

Notice of Public Hearing

Proposed Amendments to the Minnesota Sentencing Guidelines and Commentary

Date of notice: November 14, 2022

Date of hearing: December 15, 2022

The Minnesota Sentencing Guidelines Commission will hold a public hearing on Thursday, December 15, 2022, at 1:00 p.m., in the Minnesota State Capitol Building, Room G-3, 75 Rev. Dr. Martin Luther King, Jr. Blvd., Saint Paul, Minnesota 55155, to consider a proposal to amend the Minnesota Sentencing Guidelines and Commentary. A remote-participation option will be available: Members of the public may monitor and participate in the hearing remotely, and some Commission members may participate by interactive technology. Refer to the Commission's web site (mn.gov/sentencing-guidelines) for information on how to attend the public hearing remotely.

All interested persons are encouraged to participate and offer comments. Persons wishing to testify may register in advance; registration instructions will be posted on the Commission's [web site](#). If you require special accommodations to attend the public hearing, please contact the Minnesota Sentencing Guidelines Commission (MSGC) staff as soon as possible.

The Commission will hold the record open for five calendar days after the public hearing to accept written comment. Written materials must be received no later than December 20, 2022. Any person who wishes to provide a written statement may do so in one of three ways:

- By delivering the written statement to the public hearing;
- By sending the written statement by United States Mail to Minn. Sentencing Guidelines Commission, 658 Cedar Street, Suite G-58, Saint Paul, Minnesota 55155; or
- By emailing the written statement to Sentencing.Guidelines@state.mn.us.

The public hearing is being held to consider proposed Sentencing Guidelines modifications resulting from non-legislative amendments, a legislatively mandated review, and technical corrections. After the public hearing, the proposed modifications, which follow, are subject to final action by the Commission at its meeting on January 12, 2023. Meeting information will be posted on the Commission's [web site](#). If adopted and submitted to the Legislature by January 15, 2023, the modifications will be effective on August 1, 2023, unless the Legislature by law provides otherwise.

This notice, which is available in alternative formats upon request, was posted on the MSGC web site on November 14, 2022.

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A. Changes to the Calculation of the Custody Status Point

Since 2019, custody status arising from a targeted misdemeanor, non-traffic gross misdemeanor, gross misdemeanor DWI, or felony ranked at severity level 1, 2, D1, or D2 has contributed one-half custody status point to the criminal history score; *but see State v. Beganovic*, 974 N.W.2d 278, 288 (Minn. App. 2022), *review granted on other grounds* (Minn. June 29, 2022). The Commission proposes, instead, to restore a full custody status point for such custody status, but only when the total criminal history score is at the grid maximum or when the custody status was the result of a prior mitigated dispositional departure. The specified effective date of all proposed modifications is August 1, 2023.

Proposed modifications to 2022 Minn. Sentencing Guidelines and Commentary section 2.B.2:

Minnesota Sentencing Guidelines and Commentary

* * *

2. Determining Presumptive Sentences

* * *

B. Criminal History

* * *

2. Custody Status at the Time of the Offense.

a. Custody Status.

(1) Generally. "Custody status" refers to the status of:

- (i) probation;
- (ii) parole;
- (iii) supervised release;
- (iv) conditional release from an executed prison sentence;
- (v) release pending sentencing;
- (vi) confinement in a jail, workhouse, or prison pending or after sentencing; or
- (vii) escape from confinement following an executed sentence.

(2) General Requirements. A status is custody status only when the status followed entry of a guilty plea, guilty verdict, or conviction, and the offense that caused the custody status to exist (the "custody offense") was one of the following:

- (i) a felony,
- (ii) a felony extended jurisdiction juvenile (EJJ) conviction;
- (iii) a non-traffic gross misdemeanor;
- (iv) gross misdemeanor driving while impaired, refusal to submit to a chemical test, or reckless driving; or
- (v) a targeted misdemeanor.

(3) Additional Requirement for Certain Felony Custody Offenses. For a custody offense currently assigned a severity level ranking of 1 or 2 on the Standard Grid, or of D1 or D2 on the Drug Offender Grid, a status is not custody status unless either or both of the following conditions apply.

- (i) The custody status was the result of a mitigated dispositional departure from these Guidelines.
- (ii) The total criminal history score applicable to the current offense (excluding the custody status point) is 6 or more.

