

2023 Regular Session Laws

Ranking Newly Created or Amended Crimes, Part 1

May 4, 2023

Background

After each session, the Commission reviews “crime[s] created or amended by the legislature in the preceding session” for possible related modifications to the Sentencing Guidelines. In accordance with Minn. Stat. [§ 244.09, subd. 11](#), the Commission may make such modifications without advance submission to the Legislature. This paper reviews crime laws created or amended in the 2023 Regular Session to date.

Assigning Severity-Level Rankings (In General)

One of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether they should be added to the Guidelines’ offense lists (*e.g.*, offenses eligible for permissive consecutive sentences and severe violent offenses). The Commission bases its decisions, in part, on the level of harm caused by the offense and the culpability of the offender. Statutory maximums are also considered.

For new offenses listed below, the Commission may decide:

1. What severity level (SL) should be assigned?
2. Should the offense be added to the list of Offenses Eligible for Permissive Consecutive Sentences (section 6)?
3. Should the offense be added to the list of Severe Violent Offenses (section 8)?
4. Should there be an exception to the length of stay (section 3.A.2)?
5. Are there other modifications that must be made to the Guidelines?

A. Catalytic Converter Crime (New)

Act: [2023 Minn. Laws ch. 15](#).

Description: Minn. Stat. section 325E.21 (scrap metal dealers) is amended to create three new crimes.

Subdivision 11 (possession) prohibits possessing a used, detached catalytic converter that is neither associated with a particular motor vehicle by permanent marking nor EPA-certified for reuse as a replacement part.

Subdivision 12 (purchase by a non-dealer) prohibits purchasing a used, detached catalytic converter by someone who is not a registered scrap-metal dealer unless it is EPA-certified for reuse as a replacement part.

Subdivision 13 (purchase by a dealer) prohibits a scrap-metal dealer from purchasing a used, detached catalytic converter without the markings required under subdivision 11 and without the seller providing proof of ownership of the vehicle. Limited exceptions apply. The subdivision also requires the dealer to input the identifying information into a law enforcement database beginning August 1, 2024; prohibits the dealer from processing, selling, or removing the catalytic converter for one week; and requires remote payment for the purchased catalytic converter, delayed five days after sale.

Subdivision 6(b) establishes criminal penalties for violating subdivision 11, 12, or 13. The penalty varies by the total number of catalytic converters purchased, possessed, or acquired, as summarized in the following list. To arrive at the total number, the prosecutor may aggregate all catalytic converters the defendant illegally purchased, possessed, or acquired in all counties within a six-month period.

- 1 catalytic converter: Misdemeanor (maximum 90 days jail and \$1,000 fine)
- 2 catalytic converters: Gross misdemeanor (max. 365 days jail and \$3,000 fine)
- 3–10 catalytic converters: Felony with max. 5 years prison and \$10,000 fine
- 11–70 catalytic converters: Felony with max. 10 years prison and \$20,000 fine
- Over 70 catalytic converters: Felony with max. 20 years prison and \$100,000 fine

Effective date: August 1, 2023, and applies to crimes committed on or after that date.

References: Minn. Stat. § [325E.21](#); [609.52](#); [609.526](#); [609.527](#); [609.2335](#) (2022).

Long-Term Fiscal Impact (H.F. 30-1UE): The fiscal notes for this bill were for versions different from the enacted version, with different quantity thresholds and without the highest-tier penalty. In those fiscal notes, MSGC staff estimated no long-term prison-bed impact, saying, “[E]xisting convictions for scrap metal dealers are very low and MSGC has no basis for assuming convictions will increase; rather, it is assumed that scrap metal dealers and other possessors and purchasers of used, detached catalytic converters will comply with the bill’s new requirements.”

Demographic Impact (H.F. 30-1UE): Not applicable.

Sentencing Guidelines Considerations: The Guidelines assign three severity levels to the felonies established in Minn. Stat. § 609.526 for the receipt of stolen property by precious metal and scrap dealers:

- A second or subsequent violation (max. 10 years/\$50,000) is ranked at SL 4.
- Property value of \$1,000 or more (max. 10 years/\$50,000) is ranked at SL 3.
- Property value of \$501 to \$999 (max. 3 years/\$25,000) is ranked at SL 2.

The Guidelines assign three severity levels to the felonies established in Minn. Stat. § 609.53 for the general receipt of stolen property:

- Receiving stolen firearm (max. 20 years/\$100,000) is ranked at SL 4.
- Property value over \$5,000 (max. 10 years/\$20,000) is ranked at SL 3
- Property value \$5,000 or less (max. 5 years/\$10,000) is ranked at SL 2.

