

2021 1st Special Session Laws

Possible Amendments to Crime Laws Affecting the Guidelines

May 27, 2021

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.

The 2021 regular legislative session adjourned without agreement on the public safety omnibus bill, S.F. 970, which was to have been the 2021 vehicle for substantially all creations of, or amendments to, crimes. This document lays out all changes proposed by that bill—as adopted either by the House or the Senate—affecting the Guidelines. A special session, at which the issues in S.F. 970 may be addressed, is expected.

Staff does not anticipate that the Legislature will agree on any of these provisions by the Commission’s next meeting date (June 3, 2021). Accordingly, Staff does not anticipate that the Commission will act on this document on that date. Instead, staff is hopeful that the Commission can prepare for future action—to follow an anticipated special session—by discussing each change in advance, on June 3, in the event that the provision in question is ultimately enacted.

Summary of Possible Amendments to the Guidelines

Table 1 summarizes all policy changes found in the regular session’s public safety omnibus bill—as adopted either by the House, by the Senate, or by both—that may, if enacted, cause a reasonable Commission member to consider amending the Guidelines.¹ In this table, “Senate” refers to the position adopted by the Senate in [S.F. 970, 3rd engrossment \(2021\)](#) (if any); “House” refers the position adopted by the House in [S.F. 970, 1st unofficial engrossment \(2021\)](#) (if any); “Provision” is an abbreviated summary of the policy change; “Staff Rec. MSG change” is an abbreviated summary of MSGC staff’s recommendation to the Commission with respect to modifying the Minnesota Sentencing Guidelines and Commentary; and “Page” is the page number in this document where the full explanation begins.

¹ The amendment of Minn. Stat. § 609.527, found in Art. 14 § 30 of the House bill, is omitted from this document because that policy was separately enacted in 2021 Minn. Laws. [ch. 25](#).

Table 1. Summary of Possible Amendments to the Guidelines

Senate	House	Provision	Staff Rec. MSG Change	Page
A. CHANGES TO SEX OFFENSES				
Art. 4 §§ 14–17	Art. 13 §§ 13–16	Adds force-only offense to CSC 1 & 2	Rank at SL A & SL B	4
Art. 4 §§ 14–17	Art. 13 §§ 13–16	Reorganizes CSC statutes, separating offenses by adult vs. minor victims and creating prohibited occupational relationships; changes age thresholds	Rank new offenses the same as previous offenses; change references throughout; rank Prohibited Occupational Relationships CSC at SL C & SL E ALT: Increase duration 15% for minor victim vs. same offense with adult victim (see separate document)	5
Art. 4 § 18	Art. 13 § 17	Creates new CSC 5 offense	Clarify all CSC 5 references Rank at new SL I with 24-mo. max sentence ALT: Rank at SL H; shade through CHS 4	13
Art. 4 § 20	Art. 13 § 19	Creates Sexual Extortion crimes	EITHER: Rank at SL C & SL E OR: Rank at SL D & SL F	18
B. CHANGES RELATED TO SEX TRAFFICKING, PROSTITUTION, & SOLICITATION OF CHILDREN				
Art. 3 § 7	Art. 14 § 14	Adds 609.322 (sex trafficking) to violent crimes list	Add 609.322, subd. 1(b), to 8 ALT: Add 609.322 to 8	22
Art. 3 §§ 9–10	Art. 14 §§ 21–22	Increases 609.322 stat maxes	Delete stat max cap notes	24
Art. 3 § 11	Art. 14 §§ 23–24	Creates Patrons of Prostitution (2nd or Subsequent Violation)	Rank at SL 3	27
Art. 3 § 15	Art. 14 § 29	Increases stat maxes for soliciting children for sex	Delete stat max cap notes	29

Senate	House	Provision	Staff Rec. MSG Change	Page
C. OTHER CHANGES TO CRIMINAL OFFENSES				
Art. 3 § 16		Creates Child Torture crime	Rank at SL 8 ALT: Rank at SL 7	32
	Art. 14 § 34	Reorganizes drive-by shooting, 609.66 subd. 1e	Rank 1e(a)(1) at SL 3; rank 1e(a)(2) or (3) at SL 8	35
	Art. 14 §§ 19–20, 31–32, 35	Expands bias list	Rewrite 2.D.3.b(11) to comport with the expanded list	36
D. CHANGES TO SENTENCING POLICY				
Art. 3 § 6	Art. 14 § 11	Veterans Restorative Justice Act (Different Senate & House versions)	3.F cross-reference; add departure factor	39
Art. 3 § 20		Increases enhanced child pornography rankings (minority report)	Rank as directed	40
	Art. 11 §§ 42–43	Revises revocation standards	Append “last resort” language to 3.B.01.	43
	Art. 14 §§ 3 & 7	Early supervised release for juveniles at 15 years	No change to 2.C.03 or $\frac{2}{3}$ – $\frac{1}{3}$ tables behind grids	43
	Art. 14 §§ 9–10, 49	Max imprisonment for gross misdemeanor is 364 days	Clarify in 2.D.105 that a 365-day sentence is still a gross misdemeanor sentence	44
	Art. 14 §§ 15–16	Requires disability & TBI impact statements	Amend 3.F to include reference to new provisions	46
	Art. 14 § 18	Permits prosecutor sentence adjustments	No change at this time	47
	Art. 15 § 13	Redefines “public safety” in MSGC charter statute	No change at this time	48

A. Changes to Sex Offenses

1. Changes to “Force” Offenses

- **Senate Art. 4 §§ 4, 14–17; House Art. 13 §§ 3, 13–16.**

Description: Under existing Criminal Sexual Conduct (CSC) law, the use of force to accomplish sexual penetration constitutes CSC Third Degree. The use of force to accomplish sexual contact constitutes CSC Fourth Degree.

The bill modifies and reorganizes the definition of “force.” “Force” involving the infliction of bodily harm is numbered separately from “force” by attempts or threats.

The bill then moves those force offenses involving **infliction of bodily harm** from CSC Third Degree (penetration) and CSC Fourth Degree (contact) to **CSC First Degree** (penetration) and **CSC Second Degree** (contact), respectively. The 144-month statutory minimum presumptive sentence applicable to all CSC First Degree offenses applies to the new CSC First Degree force offense. The 90-month statutory minimum presumptive sentence applicable to some CSC Second Degree offenses applies to the new CSC Second Degree force offense.

To conform to this change, the bill generally limits the CSC statutes’ remaining references to “force” to uses of force by **attempts or threats**. The bill also generally uncouples the terms “force” and “coercion,” which now appear together (as “force or coercion”) throughout the CSC statutes.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [609.341](#); [609.342](#); [609.343](#); [609.344](#); [609.345](#) (2020).

Fiscal & Demographic Impact. The fiscal and demographic impact of changes to sex offenses are addressed at the end of section A (page 21).

Guidelines Considerations: The existing force or coercion offenses are currently ranked at Severity Level C (CSC Third Degree, penetration) or E (CSC Fourth Degree, contact). When personal injury is also proven, force or coercion offenses are currently ranked at Severity Level A (CSC First Degree, penetration) or B (CSC Second Degree, contact).

All CSC First Degree offenses are currently ranked at Severity Level A. All CSC Second Degree offenses to which the 90-month statutory minimum presumptive sentence applies are ranked at Severity Level B.

All CSC offenses are on the list of Offenses Eligible for Permissive Consecutive Sentences (section 6).

The Sentencing Guidelines establish a “Severe Violent Offense List” (Guidelines section 8). For a second or subsequent severe violent offense, the presumptive sentence is increased by at least twelve months (section 2.G.14). In addition, a custody status point derived from a severe violent offense is nonwaivable (section 2.B.2.e(4) & (8)).

Some CSC First Degree and CSC Second Degree offenses are on the Severe Violent Offense List. All CSC Second Degree offenses to which the 90-month statutory minimum presumptive sentence applies (ranked at Severity Level B) are on the list, with the exception of children under age 16 in a significant relationship to the perpetrator where the offense involved force, coercion, personal injury, or multiple acts committed over an extended period of time. The corresponding CSC First Degree offenses are also listed.

MSGC Staff Recommendation: Consistent with other CSC First Degree offenses, rank the new CSC First Degree force offense involving infliction of bodily harm at Severity Level A. Consistent with other CSC Second Degree offenses to which the 90-month statutory minimum presumptive sentence applies, rank the new CSC Second Degree force offense involving infliction of bodily harm at Severity Level B. Maintain existing rankings for those offenses involving force by attempt or threat, and for those coercion offenses uncoupled from force. Add the new CSC First Degree and CSC Second Degree offenses to the Severe Violent Offense List.

The changes resulting from this section’s recommendations are illustrated at the end of the following section, together with the changes that would result from that section’s recommendations.

2. Reorganization of Criminal Sexual Conduct Offenses, Including Changes to Age Thresholds and Creation of Prohibited Occupational Relationship Offenses

- **Senate Art. 4 §§ 10, 14–17; House Art. 13 §§ 9, 13–16.**

Description: The first four degrees of Criminal Sexual Conduct (CSC) are generally reorganized, with penalty provisions unchanged.

A number of age thresholds are changed.

- Several CSC offenses involving someone in a position of authority over a child, and offenses involving victims under age 13–16, require that the perpetrator be at least **48 months** older than the child. The bill reduces the age gap required in these cases to **36 months**.
- The existing requirement, found in certain CSC First-Degree and CSC Second-Degree offenses, that the victim be **under 13** years of age is modified to “**under 14**.”
- A corresponding change—changing “at least 13” to “at least 14”—is made to CSC Third Degree and CSC Fourth Degree.

The term “prohibited occupational relationship” is created, and new CSC Third Degree and CSC Fourth Degree offenses are established where the actor is in a prohibited occupational relationship with the complainant. These offenses replace a number of existing CSC offenses involving psychotherapists, medical providers, clergy, corrections employees, special transportation service providers, massage providers, and peace officers. The elements of the prohibited occupational relationship offenses are generally similar to the elements of the offenses they replace. In addition, two new prohibited occupational relationship offenses are created: one involving caregivers sexually penetrating or sexually contacting facility residents;

the other involving teachers or staff sexually penetrating or sexually contacting high school students (including adult high school students).

