

Sex Trafficking & Prostitution Review

Eligibility of Felony Patrons of Prostitution for Permissive Consecutive Sentencing

September 22, 2022

The Central Minnesota Human Trafficking Task Force (CMHTTF) recommends that the Commission add Patrons of Prostitution (2nd or Subsequent Violation) to the list of Offenses Eligible for Permissive Consecutive Sentences. This staff paper discusses the merits of this recommendation.

Permissive Consecutive Sentencing

Consecutive Sentencing Policy Overview¹

The Sentencing Guidelines (section 2.F) generally presume that multiple current sentences are concurrent with each other—that is, they are served at the same time—and that a new sentence is concurrent with an old sentence that has not yet expired. There are two exceptions to this rule:

- **Presumptive Consecutive Sentences** (section 2.F.1). Consecutive sentencing—*i.e.*, with one sentence beginning after another sentence is complete—is presumed when the new offense was committed while in—or on escape status from—prison. The nature of the two offenses is immaterial; it is only required that the Guidelines presume an executed sentence for the new offense. The consecutively sentenced offense’s prison duration, however, is calculated with a criminal history score of 1—and if this results in a shorter time to serve than concurrent sentencing, then concurrent sentencing is presumptive.
- **Permissive Consecutive Sentences** (section 2.F.2). Consecutive sentencing is permissive—*i.e.*, is not a departure from the Guidelines—when the Guidelines presume an executed sentence for both offenses, and both offenses are listed in section 6, Offenses Eligible for Permissive Consecutive Sentences. The consecutively sentenced offense’s prison duration is calculated with a criminal history score of 0.

By adding Patrons of Prostitution (2nd or Subsequent Violation) to section 6, the CMHTTF recommendation would permit (but not require) a judge to sentence a repeat prostitution patron offense consecutively to

¹ This is a high-level overview of the policy. For details, exceptions, and other rules, please refer to Guidelines section 2.F.

another listed offense—and vice-versa—provided both offenses had a sufficient combination of offense severity and criminal history that the Guidelines presumed executed prison for each.

Offenses Eligible for Permissive Consecutive Sentences – History

The original Sentencing Guidelines permitted consecutive sentences for multiple “crime[s] against a person,” a term found in the 1980 through 2004 editions of the Guidelines. In 2005, concerned that the sentencing court may lack the authority to determine, without the assistance of a jury, whether an offense was a “crime against a person,”² the Commission replaced the “crime against a person” language with a specified list of offenses eligible for permissive consecutive sentencing, Guidelines section 6. The current list is reproduced in the appendix (p. 4).

Offenses Eligible for Permissive Consecutive Sentences – Criteria

While the Guidelines set forth no criteria for including an offense on the list of Offenses Eligible for Permissive Consecutive Sentences, staff suggests, in light of the above information, the following nonexclusive list of factors to consider:

- Is the offense a crime against a person?
- Is the offense like the other offenses listed in section 6?
- Is there another compelling reason for permitting application of the consecutive-sentencing policy to the offense?

Patrons of Prostitution (2nd or Subsequent Violation)

Prior to 2021, Minn. Stat. § 609.324 made prostitution,³ whether committed by a patron or a prostitute, a misdemeanor. If committed within two years of a previous prostitution or sex trafficking conviction, or if committed in a public place, the offense was a gross misdemeanor.

Effective September 15, 2021, Minn. Stat. § 609.324 abolished the “public place” enhancement, instead elevating all first-time prostitution offenses committed by patrons to the gross misdemeanor level, and keeping all first-time prostitution offenses committed by prostitutes at the misdemeanor level. For repeat patrons, the look-back period was extended to ten years and the penalty was increased from a gross misdemeanor to a felony.

The Commission ranked the new felony offense, Patrons of Prostitution (2nd or Subsequent Violation), at severity level 3, although it is now considering moving the offense to the Sex Offender Grid.

² For an explanation for the legal basis of the Commission’s concerns, refer to an MSGC report entitled, “The Impact of *Blakely v. Washington* on Sentencing in Minnesota: Long Term Recommendations” (Sept. 30, 2004) (retrieved Sept. 22, 2022, at https://mn.gov/sentencing-guidelines/assets/Long%20Term_tcm30-31473.pdf).

³ Prostitution offenses involving children, and those in particular zones, are outside the scope of this staff paper.

Applying the Inclusion Criteria to Patrons of Prostitution

Factor 1: Is the Offense a Crime Against a Person?

Certainly, the offense of prostitution involves another person. But is the crime, as committed by a patron, “against” another person? This involves difficult questions about whether the prostitute is a victim or a voluntary sex provider—questions discussed at greater length on pages 1 and 2 of the MSGC staff paper, [“Ranking Prostitution Offense on the Sex Offender Grid”](#) (May 6, 2022).

Factor 2: Is the Offense Like the Other Offenses in Section 6?