Focusing only on theft-related crimes with the new catalytic converter crime’s highest-tier statutory maximum penalty—20 years prison and \$100,000 fine—the Guidelines assign five severity levels.

- SL 8: Identity Theft (8 or More Direct Victims, Loss Over \$35,000, or Related to Child Pornography), Minn. Stat. § 609.527, subds. 3(5) & 3(6).
- SL 7: Financial Exploitation of a Vulnerable Adult (Over \$35,000), Minn. Stat. § 609.2335.
- SL 6: Various thefts over \$35,000. Not all thefts over \$35,000 are covered; the theft must generally be fraud-related, including theft by fraud, theft by swindle, embezzlement, wage theft, and welfare fraud. (Non-fraudulent theft of over \$35,000 is generally covered by the “over \$5,000” threshold, with a lower statutory maximum, and ranked at SL 3.)
- SL 5: Check Forgery (Over \$35,000).
- SL 4: Theft of Firearm, Minn. Stat. § 609.52, subd. 3(1).

Focusing only on theft-related crimes pertaining to motor vehicles, the Guidelines assign multiple severity levels:

- Theft of a motor vehicle (with the intent to permanently deprive the owner) (max. 5 or 10 years, depending on value) is ranked at SL 4.
- Motor vehicle use without consent (max. 5 or 10 years, depending on value) is ranked at SL 3.
- For receiving stolen property, unlike theft, the fact that the property is a vehicle is irrelevant; only the value matters. The applicable severity levels are those shown in the receiving stolen property discussion, above.

Staff Recommendation: In its fiscal note for H.F. 30-1UE, staff assumed the Commission would rank the new felony with a 5-year statutory maximum (involving 3–10 catalytic converters, as ultimately enacted) at SL 2, consistent with other theft-related offenses with the same statutory maximum penalty, including offenses involving scrap dealers. At SL 2, cases with a criminal history score of 6 or more are recommended prison sentences ranging from 18 to 25 months.

Staff assumed that the Commission would rank the new felony with the 10-year statutory maximum (involving 11–70 catalytic converters, as ultimately enacted) at SL 3 or 4, based on the statutory maximum. At either SL 3 or 4, cases with a criminal history score of 4 or more are recommended prison sentences ranging from 17 to 36 months. A ranking at SL 3 would be more consistent with other theft-related offenses with the same maximum penalty.

Staff was not asked to prepare a fiscal note on a bill containing an offense with the act’s highest-tier, 20-year statutory maximum (involving more than 70 catalytic converters). As noted, theft of over \$35,000, which also has a 20-year statutory maximum, is ranked at SL 6, where cases with a criminal history score of 3 or more are recommended prison sentences ranging from 34 to 68 months. Unlike those offenses, Catalytic Converter Crime does not contain an element of fraud, suggesting a lower ranking. On the other hand, the human misery implied by the 71 or more damaged and disabled vehicles to which the defendant’s 71 or more contraband catalytic converters were once attached suggests that such a ranking may nevertheless be appropriate.

Listed below are possible modifications, as recommended by staff, with select similar offenses displayed as well. Staff recommends simply calling the new offense “Catalytic Converter Crime” because the crime, which may be committed in a multitude of ways, defies a description that is more specific while still being succinct and accurate (like “Controlled Substance Crime”).

Possible modifications to 2022 Minn. Sentencing Guidelines & Commentary section 5:

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
6	* * *	
	<u>Catalytic Converter Crime (Over 70 Converters)</u>	<u>325E.21, subd. 6(b)(5)</u>
	* * *	
	Theft Over \$35,000	609.52, subd. 2(a)(3), (4), (15), (16), & (19) with 609.52, subd. 3(1)
	* * *	

Severity Level	Offense Title	Statute Number
3	* * *	
	<u>Catalytic Converter Crime (11–70 Converters)</u>	<u>325E.21, subd. 6(b)(4)</u>
	* * *	
	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (\$1,000 or More)	609.526, subd. 2(1)
	* * *	
	Theft Crimes – Over \$5,000	See section 7: Theft Offense List
	* * *	

Severity Level	Offense Title	Statute Number
2	* * *	
	<u>Catalytic Converter Crime (3–10 Converters)</u>	<u>325E.21, subd. 6(b)(3)</u>
	* * *	
	Precious Metal and Scrap Metal Dealers, Receiving Stolen Goods (Less than \$1,000)	609.526, subd. 2(2)
	* * *	
	Theft Crimes – \$5,000 or Less	See section 7: Theft Offense List
	* * *	

