



Sex Trafficking & Prostitution Review – October Discussion

MSGC Staff Presentation
October 6, 2022

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What must happen at this meeting?

- Nothing, really – there is no legal deadline for completing the comprehensive review of how the Sentencing Guidelines address sex trafficking [and prostitution] crimes
- But the Commission has expressed a desire to complete the review and submit its report by the next legislative session
- *If*, as part of that report, the Commission wants to make changes to the Sentencing Guidelines effective in 2023, it must advance a proposal at the November meeting
- And, to do that, it must* have **discussed** the proposal, or a prior or similar version of it, at today's meeting
 - *Waivable by a two-thirds vote in November*
- Today's goal: Discuss all November decision points

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What's in the meeting packet?

- Staff issue papers:
 - 4A1 – Background: Review mandate, Central Minn. Human Trafficking Task Force (CMHTTF) recommendations, sex trafficking & prostitution crimes, and Sex Offender Grid history (from May)
 - 4A2 – Comparing options for ranking Aggravated Sex Trafficking (from May)
 - 4A3 – Should prostitution crimes move to the Sex Offender Grid? (from May)
 - 4A4 – Is Sex Trafficking a “Severe Violent Offense”? (**new**)
 - 4A5 – Should permissive consecutive sentencing apply to prostitution? (**new**)
- Sentencing practices data for sex trafficking & prostitution – 4B (from March)
- Estimated impact of various sex trafficking & prostitution proposals – 4C (from September)
- Sample draft language to implement proposals (from September)
 - 4D1 – Ranking Aggravated Sex Trafficking
 - 4D2 – Moving Prostitution Offenses to the Sex Offender Grid

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What are the main sex trafficking decision points?

1. Aggravated Sex Trafficking is currently a 48-month sentence modifier. Should it be a ranked offense instead?
 - Staff & CMHTTF rec: Yes – broader sentencing ranges; repeals odd single-offense modifier
 - On the other hand, at some criminal histories, durations actually go down; also, this requires more prison beds
2. If Aggravated Sex Trafficking 1st Degree (minor victims) is ranked at SL A, should Aggravated 2nd Degree (adult victims) be ranked below, at SL B?
 - Staff rec: Yes, to retain rational severity increase when sex trafficking victim is a minor
 - CMHTTF rec: No, rank both at SL A because stat max is the same

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Additional decision point: Is Sex Trafficking a “Severe Violent Offense”?

- Staff infers that the 2018 Commission used three criteria for defining offenses as SVOs—
 - **Violence:** Does the offense have an element of force, threat, or injury?
 - **Severity:** Above the disposition line?
 - Are there **clear & strong public safety implications of repeat violations**?
 - Due to this criterion, the crime must involve an intentional choice to harm the victim
 - Because Guidelines separately take care of repeat sex offenses, all but the most serious sex offenses are excluded from SVO list

SEX TRAFFICKING SVO ANALYSIS

- Sex Trafficking meets the SVO severity criterion
- What about violence/clear & strong public safety implications of repeat violations?
 - **Most clear** for aggravated offenses requiring debt bondage, forced labor (see Labor Trafficking), or bodily harm
 - **Arguable** for 2nd Degree/minor victims (but see CSC age offenses not on SVO list)
 - **Less arguable** for aggravated offenses involving prior offense/multiple victims
 - **Least arguable:** single adult victim, no priors

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Additional decision point: Is Sex Trafficking a “Severe Violent Offense”?

Option	Aggravating Circumstances						No Agg. Circumstances	
	Debt Bondage/ Forced Labor		Bodily Harm		Prior Offense/ Multiple Victims			
	Minor	Adult	Minor	Adult	Minor	Adult	Minor	Adult
①	✓	✓						
②	✓	✓	✓	✓				
③	✓	✓	✓	✓	✓		✓	
④	✓	✓	✓	✓	✓	✓		
⑤	✓	✓	✓	✓	✓	✓	✓	
⑥	✓	✓	✓	✓	✓	✓	✓	✓

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Sex trafficking questions to address today

- Are there any other/different Guidelines changes related to sex trafficking the Commission wishes to discuss at today's meeting?
- Does the Commission wish to direct staff to provide any new research needed for November action?
 - For example, does the Commission have direction on which SVO option(s) to prepare impact estimates for?

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What are the decision points regarding Using a Minor for Prostitution?

1. Should these offenses be reranked on the Sex Offender Grid?
 - Staff, CMHTTF, & Advocates for Human Rights rec: Yes
2. If so, where?
 - Staff rec: at SL C/E/G, by age (to fit stat max)
 - CMHTTF rec: at SL B/F/G
3. Should severity differ depending on whether a real child victim existed?
 - Staff rec: Yes, rank cases not involving real children at SL D/F/H to reflect lack of harm
 - CMHTTF & Advocates: No, rank "under the age of x" the same as "reasonably believe[d] to be under the age of x" to reflect identical culpability

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What are the decision points regarding Patrons of Prostitution (2nd Or Subsequent Violation)?

1. Should this offense be reranked on the Sex Offender Grid?
 - Difficult questions of prostitutes as “victims,” etc., but staff, CMHTTF, & Advocates rec: Yes
2. If so, where?
 - Staff & CMHTTF rec: at SL G (to fit stat max)
3. Should this offense be eligible for permissive consecutive sentencing?
 - Staff rec: If ranked on the Sex Offender Grid, yes, because all sex offenses are eligible

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Prostitution questions to address today

- Are there any other/different Guidelines changes related to prostitution the Commission wishes to discuss at today’s meeting?
- Does the Commission wish to direct staff to provide any new research needed for November action?

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