



## Possible Recommendations to the Legislature

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## The Commission's advisory mandate

“The commission shall from time to time make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing.”

– Minn. Stat. § 244.09, subd. 6

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## Status of recent legislative recommendations

- ✓ Cross-reference the sex trafficking statute in labor trafficking definitions – done in 2023
- ✓ Define the minimum term of imprisonment for murder of an unborn child in the first degree – done in 2023
- Reconcile age thresholds for prostitution – not yet done
- Reconcile statutory violent crime list with first-degree witness tampering – not yet done

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## New possible recommendation #1: Complete “mandatory life sentence” list in PSI statute

- The presentence investigation statute requires the court to cause a sentencing worksheet to be completed and forwarded to MSGC upon a defendant’s conviction of a felony
- This includes felonies for which a mandatory life sentence is required by law
- The law lists nearly all mandatory life sentences, but omits first-degree murder of an unborn child
- For accurate data reporting, MSGC needs worksheets for all life sentences
- Staff-suggested recommendation: amend the definition of “mandatory life sentence” found in Minn. Stat. § 609.115, subd. 2a, to refer to § 609.2661

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## Five-year probation cap

- In 2020, the MSGC established a presumptive five-year probation cap, with exceptions for listed homicide and sex offenses
- The 2023 Legislature codified this cap, with four differences:
  - The Legislature added harassment & stalking to the exception list
  - The five-year cap is hard (not merely presumptive)
  - For offenses with statutory maximums below five years, the cap is the stat max (formerly four years)—except for Crim Sex 5 (nonconsensual penetration) and CVO-SBH, for which the cap remains four years. This results in some felonies having a shorter possible probation period than the default maximum for gross misdemeanors (two years).
  - The new cap applies to all current & future sentences—with a process for retroactive applicability
- In response to this legislation, the MSGC repealed its presumptive five-year probation cap

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## Five-year probation cap – what about attempts?

- Big question: Does the exception list apply to attempts (*e.g.*, attempted murder, attempted criminal sexual conduct)?
- The new statutory exception list does not specify attempts
- In another context, *Noggle* (Minn. 2016) held that, when a list of crimes did not specify attempts, attempts were excluded from the list
- MSGC staff question: What should the sentencing worksheet say about the maximum length of stay for an attempt?
- MSGC question: Should the Commission recommend a statutory change?

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## New possible recommendation #2: Apply five-year probation cap exceptions to attempts

- Staff-suggested recommendation: amend the list in Minn. Stat. § 609.135, subd. 2(b), to specify attempts and conspiracies, and expand the list to include attempts and conspiracies to violate § 609.185 (murder in the first degree) and § 609.2661 (murder of an unborn child in the first degree)

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## New possible recommendation #3: Correct sentence cap for juvenile repeat/heinous sex offenses

- Minn. Stat. § 609.3455, subdivisions 3 and 4, require life sentences for certain repeat or heinous sex offenses—and, for such a life sentence, subd. 5 requires a specified minimum term of imprisonment based on the Sentencing Guidelines.
- In 2023, this required minimum term of imprisonment was capped, for juvenile offenders, at “the applicable minimum term of imprisonment described in subdivision 4b”—but there is no “subdivision 4b” within § 609.3455
- In the context of the session law, “subdivision 4b” appears to refer to Minn. Stat. § 244.05, subd. 4b, which establishes minimum terms that juvenile offenders must serve before being considered for early supervised release
- Staff-suggested recommendation: Amend the reference at the end of Minn. Stat. § 609.3455, subd. 5, to refer to a subdivision that exists

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## New possible recommendation #4: Correct targeted misdemeanor list

- Prior targeted misdemeanors, or the custody status therefrom, may contribute to the Guidelines' criminal history score
- The 2023 Legislature added "609.749 (obscene or harassing telephone calls)" to the statutory targeted misdemeanor list
- But Minn. Stat. § 609.749 contains no misdemeanors, and the misdemeanor offense of "Obscene or Harassing Telephone Calls" is found in § 609.79
- The MSGC left unchanged the Guidelines' targeted misdemeanor list (Appendix 5)
- Staff-suggested recommendation: Regarding the most recent addition to the list found in Minn. Stat. § 299C.10, subd. 1(e), reconcile the offense's citation with its name

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