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
* * *		
325E.201	Unlawful Transfers or Sales of Recordings	Unranked
<u>325E.21 subd. 6(b)(3)</u>	<u>Catalytic Converter Crime (3–10 Converters)</u>	<u>2</u>
<u>325E.21 subd. 6(b)(4)</u>	<u>Catalytic Converter Crime (11–70 Converters)</u>	<u>3</u>
<u>325E.21 subd. 6(b)(5)</u>	<u>Catalytic Converter Crime (Over 70 Converters)</u>	<u>6</u>
325F.743	Precious Metal Dealers, Regulatory Provisions	2

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B. Labor Trafficking (Restructured)

Act: [2023 Minn. Laws ch. 27](#).

Description: Minn. Stat. §§ 609.281 & 609.282 are amended to restructure the offense of Labor Trafficking. The restructured offense, as staff understands it, is shown in the Appendix (p. 17).

Minn. Stat. § 609.281 contains the labor trafficking definitions. The act expands the definitions of two of the qualifying purposes of labor trafficking, “debt bondage” and “forced labor or services.” In particular, “forced labor or services”—restyled as “forced or coerced labor or services”—is expanded to encompass threats of, and inflictions of, bodily, psychological, demonstrable economic, and demonstrable reputational harm sufficient to compel a reasonable person in the victim’s shoes to work to avoid the harm. “Blackmail” is removed from the definition of forced or coerced labor or services.

Minn. Stat. § 609.282, which previously contained two felony tiers of labor trafficking, is expanded to three tiers. The new top tier, in subdivision 1, prohibits knowingly engaging in labor trafficking when the death of a labor trafficking victim was proximately caused (assuming the crime did not constitute murder in the first or second degree). The maximum penalty is 25 years/\$40,000.

The new second tier, in subdivision 1a, has a maximum penalty of 20 years/\$40,000. This provision prohibits knowingly engaging labor trafficking if any of the following, enumerated circumstances exists:

- (1) If the victim is under age 18 (this crime was formerly in subd. 1);
- (2) If the labor trafficking occurs over an extended period of time; or
- (3) If the victim suffers great bodily harm proximately caused by the labor trafficking.

The third tier, in subdivision 2, has a maximum penalty of 15 years/\$30,000. The act does not directly change this subdivision—which simply prohibits knowingly engaging in labor trafficking—although the new definitions do alter the crime’s elements.

The act also cross-references the new labor trafficking definitions in the sex trafficking statute, consistent with a Commission recommendation to the Legislature.

Section 14 of the act, “Severity Level Ranking Review,” reads as follows:

The Sentencing Guidelines Commission shall consider assigning an offense severity level to labor trafficking under Minnesota Statutes, section 609.282, subdivision 2, and the enhanced penalty provisions in sections 6 [sic] and 7.

In context, staff assumes the Legislature’s intent to have been “sections 7 and 8,” rather than “sections 6 and 7,” as the former sections contained the act’s “enhanced penalty provisions,” while section 6 merely altered a definition. To restate this directive, as staff understands it to have been intended: the Legislature has directed the Commission to consider assigning severity levels to Labor Trafficking, as restructured.

Effective date: August 1, 2023, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.281](#); [609.282](#); [609.321](#); [609.322](#); [609.325](#); Guidelines section [2.A.4](#) (2022).

Long-Term Fiscal Impact (H.F. 42-0): The fiscal note for this bill was for a version slightly different from the enacted version, with no directive to the Commission. MSGC staff said, “[T]he expansion of offense elements and types of cases subject to the 20-year statutory maximum may result in an increase in the number of cases sentenced. However, the size of that increase is unknown. Therefore, the long-term impact is unknown, but expected to be minimal. In some years there may be a prison sentence, possibly with a term of imprisonment of longer than a year, but in most years, there will not be a need for more than one or two prison beds.”

Demographic Impact (H.F. 42-0): Not applicable.

Sentencing Guidelines Considerations: The current labor trafficking offense is unranked. Additionally, the offense is listed in sections 6 (Offenses Eligible for Permissive Consecutive Sentences) and 8 (Severe Violent Offense List).

Some felony offenses are designated as unranked offenses. Per Guidelines Comment 2.A.04, an unranked offense typically has one or more of the following characteristics: (1) the offense is rarely prosecuted; (2) the offense covers a wide range of underlying conduct; or (3) the offense is new, and the severity of a typical offense cannot yet be determined.

