



CENTRAL MINNESOTA HUMAN TRAFFICKING TASK FORCE SUGGESTED LEGISLATIVE POLICY PROPOSALS

The Central Minnesota Human Trafficking Task Force (CMHTTF) nears its 3 year mark of official operations, focusing on investigating and prosecuting felony traffickers, deterring demand, and supporting victims. Based upon our experiences both here and in collaboration with our state-wide partners, the CMHTTF has identified several areas where legislative changes would further our collective mission. The following is a summary of the reasoning behind requested legislative changes in 2021.

GOAL #1: Increased Recognition of the Act of Trafficking as a Violent Crime and a Danger to Public Safety

A. Add Sex Trafficking offenses to the list of “Violent Crimes” under the Dangerous Offender Statute.

- Issue:
 - **Currently, sex trafficking convictions do not count as a “violent crime.”**
 - Minn. Stat. § 609.1095, subd. 1(d) (omitting sex trafficking offenses from the list).
 - The dangerous offender statute allows the State to pursue an aggravated sentence up to the statutory maximum for those offenders who are convicted of a third “violent crime” and are proven to be a “danger to public safety” as defined under the statute. Minn. Stat. § 609.1095, subd. 2.
- Proposal:
 - Amend Minn. Stat. § 609.1095, Subd. 1(d) to include sex trafficking offenses as violent crimes: “...609.268; **609.322**; 609.342...”
- Rationale:
 - 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).
- Result:
 - The State may pursue, in appropriate cases where offenders have two or more prior “violent crimes,” an aggravated sentence for dangerous offenders who commit sex trafficking offenses.
 - Sex trafficking convictions would be recognized as eligible prior convictions to trigger the dangerous offender statute for traffickers who commit future violent crimes.

B. Increase statutory maximum sentences for sex trafficking by five (5) years.

- Issue:
 - **Sex trafficking crimes often involve offenders with significant and dangerous criminal histories. Increasing statutory maximum sentences for each category of trafficking cases would better allow the State, judges, and the Sentencing Guidelines Commission to appropriately determine sentences for traffickers with significant criminal histories.**
- Proposal:
 - Amend sentencing language in Sex Trafficking in the Second Degree (Adult Victims), Minn. Stat. § 609.322, subd. 1a: “to imprisonment for not more than ~~15~~ **20** years...”
 - Amend sentencing language in Sex Trafficking in the First Degree (Minor Victims) statute, Minn. Stat. § 609.322, subd. 1(a): “...to imprisonment for not more than ~~20~~ **25** years...”
 - Amend sentencing language in Sex Trafficking in the First Degree (Minor/Adult Victims with Aggravating Factors) statute, Minn. Stat. § 609.322, subd. 1(b): “...to imprisonment for not more than ~~25~~ **30** years ...”
 - Direct/allow Minnesota Sentencing Guidelines Commission to review Sex Offender Grid and/or Sentencing Modifiers.
- Rationale:
 - The current 15, 20, and 25 year statutory maximum sentences do not fully account for the impact of the often ongoing and lengthy offense of sex trafficking. On the Sentencing Guidelines Sex Offender Grid, the presumptive sentence for offenders with criminal history scores of 5 or 6+ exceeds the statutory maximum sentence for their offense, thus limiting the Judge’s options to appropriately sentence an offender.
- Result:
 - Increasing each statutory maximum sentence by five years would allow for clearer and stronger sentences for career/dangerous criminals who commit sex trafficking offenses.
 - Combining increased statutory maximum sentences with placement of trafficking on the dangerous offender list of violent crimes would allow the pursuit of aggravated sentences for those offenders whose prior and current crimes demonstrate a special danger to public safety.
 - It would also allow the Minnesota Sentencing Guidelines Commission to re-work the placement of sex trafficking offenses into a more orderly and fair position on the Sex Offender Grid.
 - Sex Trafficking Modifiers could be deleted and replaced by re-ranking sex trafficking offenses at SL A (aggravated factor(s)), SL B (minor victim), or SL C (adult victim).
 - Grid ranges (15% below, 20% above the fixed sentence) would be in place for all offenders (currently, traffickers with criminal history scores of 5 or 6 with single victims do not receive a full upper sentencing range because they are “maxed out.”).
 - Changes to the statutory maximum would have no effect on offenders with limited or no criminal history whose offenses did not involve aggravating factors.

