

Statute Number	Offense Title	Severity Level
609.343 subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)	Criminal Sexual Conduct 2nd Degree	B*
* * *		
609.3453	Criminal Sexual Predatory Conduct	See Note ⁴⁵
* * *		
609.493	Solicitation of Mentally Impaired Persons	See Note ⁵⁶
609.494 subd. 2(b)	Solicitation of Juveniles	See Note ⁶⁷
* * *		
609.495 subd. 4	Taking Responsibility for Criminal Acts	See Note ⁷⁸
* * *		
609.714	Offense in Furtherance of Terrorism	See Note ⁸⁹
* * *		

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.

* 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.

⁴⁵ See section 2.G.8 to determine the presumptive sentence.

⁵⁶ See section 2.G.3 to determine the presumptive sentence.

⁶⁷ See section 2.G.3 to determine the presumptive sentence.

⁷⁸ See section 2.G.6 to determine the presumptive sentence.

⁸⁹ See section 2.G.7 to determine the presumptive sentence.

B. Under section 2.F.2.a(1)(i), it is permissible 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
* * *	
609.322, subd. 1(a)	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 1st Degree
609.322, subd. 1(a) with ref. to subd. 1(b)	Aggravated Sex Trafficking 1st Degree
609.322, subd. 1(b)	Aggravated Sex Trafficking
609.322, subd. 1a	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 2nd Degree
609.322, subd. 1a with ref. to subd. 1(b)	Aggravated Sex Trafficking 2nd Degree
* * *	

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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.~~ 2.G.13. Attempt or conspiracy is included, as is an equivalent felony from a jurisdiction other than Minnesota.

* * *

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>609.322 subd. 1(a)</u>	<u>Sex Trafficking 1st Degree</u>	<u>B</u>	<u>300</u>	<u>CHS 5 (upper-range)</u>
<u>609.343 subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)</u>	<u>Criminal Sexual Conduct 2nd Degree</u>	<u>B</u>	<u>300</u>	<u>CHS 5 (upper-range)</u>
* * *				

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