Guidelines Section 2.A.4 contains the policy for unranked offenses. When sentencing an unranked offense, the court must assign an appropriate severity level for the offense and specify on the record why that particular level was assigned. The court may consider, but is not limited to, the following factors:

- a. The gravity of the specific conduct underlying the unranked offense;
- b. The severity level assigned to any ranked offense with elements that are similar to the elements of the unranked offense;
- c. The conduct of and severity level assigned to other offenders for the same unranked offense; and
- d. The severity level assigned to other offenders engaged in similar conduct.

Is the offense rarely prosecuted? The first typical characteristic of an unranked offense is that it is rarely prosecuted. Historically, this has been true of labor trafficking. According to MSGC monitoring data, there were two cases of labor trafficking sentenced between 2011 and 2021. One case was sentenced in 2017, and involved coercing an adult male to work for low wages with threats to report to immigration authorities. That offense was ranked at SL 6 and received a stay of imposition. The other case was sentenced in 2020 and involved sex trafficking. That offense was ranked at SL C on the Sex Offender Grid, had a presumptive sentence of 76 months in prison and received 53 months in prison which is a mitigated durational departure.

It is possible, however, that the act’s expansion of some of the definitions of “labor trafficking” will cause an increase in the number of future prosecutions.

Does the offense cover a wide range of conduct? The second typical characteristic of an unranked offense is that it covers a wide range of conduct. If a severity level is designed to apply to the “typical” offense, and the offense is drafted so broadly that there is no “typical” offense, it may not be possible to rank it.

For labor trafficking, there are two ways of looking at the range of conduct encompassed by the offense, as the act has restructured it. First, what is the range of conduct encompassed by the restructured base offense, without any of the act’s sentencing enhancements? Second, how do those sentencing enhancements narrow the offense’s range of conduct?

Criminal elements. To understand the range of conduct encompassed by the base labor trafficking offense—of an adult victim, over a limited period of time, and without death or great bodily harm—it is first necessary to understand the offense’s restructured elements. While the revised statutes will not be published for some time, staff has grafted the act’s changes onto the existing statute to show how the restructured offense will presumably appear (Appendix, p. 17). In paraphrase, the elements of the restructured crime of labor trafficking follow.

The first element is the action. The labor trafficker must recruit, transport, transfer, harbor, entice, provide, obtain, or receive someone—a person defined as the “labor trafficking victim.”

The second element is the point of the action. The action must be in furtherance of any one of the following four points:

- Debt bondage.
- Forced or coerced labor or services.
- Slavery or a similar practice.
- Removing organs using coercion or intimidation.

“Debt bondage” happens when someone works to pay off a real or alleged debt, but the reasonable value of the work isn’t applied toward the debt, or the work’s length and nature aren’t limited and defined.

“Forced or coerced labor or services” happens when someone’s work is obtained or maintained by leverage.* The leverage may be any one of the following six things:

- Sexual contact.
- Physical restraint.
- A sufficiently serious type of harm—whether bodily, psychological, economic, or reputational—that would compel a reasonable person in the worker’s position to keep working to avoid the harm.
- A threat, scheme, plan, pattern, action, or statement, that would lead the worker to believe that, without the work, someone would suffer one of the three things listed above.
- Abuse or threatened abuse of the legal process, including a civil lawsuit, criminal prosecution, or administrative action.
- Destroying, concealing, removing, confiscating, withholding, or possessing a passport, immigration document, or government ID, whether real or fake.

Regarding the last two qualifying points—slavery and organ harvesting—the statute gives no definitions.

Finally, to qualify as a crime, the labor trafficking described above must be done knowingly.

Analysis of the range of conduct encompassed by the base offense. The elements of the base labor trafficking offense are certainly complex and multifaceted, and may encompass everything from transporting someone for forced organ harvesting to enticing someone to work by threatening to report the worker to immigration authorities or seizing the worker’s passport.

When held up to the sentencing enhancements, however, the range of conduct narrows: The base offense applies only when the victim is an adult, does not die, and does not suffer great bodily harm—and [great bodily harm](#) would

* “Leverage” is not a statutory term

seem always to apply, for example, to organ harvesting. Finally, the base offense applies only when the labor trafficking occurs over a limited period of time—and an extended period of time would seemingly be a prerequisite of, for example, a debt-bondage scenario. Thus, narrowed by the absence of the sentencing enhancements, the base labor trafficking offense’s possible range of conduct may not be so broad as to stymie the Commission’s attempts at ranking its typical severity.

