

## Sex Trafficking & Prostitution Review

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# Staff-Recommended Recommendations to the Legislature

October 12, 2022

While working on the Commission’s [mandated sex trafficking review](#), staff identified three statutes needing amendment. Although recommendations to the Legislature are not part of the review mandate, the Commission has a [standing duty](#) to make recommendations to the Legislature about changes to criminal statutes. Staff recommends that the Commission include the following three recommendations in its 2023 Report to the Legislature.

### Recommendation 1:

## Cross-Reference the Sex Trafficking Statute in Labor Trafficking Definitions

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### Background

In [2005](#), the Legislature created Minn. Stat. § [609.282](#), which outlawed Labor Trafficking. The new offense’s definitions were codified in Minn. Stat. § [609.281](#). Among those definitions were “debt bondage” and “forced labor or services”—two different ways by which trafficked persons may become Labor Trafficking victims.

In [2009](#), the Legislature amended the Sex Trafficking statute, Minn. Stat. § [609.322](#), to establish the offense of Aggravated Sex Trafficking, with four alternative aggravating factors. Among the aggravating factors was that “the time period that a sex trafficking victim was held in *debt bondage* or *forced labor or services* exceeded 180 days” (subd. 1(b)(3)) (emphases added).

### The Problem: Undefined Labor Trafficking Terms in the Sex Trafficking Statute

The terms “debt bondage” and “forced labor or services” are rarely used in Minnesota Statutes, and only in the context of labor trafficking specifically, or human trafficking generally. One might naturally assume, therefore, that the Labor Trafficking statute’s detailed definitions of the terms “debt bondage” and “forced labor or services”<sup>1</sup> apply to the same terms as used in the Aggravated Sex Trafficking statute.

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<sup>1</sup> Those definitions, as set forth in Minn. Stat. § [609.281](#), are:

“Subd. 3. **Debt bondage.** ‘Debt bondage’ means the status or condition of a debtor arising from a pledge by the debtor of the debtor’s personal services or those of a person under the debtor’s control as a security for debt, if the value of those

As natural as such an assumption might be, however, the Labor Trafficking definitions are limited in scope to “sections 609.281 to 609.284.”<sup>2</sup> Sex Trafficking is outside that scope. Thus, the terms “debt bondage” and “forced labor or services”—technical terms not subject to a common usage<sup>3</sup>—are arguably undefined in the context of Aggravated Sex Trafficking.

## Staff Recommendation

To avoid important, technical terms being undefined in the Sex Trafficking statute—terms the Legislature has carefully defined in the context of Labor Trafficking—the Labor Trafficking definitions should cross-reference the Sex Trafficking statute. To accomplish this, staff recommends that the Commission recommend that the Legislature amend Minn. Stat. § 609.281, subd. 1 (2021), by adding the phrase “, and 609.322” before the comma.<sup>4</sup>

## Recommendation 2: Reconcile Age Thresholds for Using a Minor for Prostitution

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### Background

Before 2021, the following offenses and offense groups all had more serious versions if the crimes involved victims under the age of 13 years, and less serious versions if the crimes involved victims at least 13 years of age:

- Using a Minor for Prostitution ([Minn. Stat. § 609.324 \(2020\)](#))
- Criminal Sexual Conduct ([Minn. Stat. §§ 609.342–609.345 \(2020\)](#))
- Use of Minors in Sexual Performance ([Minn. Stat. § 617.246 \(2020\)](#))
- Dissemination & Possession of Child Pornography ([Minn. Stat. § 617.247 \(2020\)](#))

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services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Subd. 4. **Forced labor or services.** ‘Forced labor or services’ means labor or services that are performed or provided by another person and are obtained or maintained through an actor’s:

- (1) threat, either implicit or explicit, scheme, plan, or pattern, or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services, that person or another person would suffer bodily harm or physical restraint;
- (2) physically restraining or threatening to physically restrain a person;
- (3) abuse or threatened abuse of the legal process;
- (4) knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; or
- (5) use of blackmail.”

<sup>2</sup> “**Generally.** As used in sections 609.281 to 609.284, the following terms have the meanings given.” Minn. Stat. § 609.281, subd. 1.