GOAL #2: Increased and Equitable Consequences for Sex Buyers

A. Increase sentences for repeat sex buyers and delete old distinctions between public/private places.

- Issue:
 - Heightened enforcement and victim-centered efforts by human trafficking task forces have emphasized that **demand drives the sex trafficking industry**. Providing a distinction between where

the location of an arrangement for sex acts for profit occurs is based on outdated understanding of the issue: **the demand needs to be eradicated, not simply pushed out of the open.** Repeat offenders are common and deterrence requires additional teeth.

- Proposal:

- Modify patron language in Minn. Stat. § 609.324 to: a) **delete the distinction between public/private place as to the location of the sex act for buyers of sex from adult victims; b) criminalize all first offenses as at least gross misdemeanors (currently misdemeanors in a private place); and c) establish a 10-year-look back period to enhance gross misdemeanor offenses to felonies.**
- Amend Minn. Stat. § 609.324: ...

~~Subd. 2. Patrons of Prostitution in public place; penalties for patrons. (a) Whoever, while acting as a patron, intentionally does any of the following while in a public place is guilty of a gross misdemeanor:~~

~~(1) engages in prostitution with an individual 18 years of age or older; or~~

~~(2) hires, offers to hire, or agrees to hire an individual 18 years of age or older to engage in sexual penetration or sexual contact.~~

~~Except as otherwise provided in subdivision 4 3, a person who is convicted of violating this subdivision must, at a minimum, be sentenced to pay a fine of at least \$1,500.~~

(b) Whoever violates the provisions of this subdivision within ten years of a previous conviction for violating this section or section 609.322 is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

~~Subd. 3. General prostitution crimes; penalties for patrons. (a) Whoever, while acting as a patron, intentionally does any of the following is guilty of a misdemeanor:~~

~~(1) engages in prostitution with an individual 18 years of age or older; or~~

~~(2) hires, offers to hire, or agrees to hire an individual 18 years of age or older to engage in sexual penetration or sexual contact. Except as otherwise provided in subdivision 4, a person who is convicted of violating this paragraph must, at a minimum, be sentenced to pay a fine of at least \$500.~~

~~(b) Whoever violates the provisions of this subdivision within two years of a previous prostitution conviction for violating this section or section 609.322 is guilty of a gross misdemeanor. Except as otherwise provided in subdivision 4, a person who is convicted of violating this paragraph must, at a minimum, be sentenced as follows:~~

~~(1) to pay a fine of at least \$1,500; and~~

~~(2) to serve 20 hours of community work service.~~

~~The court may waive the mandatory community work service if it makes specific, written findings that the community work service is not feasible or appropriate under the circumstances of the case.~~

Subd. 4 **3**. Community service in lieu of minimum fine. The court may order a person convicted of violating subdivision 2 ~~or 3~~ to perform community work service in lieu of all or a portion of the minimum fine required under those subdivisions if the court makes specific,

written findings that the convicted person is indigent or that payment of the fine would create undue hardship for the convicted person or that person's immediate family. Community work service ordered under this subdivision is in addition to any mandatory community work service ordered under subdivision 3.

Subd. 5 4. Use of motor vehicle to patronize prostitutes; driving record notation. (a) When a court sentences a person convicted of violating this section while acting as a patron, the court shall determine whether the person used a motor vehicle during the commission of the offense and whether the person has previously been convicted of violating this section or section 609.322. If the court finds that the person used a motor vehicle during the commission of the offense, it shall forward its finding along with an indication of whether the person has previously been convicted of a prostitution offense to the commissioner of public safety who shall record the finding on the person's driving record. Except as provided in paragraph (b), the finding is classified as private data on individuals, as defined in section 13.02, subdivision 12, but is accessible for law enforcement purposes.

(b) If the person has previously been convicted of a violation of this section or section 609.322, the finding is public data.