Narrowing of the range of conduct through sentencing enhancements. The new sentencing enhancements may improve the Commission’s ability to rank labor trafficking. While the existing offense has only two tiers—depending on whether the victim is a minor—the restructured offense will have three tiers, one of which takes three forms. Thus, within the restructured penalty provisions, the Legislature enumerates five ways of committing labor trafficking, and the Commission could theoretically assign a different severity level to each:

- Subd. 1: Labor trafficking resulting in death (25 years/\$40,000)
- Subd. 1a(1): Labor trafficking a minor (20 years/\$40,000)
- Subd. 1a(2): Labor trafficking over an extended period of time (20 years/\$40,000)
- Subd. 1a(3): Labor trafficking resulting in great bodily harm (20 years/\$40,000)
- Subd. 2: Labor trafficking – base offense (15 years/\$30,000)

The first and fourth sentencing enhancements are familiar in criminal law. The following offense rankings apply to representative crimes resulting in death (Table 1) and in great bodily harm (Table 2).

Table Key: “Severity” = Severity Level; “SVO” = Second Severe Violent Offense; “Stat Max” = Statutory Maximum (probation length years for completed offenses); 5-Year Probation Cap=“5-Yr Cap” (“X”=exempt for completed offenses); an asterisk (*) = an unranked offense.

Table 1. Representative Offenses Resulting in Death

Statute	Offense Title	Severity	SVO	5-Yr Cap	Stat Max
609.687 subd. 3(1)	Adulteration Resulting in Death	11		5	40
609.19 subd. 1(1)	Murder 2 (intentional)	11	X	X	40
609.19 subd. 1(2)	Murder 2 (drive-by shooting)	11	X	X	40
609.487 subd. 4(a)	Fleeing Peace Officer (resulting in death)	10		5	40
609.19 subd. 2(1)	Murder 2 (unintentional felony murder)	10	X	X	40
609.19 subd. 2(2)	Murder 2 (assault contrary to protective order)	10	X	X	40
609.195(a)	Murder 3 (depraved mind)	10	X	X	25
609.2325 subd. 3(1)	Criminal Abuse of Vulnerable Adult (death)	9		5	15
609.195(b)	Murder in the Third Degree (schedule I/II drugs)	9	X	X	25
609.20(1)	Manslaughter 1 (heat of passion)	9		X	15
609.20(2)	Manslaughter 1 (violent misdemeanor)	9		X	15
609.20(5)	Manslaughter 1 (child abuse)	9		X	15
609.20(3)	Manslaughter 1 (coerced)	8		X	15

Statute	Offense Title	Severity	SVO	5-Yr Cap	Stat Max
609.20(4)	Manslaughter 1 (schedule III/IV/V drugs)	8		X	15
609.205(1)	Manslaughter 2 (culpable negligence)	8		5	10
609.205(5)	Manslaughter 2 (child neglect)	8		5	10
609.2112 subd. 1(a)	Criminal Vehicular Homicide	8		X	10
609.78 subd. 2a	Emergency Telephone Calls—Serious Injury or Death	8		5	10
609.205(2)	Manslaughter 2 (hunting accident)	5		5	10
609.205(3)	Manslaughter 2 (spring gun)	5		5	10
609.205(4)	Manslaughter 2 (vicious animal)	5		5	10

Table 1 lists murder in the second degree for comparison, but it should be noted that the Legislature adds to the crime of labor trafficking resulting in death the condition, “and murder in the first or second degree was not committed thereby.”

Table 2. Representative Offenses Resulting in Great Bodily Harm

Statute	Offense Title	Severity	SVO	5-Yr Cap	Stat Max
609.221 subd. 1	Assault 1 - Great Bodily Harm	9	X	5	20
609.25 subd. 2(2)	Kidnapping - Great Bodily Harm	9	X	5	40
609.228	Great Bodily Harm Distribution of Schedule I/II Drugs	8		5	10
609.2325 subd. 3(2)	Criminal Abuse of Vulnerable Adult - Great Bodily Harm	8		5	10
609.233 subd. 3(1)	Deprivation of Vulnerable Adult - Great Bodily Harm	8		5	10
609.377 subd. 6	Malicious Punishment of Child - Great Bodily Harm	8		5	10
609.487 subd. 4(b)	Fleeing Peace Officer - Great Bodily Harm	6		5	7
609.2113 subd. 1	Criminal Vehicular Operation - Great Bodily Harm	5		5	6
609.576 subd. 1(1)	Negligent Fires - Great Bodily Harm	4		5	5
609.591 subd. 3(1)	Hinder Logging - Great Bodily Harm	3		5	5

The second sentencing enhancement—involving a minor victim—has fewer precedents. The following crimes are felonies whether committed against an adult victim or a minor victim, but are more severe when committed against a minor victim. This list does not include gross misdemeanors that become felonies if committed against a minor, nor offenses with multiple age tiers.