Under existing law, the elements of each CSC crime is contained in various paragraphs under subdivision 1 of the respective statute. The bill reorganizes these crimes by creating, within each of the first four CSC degrees, a new subdivision 1a, applicable only to crimes against children under age 18. If the age of the victim is an element of the crime, the offense is moved into subdivision 1a. Offenses where the victim's age is not an element of the crime are placed in both subdivisions: Subdivision 1 (applicable only to adult victims) and subdivision 1a (applicable only to child victims). The paragraphs within each subdivision 1 are rearranged and renumbered.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [609.341](#); [609.342](#); [609.343](#); [609.344](#); [609.345](#) (2020).

Fiscal & Demographic Impact. The fiscal and demographic impact of changes to sex offenses are addressed at the end of section A (page 21).

Guidelines Considerations

Age Gaps. The offenses with a 48-month age gap—to become a 36-month age gap under the bill—are ranked as follows:

- **CSC 1st Degree (Penetration) – Severity Level A**
 - 609.342 subd. 1(b) – Victim 13–15, Actor 4 years older & in position of authority
- **CSC 2nd Degree (Contact) – Severity Level D**
 - 609.343 subd. 1(b) – Victim 13–15, Actor 4 years older & in position of authority
- **CSC 3rd Degree (Penetration) – Severity Level D**
 - 609.344 subd. 1(b) with reference to subd. 2(1) – Victim 13–15, Actor 4 years older
 - 609.344 subd. 1(e) – Victim 16–17, Actor 4 years older & in position of authority
- **CSC 4th Degree (Contact) – Severity Level F**
 - 609.345 subd. 1(b) – Victim 13–15, Actor 4 years older
 - 609.345 subd. 1(e) – Victim 16–17, Actor 4 years older & in position of authority

If the offense is a CSC Third Degree involving the sexual penetration of a child age 13–15, a limited age gap now exists, with a reduced statutory maximum penalty: a gap of more than **24 months**, but not more than 48 months. That offense is ranked at **Severity Level G**. Under the bill, the age gap for that lesser offense

(changed to apply to a child age 14 or 15), is limited to more than **36 months**, but not more than 48 months.² Perpetrators of the revised offense must be age 17, 18, or 19.

Offenses involving twelve- and thirteen-year-old victims. Under the bill, offenses involving thirteen-year-old victims are classified as offenses involving twelve-year-old victims are classified now. Offenses involving twelve- and thirteen-year-old victims are presently ranked as follows.

- **CSC 1st Degree (Penetration) – Severity Level A**
 - 609.342 subd. 1(a) – Victim under 13, Actor 3 years older
 - 609.342 subd. 1(b) – Victim 13–15, Actor 4 years older & Pos. Authority
- **CSC 2nd Degree (Contact) – Severity Level D**
 - 609.343 subd. 1(a) – Victim under 13, Actor 3 years older
 - 609.343 subd. 1(b) – Victim 13–15, Actor 4 years older & Pos. Authority
- **CSC 3rd Degree (Penetration) – Severity Level D**
 - 609.344 subd. 1(b) with reference to subd. 2(1) – Victim 13–15, Actor 4 years older
- **CSC 4th Degree (Contact) – Severity Level F**
 - 609.345 subd. 1(b) – Victim 13–15, Actor 4 years older

Offenses involving twelve- and thirteen-year-old victims with juvenile perpetrators. Not included on the above list are two CSC offenses for which the perpetrator is, by definition, a juvenile. Those offenses are CSC Third Degree under Minn. Stat. § 609.344, subd. 1(a) (penetration), and CSC Fourth Degree under § 609.345, subd. 1(a) (contact). For each offense, the victim must be under age 13 (changing to age 14 under the bill), and the perpetrator must be no more than 36 months older than the victim. The perpetrator cannot, therefore, be older than age 15 (changing to age 16 under the bill). The Commission ranks these offenses at **Severity Level D** (CSC Fourth Degree) and **Severity Level F** (CSC Fourth Degree).

Also, there is a special version of CSC Third Degree, with a lower statutory maximum penalty, that now applies to victims age 13–15 when the age gap is between 24 and 48 months. That offense is ranked at **Severity Level G**. When this offense is now committed against a thirteen-year-old victim, the perpetrator is also, by definition, a juvenile.

Prohibited occupational relationships. The bill creates new offenses requiring that the perpetrator be in a prohibited occupational relationship with the victim. The same conduct is now prohibited under several statutory paragraphs, each of which the Commission has ranked identically. If the offense is CSC Third Degree (penetration), it is ranked at **Severity Level C**. If the offense is CSC Fourth Degree (contact), it is ranked at **Severity Level E**.

Two new CSC offenses involving prohibited occupational relationships are not presently ranked. One, involving caregivers sexually penetrating or sexually contacting facility residents, is not ranked because it is

² The bill retains the reference to “24 months” in the lesser penalty provision, but, because the offense no longer applies when the age gap is less than 36 months, MSGC staff assumes that the 24-month reference no longer has any effect.

presently a **gross misdemeanor** under Minn. Stat. § 609.2325, subd. 1(b). The other, involving teachers or staff sexually penetrating or sexually contacting high school students (including adult high school students), is not ranked because it is not necessarily a crime—particularly if the victim is an adult high school student. If the victim is a child, it may be a crime if the perpetrator is more than four years older and is in a position of authority over the student. If the victim is age 16 or 17, such a crime is ranked at **Severity Level D** (CSC Third Degree, penetration) or **Severity Level F** (CSC Fourth Degree, contact). If the victim is age 13, 14, or 15, such a crime is ranked at **Severity Level A** (CSC First Degree, penetration), **Severity Level D** (CSC Second Degree, contact), or **Severity Level F** (CSC Fourth Degree, contact, but with no age gap required).

Identical offenses in both subdivisions 1 and 1a. With respect to a number of CSC First- through Fourth-Degree offenses, the age of the victim is immaterial. The bill takes each of these offenses and divides it in two, depending on whether the victim is an adult or a child. Adult-victim offenses remain in subdivision 1. Child-victim offenses are placed in subdivision 1a. Penalties are unchanged.

Table 2 displays those offenses that the bill divides, depending on the victim’s age, between subdivisions 1 and 1a of the respective statute. The table describes the offense and shows where it is presently codified and how it is presently ranked. The table then shows how it is to be newly codified—for both adult victims (subd. 1) and child victims (subd. 1a)—and how staff recommends ranking the newly codified offense. Within each cell, the top line pertains to those offenses involving penetration—CSC First Degree (Minn. Stat. § 609.342) and CSC Third Degree (§ 609.344)—and the bottom line pertains to those offenses involving contact—CSC Second Degree (§ 609.343) and CSC Fourth Degree (§ 609.345).

If age is currently an element of an offense (an “age case”), the bill places that offense in subdivision 1a only. Because Table 2 displays only those offenses that the bill divides between subdivisions 1 and 1a, age cases are not shown in Table 2. Except for the age-gap and age-threshold changes described above, the elements and penalties of age cases are entirely unchanged.

Table 2. Offenses to be Codified Under Both Adult-Victim and Child-Victim CSC Subdivisions

Offense Description	Presently Codified at	Presently Ranked at	New Codification		Staff-Recommended Ranking	
			Adult Victim	Child Victim	Adult Victim	Child Victim
Fear of great bodily harm	609.342 1(c)	A	609.342 1(a)	609.342 1a(a)	A	A
	609.343 1(c)	B	609.343 1(a)	609.343 1a(a)	B	B
Dangerous weapon	609.342 1(d)	A	609.342 1(b)	609.342 1a(b)	A	A
	609.343 1(d)	B	609.343 1(b)	609.343 1a(b)	B	B

Offense Description	Presently Codified at	Presently Ranked at	New Codification		Staff-Recommended Ranking	
			Adult Victim	Child Victim	Adult Victim	Child Victim
Personal injury with force,* coercion, or MI/PH**	609.342 1(e) 609.343 1(e)	A B	609.342 1(c)	609.342 1a(c)	A	A
			609.343 1(c)	609.343 1a(c)	B	B
Force (inflict bodily harm)	609.344 1(c) 609.345 1(c)	C E	609.342 1(d)	609.342 1a(i)	A	A
			609.343 1(d)	609.343 1a(i)	B	B
Accomplice with force, coercion, or weapon	609.342 1(f) 609.343 1(f)	A B	609.342 1(e)	609.342 1a(d)	A	A
			609.343 1(e)	609.343 1a(d)	B	B
Coercion	609.344 1(c) 609.345 1(c)	C E	609.344 1(a)	609.344 1a(c)	C	C
			609.345 1(a)	609.345 1a(c)	E	E
MI/PH**	609.344 1(d) 609.345 1(d)	C E	609.344 1(b)	609.344 1a(d)	C	C
			609.345 1(b)	609.345 1a(d)	E	E
Force*	609.344 1(c) 609.345 1(c)	C E	609.344 1(c)	609.344 1a(h)	C	C
			609.345 1(c)	609.345 1a(h)	E	E
Prohibited occupational relationship	609.344 1(h)(i)(j) (k)(l)(m)(n)(o)(p) 609.345 1(h)(i)(j) (k)(l)(m)(n)(o)(p)	C E	609.344 1(d)	609.344 1a(i)	C	C
			609.345 1(d)	609.345 1a(i)	E	E

Notes: *Force by threat or attempt only; excludes force involving infliction of bodily harm

** Mentally impaired, mentally incapacitated, or physically helpless

Consecutive Sentences. All CSC offenses are on the list of Offenses Eligible for Permissive Consecutive Sentences (section 6).

MSGC Staff Recommendation: Make no Guidelines changes based on changes to age gaps and age thresholds. Treat CSC offenses involving 13-year-old victims like CSC offenses involving 12-year-old victims. Rank prohibited occupational relationship cases at Severity Level C (CSC Third Degree) and Severity Level E (CSC Fourth Degree). Treat reorganized offenses in the same way that corresponding offenses with identical

elements are treated in the existing Guidelines. Make conforming technical changes. Authorize MSGC staff to edit examples in the Sex Offender Grid to conform to these changes, and for space and style. The recommended changes follow.