<sup>3</sup> See Minn. Stat. § [645.08\(1\)](#): “[W]ords and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition ... .”

<sup>4</sup> If thus amended, Minn. Stat. § 609.281, subd. 1, would read as follows: “Subdivision 1. **Generally.** As used in sections 609.281 to 609.284, and 609.322, the following terms have the meanings given.”

Other uses of the 13-year age threshold were:

- A person who induced a child under the age of 13 years to commit a sex act could be criminally liable for the act ([Minn. Stat. § 609.341, subs. 11\(a\)\(ii\) & 12\(2\)\(ii\) & \(iii\) \(2020\)](#)); and
- Bare, genital-to-genital contact with a child under the age of 13 was treated as seriously as if sexual penetration occurred ([Minn. Stat. §§ 609.341, subd. 11\(c\), & 609.342, subd. 1 \(2020\)](#)).

Effective September 15, 2021, the Legislature (in [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 4](#), or simply “Chapter 11”) uniformly incremented all the above-mentioned age thresholds by one year—so “under 13 years of age” became “under 14 years of age,” for example—with one exception. That exception is the subject of the following section.

### **The Problem:**

#### **Conflicting Penalties for Hiring or Offering to Hire for Sex a Person Believed to be a 13-Year-Old Child**

Chapter 11<sup>5</sup> made five changes to age thresholds for the crime of Using a Minor for Prostitution.

For the 20-year felony (Minn. Stat. § [609.324](#), subd. 1(a)), Chapter 11 increased the age threshold from “under the age of 13 years” to “under the age of 14 years” for the crimes of—

- **Subd. 1(a)(1):** Engaging in prostitution with an individual under that age;
- **Subd. 1(a)(2):** Hiring, offering, or agreeing to hire for sex an individual under that age; and
- **Subd. 1(a)(3):** Hiring, offering, or agreeing to hire for sex an individual reasonably believed to be under that age.

For the 10-year felony (Minn. Stat. § [609.324](#), subd. 1(b)), Chapter 11 increased the age threshold from “at least 13 years” to “at least 14 years” for the crimes of—

- **Subd. 1(b)(1):** Engaging in prostitution with an individual at least that age, but under the age of 16 years; and
- **Subd. 1(b)(2):** Hiring, offering, or agreeing to hire for sex an individual at least that age, but under the age of 16 years.

In **subd. 1(b)(3)**, however, Chapter 11 failed to change the age threshold of the 20-year felony: That crime still applies to hiring, offering, or agreeing to hire for sex an individual reasonably believed to be at least 13 years old, but under the age of 16 years. Given the Legislature’s otherwise uniform increase of the age threshold from 13 to 14 years in every other statute amended by Chapter 11—and most particularly the increase in the age threshold for the more serious version of the very same offense, found in subd. 1(a)(3)—this omission was obviously inadvertent.

Because of this omission, the crime of hiring, offering, or agreeing to hire for sex someone reasonably believed to be exactly 13 years old now has two different penalties: a 20-year penalty under subd. 1(a)(3)

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<sup>5</sup> Specifically, [2021 Minn. Laws 1st Sp. Sess. ch. 11, art. 4, § 5](#).

and a 10-year penalty under subd. 1(b)(3). This is irrational and confusing, and may result in the application of a less serious penalty than the Legislature intended.

### Staff Recommendation

To make consistent the age thresholds for the crime of Using a Minor for Prostitution, staff recommends that the Commission recommend that the Legislature amend Minn. Stat. § 609.324, subd. 1(b)(3) (2021), by replacing the number “13” with the number “14.”<sup>6</sup>

## Recommendation 3: Reconcile First-Degree Witness Tampering with the Statutory Violent Crime List<sup>7</sup>

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### Background

Minn. Stat. § [609.1095](#), subd. 1(d), contains a statutory “violent crime” list. Repeated convictions of crimes on this list may result in a mandatory executed prison sentence and, if accompanied by a finding of dangerousness to public safety, may justify an aggravated durational departure from the Guidelines.

In [1998](#), when it created the statutory violent crime list, the Legislature included on it First-Degree Witness Tampering. Although it had created the crime of *Aggravated* First-Degree Witness Tampering [the previous year](#), the Legislature did not include the aggravated offense on the statutory violent crime list—possibly because the new list was modeled after an old list found in Minn. Stat. § [609.152](#), which predated *Aggravated* First-Degree Witness Tampering and was repealed when Minn. Stat. § 609.1095 was created.