- Kidnapping, where the severity increases from SL 6 to SL 8 if the victim is under 16.

- Sex Trafficking, where the Commission proposes to rank the first-degree offense—involving a minor victim—one SL higher (SL A or SL B) than the second-degree offense (SL B or SL C) (effective August 1, 2023, absent legislative intervention).

In addition, under the sentence modifier for a crime committed for the benefit of a gang (Guidelines section [2.G.10](#)), an additional 12 months is added to the presumptive duration if the victim was under age 18.

The third sentencing enhancement—that the labor trafficking occurred over an extended period of time—is similar to an element of several criminal sexual conduct offenses—specifically, “multiple acts committed over an extended period of time” upon a child by a significant relative. With that element, the sexual contact of a victim under age 16 is elevated from SL D to SL B; and the sexual abuse of a 16- or 17-year-old victim is elevated from SL D to SL C (penetration) or from SL F to SL E (contact). The “extended period of time” language also appears in Minn. Stat. § 609.233, pertaining to neglect of vulnerable adults, where the gross misdemeanor offense [appears to be](#) enhanced to a felony when that element is present.

Staff Recommendation: First, staff recommends ranking these labor trafficking offenses. Although the offense has rarely been committed in the past, the range of conduct described by these restructured offenses are, for the reasons discussed above, sufficiently narrowed that they may be reasonable ranked.

Second, staff recommends ranking labor trafficking resulting in **death** at **SL 9**, which is one SL below second-degree felony murder under Minn. Stat. § 609.19, subd. 2(1). At first glance, second-degree felony murder—“caus[ing] the death of a human being, without intent to effect the death of any person, while committing or attempting to commit a felony offense”—would always seem to apply to labor trafficking resulting in death. But courts require the predicate felony of second-degree felony murder to involve a “special danger to human life,” both in the abstract and as committed. *State v. Anderson*, 666 N.W.2d 696, 700–01 (Minn. 2003). Because the Legislature excludes second-degree murder from the definition of labor trafficking resulting in death, staff infers that the Commission’s task is to rank labor trafficking not committed in a manner involving a special danger to human life, but nevertheless directly resulting in death. Ranking the offense one SL below second-degree felony murder fits the bill.

Third, staff recommends ranking labor trafficking resulting in **great bodily harm** at **SL 8**. The offense’s severity fits well with the other SL 8 great-bodily-harm offenses listed on Table 2 (p. 10).

Fourth, staff recommends ranking labor trafficking of a **minor victim** at **SL 8**. When this exploitative and coercive offense is committed against a minor, its exploitation and coercion becomes extreme. A presumptive commit, even for a first offense, seems appropriate, and is consistent with the high statutory maximum penalty.

Fifth, staff recommends ranking labor trafficking when committed **over an extended period of time**—but not against a minor nor resulting in great bodily harm or death—at **SL 7**. This ranking recognizes the reality that many forms of labor trafficking—including, but not limited to, debt bondage—will necessarily occur over an extended period of time. While certainly more serious than the base offense, staff questions whether this factor, alone, is sufficiently severe as to warrant a presumptive commit for a first-time offender. Moreover, this ranking recognizes that, in cases involving several convictions for several labor trafficking victims, at least two will be included in the criminal history score (for 1.5 points each) of the next offenses to be sentenced (also known as “*Hernandizing*”) as provided for in Guidelines sections 2.B.1.d & e. Thus, at SL 7, even a first-time offender will face a presumptive prison sentence for multiple convictions involving more than two victims.

Sixth, staff recommends ranking the **base offense**—labor trafficking, occurring over a limited period of time, of an adult victim who neither dies nor suffers great bodily harm—at **SL 6**. This ranking recognizes the high statutory maximum penalty and the offense’s exploitative and coercive nature while still leaving room for more serious ways of committing it. It appropriately provides presumptive probation for the person with a criminal history score below three who has not committed the offense in a more serious way. Moreover, this ranking recognizes that, in cases involving several convictions for several labor trafficking victims, at least two will be included in the criminal history score (for 1.5 points each) of the next offenses to be sentenced (also known as “*Hernandizing*”) as provided for in Guidelines sections 2.B.1.d & e. Thus, at SL 6, even a first-time offender will face a presumptive prison sentence for multiple convictions involving more than two victims.