The most closely related felony offenses, Sex Trafficking and Using a Minor for Prostitution, are listed in section 6. Moreover, section 6 includes all offenses on the Sex Offender Grid, and the Commission is now considering ranking Patrons of Prostitution on the Sex Offender Grid.

Factor 3: Is There Another Compelling Reason for Permitting Application of the Consecutive-Sentencing Policy to the Offense?

If patrons of prostitution tend to be habitually recurrent offenders, it would be possible for such a patron to avoid criminal sanctions for multiple offenses through concurrent sentencing. Listing the offense in section 6 would give the court the opportunity to provide additional consequences for additional offenses.

Conclusion

There is some merit to the CMHTTF recommendation to include Patrons of Prostitution (2nd or Subsequent Violation) among the offenses eligible for permissive consecutive sentences, although the decision requires the Commission to grapple with difficult questions about the status of a prostitute as a victim.

Staff Recommendation

If the Commission chooses to place Patrons of Prostitution on the Sex Offender Grid, staff recommends, if only for the sake of consistency, that it also list the offense in section 6.

Appendix: 2022 Minn. Sentencing Guidelines & Commentary, Section 6

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
152.021, subd. 2a	Manufacture any Amount of Methamphetamine
152.021, subd. 2b(2) with ref. to 152.01, subd. 24(8)	Aggravated Controlled Substance Crime 1st Degree, Sale to a Minor or Vulnerable Adult
152.022, subd. 1(6)	Sells Cocaine/Narcotic to Minor/Employs Minor
152.023, subd. 1(3)	Sells Sch. I,II,III to Minor (not Narcotic)
152.023, subd. 1(4)	Sells Sch. I,II,III Employs Minor (not Narcotic)
152.024, subd. 1(2)	Schedule IV or V to Minor
152.024, subd. 1(3)	Employs Minor to Sell Schedule IV or V
152.0261, subd. 1a	Employing a Minor to Import Controlled Substances
152.137	Methamphetamine Crimes Involving Children or Vulnerable Adults
169.09, subd. 14(a)(1)	Accidents (Death)
169.09, subd. 14(a)(2)	Accidents (Great Bodily Harm)
169A.24	DWI 1st Degree
243.166, subd. 5(b)	Registration of Predatory Offenders
243.166, subd. 5(c)	Registration of Predatory Offenders (2nd or subsequent)
518B.01, subd. 14(d)	Violation of an Order for Protection
609.185	Murder 1st Degree
609.19	Murder 2nd Degree
609.195	Murder 3rd Degree

Statute Number	Offense Title
609.20	Manslaughter 1st Degree
609.205	Manslaughter 2nd Degree
609.2112, subd. 1	Criminal Vehicular Homicide (Death)
609.2113, subd. 1	Criminal Vehicular Operation (Great Bodily Harm)
609.2113, subd. 2	Criminal Vehicular Operation (Substantial Bodily Harm)
609.2114, subd. 1	Criminal Vehicular Operation (Death to an Unborn Child)
609.2114, subd. 2	Criminal Vehicular Operation (Injury to an Unborn Child)
609.215	Aiding Suicide
609.221	Assault 1st Degree
609.222	Assault 2nd Degree - Dangerous Weapon
609.223	Assault 3rd Degree
609.2231	Assault 4th Degree
609.224, subd. 4	Assault 5th Degree (3rd or Subsequent Violation)
609.2241	Knowing Transfer of Communicable Disease
609.2242, subd. 4	Domestic Assault
609.2245	Female Genital Mutilation
609.2247	Domestic Assault by Strangulation
609.228	Great Bodily Harm Caused by Distribution of Drugs
609.229, subd. 3	Crime Committed for Benefit of Gang
609.2325, subd. 3(1)	Criminal Abuse of Vulnerable Adult (Death)
609.2325, subd. 3(2)	Criminal Abuse of Vulnerable Adult (Great Bodily Harm)
609.2325, subd. 3(3)	Criminal Abuse of Vulnerable Adult (Substantial Bodily Harm)
609.233, subd. 3	Deprivation of Vulnerable Adult
609.235	Use of Drugs to Injure or Facilitate Crime
609.24	Simple Robbery
609.245, subd. 1	Aggravated Robbery 1st Degree
609.245, subd. 2	Aggravated Robbery 2nd Degree
609.25	Kidnapping
609.255	False Imprisonment