(4) Additional Requirement for Misdemeanor and Gross Misdemeanor Custody Offenses. For any of the following custody offenses, a status is not custody status unless the total criminal history score applicable to the current offense (excluding the custody status point) is 6 or more:

- (i) a non-traffic gross misdemeanor;
- (ii) gross misdemeanor driving while impaired, refusal to submit to a chemical test, or reckless driving; or
- (iii) a targeted misdemeanor.

(5) Exceptions. Custody status does not apply to:

- (i) probation or other custody that occurs while adjudication of guilt is stayed;
- (ii) juvenile custody status other than for a felony EJJ conviction;
- (iii) custody for a misdemeanor or gross misdemeanor DWI committed at age 16 or 17 and processed in adult court under Minn. Stat. § 260B.225, subds. 3 and 8; or
- (iv) commitment for treatment or examination under Minn. R. Crim. P. 20.

b. a. ~~One or One-Half Custody Status Point.~~

(1) Assign **one** custody status point ~~if the current offense was committed while in a custody status.~~

(2) ~~When multiple offenses are an element of the current offense, or when the current offense is an aggregated offense, the current offense was "committed while in a custody status" if the custody status existed at any point in time during which the current offense occurred. when the conditions in paragraphs (1), (2), and (3)(ii) or (iii) are met. In all other cases when the conditions in paragraphs (1) through (3) are met, assign **one-half** custody status point:~~

~~(1) The offender was under one of the following custody statuses at the time the current offense was committed:~~

- ~~(i) probation;~~
- ~~(ii) parole;~~
- ~~(iii) supervised release;~~
- ~~(iv) conditional release following release from an executed prison sentence (see conditional release terms listed in section 2.E.3);~~
- ~~(v) release pending sentencing;~~
- ~~(vi) confinement in a jail, workhouse, or prison pending or after sentencing; or~~
- ~~(vii) escape from confinement following an executed sentence.~~

~~(2) The offender was under one of the custody statuses in paragraph (1) after entry of a guilty plea, guilty verdict, or conviction.~~

~~(3) The offender was under one of the custody statuses in paragraph (1) for one of the following:~~

- ~~(i) a felony currently assigned a severity level ranking, on the Offense Severity Reference Table, of 1 or 2 on the Standard Grid or D1 or D2 on the Drug Offender Grid, a felony from a jurisdiction other than Minnesota equivalent to an offense currently ranked at one of those severity levels, or an extended jurisdiction juvenile (EJJ) conviction for an offense currently ranked at one of those severity levels;~~
- ~~(ii) any other felony;~~
- ~~(iii) any other EJJ conviction;~~
- ~~(iv) a non-traffic gross misdemeanor;~~
- ~~(v) gross misdemeanor driving while impaired, refusal to submit to a chemical test, or reckless driving; or~~
- ~~(vi) a targeted misdemeanor.~~

~~(4) Assigning Points to Offenses Committed Over Time. Assign one or one-half custody status point when the offender meets the conditions in paragraphs (1) through (3) and the offender was placed under one of the custody statuses in paragraph (1) at any point in time during which the offense occurred when:~~

- ~~(i) multiple offenses are an element of the conviction offense; or~~
- ~~(ii) the conviction offense is an aggregated offense.~~

c. ~~b. Two Custody Status Points. Assign **two** custody status points, rather than one, if:~~

~~(1) the current offense was committed while in a custody status;~~

~~(2) (4) both the custody offense and the current conviction offense is an offense are currently found on the Sex Offender Grid; Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166); and~~

~~(3) (2) the offender qualifies for one custody status point, as described in section a, above, for an offense currently found on the Sex Offender Grid other than neither offense is Failure to Register as a Predatory Offender (Minn. Stat. § 243.166).~~

d. ~~c. Additional Duration.~~

~~(1) An **additional three months** must be added to the duration of the appropriate cell time, which then becomes the presumptive duration, when:~~

- (i) ~~(1)~~ at least ~~one-half~~ one custody status point is assigned; and
- (ii) ~~(2)~~ the ~~offender's total Criminal History Score~~ total criminal history score exceeds the maximum score on the applicable Grid (i.e., is 7 or more).

~~(2)~~ Three months must also be added to the lower and upper end of the range provided in the appropriate cell on the applicable Grid.