Possible Amendments to 2020 Minn. Sentencing Guidelines §§ 2.G.5, 5 & 8:

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[2.]G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers

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5. Attempt or Conspiracy to Commit Criminal Sexual Conduct in the First or Second Degree. The Commission regards the provisions in Minn. Stat. § 609.342, subd. 2(b) and 609.343, subd. 2(b) as statutorily created presumptive sentences, not mandatory minimums. When an offender is sentenced for an attempt or conspiracy to commit Criminal Sexual Conduct in the First Degree under Minn. Stat. § 609.342 or Criminal Sexual Conduct in the Second Degree under Minn. Stat. § 609.343, ~~subd. 1(c), (d), (e), (f), and (h)~~ subd. 1(a), 1(b), 1(c), 1(d), 1(e), 1a(a), 1a(b), 1a(c), 1a(d), 1a(h), or 1a(i), the presumptive duration is one-half of that found in the appropriate cell on the Sex Offender Grid for the underlying offense or any mandatory minimum, whichever is longer.

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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
A	Criminal Sexual Conduct 1st Degree	609.342
B	Criminal Sexual Conduct 2nd Degree	609.343 subd. 1(c)(d)(e)(f)(h) <u>609.343, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)</u>
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	609.322, subd. 1(a)

Severity Level	Offense Title	Statute Number
C	Criminal Sexual Conduct 3rd Degree	609.344, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) 609.344, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 2nd Degree	609.322, subd. 1a
D	Criminal Sexual Conduct 2nd Degree	609.343 subd. 1(a)(b)(g) 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)
	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 3(b)
	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)	617.246, subd. 2(b), 3(b), 4(b)
E	Criminal Sexual Conduct 4th Degree	609.345, subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p) 609.345, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)
	Dissemination of Child Pornography	617.247, subd. 3(a)
	Use of Minors in Sexual Performance	617.246, subd. 2(a), 3(a), 4(a)
F	Criminal Sexual Conduct 4th Degree	609.345 subd. 1a(a)(b)(e)(f)
	Criminal Sexual Conduct 5th Degree	609.3451, subd. 3
	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 4(b)
G	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant)	609.344 subd. 1a(b) with ref. to subd. 2(2)

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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.

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Statute Number	Offense Title	Severity Level
609.342	Criminal Sexual Conduct 1st Degree	A
609.343 subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(h)(i)	Criminal Sexual Conduct 2nd Degree	B
609.343 subd. 1(a)(b)(g) 609.343 subd. 1a(e)(f)(g)	Criminal Sexual Conduct 2nd Degree	D
609.343 subd. 1(c)(d)(e)(f)(h)	Criminal Sexual Conduct 2nd Degree	B
609.344 subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)	Criminal Sexual Conduct 3rd Degree	C
609.344 subd. 1a(a)	Criminal Sexual Conduct 3rd Degree (By Definition Perpetrator Must be a Juvenile)	D
609.344 subd. 1a(e)(f) or subd. 1a(b) with ref. to subd. 2(1)	Criminal Sexual Conduct 3rd Degree	D
609.344 subd. 1a(b) with ref. to subd. 2(2)	Criminal Sexual Conduct 3rd Degree (Actor between 24 mos. and 48 mos. older than Complainant)	G
609.344 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 3rd Degree	C
609.345 subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)	Criminal Sexual Conduct 4th Degree	E
609.345 subd. 1a(a)	Criminal Sexual Conduct 4th Degree (By Definition Perpetrator Must be a Juvenile)	F
609.345 subd. 1a(b)(e)(f)	Criminal Sexual Conduct 4th Degree	F
609.345 subd. 1(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o)(p)	Criminal Sexual Conduct 4th Degree	E

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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.

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Statute Number	Offense Title
609.342, subd. 1(c)(d)(e)(f) <u>609.342, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(i)</u>	Criminal Sexual Conduct 1st Degree
609.343, subd. 1(c)(d)(e)(f) <u>609.343, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(i)</u>	Criminal Sexual Conduct 2nd Degree

3. Creation of New Criminal Sexual Conduct Fifth Degree Offense

- **Senate Art. 4 § 18; House Art. 13 § 17.**

Description: Fifth-Degree CSC under Minn. Stat. § 609.3451 adds a felony with a two-year statutory maximum or \$10,000 fine under subdivision 1 for engaging in nonconsensual sexual penetration. Subdivision 1a is added, the title is amended to “Sexual contact; child present” and the existing offenses for engaging in nonconsensual sexual contact or masturbation or lewd exhibition with a minor under 16 are moved to it. Subdivision 2 is amended to reference subdivision 1a (rather than 1), and subdivision 3 is amended, the penalty for the new felony is inserted into para (a), and new para (b) is created referencing subsequent offenses under both subd. 1 and subd. 1a. The lookback time is lengthened from seven years to 10 years and the lookbacks are extended to both convictions and adjudications.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.3451](#); [609.135](#) (2020).

Fiscal & Demographic Impact. The fiscal and demographic impact of changes to sex offenses are addressed at the end of section A (page 21).

Guidelines Considerations: The existing felony Fifth-Degree CSC offenses are ranked at Severity Level F, have a 7-year statutory maximum and are exempt from the 5-year probation cap.

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 the new offense, the Commission may decide:

1. What severity level 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)?

MSGC Staff Recommendation: Create a new severity level (Severity Level I) on the Sex Offender Grid at which the two-year statutory maximum penalty equals the grid maximum (24 months) at a Criminal History Score of 6 or more. Make no changes to length of stay (section 3.A.2); which will keep all Criminal Sexual Conduct 5th Degree offenses on the list of exceptions to the 5-year probation cap rule. By law, the offense will have a 4-year probation cap under Minn. Stat. § 609.135.2(a). Authorize MSGC staff to edit examples in the Sex Offender Grid for space and style. Make other conforming technical changes.

Alternative MSGC Staff Recommendation: Rather than create a new Severity Level I, rank the new offense at Severity Level H and change that severity level on the Sex Offender Grid so that the cells are shaded at criminal history scores 0 through 4. The presumptive sentence for Failure to Register as a Predatory Offender would remain a presumptive commit by operation of Guidelines section 2.E.1 and Appendix 1 and Minn. Stat. § 243.166, subd. 5(b) and (c). Make all other changes described in the previous paragraph. The alternative is displayed beginning on page 16.

Possible Amendments to 2020 Minn. Sentencing Guidelines³ §§ 4 & 5:

* * *

³ To avoid confusion caused by multiple mark-ups, the 2020 Minn. Sentencing Guidelines are displayed as if already amended by amendments previously discussed within the document. This technique is used throughout the document.

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 4th Degree–1a(a)(b)(e)(f)</i> (e.g., contact & child victim) <i>CSC 5th Degree (Subsequent)</i> <i>Possession of Child Pornography</i> (Subseq./Pred. Off./Under 13)	F	18	27	36	45	59	77	84
					<i>39-54</i>	<i>51-70</i>	<i>66-92</i>	<i>72-100</i>
<i>CSC 3rd Degree–1a(b) with 2(2)</i> <i>Possession of Child Pornography</i> <i>Solicit Child for Sexual Conduct</i> ²	G	15	20	25	30	39	51	60
						<i>34-46</i>	<i>44-60</i>	<i>51-60</i> ²
<i>Failure to Register as a Predatory Offender</i>	H	12 ¹	14	16	18	24	30	36
		<i>12¹-14</i>	<i>12¹-16</i>	<i>14-19</i>	<i>16-21</i>	<i>21-28</i>	<i>26-36</i>	<i>31-43</i>
<i>CSC 5th Degree (Nonconsensual Penetration)</i>	I	<u>12¹</u>	<u>12¹</u>	<u>12¹</u>	<u>14</u>	<u>17</u>	<u>21</u> <i>18-24</i> ²	<u>24</u> <i>21-24</i> ²

¹ 12¹=One year and one day

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.

* * *

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
F	Criminal Sexual Conduct 5th Degree (<u>2nd or Subsequent Violation</u>)	609.3451, subd. 3(b)
I	Criminal Sexual Conduct 5th Degree (<u>Nonconsensual Penetration</u>)	609.3451, subd. 3(a)

* * *

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
609.3451 subd. 3(a)	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	I
609.3451 subd. 3(b)	Criminal Sexual Conduct 5th Degree <u>(2nd or Subsequent Violation)</u>	F

* * *

Alternative Guidelines amendments ranking the new offense at Severity Level H (see page 14 for description).

Possible Amendments to 2020 Minn. Sentencing Guidelines §§ 4 & 5; and Appendix 3:

* * *

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 4th Degree–1a(a)(b)(e)(f) (e.g., contact & child victim)</i> <i>CSC 5th Degree (Subsequent)</i> <i>Possession of Child Pornography (Subseq./Pred. Off./Under 13)</i>	F	18	27	36	45	59	77	84
					<i>39-54</i>	<i>51-70</i>	<i>66-92</i>	<i>72-100</i>
<i>CSC 3rd Degree–1a(b) with 2(2)</i> <i>Possession of Child Pornography</i> <i>Solicit Child for Sexual Conduct</i> ²	G	15	20	25	30	39	51	60
						<i>34-46</i>	<i>44-60</i>	<i>51-60</i> ²
<i>Failure to Register as a Predatory Offender</i> <i>CSC 5th Degree (Nonconsensual Penetration)</i>	H	12 ¹	14	16	18	24	30	36
		<i>12¹-14</i>	<i>12¹-16</i>	<i>14-19</i>	<i>16-21</i>	<i>21-28</i>	<i>26-36</i>	<i>31-43</i>

¹ 12¹=One year and one day

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.

* * *

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
F	Criminal Sexual Conduct 5th Degree (<u>2nd or Subsequent Violation</u>)	609.3451, subd. 3(<u>b</u>)
<u>H</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>609.3451, subd. 3(a)</u>

* * *

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
243.166 subd. 5(b)	Registration of Predatory Offenders	H ₋ *
243.166 subd. 5(c)	Registration of Predatory Offenders (2nd or Subsequent Violations)	H ₋ *
<u>609.3451 subd. 3(a)</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>H**</u>
609.3451 subd. 3(<u>b</u>)	Criminal Sexual Conduct 5th Degree (<u>2nd or Subsequent Violation</u>)	F

* The presumptive disposition is commitment. See section 2.E and Appendix 1.