Statute Number	Offense Title
609.2661	Consp./At. Murder of Unborn Child 1st Degree
609.2662	Murder of an Unborn Child 2nd Degree
609.2663	Murder of an Unborn Child 3rd Degree
609.2664	Manslaughter of an Unborn Child 1st Degree
609.2665	Manslaughter of an Unborn Child 2nd Degree
609.267	Assault of an Unborn Child 1st Degree
609.2671	Assault of an Unborn Child 2nd Degree
609.268	Death or Injury of an Unborn Child in Comm. of Crime
609.282	Labor Trafficking
609.322, subd. 1(a)	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 1st Degree
609.322, subd. 1a	Solicit, Promote, or Profit from Prostitution; Sex Trafficking in the 2nd Degree
609.324, subd. 1(a)	Engage or Hire a Minor to Engage in Prostitution
609.324, subd. 1(b)	Engage or Hire a Minor to Engage in Prostitution
609.324, subd. 1(c)	Engage or Hire a Minor to Engage in Prostitution
609.342	Criminal Sexual Conduct 1st Degree
609.343	Criminal Sexual Conduct 2nd Degree
609.344	Criminal Sexual Conduct 3rd Degree
609.345	Criminal Sexual Conduct 4th Degree
609.3451	Criminal Sexual Conduct 5th Degree
609.3453	Criminal Sexual Predatory Conduct
609.3458	Sexual Extortion
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Internet or Computer)
609.365	Incest
609.377	Malicious Punishment of Child
609.3775	Child Torture
609.378	Child Neglect/Endangerment

Statute Number	Offense Title
609.485, subd. 4(a)(3)	Escape with Violence from GM or Misd. Offense
609.485, subd. 4(b)	Escape with Violence from Felony Offense
609.487, subd. 3	Fleeing Peace Officer
609.487, subd. 4(a)	Fleeing Peace Officer (Resulting in Death)
609.487, subd. 4(b)	Fleeing Peace Officer (Great Bodily Harm)
609.487, subd. 4(c)	Fleeing Peace Officer (Substantial Bodily Harm)
609.498, subd. 1a	Tampering with a Witness in the 1st Degree
609.498, subd. 1b	Tampering with a Witness, Aggravated 1st Degree
609.502, subd. 1(1)	Interference with a Dead Body or Scene of Death
609.527	Identity Theft
609.561	Arson in the 1st Degree
609.5641, subd. 1a(b)	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of \$100,000)
609.5641, subd. 1a(c)	Wildfire Arson (Damage over 100 Dwellings, Burns 1,500 Acres or More, or Crops in Excess of \$250,000)
609.5641, subd. 1a(d)	Wildfire Arson (Demonstrable Bodily Harm)
609.582, subd. 1(a)	Burglary 1st Degree - of Occupied Dwelling
609.582, subd. 1(b)	Burglary 1st Degree with Dangerous Weapon
609.582, subd. 1(c)	Burglary 1st Degree with Assault
609.582, subd. 2(a)(1)	Burglary 2nd Degree – Dwelling
609.582, subd. 2(a)(2)	Burglary 2nd Degree – Bank
609.591, subd. 3(1)	Hinder Logging (Great Bodily Harm)
609.594, subd. 2	Damage to Property - Critical Public Service Facilities
609.66, subd. 1e	Drive-By Shooting
609.662, subd. 2(b)(1)	Duty to Render Aid (Death or Great Bodily Harm)
609.662, subd. 2(b)(2)	Duty to Render Aid (Substantial Bodily Harm)
609.671	Hazardous Wastes
609.687, subd. 3(1)	Adulteration Resulting in Death
609.687, subd. 3(2)	Adulteration Resulting in Bodily Harm
609.71, subd. 1	Riot 1st Degree

Statute Number	Offense Title
609.712	Real/Simulated Weapons of Mass Destruction
609.713, subd. 1	Threats of Violence (Terror/Evacuation)
609.713, subd. 2	Threats of Violence (Bomb Threat)
609.713, subd. 3(a)	Threats of Violence (Replica Firearm)
609.714, subd. 2	Crimes Committed in Furtherance of Terrorism
609.746, subd. 1(f)	Surreptitious Observation Device (Minor Victim and Sexual Intent)
609.748, subd. 6(d)	Violation of Harassment Restraining Order
609.749, subd. 3	Harassment (Aggravated Violations)
609.749, subd. 4	Harassment (Subsequent Violations)
609.749, subd. 5	Stalking
609.78, subd. 2a	Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death)
609.78, subd. 2b(2)	Emergency Telephone Calls and Communications (Blocks, Interferes, Prevents Using Multiple Communication Devices or Electronic Means)
609.855, subd. 2(c)(1)	Interference with Transit Operator
609.855, subd. 5	Discharge Firearm at Occupied Transit Vehicle/Facility
617.23, subd. 3	Indecent Exposure
617.246, subd. 2(a), 3(a), 4(a)	Use of Minors in Sexual Performance
617.246, subd. 2(b), 3(b), 4(b)	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 14)
617.247, subd. 3(a)	Dissemination of Child Pornography
617.247, subd. 3(b)	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)
617.247, subd. 4(a)	Possession of Child Pornography
617.247, subd. 4(b)	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)
617.261, subd. 2(b)	Nonconsensual Dissemination of Private Sexual Images
624.732, subd. 2	Intentional Release of Harmful Substance
624.7191	Metal Penetrating Bullets
629.75, subd. 2(d)	Violation of a Domestic Abuse No Contact Order