In its current form, the statutory violent crime list continues to include First-Degree Witness Tampering ([Minn. Stat. § 609.498, subd. 1](#)) and to exclude *Aggravated* First-Degree Witness Tampering ([Minn. Stat. § 609.498, subd. 1b](#)).

### The Problem:

#### The Less Violent Form of First-Degree Witness Tampering is the Statutory Violent Crime

Although their provisions are worded somewhat differently, First-Degree Witness Tampering has much in common with its aggravated counterpart. Both First-Degree Witness Tampering and *Aggravated* First-Degree Witness Tampering cover essentially the same six ways of tampering with a witness. Attempting to dissuade a witness from providing information to police about a crime or from testifying at trial; attempting to coerce a witness to provide false information to police about a crime or to testify falsely at trial; or

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<sup>6</sup> If thus amended, Minn. Stat. § 609.324, subd. 1(b)(3) would read as follows: “(b) Whoever intentionally does any of the following may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both: ... (3) hires or offers or agrees to hire an individual who the actor reasonably believes to be under the age of 16 years but at least ~~13~~ 14 years to engage in sexual penetration or sexual contact.”

<sup>7</sup> While this issue does not directly relate to sex trafficking or prostitution, staff identified it while researching the question of whether the Sentencing Guidelines should classify Sex Trafficking as a “Severe Violent Offense.” See the MSGC staff paper entitled “[Sex Trafficking & Prostitution Review: Classifying Sex Trafficking as a Severe Violent Offense](#)” (Sep. 29, 2022) (in the October 2022 meeting materials).

retaliating against someone who has provided information to police about a crime or testified at trial—all of these may be forms of witness tampering covered by the First-Degree and the Aggravated First-Degree forms of the crime.<sup>8</sup>

The key difference between the two offenses is the degree of force used or threatened. First-Degree Witness Tampering requires that the witness tampering be facilitated by means of any force or threat of injury—or, in the case of retaliation, by intentionally causing injury or threatening to cause injury—to a person or to property. No minimum level of force or injury is specified. Aggravated First-Degree Witness Tampering, on the other hand, requires the defendant—in the course of intentionally tampering with the witness—to cause, or credibly threaten<sup>9</sup> to cause, great bodily harm<sup>10</sup> or death.

From the differences in the statutory maximum penalties—20 years vs. 5 years—the Legislature clearly views Aggravated First-Degree Witness Tampering to be more serious than First-Degree Witness Tampering. From the differences in the assigned severity levels—9 vs. 5—it is evident that the Sentencing Guidelines concur. From the respective elements—causing or threatening death or great bodily harm vs. merely injuring, using force, or threatening to injure or use force—Aggravated First-Degree Witness Tampering is obviously more violent than First-Degree Witness Tampering. Staff sees no rational basis for including First-Degree Witness Tampering, but excluding Aggravated First-Degree Witness Tampering, as a statutory violent crime.

## Recommendation

To reconcile the statutory violent crime list with the degrees of violence inherent in the two forms of first-degree witness tampering, staff recommends that the Commission recommend that the Legislature amend the statutory violent crime list found in Minn. Stat. § 609.1095, subd. 1(d) (2021), by taking one of the following two actions:

- Adding Aggravated First-Degree Witness Tampering by inserting “or 1b” after “609.582, subdivision 1”; or
- Replacing First-Degree Witness Tampering with Aggravated First-Degree Witness Tampering by replacing “609.582, subdivision 1” with “609.582, subdivision 1b.”

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<sup>8</sup> With respect to trial witnesses, there is one difference in the witness tampering itself: While the First-Degree Witness Tampering statute protects witnesses testifying at any type of trial, proceeding, or inquiry authorized by law, the Aggravated First-Degree Witness Tampering Statute protects only witnesses at a *criminal* trial or proceeding.

<sup>9</sup> The threat may be implicit or explicit.

<sup>10</sup> “ ‘Great bodily harm’ means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm.” [Minn. Stat. § 609.02, subd. 8.](#)