** 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.

* * *

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:
<u>609.3451, subd. 3(a)</u>	<u>Criminal Sexual Conduct 5th Degree (Nonconsensual Penetration)</u>	<u>H</u>	<u>24</u>	<u>CHS 5</u>

4. Creation of New Sexual Extortion Crimes

- **Senate Art. 4 § 20; House Art. 13 § 19.**

Description: Sexual Extortion under Minn. Stat. § 609.3458 is created. The offense occurs when a person engages in sexual penetration or sexual contact with another person and compels the other person to submit by making direct or indirect threats to withhold or harm a job or business, cause criminal charges to be made, report immigration status, disseminate private sexual images, expose a secret, or change housing or rent. The penetration contact offense is a felony carrying a maximum penalty of 10 years imprisonment and/or a \$20,000 fine. The contact penetration offense is a felony carrying a maximum penalty of 15 years imprisonment and/or a \$30,000 fine. Persons are subject to conditional release and no person may be charged with an attempt.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: N/A.

Fiscal & Demographic Impact. The fiscal and demographic impact of changes to sex offenses are addressed at the end of section A (page 21).

Guidelines Considerations: 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 the new offense, the Commission may decide:

1. What severity level 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)?

One of the elements of Sexual Extortion is that submission to the sexual contact or penetration is compelled by a threat (to disclose harmful information or withhold a benefit). The enactment of this crime was recommended by the CSC Statutory Reform Working Group, which included the following rationale in its report: “This proposal ... was created in recognition of the experiences of many survivors who felt compelled to comply with unwanted sexual conduct because of extortion or blackmail. The threats under this proposal are regularly experienced by victims/survivors of sexual violence and are unable to be charged because they are not prohibited acts under Minnesota’s CSC statutes”

The Sexual Extortion offenses carry the same statutory maximum penalty as CSC Third Degree and CSC Fourth Degree.

In its fiscal note, staff assumed that the Commission would rank the penetration offense at Severity Level C and the contact offense at Severity Level E. Compared to CSC Third Degree and CSC Fourth Degree offenses ranked at those severity levels, the compulsion involved in these offenses is less than force or coercion, but the Commission may consider it to be similar to the power imbalances in prohibited occupational relationship offenses that make consent legally irrelevant.

Alternatively, the Commission may consider the compulsion involved in these offenses to be similar to that of CSC Third Degree and CSC Fourth Degree offenses involving teenage victims and older perpetrators, where consent is also deemed to be legally irrelevant. Those offenses are ranked at Severity Level D (penetration) and Severity Level F (contact).

MSGC Staff Recommendation: Rank the Sexual Extortion penetration offense at Severity Level C and the contact offense at Severity Level E (section 5); add Sexual Extortion to the list of Offenses Eligible for Permissive Consecutive Sentences (section 6); add Sexual Extortion to the list of exceptions to the length of stay (section 3.A.2); **do not** add Sexual Extortion to the list of Severe Violent Offenses (section 8).

Alternative MSGC Staff Recommendation: Rank the Sexual Extortion penetration offense at Severity Level D and the contact offense at Severity Level F (not displayed); and make the changes to sections 6 and 3.A.2 described above.

Possible Amendments to 2020 Minn. Sentencing Guidelines §§ 3.A; 5; & 6:

* * *

[3.]A. Establishing Conditions of Stayed Sentences

* * *

2. Length of Stay.

- a. When the court stays execution or imposition of sentence for a felony offense, including an attempt or conspiracy, the pronounced length of stay must not exceed five years or the length of the statutory maximum punishment, whichever is less, unless the court identifies and articulates substantial and compelling reasons to support a departure from this rule.

* * *

- d. The limitation in section 1.D.3.a does not apply to a sentence for a violation of Minn. Stat. § 609.19 (Murder 2nd Degree), 609.195 (Murder 3rd Degree), 609.20 (Manslaughter 1st Degree), 609.2112 (Criminal Vehicular Homicide), 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), 609.268 (Death or Injury of an Unborn Child in Comm. of Crime), 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), ~~or 609.3451 (Criminal Sexual Conduct 5th Degree), or 609.3458 (Sexual Extortion).~~

* * *

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
C	<u>Sexual Extortion (Penetration)</u>	<u>609.3458, subd. 1(b)</u>
E	<u>Sexual Extortion (Contact)</u>	<u>609.3458, subd. 1(a)</u>

* * *

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
<u>609.3458 subd. 1(a)</u>	<u>Sexual Extortion (Contact)</u>	<u>E</u>

Statute Number	Offense Title	Severity Level
<u>609.3458 subd. 1(b)</u>	<u>Sexual Extortion (Penetration)</u>	<u>C</u>

* * *

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
<u>609.3458</u>	<u>Sexual Extortion</u>

* * *

5. Fiscal & Demographic Impact

The fiscal and demographic impact estimated for the legislative changes to sex offenses described in Section A of this document are as follows:

Long-Term Fiscal Impact (H.F. 707-2E): Estimated 234 additional prison beds.

Demographic Impact (H.F. 707-2E): ([Link to full DIS](#)).

- **Gender:** Male (97.2%); Female (2.8%).
- **Race & Ethnicity:** White (56.3%); Black (18.3%); American Indian (1.4%); Hispanic (16.9%); Asian (7.0%).
- **Judicial District:** First (16.9%); Second (9.9%); Third (11.3%); Fourth (14.1%); Fifth (7.0%); Sixth (7.0%); Seventh (8.5%); Eighth (7.0%); Ninth (7.0%); and Tenth (11.3%).

B. Changes Related to Sex Trafficking, Prostitution, & Solicitation of Children

1. Sex Trafficking Added to “Violent Crime” Definition

- **Senate Art. 3 § 7; House Art. 14 § 14**

Description: Adds Minn. Stat. § 609.322 (Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking) to the definition of “violent crime” in Minn. Stat. § 609.1095. Persons who repeatedly commit crimes on this list face enhanced penalties.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.1095](#) (2020); Minn. Stat. § [609.322](#) (2020).

Long-Term Fiscal Impact (H.F. 613-1UE): Estimated 10 additional prison beds.

Demographic Impact (H.F. 613-1UE): ([Link to full DIS](#)).

- **Gender:** Male (100.0%); Female (0%).
- **Race & Ethnicity:** White (9.6%); Black (90.4%); American Indian (0%); Hispanic (0%); Asian (0%).
- **Judicial District:** First (0%); Second (0%); Third (0%); Fourth (24.4%); Fifth (27.8%); Sixth (0%); Seventh (16.6%); Eighth (0%); Ninth (0%); and Tenth (31.1%).

Guidelines Considerations: Sex Trafficking becomes subject to the sentencing enhancements provided in Minn. Stat. section 609.1095, subdivision 2 (aggravated durational departure for dangerous offender who commits third violent crime up to the statutory maximum if the offender has two or more prior convictions for violent crimes) and subdivision 3 (mandatory commitment to the commissioner of corrections for at least the length of the presumptive sentence for a dangerous offender who commits third violent felony). The addition of Sex Trafficking to the list of violent crimes could impact the sentences imposed for these offenses. Minn. Stat. § 609.1095, subd. 2, provides for an optional durational departure up to the statutory maximum for a third violent crime when the offender is found to be a danger to public safety, which finding may be supported either by the offender’s past criminal behavior or the facts of the present offense involving an aggravating factor that would justify a durational departure.

The Sentencing Guidelines establish a “Severe Violent Offense List” (Guidelines section 8). For a second or subsequent severe violent offense, the presumptive sentence is increased by at least twelve months (section 2.G.14). In addition, a custody status point derived from a severe violent offense is nonwaivable (section 2.B.2.e(4) & (8)). Sex Trafficking is not presently on that list, although Labor Trafficking is.

The proponents’ [rationale](#) for adding sex trafficking to the statutory list of violent crimes is threefold:

- “Sex trafficking regularly involves violence (to the victim by the trafficker/patrons, as codified in the aggravating factor of infliction of bodily harm).
- “As a lucrative and illicit enterprise requiring ongoing human contact in private locations where victims are most vulnerable, the danger to the victim and others is high.

- “Sex trafficking is certainly as dangerous an ongoing activity as other ‘violent crimes’– i.e. simple robbery, burglary in the first degree, criminal sexual conduct in the first through fourth degrees, and controlled substance crimes in the first through fourth degrees. Minn. Stat. § [609.1095](#), subd. 1(d).”

Not all offenses classified as “violent crimes” appear in the Guidelines’ Severe Violent Offense List; compare the second and sixth columns of Table 1 in [MSGC Staff Information Paper: Selected Violence-Related Crime Lists \(March 2, 2021\)](#). In light of the particular applicability of the proponents’ rationale to aggravated sex trafficking offenses, staff recommends adding aggravated sex trafficking offenses (involving repeat offenses, bodily harm, debt bondage or forced work for over 180 days, or multiple victims) to the Severe Violent Offense List.

MSGC Staff Recommendation: Add Minn. Stat. § 609.322, subd. 1(b) (aggravated sex trafficking), to the Severe Violent Offense List (section 8), as follows.

Alternative to MSGC Staff Recommendation: Add all sex trafficking offenses (Minn. Stat. § 609.322) to Guidelines section 8, Severe Violent Offense List, by adopting the following changes without “subd. 1(b).”