- Rationale/Result:
 - Increased tools to enforce demand-side cases will allow investigators and prosecutors to appropriately account for the demand role in human trafficking and provide more effective deterrence. Decreased emphasis on *where* an act occurred vs. what the buyer is doing helps further shift the attitude that the crime is merely a public nuisance and not a victim-related crime.

GOAL #3: Changes to Trafficking-Related Statutes - Protecting Victims and Children

A. Raise the statutory maximum sentence for Solicitation of Children to Engage in Sexual Conduct from three (3) to five (5) years.

- Issue:
 - Details conducted by ICAC-trained investigators and multi-jurisdictional task forces have continued to uncover a **high demand by adult offenders to solicit children 15 years of age or younger to engage in sexual conduct**. Additional maximum consequences for offenders are appropriate.
- Proposal:
 - Amend Minn. Stat. § 609.352, subd. 4 to:
 - Subd. 4 Penalty. A person convicted under subdivision 2 or 2a is guilty of a felony and may be sentenced to imprisonment for not more than ~~three~~ **five** years, or to payment of a fine of not more than \$5,000, or both.
- Rationale/Result:
 - Currently, the Minnesota Sentencing Guidelines Sex Offender Grid places this offense at Severity Level G. Offenders with criminal history scores of 0-3 received probation sentences (15-30 months prison stayed pending the probationary term). An increased maximum prison sentence also increases the potential probation term to 5 years, allowing **more time for probation to monitor** those offenders who continue to pose a threat to minor victims.
 - Offenders with criminal history scores of 4 or more are limited to prison sentences in the range of 34-36 months. This is inconsistent with other Severity Level G offenses, where prison sentences range from 34-

60 months depending on criminal history. Increased maximum sentences would allow Judges to sentence offenders with higher criminal history scores to a broader range of sentences up to five years.

- This change would not require a modification of the Guidelines.

B. Increase penalties to deter trespassing at facilities providing emergency shelter services or transitional housing for sex trafficking victims and their children; consistent with protections for battered women facilities.

- Issue:
 - Facilities providing emergency shelter services or transitional housing for sex trafficking victims and their children are locations where past, current, or potential future traffickers may locate victims **to recruit, harass, intimidate, or harm them**. State-wide, facilities serving juvenile and adult victim-survivors are at risk from traffickers; victims and their children who come to these facilities **deserve similar protections to those appropriately provided for victims of domestic violence and their children**. An increase to a gross misdemeanor charge would give staff and law enforcement greater ability to keep traffickers out and victims safe.
- Proposal:
 - Amend Minn. Stat. § 609.605, subd. 2 to:
 - Subd. 4 Gross Misdemeanor. Whoever trespasses upon the grounds of a facility providing emergency shelter services for battered women, as defined under section 611A.31, subdivision 3, or providing comparable services for sex trafficking victims, as defined under section 609.321, subdivision 7b, or of a facility providing transitional housing for battered women and their children or sex trafficking victims and their children, without claim of right or consent of one who has right to give consent, and refuses to depart from the grounds of the facility on demand of one who has right to give consent, is guilty of gross misdemeanor.
- Rationale:
 - CMHTTF's work with adult and juvenile victim-survivors has emphasized the vulnerability and susceptibility of victims to recruitment and/or retention tactics by traffickers (including, but not limited to: promises to change, drugs, financial incentives or deterrents, and intimidation). Like victims of intimate partner violence, the moments when the victim-survivor cooperates with investigators or reaches out for help at a shelter or transitional housing are fraught with peril.
 - CMHTTF investigations have revealed multiple victims whose trafficker deploys techniques used by batterers with their domestic violence victims and children. Terebinth Refuge, a facility in Waite Park providing housing and services for adult victim-survivors and their children, has observed traffickers come to the facility and grounds. State-wide Safe Harbor facilities providing shelter for youth are also susceptible to traffickers preying on young victims.
 - Staff at these facilities and law enforcement need the ability to ensure that victim-survivors and their children can be free from harassment while on their premises.
- Result:
 - **Gross misdemeanor penalties would put victims of trafficking and domestic battering on equal footing and increase punishments for traffickers or others who seek to further harm them.**