

Staff Paper

Sample Draft Language to Move Prostitution Offenses to the Sex Offender Grid

August 22, 2022

The following is staff’s attempt to draft language that would move several prostitution offenses to the Sex Offender Grid, rather than the Standard Grid (as is now the case). 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 all Using a Minor for Prostitution offenses with the same statutory maximum penalty at the same severity level (as recommended by the Advocates for Human Rights), and to rank Using a Minor for Prostitution offenses at different severity levels depending on whether an actual child victim existed (as [recommended by staff](#)). Most of the drafted changes are common to both alternatives, but some changes—indicated by **yellow highlighting**—are required only by the staff-recommended alternative.

Many of the changes highlighted in yellow are caused by the fact that, in the staff-recommended alternative, one of the offenses would be ranked at Severity Level H, a new severity level created in 2021 to accommodate the offense of Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration). While the new severity level’s durations were modeled after the durations of the existing Severity Level I, the displayed durations were constrained by the new offense’s low statutory maximum penalty. If, as in the staff-recommended alternative, an offense with a higher statutory maximum penalty is to be ranked at Severity Level H, those durations are free to grow to mirror those of Severity Level I.

“Using a Minor for Prostitution”

The sample draft language uses the term “Using a Minor for Prostitution” to describe a violation of Minn. Stat. § 609.324, subd. 1. The Sentencing Guidelines now describe such a crime as “Engage or Hire a Minor to Engage in Prostitution.” Without losing a significant amount of meaning, the shorter description frees up space to add the age of the child (e.g., “Using a Minor for Prostitution (Age 14 or 15)”), which succinctly explains why the offense is ranked at different severity levels. (Staff rejected the term “Child Prostitution” out of concern that it might leave the reader with the impression that the crime is committed by the child.)

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.

Apparent 2021 Legislative Drafting Error

For a number of criminal sexual conduct, child pornography, and related offenses, Legislative changes in 2021 ([2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 4](#)) expanded the lowest and most severe victim age category from “under 13” to “under 14.” With respect to Using a Minor for Prostitution, however, this change was incompletely made: An [apparent drafting error](#) classified the hiring for sex of someone reasonably believed to be a 13-year-old child in both Minn. Stat. § [609.324, subd. 1\(a\)\(3\)](#) (20-year maximum penalty) and subd. 1(b)(3) (10-year maximum penalty). The sample draft language disregards this apparent error and assumes that the hiring for sex of someone reasonably believed to be age 13 is in the offense category with the higher penalty.

Minnesota Sentencing Guidelines and Commentary

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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>CSC 5th Degree–3(a)</i> <i>(nonconsensual penetration)</i>	H	12 ¹	14	16	18	24	24 ² 24-24 30 26-36	24 ² 24-24 36 31-43
<i>Failure to Register as a Predatory Offender</i>	I	12 ¹ 12 ¹ -14	14 12 ¹ -16	16 14-19	18 16-21	24 21-28	30 26-36	36 31-43

* * *

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. 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.

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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
* * *		
9	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(a)
* * *		
5	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(b)
* * *		
3	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(c)
* * *		
3	Patrons of Prostitution (2nd or Subsequent Violation)	609.324, subd. 2(b)
* * *		
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)
	Using a Minor for Prostitution (Under Age 14)	609.324, subd. 1(a)(1) & (2)
	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)
D	Criminal Sexual Conduct 2nd Degree	609.343, subd. 1a(e)(f)(g)
	Criminal Sexual Conduct 3rd Degree	609.344 subd. 1a(a)(e)(f) or subd. 1a(b) with ref. to subd. 2(1)
	Using a Minor for Prostitution (Believed to be Under Age 14)	609.324, subd. 1(a)(3)