Possible Amendments to 2020 Minn. Sentencing Guidelines § 8:

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
609.185	Murder 1st Degree
609.19	Murder 2nd Degree
609.195(a)	Murder 3rd Degree (Depraved Mind)
609.221	Assault 1st Degree
609.222, subd. 2	Assault 2nd Degree (Dangerous Weapon, Substantial Bodily Harm)
609.245, subd. 1	Aggravated Robbery 1st Degree
609.25, subd. 2(2)	Kidnapping (Great Bodily Harm/Unsafe Release/Victim Under 16)
609.2661	Murder of an Unborn Child 1st Degree
609.2662	Murder of an Unborn Child 2nd Degree

Statute Number	Offense Title
609.2663	Murder of an Unborn Child 3rd Degree
609.282	Labor Trafficking
<u>609.322 subd. 1(b)</u>	<u>Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking</u>
609.342, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(i)	Criminal Sexual Conduct 1st Degree
609.343, subd. 1(a)(b)(c)(d)(e) & 1a(a)(b)(c)(d)(i)	Criminal Sexual Conduct 2nd Degree
609.498, subd. 1b	Tampering with Witness, Aggravated 1st Degree
609.561, subd. 1 or 2	Arson 1st Degree
609.66, subd. 1e(b)	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)

* * *

2. Statutory Maximums Increased for Sex Trafficking Offenses

- **Senate Art. 3 §§ 9–10; House Art. 14 §§ 21–22**

Description: For first-degree sex trafficking offenses in Minn. Stat. section 609.322 subd. 1(a), the maximum is increased from 20 to 25 years (300 mos.). For second-degree offenses in Minn. Stat. section 609.322, subd.1a, the maximum is increased from 15 to 20 years (240 mos.). For either first- or second-degree offenses with aggravating circumstances under subd. 1(b), the maximum is increased from 25 to 30 years (360 mos.).

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.322](#) (2020).

Long-Term Fiscal Impact (H.F. 613-1UE): Two of the three cases with statutory maximum presumptive sentences are accounted for by either the required sentence for two prior violent offenses or by a consecutive sentence that resulted in a sentence greater than 300 months. It is estimated the increases to the statutory maximums for First-Degree Sex Trafficking for the other offender with a CHS of 6 or more will result in the eventual need for one additional prison bed.

Demographic Impact (H.F. 613-1UE): ([Link to full DIS](#)).

- **Gender:** Male (100.0%); Female (0%).
- **Race & Ethnicity:** White (9.6%); Black (90.4%); American Indian (0%); Hispanic (0%); Asian (0%).

- **Judicial District:** First (0%); Second (0%); Third (0%); Fourth (24.4%); Fifth (27.8%); Sixth (0%); Seventh (16.6%); Eighth (0%); Ninth (0%); and Tenth (31.1%).

Guidelines Considerations: Increases to the statutory maximums will require changes to grid ranges and notations.

- First-Degree Sex Trafficking (involving children under age 18) is ranked at Severity Level B; the changes bring the statutory maximum (25 years) in line with the other identically ranked offense on the Sex Offender Grid (certain subdivisions of 2nd Degree Criminal Sexual Conduct). Because the statutory maximum will now be equal to the maximum penalty displayed on the Sex Offender Grid, references to policy applicable when the presumptive sentence durations exceed the statutory maximum sentence—found in section 5.B and Appendix 3—will no longer be necessary.
- Second-Degree Sex Trafficking (involving adults) is ranked at Severity Level C. Heretofore, the greatest statutory maximum penalty for a Severity Level C offense was 15 years; for this reason, the Sex Offender Grid did not display durations greater than 180 months, even in the upper ranges. Due to the larger statutory maximum penalty, it will be necessary to modify the Sex Offender Grid to display the upper ranges required by Minn. Stat. § 244.09, subd. 5(2) (20% increase). Because this change will cause certain Criminal Sexual Conduct 3rd Degree offenses to have presumptive durations (upper range only) that exceed the statutory maximum, those Criminal Sexual Conduct 3rd Degree ranked at Severity Level C should be added to the list of offenses in Appendix 3, Presumptive Sentence Durations that Exceed the Statutory Maximum Sentence Reference Table; and a footnote referencing this limitation should be added in section 5.B.
- Aggravated Sex Trafficking is not a separately ranked offense; instead, the Guidelines treat the aggravating circumstance (prior offense, bodily harm, long-term debt bondage or forced labor, or multiple victims) as a sentence modifier under Guidelines section 2.G.9 (increasing the presumptive duration by 48 months for a completed offense). No Guidelines changes are required as a result of the increased statutory maximum penalty.

In addition to these provisions, the bill (Senate Art. 3 § 19; House Art. 14 § 48) requires the Commission to “comprehensively review and consider modifying how the Sentencing Guidelines and the sex offender grid address the crimes described in Minnesota Statutes, section 609.322.” Further Guidelines changes may result from this review.

MSGC Staff Recommendation: Make technical corrections, as follows.

Possible Amendments to 2020 Minn. Sentencing Guidelines §§ 4.B & 5.B; and Appendix 3:

* * *

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.

CRIMINAL HISTORY SCORE

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)		0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 <i>144-172</i>	156 <i>144-187</i>	168 <i>144-201</i>	180 <i>153-216</i>	234 <i>199-280</i>	306 <i>261-360</i>	360 <i>306-360²</i>
<i>CSC 2nd Degree-1(a)(b)(c)(d)(e), 1a(a)(b)(c)(d)(h)(i) (e.g., contact, force, & injury)</i>	B	90 <i>90³-108</i>	110 <i>94-132</i>	130 <i>111-156</i>	150 <i>128-180</i>	195 <i>166-234</i>	255 <i>217-300</i>	300 <i>255-300²</i>
<i>CSC 3rd Degree-1(a)(b)(c)(d), 1a(c)(d)(g)(h)(i) (e.g., penetration & force/occupation)</i>	C	48 <i>41-57</i>	62 <i>53-74</i>	76 <i>65-91</i>	90 <i>77-108</i>	117 <i>100-140</i>	153 <i>131-180 183</i>	180 <i>153-180³ 216</i>

* * *

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.

* * *

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
609.322 subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B*
609.344 subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)	Criminal Sexual Conduct 3rd Degree	C ₋ *

* 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.

* * *

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:
609.322, subd. 1(a)	Solicits, Promotes, or Receives Profit Derived from Prostitution; Sex Trafficking 1st Degree	B	240	CHS 5
609.344, subd. 1(a)(b)(c)(d) & 1a(c)(d)(g)(h)(i)	Criminal Sexual Conduct 3rd Degree	C	180	CHS 5 (upper-range)

3. Patrons of Prostitution (2nd or Subsequent Violation)

- **Senate Art. 3 §§ 11, 21; House Art. 14 §§ 23–24, 50**

Description: For the offense of Patrons of Prostitution (Minn. Stat. § 609.324, subds. 2 & 3), the bill elevates the general offense from a misdemeanor to a gross misdemeanor, abolishing the gross misdemeanor penalty enhancement for committing the offense in public. It also creates a new felony Patrons of Prostitution crime, with a five-year statutory maximum penalty, for a violation within 10 years of a previous conviction under Minn. Stat. § 609.324 or 609.322.

In the **House version only**, the bill adjusts the age limits for the offenses found in Minn. Stat. section 609.324, subds. 1(a) & 1(b), Engage or Hire a Minor to Engage in Prostitution. The subd. 1(a) offense, which has a statutory maximum of 20 years and currently applies to acts involving someone under the age of 13, is amended to apply to someone under the age of 14. The subd. 1(b) offense, which has a statutory maximum of 10 years and currently applies to acts involving someone under the age of 16 but at least 13, is amended to apply to someone under the age of 16 but at least 14. Subd. 1(c), which applies to children at least 16 years old, is unchanged.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.322](#) (2020); Minn. Stat. § [609.324](#) (2020).

Long-Term Fiscal Impact (H.F. 613-1UE): In its fiscal note, MSGC estimated no impact with respect to the new felony. Currently repeat violations of Minn. Stat. § 609.324, subd. 3 within two years of a prior offense

are gross misdemeanors. Minn. Judicial Branch information indicated there were no such convictions from 2017 to 2019.

(House version only): If one person a year receives a prison sentence of 86 months for Minn. Stat. section 609.324, subd. 1 (a), the estimated prison bed impact is 5 beds.

Demographic Impact (H.F. 613-1UE): Not applicable.

Guidelines Considerations:

Prostitution offenses contained in Minn. Stat. section 609.324, subd. 1 (Engage or Hire a Minor to Engage in Prostitution) are felonies presently ranked on the Standard Grid as follows:

- Subd. 1(a), involving children under age 13: 20-year statutory maximum, ranked at Severity Level 9.
- Subd. 1(b), involving children age 13–15: 10-year statutory maximum, ranked at Severity Level 5.
- Subd. 1(c), involving children age 16 & 17: 5-year statutory maximum, ranked at Severity Level 3.

With respect to the **House version only:** Because the statutory maximums are unchanged by this amendment, it is assumed that the severity levels will remain the same.

MSGC Staff Recommendation: Because the new Patrons of Prostitution (2nd or Subsequent Violation) offense felony has the same statutory maximum penalty (five years imprisonment) as an existing prostitution offense (Engage or Hire a Minor Age 16 or 17 to Engage in Prostitution), staff recommends ranking it the same, at Severity Level 3. At that severity level, cases with a CHS of four or more are recommended prison sentences.

Staff does not recommend adding Patrons of Prostitution (2nd or Subsequent) to the list of permissive consecutive offenses (section 6). Although Sex Trafficking and Child Prostitution are currently on the list, most would not likely consider the new crime—involving a presumably consensual, albeit illegal, transaction between adults—to be a crime against the person, which was the original basis for membership on the list.

Possible Amendments to 2020 Minn. Sentencing Guidelines § 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
3	Engage or Hire a Minor to Engage in Prostitution	609.324, subd. 1(c)

Severity Level	Offense Title	Statute Number
	<u>Patrons of Prostitution (2nd or Subsequent Violation)</u>	<u>609.324, subd. 2(b)</u>

* * *

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(c)	Engage or Hire a Minor to Engage in Prostitution	3
<u>609.324 subd. 2(b)</u>	<u>Patrons of Prostitution (2nd or Subsequent Violation)</u>	<u>3</u>

* * *

4. Statutory Maximums Increased for Solicitation of Children to Engage in Sexual Conduct

- **Senate Art. 3 §§ 15; House Art. 14 § 29**

Description: The statutory maximum for violations under Minn. Stat. § 609.352 (Solicitation of Children to Engage in Sexual Conduct) is increased from three to five years (60 mos.).