~~(3)~~ If the current conviction is an attempt, conspiracy, or other offense with a sentence modifier that reduces the presumptive sentence, the three months must be added to the cell duration before the duration is reduced as outlined in section 2.G. The presumptive duration, however, cannot be less than one year and one day.

d. ~~No Custody Status Points Assigned.~~ The offender must not be assigned custody status points when:

~~(1) The offender was committed for treatment or examination under Minn. R. Crim. P. 20.~~

~~(2) The offender was on juvenile custody status other than for an extended jurisdiction juvenile (EJJ) conviction, at the time the adult felony was committed.~~

~~(3) The offender was on custody status for a misdemeanor or gross misdemeanor DWI committed when the offender was 16 or 17 years old, and the DWI was processed in adult court under Minn. Stat. § 260B.225, subs. 3 and 8.~~

e. Waiver. Subject to the limitations in paragraph (4) below, the court, on its own motion or on the motion of a party, may, but is not required to, waive assignment of a custody status ~~point or half-point pursuant to section 2.B.2, point,~~ provided the offender establishes that granting a waiver is consistent with public safety. Specifically, the court has the discretion, but is not required, to grant a waiver if the offender establishes that waiver is consistent with public safety and promotes the traditional purposes of ~~sentencing~~ sentencing, which are retribution, incapacitation, deterrence, restitution, and rehabilitation. See Minn. Stat. § 244.09. In considering rehabilitation, the court may examine the following:

(1) Whether the offender has consistently utilized available probation services, such as drug, alcohol, and psychological treatment services, and has otherwise been in substantial compliance with the conditions of probation, parole, or conditional or

supervised release, apart from the commission of the current offense, for the past twelve months;

- (2) Whether the current offense represents an escalation of criminal activity; and
- (3) Whether the offender has made any progress toward rehabilitation and reentry into society, such as additional education and/or vocational training.
- (4) The court may not, however, waive assignment of a custody status point ~~or half-point~~ if either the current offense or a custody ~~status~~ offense is any of the following offenses, including an equivalent felony offense from a jurisdiction other than Minnesota. ~~As used within this paragraph, "custody status offense" means a prior offense resulting in a custody status that caused the offender to qualify for a custody status point as described in section a, above.~~
 - (i) an offense currently assigned a severity level ~~ranking, on the Offense Severity Reference Table,~~ ranking of 8, 9, 10, or 11 on the Standard Grid;
 - (ii) an offense on the Sex Offender Grid other than Failure to Register as a Predatory Offender (Minn. Stat. § 243.166);
 - (iii) an offense currently assigned a severity level ~~ranking, on the Offense Severity Reference Table,~~ ranking of D8 or D9 on the Drug Offender Grid;
 - (iv) an offense listed in section 8, Severe Violent Offense List;
 - (v) Fleeing Peace Officer (Great Bodily Harm) (Minn. Stat. § 609.487, subd. 4(b));
or
 - (vi) an attempt or conspiracy to commit one of these offenses.

Comment

2.B.201. *The basic rule assigns ~~offenders one or one-half point if they were~~ a criminal history point for being under some form of eligible criminal justice custody status when they committed the offense for which they are now being sentenced. committing the current offense.*

2.B.202. *The Commission intended to ~~avoid~~ limit criminal history scores in which a prior offense's custody status point outweighed the criminal history of the prior offense itself. Accordingly, when the criminal history weight of a prior felony is one-half point (but excluding severity level H or I offenses; see generally section 2.B.1) or the prior gross misdemeanor or misdemeanor contributes one or two misdemeanor units (see section 2.B.3), the custody status from that prior offense results in ~~one-half, rather than one,~~ a custody status point. point only in limited circumstances—when the total criminal history score is very high, or when the custody status was the result of a prior mitigated dispositional departure.*

2.B.203. *In determining whether to grant a waiver in a particular case, the primary consideration is public safety. In this context, public safety means protecting the public from crime. The court should consider the values of retribution, incapacitation, deterrence, restitution and rehabilitation. In doing so, the court should apply a balanced approach in which all five values are examined and applied. For rehabilitation, the court may also consider the three factors listed in section 2.B.2.e in order to examine the whole person. When custody status is waived, the presumptive sentence will be calculated without the addition of the waived custody status point, ~~or half-point,~~ in the criminal history score. Thus, provided the processes of section 2.B.2.e are followed, granting a waiver of custody status for the current offense does not, in itself, constitute a departure from the Sentencing Guidelines.*