Staff recommends maintaining all labor trafficking offenses on the severe violent offense list because they typically involve debt bondage or forced or coerced labor or services, which the Commission recently considered sufficient cause for placing some sex trafficking offenses on the list (although, it should be noted, the sex trafficking offense requires the debt bondage, labor, or services to occur over 180 days). Reasonable Commission members may, however, consider removing the base labor trafficking offense, and labor trafficking when committed over an extended period of time, from the severe violent offense list, because these offenses’ elements do not necessarily require the use of force, the threatened use of force, or the infliction of injury, and their recommended rankings would fall below the disposition line. Thus, these offenses would not ordinarily be considered to have met the [staff-inferred criteria](#) for inclusion on the list of severe violent offenses.

Summary of staff recommendations:

- Subd. 1: Labor trafficking resulting in death (25 years/\$40,000) – rank at SL 9
- Subd. 1a(1): Labor trafficking a minor (20 years/\$40,000) – rank at SL 8
- Subd. 1a(2): Labor trafficking over an extended period of time (20 years/\$40,000) – rank at SL 7
- Subd. 1a(3): Labor trafficking resulting in great bodily harm (20 years/\$40,000) – rank at SL 8
- Subd. 2: Labor trafficking – base offense (15 years/\$30,000) – rank at SL 6
- Continue to list Labor Trafficking in section 6 (Offenses Eligible for Permissive Consecutive Sentences).
- Continue to list Labor Trafficking in section 8 (Severe Violent Offense List).

In addition, sex trafficking’s entry in section 8 references a labor trafficking term that the act has renamed; to conform to the act, staff recommends changing “Forced Services” to “Forced or Coerced Labor or Services” in section 8.

These recommendations, as applied to the Sentencing Guidelines, are shown below. The Commission’s recent work on another human-trafficking offense, sex trafficking, is shown for comparison.

Possible modifications to 2022 Minn. Sentencing Guidelines & Commentary sections 5, 6, & 8 (displaying in red anticipated sex trafficking language, as proposed to take effect August 1, 2023):

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	* * *	
	Kidnapping (Great Bodily Harm)	609.25, subd. 2(2)
	<u>Labor Trafficking (Death)</u>	<u>609.282, subd. 1</u>
	Manslaughter 1st Degree	609.20(1),(2) & (5)
	* * *	
8	Kidnapping (Not in Safe Place or Victim Under 16)	609.25, subd. 2(2)
	<u>Labor Trafficking (Great Bodily Harm)</u>	<u>609.282, subd. 1a(3)</u>
	<u>Labor Trafficking (Minor Victim)</u>	<u>609.282, subd. 1a(1)</u>
	Malicious Punishment of Child (Great Bodily Harm)	609.377, subd. 6
7	* * *	
	Felony Driving While Impaired 1st Degree	169A.24
	<u>Labor Trafficking (Extended Period of Time)</u>	<u>609.282, subd. 1a(2)</u>
	Wildfire Arson (Damage over Five Dwellings, Burns 500 Acres or More, or Crops in Excess of \$100,000)	609.5641 subd. 1a(b)
6	* * *	
	Kidnapping (Safe Release/No Great Bodily Harm)	609.25, subd. 2(1)
	<u>Labor Trafficking</u>	<u>609.282, subd. 2</u>
	Medical Assistance Fraud (Over \$35,000)	609.466
UNRANKED	* * *	
	<u>Labor Trafficking</u>	<u>609.282</u>
	* * *	
	Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking	609.283
	* * *	
A	Aggravated Sex Trafficking 1st Degree	609.322, subd. 1(a) with ref. to 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)

Severity Level	Offense Title	Statute Number
	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)
	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
* * *		
609.282	Labor Trafficking	Unranked
609.282 subd. 1	Labor Trafficking (Death)	<u>9</u>
609.282 subd. 1a(1)	Labor Trafficking (Minor Victim)	<u>8</u>
609.282 subd. 1a(2)	Labor Trafficking (Extended Period of Time)	<u>7</u>
609.282 subd. 1a(3)	Labor Trafficking (Great Bodily Harm)	<u>8</u>
609.282 subd. 2	Labor Trafficking	<u>6</u>
609.283	Unlawful Conduct with Documents in Furtherance of Labor or Sex Trafficking	Unranked
609.31	Leaving State to Evade Paternity	1
609.322 subd. 1(a)	Sex Trafficking 1st Degree	B**
609.322 subd. 1(a) with ref. to subd. 1a	Aggravated Sex Trafficking 1st Degree	A
609.322 subd. 1a	Sex Trafficking 2nd Degree	C