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.352](#) (2020).

Long-Term Fiscal Impact (H.F. 613-1UE): It is estimated that one case per year will receive a sentence increase from 36 months to 60 months. Given that two-thirds of the sentence will be served in prison, this would result in the need for 1 additional prison bed. This bed would be needed in year three and every year after. The impact may be greater if, in the future, some cases with high CHSs do not receive departures.

Demographic Impact (H.F. 613-1UE): ([Link to full DIS](#)).

- **Gender:** Male (100.0%); Female (0%).
- **Race & Ethnicity:** White (9.6%); Black (90.4%); American Indian (0%); Hispanic (0%); Asian (0%).
- **Judicial District:** First (0%); Second (0%); Third (0%); Fourth (24.4%); Fifth (27.8%); Sixth (0%); Seventh (16.6%); Eighth (0%); Ninth (0%); and Tenth (31.1%).

Guidelines Considerations: The statutory maximum for Solicitation of Children to Engage in Sexual Conduct under Minn. Stat. § 609.352 is increased from three to five years. It is assumed that the increase will have no impact on the severity-level ranking for Minn. Stat. § 609.352. This offense is ranked at Severity Level G

where the presumptive sentence for offenders with a CHS of six or more is 60 months. Currently, offenses with a CHS of four or more are limited to a presumptive sentence of 36 months (because the presumptive sentence must not exceed the statutory maximum). Raising the statutory maximum to 60 months will result in an increase in the presumptive durations for offenses with a CHS of four or more.

MSGC Staff Recommendation: Make technical corrections, as follows. Authorize MSGC staff to edit examples in the Sex Offender Grid for space and style.

Possible Amendments to 2020 Minn. Sentencing Guidelines §§ 4.B & 5.B and Appendix 3:

* * *

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 3rd Degree–1a(b) with 2(2) Possession of Child Pornography Solicit Child for Sexual Conduct²</i>	G	15	20	25	30	39	51	60
						<i>34-46</i>	<i>44-60</i>	<i>51-60²</i>

* * *

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.

* * *

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
609.352 subd. 2	Solicitation of Children to Engage in Sexual Conduct	G*

Statute Number	Offense Title	Severity Level
609.352 subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G*

* 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.

* * *

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:
609.352, subd. 2	Solicitation of Children to Engage in Sexual Conduct	G	36	CHS 4
609.352, subd. 2a	Solicitation of Children to Engage in Sexual Conduct (Electronic)	G	36	CHS 4

* * *

C. Other Changes to Criminal Offenses

1. Creation of Child Torture Crime

- **Senate Art. 3 § 16; No Corresponding House Position**

Description: The bill creates a felony, with a statutory maximum penalty of 25 years imprisonment, a \$35,000 fine, or both, for torturing a child under age 18. “Torture” is defined as the intentional infliction of extreme mental anguish, or extreme psychological or physical abuse, when committed in an especially depraved manner. (The same term, identically defined, constitutes a “heinous element” that qualifies certain sex offenses for mandatory life sentences.)

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [609.25](#); [609.3455](#), subd. 1(d)(1), 1(i), 2 & 3.

Long-Term Fiscal Impact (S.F. 868): Estimated 3 additional prison beds.

Demographic Impact (S.F. 868): Not applicable.

Guidelines Considerations: 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 the new offense, the Commission may decide:

1. What severity level 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)?

Among the several means by which the crime of Kidnapping (Minn. Stat. § 609.25) may be committed is the confinement or removal of a child under age 16 for the purpose of terrorizing the victim, an offense ranked at Severity Level 8. Because of the common aspects of this offense to Child Torture (purposefully terrorizing a child victim), MSGC staff assumed that the Commission would rank Child Torture at Severity Level 8 also. Child Torture has a lower statutory maximum (~~20~~ [25](#) years of imprisonment for Child Torture vs. 40 years of imprisonment for Kidnapping (Victim Under 16)) and Kidnapping has an additional element of confinement or removal. However, the majority of cases with a Severity Level 8 include a statutory maximum of 10, 15, or 20 years.

MSGC Staff Recommendation: Rank Child Torture at Severity Level 8 (section 5); add Child Torture to the list of Offenses Eligible for Permissive Consecutive Sentences (section 6); add Child Torture to the list of exceptions to the length of stay (section 3.A.2); and add Child Torture to the list of Severe Violent Offenses (section 8). (The Complete Severe Violent Offense List is reproduced beginning on page 23).

* * *

[3.]A. Establishing Conditions of Stayed Sentences

* * *

3. Length of Stay.

- a. When the court stays execution or imposition of sentence for a felony offense, including an attempt or conspiracy, the pronounced length of stay must not exceed five years or the length of the statutory maximum punishment, whichever is less, unless the court identifies and articulates substantial and compelling reasons to support a departure from this rule.

* * *

- b. The limitation in section 1.D.3.a does not apply to a sentence for a violation of Minn. Stat. § 609.19 (Murder 2nd Degree), 609.195 (Murder 3rd Degree), 609.20 (Manslaughter 1st Degree), 609.2112 (Criminal Vehicular Homicide), 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), 609.268 (Death or Injury of an Unborn Child in Comm. of Crime), 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) ~~or~~ 609.3458 (Sexual Extortion), or 609.3775 (Child Torture).

* * *

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
8	<u>Child Torture</u>	<u>609.3775</u>

* * *

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
<u>609.3775</u>	<u>Child Torture</u>	<u>8</u>

* * *

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
<u>609.3775</u>	<u>Child Torture</u>

* * *

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
<u>609.3775</u>	<u>Child Torture</u>

* * *

2. Reorganization of Drive-By Shooting Offenses

- **House Art. 14 § 34; No Corresponding Senate Position**

Description: The bill abrogates *State v. Hayes*, 826 N.W.2d 799 (Minn. 2013), and clarifies the ambiguity *Hayes* identified in the drive-by shooting statute. In *Hayes*, the State unsuccessfully argued that Minn. Stat. § 609.66, subd. 1e(b), modifies the elements of subd. 1e(a) to create a separate, aggravated offense. The Minnesota Supreme Court instead adopted a narrower construction: that subd. 1e(b) sets forth enhanced penalties for aggravated violations of subd. 1e(a). Because subd. 1e(a) applies only to shooting “at or toward another motor vehicle or a building,” *Hayes* held, it does not apply to shootings of a person who was not in another motor vehicle or a building—such as a pedestrian or an occupant of the shooter’s vehicle. By the logic of *Hayes*, the law is similarly inapplicable to shootings at the same motor vehicle the shooter was in or had just exited, as subd. 1e(a) requires shooting at “another” motor vehicle.

The bill enacts the State’s position in *Hayes*, and therefore encompasses the following behaviors within the drive-by shooting statute, excluded by the *Hayes* interpretation: the shooting of a person who was not in another motor vehicle or building; and shooting at the same, occupied motor vehicle that the shooter was in or had just exited.

The bill accomplishes this by separating the offense definitions from the penalty provisions. It lists the possible targets as (1) an unoccupied motor vehicle or building, (2) a motor vehicle or building that was occupied and (3) another person. The statutory maximums for the various offense remain the same.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.66, subd. 1e](#); *State v. Hayes*, 826 NW 2d 799 (Minn. 2013).

Long-Term Fiscal Impact (H.F. 290): Fiscal note not requested.

Demographic Impact (H.F. 290): Not estimated.

Guidelines Considerations: Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building) (stat. max. 10 years) is ranked at Severity Level 8, where executed prison is presumed regardless of criminal history. Drive-By Shooting (Unoccupied Motor Vehicle or Building) (stat. max. 3 years) is ranked at Severity Level 3.

Either offense is eligible for permissive consecutive sentences (section 6). Only the more severe offense is classified as a severe violent offense (section 8).

Murder 2nd Degree (Intentional Murder; Unintentional Drive-By Shootings) is ranked at Severity Level 11.

MSGC Staff Recommendation: Make conforming changes to the Guidelines.

Possible Amendments to 2020 Minn. Sentencing Guidelines §§ 5 & 8:

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
8	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	609.66, subd. 1e(b) <u>subd. 1e(a)(2) & (3)</u>
3	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	609.66, subd. 1e(a) <u>(1)</u>

* * *

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
609.66 subd. 1e(a) <u>(1)</u>	Drive-By Shooting (Unoccupied Motor Vehicle or Building)	3
609.66 subd. 1e(b) <u>subd. 1e(a)(2) & (3)</u>	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)	8

* * *

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
609.66, subd. 1e(b) <u>subd. 1e(a)(2) & (3)</u>	Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building)

* * *

3. Expansion of Bias Crimes' Protected Classes

- **House Art. 14 §§ 19, 20, 31, 32, & 35; No Corresponding Senate Position**

Description: The penalties for certain assault, property-damage, and harassment offenses are increased if the offenses are committed “because of the victim’s or another’s actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin.” The bill expands these lists of protected classes to include actual or perceived ethnicity, gender, gender identity, and gender expression. The bill also protects an associate (actual or perceived) of a protected-class member within these bias crimes.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. §§ [609.2231, subd. 4](#) (fourth-degree assault motivated by bias); [609.2233](#) (increased statutory maximum sentence for felony assault motivated by bias); [609.595, subds. 1a](#) (second-degree criminal damage to property) & [2\(b\)](#) (third-degree criminal damage to property motivated by bias); [609.749, subd. 3\(a\)\(1\)](#) (aggravated harassment motivated by bias); and [363A.03, subd. 12](#) (defining “disability”).

Long-Term Fiscal Impact (H.F. 1691): No estimated impact on state prison resources.

Demographic Impact (H.F. 1691): Not applicable.

Guidelines Considerations: Bias crimes are treated as follows:

- Assault 4th Degree Motivated by Bias (stat. max. 1 year and a day) is ranked at Severity Level 1.
- Damage to Property (Motivated by Bias) (stat. max. 1 year and a day) is ranked at Severity Level 1.
- Harassment (Aggravated Violations) (stat. max. 5 years) is ranked at Severity Level 4
- Section 2.G.11 increases by 25 percent the presumptive duration of a felony assault whose maximum penalty has been increased 25 percent by Minn. Stat. § 609.2233.