2.B.204. *Commitments under Minn. R. Crim. P. 20, and juvenile custody status are not included because, in those situations, there has been no conviction. However, a custody point will be assigned if ~~the offender committed~~ the current offense was committed while under some form of custody following an extended jurisdiction juvenile (EJJ) conviction.*

2.B.205. *The custodial statuses covered by this policy are those occurring after conviction of a felony, non-traffic gross misdemeanor, gross misdemeanor driving while impaired or refusal to submit to a chemical test, gross misdemeanor reckless driving, or misdemeanor on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e). Thus, ~~an offender who commits a new felony committed while on pre-trial diversion or pre-trial release on another charge does not get a custody status point. is not committed while in a custody status.~~ Likewise, ~~offenders serving a misdemeanor sentence for an offense not on the targeted misdemeanor list provided in Minn. Stat. § 299C.10, subd. 1(e), do not receive a custody status point,~~ does not qualify as custody status, even if the court imposed the misdemeanor sentence upon conviction of a gross misdemeanor or felony.*

2.B.206. *As a general rule, the Commission excludes traffic offenses from consideration in computing the criminal history score. Given the increased penalties associated with driving while impaired (DWI) offenses and the serious impact on public safety, the Commission determined that these offenses should be considered for custody status points in the same manner as non-traffic offenses.*

2.B.207. *The most problematic consequence of a Criminal History Score of 7 or more (in excess of the maximum points differentiated by the Sentencing Guidelines Grids) is that no additional penalty accrues for engaging in felonious behavior while under custody supervision. For example, if a person with an offender has a Criminal History Score of 7 and is 7, while released pending sentencing for a Severity Level 3 offense, ~~and he or she commits another Severity Level 3 offense, offense while awaiting sentencing,~~ the presumptive sentence for the most recent offense is the same as for the prior offense. A presumption exists against consecutive sentences for most property offenses, and therefore no additional penalty results when*

this situation occurs. The addition of three months to the cell duration provides a uniform presumptive standard for dealing with this situation.

2.B.208. While the Commission believes that the impact of the custody status provision should be maintained for all cases, incrementing the sanction for each criminal history point above seven is deemed inappropriate. The primary determinant of the sentence is the seriousness of the current conviction offense. Criminal history is of secondary importance, and the Commission believes that proportionality in sentencing is served sufficiently with the criminal history differentiations incorporated in the Sentencing Guidelines Grids and with the special provision for maintaining the impact of the custody status provision. The Commission deems further differentiation unnecessary to achieve proportionality in sentencing.

2.B.209. The Commission believes that when multiple offenses are an element of the conviction offense or the conviction offense is an aggregated offense, ~~offenders should receive a custody status point~~ should apply if they become subject to one of the custody status types listed in 2.B.2.a(1) 2.B.2.a occurs at any point during the time period in which the offenses occurred. While the Commission recognizes that its policy for determining the presumptive sentence states that for aggregated offenses, the earliest offense date determines the date of offense, it believes that eligibility for a custody status point should not be limited to the ~~offender's custody status at the time of the earliest date of offense.~~

2.B.210. ~~When offenders~~ Anyone on any a custody status condition listed in section 2.B.2.b 2.B.2.a for a sex offense commit who commits another sex offense is offense, ~~they are~~ assigned an additional custody status point. The Commission believes that ~~offenders those who commit a subsequent sex offenses offense~~ pose so significant a risk to public safety that their criminal history scores should be enhanced to reflect this risk. This policy does not apply to the offense of Failure to Register as a Predatory Offender (Minn. Stat. § 243.166).

2.B.211. Assign a custody status point to anyone who, while an offender on any custody status type, type who absconds and commits a new felony offense. The custody status type depends on the form of supervision that exists ~~when the offender commits a~~ at the time of the new offense. For example, ~~assign a custody status point to an offender who~~ if someone absconds from supervised release and commits a new felony offense, a custody status point would be assigned and the offense. The custody status type would be "supervised release."

* * *

B. Modifications Related to Sex Trafficking

As a result of its legislatively mandated review of how the Sentencing Guidelines address Sex Trafficking ([2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 2, § 54](#)), the Commission proposes—

- To rank Aggravated Sex Trafficking 1st Degree on the Sex Offender Grid at Severity Level A;
- To rank Aggravated Sex Trafficking 2nd Degree on the Sex Offender Grid at Severity Level B; and
- To repeal the existing 48-month sentence modifier that now applies to Aggravated Sex Trafficking.