Statute Number	Offense Title	Severity Level
609.322 subd. 1(b) with ref. to subd. 1a	Aggravated Sex Trafficking 2nd Degree	B
* * *		

**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
* * *	
609.282	Labor Trafficking
609.322, subd. 1(a)	Sex Trafficking 1st Degree
609.322, subd. 1(a) with ref. to subd. 1(b)	Aggravated Sex Trafficking 1st Degree
609.322, subd. 1a	Sex Trafficking 2nd Degree
609.322, subd. 1a with ref. to subd. 1(b)	Aggravated Sex Trafficking 2nd Degree
* * *	

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

Statute Number	Offense Title
* * *	
609.282	Labor Trafficking

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

Appendix. Labor Trafficking Statute eff. Aug. 1, 2023 (Unofficial MSGC Version)

609.281 DEFINITIONS.

Subdivision 1. **Generally.** As used in sections 609.281 to 609.284, the following terms have the meanings given.

Subd. 2. [Repealed, 2023 c 27 s 15]

Subd. 3. **Debt bondage.** "Debt bondage" occurs when a person provides labor or services of any kind to pay a real or alleged debt of the person or another, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of the labor or services are not respectively limited and defined.

Subd. 4. **Forced or coerced labor or services.** "Forced or coerced labor or services" means labor or services of any kind that are performed or provided by another person and are obtained or maintained through an actor's:

(1) threat, either implicit or explicit, scheme, plan, pattern, or other action or statement intended to cause a person to believe that, if the person did not perform or provide the labor or services, that person or another would suffer physical restraint; sexual contact, as defined in section 609.341, subdivision 11, paragraph (b); or bodily, psychological, demonstrable economic, or demonstrable reputational harm that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm;

(2) sexual contact, as defined in section 609.341, subdivision 11, paragraph (b), with a person;

(3) physical restraint of a person;

(4) infliction of bodily, psychological, demonstrable economic, or demonstrable reputational harm that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm;

(5) abuse or threatened abuse of the legal process, including the use or threatened use of a law or legal process, whether administrative, civil, or criminal; or

(6) destruction, concealment, removal, confiscation, withholding, or possession of any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; or

Subd. 5. **Labor trafficking.** "Labor trafficking" means:

(1) the recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, in furtherance of:

(i) debt bondage;

(ii) forced or coerced labor or services;

(iii) slavery or practices similar to slavery; or

(iv) the removal of organs through the use of coercion or intimidation; or

(2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).

Subd. 6. **Labor trafficking victim.** "Labor trafficking victim" means a person subjected to the practices in subdivision 5.

Subd. 7. **Psychological harm.** "Psychological harm" means harm that causes mental distress, mental suffering, or mental anguish as demonstrated by a victim's response to an act, including but not limited to seeking psychotherapy as defined in section 604.20, losing sleep or appetite, being diagnosed with a mental health condition, experiencing suicidal ideation, or having difficulty concentrating on tasks resulting in a loss of productivity.

609.282 LABOR TRAFFICKING.

Subdivision 1. **Labor trafficking resulting in death.** Whoever knowingly engages in the labor trafficking of an individual is guilty of a crime and may be sentenced to imprisonment for not more than 25 years or to payment of a fine of not more than \$40,000, or both if the labor trafficking victim dies and the death was proximately caused by the labor trafficking conduct of the offender and murder in the first or second degree was not committed thereby.

Subd. 1a. **Individuals under age 18; extended period of time; great bodily harm.** Whoever knowingly engages in the labor trafficking of an individual is guilty of a crime and may be sentenced to imprisonment for not more than 20 years or to a payment of a fine of not more than \$40,000, or both if any of the following circumstances exist:

- (1) the labor trafficking victim is under the age of 18;
- (2) the labor trafficking occurs over an extended period of time; or
- (3) the labor trafficking victim suffers great bodily harm and the harm was proximately caused by the labor trafficking conduct of the offender.

Subd. 2. **Other offenses.** Whoever knowingly engages in the labor trafficking of another is guilty of a crime and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both.

Subd. 3. **Consent or age of victim not a defense.** In a prosecution under this section the consent or age of the victim is not a defense.