In addition, section 2.D.3.b(11) authorizes an aggravated departure for the reason that “[t]he offender intentionally selected the victim or the property against which the offense was committed, in whole or in part, because of the victim’s, the property owner’s, or another’s actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin.” But for the cross-reference to the “disability” definition, this list is identical the statutory protected-class list in current law. Per Comment 2.D.308, this departure factor may not be used in conjunction with one of the statutory bias crimes.

MSGC Staff Recommendation: Modify section 2.D.3.b(11) as follows:

[2.D]3. Factors that may be used as Reasons for Departure. The following is a nonexclusive list of factors that may be used as reasons for departure:

* * *

b. Aggravating Factors.

* * *

(11) The offender intentionally selected the victim or the property against which the offense was committed, in whole or in part, because of the victim's, the property owner's, or another's actual or perceived race, color, ethnicity, religion, sex, gender, sexual orientation, gender identity, gender expression, ~~disability~~, age, or national origin, or disability.

* * *

D. Changes to Sentencing Policy

1. Veterans Restorative Justice Act

The Senate and House each adopt different versions of the Veterans Restorative Justice Act.

- **Senate Art. 3 § 6; House Art. 14 § 11**

Description: The **House version** requires courts to grant stays of adjudication to service members or veterans whose offense was committed as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or a mental health condition caused by military service. The offense must be no more severe than Severity Level 7 on the Standard Grid or D7 on the Drug Offender Grid, including misdemeanor or gross misdemeanor offenses but excepting offenses for which predatory offender registration is required. If the defendant has previously received a stay of adjudication under this section, the court may deny the use of this section on subsequent felony offenses. The bill establishes criteria for revocation or discharge. The bill provides mitigated dispositional departure factors for veterans convicted.

The **Senate version** is similar, but requires that the prosecutor and the victim consent to the stay of adjudication.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

Guidelines Considerations: Minn. Sentencing Guidelines (section 3.F, Military Veterans) states: “Under Minn. Stat. § 609.115, subd. 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision.”

References: Minn. Stat. § [609.115](#) (2020).

Long-Term Fiscal Impact, House Version (H.F. 478-1UE): 53 beds would be avoided; 24 beds in FY2023, 36 in FY2024, 49 in FY2025, 51 in FY2026, 52 in FY2027, and 53 in FY2028 and every year after.

Long-Term Fiscal Impact, Senate Version (S.F. 1633-0): 8 beds would be avoided; 3 beds in FY2023, 4 in FY2024, 6 in FY2025, 7 in FY2026, and 8 in FY2027 and every year after.

Demographic Impact: Not prepared. MSGC does not have demographic information on the veterans who would be affected.

MSGC Staff Recommendation: Modify section 2.D, Departures from the Guidelines; and section 3.F, Military Veterans, to comport with the changes, as follows.

Possible Amendments to 2020 Minn. Sentencing Guidelines §§ 2.D & 3.F:

* * *

[2.D]3. Factors that may be used as Reasons for Departure. The following is a nonexclusive list of factors that may be used as reasons for departure:

c. Mitigating Factors.

* * *

(7) The offender is particularly amenable to probation. This factor may, but need not, be supported by the fact that the offender is particularly amenable to a relevant program of individualized treatment in a probationary setting.

(8) In the case of a controlled substance offense conviction, the offender is found by the district court to be particularly amenable to probation based on adequate evidence that the offender is chemically dependent and has been accepted by, and can respond to, a treatment program in accordance with Minn. Stat. § 152.152.

(9) In the case of a qualifying United States military service member or veteran, the offender is found by the district court to meet the criteria for particular amenability to probation found in Minn. Stat. § 609.1056, subd. 4. [HOUSE]

(9) In the case of a qualifying United States military service member or veteran, the offender is found by the district court to meet the criteria for amenability to probation found in Minn. Stat. § 609.1056, subd. 2(e). [SENATE]

* * *

[3.]F. Military Veterans

Under Minn. Stat. § 609.115, subd. 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision. Minn. Stat. § 609.1056 provides deferred judgment procedures for certain criminal offenses related to service-related disorders if a defendant is a United States military service member or veteran.

* * *

2. Directed Increases to Enhanced Child Pornography Rankings

- **Senate Art. 3 § 20; No Corresponding House Position**

Description: The Commission is directed to adopt the enhanced child pornography rankings for enhanced child pornography possession and dissemination crimes recommended in the minority report contained within the Commission’s January 15, 2021, Report to the Legislature, as follows:

- The severity level assigned to Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13) is to be increased from severity level D (presumptive 36 month stayed

sentence at zero criminal history points) to C (presumptive 48-month prison commit at zero criminal history points);

- The severity level assigned to Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13) is to be increased from severity level F (presumptive 18 month stayed sentence at zero criminal history points) to E (presumptive 24-month stayed sentence at zero criminal history points).

The 2021 Report to the Legislature contained proposals to increase the severity levels assigned to Use of Minors in Sexual Performance offenses (Minn. Stat. § 617.246) effective August 1, 2021. The bill explicitly adopts “[t]he other modifications to the grid relating to child pornography crimes proposed in the main report.”

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

Guidelines Considerations: The bill approves both the majority and the minority reports of January, 2021. The severity level for each child pornography crime will be increased by one level, with the exception of the two most common offenses: possession and dissemination crimes where enhancing circumstances are absent.

References: Minn. Stat. § [617.247](#) (2020).

Long-Term Fiscal Impact: It is estimated that an increase in severity-level rankings for the enhanced dissemination cases will result in the eventual need for 10 additional prison beds and the increase in Severity Level ranking for the enhanced possession cases will result in the eventual need for 45 additional prison beds, for a total of 55 beds.

Demographic Impact: Not prepared.

MSGC Staff Recommendation: The changes to Use of Minors in Sexual Performance require no further action. Authorize MSGC staff to edit examples in the Sex Offender Grid for space and style. With respect to the enhanced dissemination and possession offenses, adjust the severity levels as follows.

Possible Amendments to 2020 Minn. Sentencing Guidelines §§ 4.B & 5:

* * *

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
CSC 4th Degree–1(a)(b)(e)(f) (e.g., contact & child victim) CSC 5th Degree <i>Possession of Child Pornography</i> (Subseq./Pred. Off./Under 13)	F							
		18	27	36	45 39-54	59 51-70	77 66-92	84 72-100

* * *

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
C	<u>Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)</u>	<u>617.247, subd. 3(b)</u>
D	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 3(b)
E	<u>Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)</u>	<u>617.247, subd. 4(b)</u>
F	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	617.247, subd. 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
617.247, subd. 3(b)	Dissemination of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	D <u>C</u>
617.247 subd. 4(b)	Possession of Child Pornography (Subsequent, by Predatory Offender, or Child Under 13)	F <u>E</u>

* * *

3. Revision of Probation Revocation Standards

- **House Art. 11 §§ 42–43; No Corresponding Senate Position**

Description: The bill amends the statutory standards for probation revocation.

In general, the bill states, “Revocation should only be used as a last resort when rehabilitation has failed.”

For first time probation violators, the bill states that several judicially established criteria for probation violation—that the offender needs correctional treatment best provided through confinement, that it would unduly depreciate the seriousness of the violation if probation were not revoked, and that the need for confinement outweighs the policies favoring probation—are **not** met if the violation is one of several enumerated substance-related or technical violations. For such first-time violations, the bill forbids both the imposition or execution of the sentence and the taking of the probationer into immediate custody, unless it is established, by a preponderance of the evidence, that the continued presence of the probationer in the community would present a risk to public safety.

Effective Date: August 1, 2021, and applies to crimes committed on or after that date.

References: Minn. Stat. § [609.14](#); *State v. Austin*, 295 N.W.2d 246 (Minn. 1980); *State v. Modtland*, 695 N.W.2d 602 (Minn. 2005).

Long-Term Fiscal Impact (H.F. 1761-1CE): MSGC lacks the information necessary to make any estimate of the impact in either reduced prison beds or increased costs for probation supervision.

Demographic Impact (H.F. 1761-1CE): Not estimated.

Guidelines Considerations: Section 3.B contains general guidance regarding the revocation of stayed sentences, all of which may generally be regarded as consistent with the provisions of the bill.

MSGC Staff Recommendation: Amend Comment 3.B.01, as follows:

Comment

3.B.01. *The Guidelines are based on the concept that the severity of the sanction is proportional to the severity of the current offense and the criminal history of the offender. Therefore, great restraint should be*

used when considering increasing the severity of the sanction based upon non-criminal technical violations of probationary conditions. Revocation should be used only as a last resort when rehabilitation has failed (Minn. Stat. § 609.14).

* * *

4. Creation of Early Supervised Release Eligibility for Juveniles at 15 Years

- **House Art. 14 §§ 3, 5, & 7; No Corresponding Senate Position**

Description: Minn. Stat. § 244.101 defines an “executed sentence” as consisting of two parts: (1) a specified minimum term of imprisonment equal to two-thirds of the executed sentence; and (2) a specified maximum supervised release term equal to one-third of the executed sentence. The sentencing court is required to explain this when pronouncing an executed sentence.

The bill creates an exception to this two-thirds/one-third definition of an executed sentence: A person who was under age 18 on the offense date becomes eligible for early supervised release after 15 years of imprisonment (or at two-thirds of the executed sentence, if that date is earlier).

Effective Date: Juvenile Review Board provision is effective July 1, 2021; other effective dates not specified.

References: Minn. Stat. § [244.101](#)

Long-Term Fiscal Impact (H.F. 290): Fiscal note not requested.

Demographic Impact (H.F. 290): Not estimated.

Guidelines Considerations: Comment 2.C.03 describes the existing two-thirds/one-third definition of an “executed sentence.” In addition, each sentencing grid is followed by a table of examples of executed sentences broken down by term of imprisonment and supervised release term, where the “executed sentence” description is repeated. In the case of people serving lengthy executed sentences (*i.e.*, longer than 270 months) for juvenile offenses, the bill makes these descriptions imprecise.