The Commission also proposes to add the following offenses to the Severe Violent Offense List:

- Sex Trafficking 1st Degree;
- Aggravated Sex Trafficking 1st Degree; and
- Aggravated Sex Trafficking 2nd Degree (Bodily Harm/Debt Bondage/Forced Services).

The specified effective date of all proposed modifications is August 1, 2023.

Proposed modifications to 2022 Minn. Sentencing Guidelines and Commentary sections 2, 2.G, 4.B, 5.A, 5.B, 6, and 8; and Appendix 3:

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

Statute Number	Offense Title
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.~~

* * *

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>	255 217-300 <u>306</u>	300 255-300² <u>360</u>
* * *								
<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	<u>Aggravated Sex Trafficking 1st Degree</u>	<u>609.322, subd. 1(a) with ref. to subd. 1(b)</u>
	Criminal Sexual Conduct 1st Degree	609.342
B	<u>Aggravated Sex Trafficking 2nd Degree</u>	<u>609.322, subd. 1a with ref. to subd. 1(b)</u>
	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>
609.322 subd. 1(b)	Aggravating Factors for Solicitation or Promotion of Prostitution ; Sex Trafficking	See Note ⁴
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>
* * *		
609.343 subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)	Criminal Sexual Conduct 2nd Degree	B**
* * *		

* 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
609.3453	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.
- B.** Under section 2.F.2.a(1)(i), it is permissive 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

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.

Statute Number	Offense Title
<u>609.322, subd. 1(a) with ref. to subd. 1(b)</u>	<u>Aggravated Sex Trafficking 1st Degree</u>
609.322, subd. 1a	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 2nd Degree
<u>609.322, subd. 1a with ref. to subd. 1(b)</u>	<u>Aggravated Sex Trafficking 2nd Degree</u>
* * *	

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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.

Statute Number	Offense Title
* * *	
<u>609.322, subd. 1(a)</u>	<u>Sex Trafficking 1st Degree</u>
<u>609.322, subd. 1(a) with ref. to subd. 1(b)</u>	<u>Aggravated Sex Trafficking 1st Degree</u>
<u>609.322, subd. 1a with ref. to subd. 1(b)(2) or (3)</u>	<u>Aggravated Sex Trafficking 2nd Degree (Bodily Harm/Debt Bondage/Forced Services)</u>
* * *	

* * *

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>
* * *				

* * *

C. Technical Modifications

The Commission proposes to remove an unnecessary word in an aggravated departure factor and to list Sexual Extortion as a conditional-release offense. The specified effective date of all proposed modifications is August 1, 2023.

Proposed modifications to 2022 Minn. Sentencing Guidelines and Commentary sections 2.D.3.b(3) and 2.E.3:

Minnesota Sentencing Guidelines and Commentary

2. Determining Presumptive Sentences

* * *

D. Departures from the Guidelines

* * *

3. Factors that may be used as Reasons for Departure. The following is a nonexclusive list of factors that may be used as reasons for departure: * * *

- b. Aggravating Factors. * * *

(3) The current conviction is for a criminal sexual conduct offense, or an offense in which the victim was otherwise injured, and is the offender has a prior felony conviction for a criminal sexual conduct offense or an offense in which the victim was otherwise injured.

* * *

E. Mandatory Sentences

* * *

3. Conditional Release. Several Minnesota statutes provide for mandatory conditional release terms that must be served by certain offenders once they are released from prison. The court must pronounce the conditional release term when sentencing for the following offenses:

- First-degree (felony) driving while impaired. Minn. Stat. § 169A.276, subd. 1(d).
- Predatory offense registration violation committed by certain offenders. Minn. Stat. § 243.166, subd. 5a.
- Assault in the fourth degree against secure treatment facility personnel. Minn. Stat. § 609.2231, subd. 3a(e).
- First- through fourth-degree criminal sexual conduct, sexual extortion, and criminal sexual predatory conduct. Minn. Stat. § 609.3455, subds. ~~6-8~~. 6-8.
- Use of minors in sexual performance. Minn. Stat. § 617.246, subd. 7.
- Child pornography. Minn. Stat. § 617.247, subd. 9.

* * *