Severity Level	Offense Title	Statute Number
D	Use of Minors in Sexual Performance	617.246, subd. 2(a), 3(a), 4(a)
E	<u>Using a Minor for Prostitution (Age 14 or 15)</u>	609.324, subd. 1(b)(1) & (2)
	Criminal Sexual Conduct 4th Degree	609.345, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	Dissemination of Child Pornography	617.247, subd. 3(a)
	Sexual Extortion (Contact)	609.3458, subd. 1(a)
	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 14)	617.247, subd. 4(b)
F	Criminal Sexual Conduct 4th Degree	609.345 subd. 1a(a)(b)(e)(f)
	Criminal Sexual Conduct 5th Degree (2nd or Subsequent Violation)	609.3451, subd. 3(b)
	<u>Using a Minor for Prostitution (Believed to be Age 14 or 15)</u>	609.324, subd. 1(b)(3)
G	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 36 mos. older than Complainant)	609.344 subd. 1a(b) with ref. to subd. 2(2)
	Indecent Exposure	617.23 subd. 3
	<u>Patron of Prostitution (2nd or Subsequent Violation)</u>	609.324, subd. 2(b)
	Possession of Child Pornography	617.247, subd. 4(a)
	<u>Using a Minor for Prostitution (Age 16 or 17)</u>	609.324, subd. 1(c)(1) & (2)
	Solicitation of Children to Engage in Sexual Conduct	609.352, subd. 2
	Solicitation of Children to Engage in Sexual Conduct (Electronic)	609.352, subd. 2a
	Surreptitious Observation Device (Minor Victim and Sexual Intent)	609.746, subd. 1(f)
H	Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)	609.3451, subd. 3(a)
	<u>Using a Minor for Prostitution (Believed to be Age 16 or 17)</u>	609.324, subd. 1(c)(3)
* * *		

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
* * *		
609.324 subd. 1(a)(1) & (2)	Engage or Hire a Minor to Engage in Using a Minor for Prostitution (Under Age 14)	9 C
609.324 subd. 1(a)(3)	Using a Minor for Prostitution (Believed to be Under Age 14)	D
609.324 subd. 1(b)(1) & (2)	Engage or Hire a Minor to Engage in Using a Minor for Prostitution (Age 14 or 15)	5 E
609.324 subd. 1(b)(3)	Using a Minor for Prostitution (Believed to be Age 14 or 15)	F
609.324 subd. 1(c)(1) & (2)	Engage or Hire a Minor to Engage in Using a Minor for Prostitution (Age 16 or 17)	3 G
609.324 subd. 1(c)(3)	Using a Minor for Prostitution (Believed to be Age 16 or 17)	H
609.324 subd. 2(b)	Patrons Patron of Prostitution (2nd or Subsequent Violation)	3 G
609.3242 subd. 2(2)	Prostitution Crimes (Gross Misd. Level) Committed in School or Park Zones	1
* * *		
609.3451 subd. 3(a)	Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)	H*
* * *		

* 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.

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
* * *	
609.324, subd. 1(a)(1) & (2)	Engage or Hire a Minor to Engage in <u>Using a Minor for Prostitution (Under Age 14)</u>
609.324 subd. 1(a)(3)	<u>Using a Minor for Prostitution (Believed to be Under Age 14)</u>
609.324, subd. 1(b)(1) & (2)	Engage or Hire a Minor to Engage in <u>Using a Minor for Prostitution (Age 14 or 15)</u>
609.324 subd. 1(b)(3)	<u>Using a Minor for Prostitution (Believed to be Age 14 or 15)</u>
609.324, subd. 1(c)(1) & (2)	Engage or Hire a Minor to Engage in <u>Using a Minor for Prostitution (Age 16 or 17)</u>
609.324 subd. 1(c)(3)	<u>Using a Minor for Prostitution (Believed to be Age 16 or 17)</u>
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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:
* * *				

Statute	Offense	Severity Level	Statutory Maximum (Months)	Exceeds Statutory Maximum At:
609.3451, subd. 3(a)	Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)	H	24	CHS 5
* * *				

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