MSGC Staff Recommendation: No change. Although this bill makes imprecise the descriptions of “executed sentence” found in Comment 2.C.03 and the tables following the grids, those descriptions still apply as a general rule to the vast majority of cases.

5. Limiting Imprisonment for Gross Misdemeanors to 364 Days

- **House Art. 14 §§ 9–10, 49; No Corresponding Senate Position**

Description: The bill changes the default maximum penalty for a gross misdemeanor to “364 days” (currently “one year”) imprisonment. The bill also directs the Revisor of Statutes to substitute “364 days” for “one year” in Minnesota Statutes consistent with that change. Finally, the bill deems any law providing

for a maximum sentence of one year imprisonment, or defined as a gross misdemeanor, to have a statutory maximum penalty of 364 days imprisonment and a maximum fine of \$3,000.

The bill does not change the statutory definition of a “gross misdemeanor,” which is “any crime which is not a felony or misdemeanor.” A “felony” is “a crime for which a sentence of imprisonment for more than one year may be imposed” and a “misdemeanor” is “a crime for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed.”

Effective Date: The date following final enactment, and applicable to offenders receiving a gross misdemeanor sentence before, on, or after that date.

References: Minn. Stat. §§ [609.02](#), [609.03](#), & [609.13](#).

Long-Term Fiscal Impact (H.F. 614): Fiscal note not requested.

Demographic Impact (H.F. 614): Not estimated.

Guidelines Considerations: Guidelines section 2.D.1 provides, in part, “A pronounced sentence for a felony conviction that is outside the appropriate prison range on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence, is a departure from the Guidelines.”

Comment 2.D.105 clarifies, “Under Minn. Stat. § 609.13, if a court pronounces a misdemeanor or gross misdemeanor sentence for a felony conviction, that conviction is deemed a gross misdemeanor or misdemeanor. The sentence is a departure because it is outside the appropriate range on the applicable Grid. Because courts sometimes fail to issue departure reports in these cases, section 2.D was amended to clarify that if the court stays or imposes a gross misdemeanor or misdemeanor sentence for a felony conviction, the sentence is a departure.”

After the bill’s change, there may be some confusion about whether a 365-day sentence is still a gross misdemeanor sentence, and therefore a Guidelines departure.

MSGC Staff Recommendation: Amend Comment 2.D.105, as follows:

2.D.105. *Under Minn. Stat. § 609.13, if a court pronounces a misdemeanor or gross misdemeanor sentence for a felony conviction, that conviction is deemed a gross misdemeanor or misdemeanor. The sentence is a departure because it is outside the appropriate range on the applicable Grid. Because courts sometimes fail to issue departure reports in these cases, section 2.D was amended to clarify that if the court stays or imposes a gross misdemeanor or misdemeanor sentence for a felony conviction, the sentence is a departure. By operation of Minn. Stat. §§ 609.13 and 609.02, a 365-day sentence is a gross misdemeanor sentence, notwithstanding Minn. Stat. §§ 609.03(2) and 609.0342.*

In contrast, if the prosecutor amends the charge to a gross misdemeanor or misdemeanor offense prior to conviction, a gross misdemeanor or misdemeanor sentence will not be a departure because the sentence

will be consistent with the level of the charge. When the prosecutor amends the charge, the prosecutor must amend it to an existing offense. For example, there is no gross misdemeanor version of threats of violence (Minn. Stat. § 609.713) in statute, so a charge of threats of violence cannot be amended from a felony to a gross misdemeanor.

6. Requiring Disability & Brain Injury Impact Statements

- **House Art. 14 §§ 15–16; No Corresponding Senate Position**

Description: Both §§ 15 and 16 of House article 14 amend the presentence investigation statute to require the court to conduct a presentence inquiry of the defendant.

Upon conviction of a crime, § 15 requires the court to inquire whether the defendant is an individual with a disability. If so, and if the defendant may be sentenced to a term of imprisonment, the court may order that the presentence investigation report (PSI) addresses the impact of a term of imprisonment on the person’s disability. The court must consider that impact statement in imposing a sentence, and must consider the least restrictive environment to meet the state’s penal objective.

Upon conviction of a felony, § 16 requires the court to inquire whether the defendant has a history of stroke, traumatic brain injury, or fetal alcohol spectrum disorder. If so, and if the court believes that the offender may have a mental impairment causing a lack of substantial capacity for judgment at the time of the offense, the court must order a neuropsychological examination, unless such an examination was recently performed. At sentencing, the court may consider the results of the examination to determine whether the offender lacked substantial capacity for judgment at the time of the offense.

Effective Date: § 15: August 1, 2021, and applicable to individuals convicted of a crime on or after that date. § 16: Not stated.

References: Minn. Stat. §§ [609.1055](#) (authorizing probation for an offender with a serious and persistent mental illness) & [609.115](#) (presentence investigation).

Long-Term Fiscal Impact (H.F. 856-1CE & H.F. 1082-0): MSGC lacks the information necessary to make any estimate of the impact in either reduced prison beds or increased costs for probation supervision.

Demographic Impact (H.F. 856-1CE & H.F. 1082-0): Not estimated.

Guidelines Considerations: Guidelines section 2.D.3.a(3) authorizes a mitigated departure for the reason that “[t]he offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this factor.” Section 2.D.3.a(6) authorizes a mitigated departure for the reason that “[t]he court is ordering an alternative placement under Minn. Stat. § 609.1055 for an offender with a serious and persistent mental illness.”

An analogous provision in the PSI statute presently requires the court to make a presentence inquiry as to the defendant’s status as a servicemember or veteran. Section 3.F addresses this provision as follows:

Under Minn. Stat. § 609.115, subd. 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision.

MSGC Staff Recommendation: Modify Guidelines § 3.F, Military Veterans, to comport with the changes as follows.

Possible Amendments to 2020 Minn. Sentencing Guidelines § 3.F:

* * *

[3.]F. Military Veterans Other Presentence Investigation Considerations

1. Military Veterans. Under Minn. Stat. § 609.115, subd. 10, when a defendant is convicted of a crime, the court must inquire whether the defendant is currently serving in or is a veteran of the armed forces of the United States, and if so, may take further action as permitted by that provision. Minn. Stat. § 609.1056 provides deferred judgment procedures for certain criminal offenses related to service-related disorders if a defendant is a United States military service member or veteran.
2. Disability. Under Minn. Stat. § 609.115, subd. 11, when a defendant is convicted of a crime, the court must inquire whether the defendant is an individual with a disability, and if so, may take further action as permitted by that provision.
3. History of Brain Injury. Under Minn. Stat § 609.115, subd. 12, when a defendant is convicted of a felony, the court must inquire whether the defendant has a history of stroke, traumatic brain injury, or fetal alcohol spectrum disorder, and if so, may take further action as permitted by that provision.

* * *

7. Prosecutor Sentence Adjustments

- **House Art. 14 §§ 6, 18; No Corresponding Senate Position**

Description: The bill establishes a post-sentence process by which prosecutors, in their discretion, may petition courts to mitigate a previously imposed sentence upon a finding of substantial and compelling reasons to do so. The bill supplies several mandatory and optional factors for the court’s consideration. If the court grants such an adjustment, it is required to cause a sentencing worksheet to be completed and forwarded to the MSGC, and the MSGC is required to include in its annual report to the Legislature a summary and analysis of sentence adjustments issued under this provision, including demographic data.

Effective Date: August 1, 2021.

References: Minn. Stat. § [609.115](#) (regarding sentencing worksheets).

Long-Term Fiscal Impact (H.F. 901): Fiscal note not requested.

Demographic Impact (H.F. 901): Not estimated.

Guidelines Considerations: Section 3.A addresses the conditions and length of stayed sentences. Section 3.B addresses revocation of stayed sentences. It is conceivable that the Commission may wish to address sentence adjustments as well.

MSGC Staff Recommendation: Make no changes at this time.

8. Definition of “Public Safety” in MSGC Charter Statute

- **House Art. 15 § 13; No Corresponding Senate Position**

Description: The bill amends the Minnesota Sentencing Guidelines Commission’s charter statute. Minn. Stat. § [244.09, subd. 5](#), governs the promulgation of the Sentencing Guidelines. The fourth paragraph of that subdivision now contains two sentences:

In establishing and modifying the Sentencing Guidelines, the primary consideration of the commission shall be public safety. The commission shall also consider current sentencing and release practices; correctional resources, including but not limited to the capacities of local and state correctional facilities; and the long-term negative impact of the crime on the community.

The bill inserts the following language between those two sentences:

Promoting public safety includes the promotion of human rights. “Public safety” means reducing or preventing crime while maintaining the basic rights, freedoms, and privileges that belong to every person including the right to dignity, fairness, equality, respect, and freedom from discrimination, and is achieved by preferring the use of community services to imprisonment or other confinement unless confinement is necessary to protect the public, promoting the rehabilitation of those convicted through the provision of evidence-based programming and services, and imposing sanctions that are the least restrictive necessary to achieve accountability, address the harm for the offense, and ensure victim safety.

The bill makes similar changes to the charter statutes of other criminal-justice entities.

Effective Date: Not stated.

References: Minn. Stat. § [244.09, subd. 5](#).

Long-Term Fiscal Impact (H.F. 2433): Fiscal note not requested.

Demographic Impact (H.F. 2433): Not estimated.

Guidelines Considerations: The meaning of “public safety” is most directly addressed in section 1.A.1 of the Sentencing Guidelines:

In establishing and modifying the Sentencing Guidelines, the Commission’s primary consideration shall be public safety. This shall include consideration of the long-term negative impact of the crime on the community. Minn. Stat. § 244.09, subd. 5.

The meaning of the term is also directly addressed in Comment 2.B.203, which guides the district court regarding when waiver of custody status may properly be found to be “consistent with public safety” (section 2.B.2.e). That comment reads, in part:

In determining whether to grant a waiver in a particular case, the primary consideration is public safety. In this context, public safety means protecting the public from crime. The court should consider the values of retribution, incapacitation, deterrence, restitution and rehabilitation. ...

MSGC Staff Recommendation: Make no changes at this time, but the Commission may wish to study the language in section 1.A.1 and Comment 2.B.203 and consider possible revision in light of the new definition.