

Closing the Gaps: A Review of the 2021 Sexual Assault Statutory Reforms



Hennepin County Law Library CLE



James Hanneman

- Senior attorney, Adult Prosecution, Hennepin County Attorney's Office
- Sexual Assault Initiative
 - **Goal:** improve response to sexual assault across systems
- 3 years: Alcohol and drug-facilitated assaults
- Current: embedded with suburban police departments on sexual assault cases



Context for reform

Cultural shifts



Denied Justice, Star Tribune

DENIED JUSTICE • SPECIAL REPORT

THE RAPE CASES THAT GO NOWHERE



Summit
turns to
scramble
for Trump

Starting in Helsinki, week
of major missteps, gaffes.

By ASHLEY PARKER, PHILIP
RUCKER and JOSH DAWSEY
Washington Post

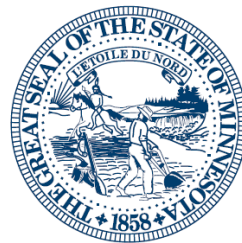
WASHINGTON - Executive
time began early on Thursday,
just after sunrise.

Feeling exasperated and
feisty as he awoke in the White
House residence, President
Donald Trump fired off his
grievances on Twitter about
how the media had been cover-
ing his Helsinki summit.
And, refusing to be cowed,
Trump gave National Security
Adviser John Bolton an order:
to schedule a second summit
and officially invite Russian
President Vladimir Putin to
visit Washington.

Minnesota Attorney General Working Group

STATE OF MINNESOTA

ATTORNEY GENERAL'S WORKING GROUP ON SEXUAL ASSAULT



*Recommendations
December 2018*



Recommendations

Process

- POST Board model policy on sexual assault investigations
- Require police department policies
- Require police training
- Easier for victims to report
- Require police reporting of aggregate data
- Authorize pre-conviction DNA collection

Substance

- Clarify definition of “physically helpless” when victim is impaired
- Repeal Voluntary Relationships Statute (MS 609.349)



Recommendations

Process

- POST Board model policy on SA investigations
- Require police department policies
- Require police training
- Easier for victims to report
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Substance

- Clarify definition of “physically helpless” when victim is impaired
- Repeal Voluntary Relationships Statute (MS 609.349)



Criminal Sexual Conduct Statutory Reform Working Group

CRIMINAL SEXUAL CONDUCT STATUTORY REFORM WORKING GROUP

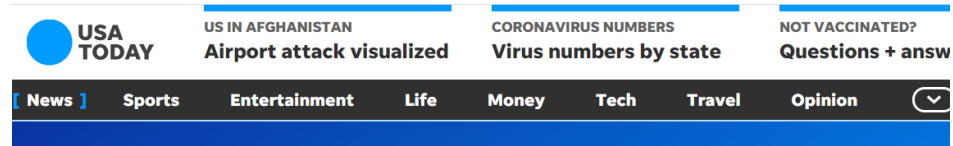
Report to the Minnesota Legislature

January 2021



Minnesota Department of Public Safety
Office of Justice Programs

State v. Khalil, 956 N.W.2d 627 (Minn. 2021)



POLITICS

Minnesota Supreme Court throws out rape conviction because intoxicated woman willingly consumed alcohol

[Sarah Elbeshbishi](#) USA TODAY

Published 12:10 p.m. ET Mar. 27, 2021 | Updated 2:13 p.m. ET Mar. 28, 2021



Sess. Laws 2021, 1st Spec. Sess., Ch 11, Art. 4

ARTICLE 4

CRIMINAL SEXUAL CONDUCT

Section 1. Minnesota Statutes 2020, section 2.722, subdivision 1, is amended to read:

Subdivision 1. **Description.** Effective July 1, 1959, the state is divided into ten judicial districts composed of the following named counties, respectively, in each of which districts judges shall be chosen as hereinafter specified:

1. Goodhue, Dakota, Carver, Le Sueur, McLeod, Scott, and Sibley; 36 judges; and four permanent chambers shall be maintained in Red Wing, Hastings, Shakopee, and Glencoe and one other shall be maintained at the place designated by the chief judge of the district;
2. Ramsey; 26 judges;
3. Wabasha, Winona, Houston, Rice, Olmsted, Dodge, Steele, Waseca, Freeborn, Mower, and Fillmore; 23 judges; and permanent chambers shall be maintained in Faribault, Albert Lea, Austin, Rochester, and Winona;
4. Hennepin; 60 judges;
5. Blue Earth, Watonwan, Lyon, Redwood, Brown, Nicollet, Lincoln, Cottonwood, Murray, Nobles, Pipestone, Rock, Faribault, Martin, and Jackson; ~~16~~ 17 judges; and permanent chambers shall be maintained in Marshall, Windom, Fairmont, New Ulm, and Mankato;



The Reforms



Broadening protections for voluntarily intoxicated victims

Impairment cases

Physically helpless

Means that a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor.

State v. Blevins, 757 N.W.2d 698 (Minn. App. 2008) – conviction reversed

State v. Finley, 2014 WL 1660669 (Minn. App. Apr. 28, 2014) – conviction reversed

Limitation: Focuses on physical inability to communicate – which applies in very few cases – rather than mental ability to give consent

Mentally incapacitated

Means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.

State v. Khalil, 956 N.W.2d 627 (Minn. 2021) – conviction reversed

Limitation: Doesn't apply to victims who voluntarily consume alcohol or drugs

Impairment cases

Physically helpless

Means that a person is (a) **asleep or not conscious**, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor.

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Means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, **lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.**

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State v. Finley, 2014 WL 1660669 (Minn. App. Apr. 28, 2014) – conviction reversed

Limitation: Focuses on physical inability to communicate – which applies in very few cases – rather than mental ability to give consent

Mentally incapacitated

Means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, **administered to that person without the person's agreement**, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.

State v. Khalil, 956 N.W.2d 627 (Minn. 2021) – conviction reversed

Limitation: Doesn't apply to victims who voluntarily consume alcohol or drugs



Revised statute

MS 609.341, subd. 7. Mentally incapacitated.

"Mentally incapacitated" means:

(1) that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration; or

(2) that a person is under the influence of any substance or substances to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person's conduct.



Voluntary intoxication defense

MS 609.3469 VOLUNTARY INTOXICATION DEFENSE.

(a) The "knows or has reason to know" mental state requirement for violations of sections 609.342 to 609.345 involving a complainant who is mentally incapacitated, as defined in section 609.341, subdivision 7, clause (2), involves specific intent for purposes of determining the applicability of the voluntary intoxication defense described in section 609.075. This defense may be raised by a defendant if the defense is otherwise applicable under section 609.075 and related case law.

(b) Nothing in paragraph (a) may be interpreted to change the application of the defense to other crimes.

(c) Nothing in paragraph (a) is intended to change the scope or limitations of the defense or case law interpreting it beyond clarifying that the defense is available to a defendant described in paragraph (a).



Simplifying the definition of force and coercion

Levels of sex offenses

Criminal Sexual Conduct 5

5

Act:

Nonconsensual **sexual contact** (ie, groping)

Level:

Gross
Misdemeanor
Not registerable

Criminal Sexual Conduct 4

4

Act:

Nonconsensual **sexual contact** **PLUS** enhancer (ie. force or coercion, physically helpless, prohibited occupation)

Level:

Felony (level E)
24mo. stayed – 120mo. commit
Registerable

Criminal Sexual Conduct 3

3

Act:

Nonconsensual **penetration** **PLUS** enhancer

Level:

Felony (level C)
48-180mo. commit
Registerable

Criminal Sexual Conduct 2

2

Act:

Nonconsensual **sexual contact** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level B)
90-300mo. commit
Registerable

Criminal Sexual Conduct 1

1

Act:

Nonconsensual **penetration** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level A)
144-360mo. commit
Registerable

Levels of sex offenses

Criminal Sexual Conduct 5

5

Act:

Nonconsensual **sexual contact** (ie, groping)

Level:

Gross Misdemeanor
Not registerable

Criminal Sexual Conduct 4

4

Act:

Nonconsensual **sexual contact** **PLUS** enhancer (ie. force or coercion, physically helpless, prohibited occupation)

Level:

Felony (level E)
24mo. stayed – 120mo. commit
Registerable

Criminal Sexual Conduct 3

3

Act:

Nonconsensual **penetration** **PLUS** enhancer

Level:

Felony (level C)
48-180mo. commit
Registerable

Criminal Sexual Conduct 2

2

Act:

Nonconsensual **sexual contact** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level B)
90-300mo. commit
Registerable

Criminal Sexual Conduct 1

1

Act:

Nonconsensual **penetration** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level A)
144-360mo. commit
Registerable

Levels of sex offenses

Criminal Sexual Conduct 5

5

Act:

Nonconsensual **sexual contact** (ie, groping)

Level:

Gross Misdemeanor
Not registerable

Criminal Sexual Conduct 4

4

Act:

Nonconsensual **sexual contact** **PLUS** enhancer (ie. force or coercion, physically helpless, prohibited occupation)

Level:

Felony (level E)
24mo. stayed – 120mo. commit
Registerable

Criminal Sexual Conduct 3

3

Act:

Nonconsensual **penetration** **PLUS** enhancer

Level:

Felony (level C)
48-180mo. commit
Registerable

Criminal Sexual Conduct 2

2

Act:

Nonconsensual **sexual contact** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level B)
90-300mo. commit
Registerable

Criminal Sexual Conduct 1

1

Act:

Nonconsensual **penetration** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level A)
144-360mo. commit
Registerable

Levels of sex offenses

Criminal Sexual Conduct 5

5

Act:

Nonconsensual **sexual contact** (ie, groping)

Level:

Gross Misdemeanor
Not registerable

Criminal Sexual Conduct 4

4

Act:

Nonconsensual **sexual contact** **PLUS** enhancer (ie. force or coercion, physically helpless, prohibited occupation)

Level:

Felony (level E)
24mo. stayed – 120mo. commit
Registerable

Criminal Sexual Conduct 3

3

Act:

Nonconsensual **penetration** **PLUS** enhancer

Level:

Felony (level C)
48-180mo. commit
Registerable

Criminal Sexual Conduct 2

2

Act:

Nonconsensual **sexual contact** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level B)
90-300mo. commit
Registerable

Criminal Sexual Conduct 1

1

Act:

Nonconsensual **penetration** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level A)
144-360mo. commit
Registerable

Levels of sex offenses

Criminal Sexual Conduct 5

5

Act:

Nonconsensual **sexual contact** (ie, groping)

Level:

Gross Misdemeanor
Not registerable

Criminal Sexual Conduct 4

4

Act:

Nonconsensual **sexual contact** **PLUS** enhancer (ie. force or coercion, physically helpless, prohibited occupation)

Level:

Felony (level E)
24mo. stayed – 120mo. commit
Registerable

Criminal Sexual Conduct 3

3

Act:

Nonconsensual **penetration** **PLUS** enhancer

Level:

Felony (level C)
48-180mo. commit
Registerable

Criminal Sexual Conduct 2

2

Act:

Nonconsensual **sexual contact** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level B)
90-300mo. commit
Registerable

Criminal Sexual Conduct 1

1

Act:

Nonconsensual **penetration** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level A)
144-360mo. commit
Registerable



Force

MS 609.341, subd. 3. Force

"Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.



Force

MS 609.341, subd. 3. Force 1

"Force" means **the infliction**, attempted infliction, or threatened infliction **by the actor of bodily harm** or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.



Force

MS 609.341, subd. 3. Force

2

"Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.



Force

MS 609.341, subd. 3. Force

"Force" means the infliction, attempted infliction, **3** or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.



Force

MS 609.341, subd. 3. Force

"Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily

- 4 harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

?????



Force revised

Cause pain or injury

MS 609.341, subd. 3. Force

"Force" means either (1) the infliction by the actor of bodily harm; or (2) the attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which
~~(a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.~~

Attempted or threatened infliction, or threat of other crime



Coercion

MS 609.341, subd. 14. Coercion

"Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will. Proof of coercion does not require proof of a specific act or threat.



Coercion

MS 609.341, subd. 14. Coercion 1

"Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will. Proof of coercion does not require proof of a specific act or threat.



Coercion

MS 609.341, subd. 14. Coercion

"Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or **the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will.** Proof of coercion does not require proof of a specific act or threat. **2**



Coercion revised

MS 609.341, subd. 14. Coercion

"Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear ~~that the actor will inflict~~ the infliction of bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant ~~that causes the complainant to submit to sexual penetration or contact against the complainant's will~~ to accomplish the act. Proof of coercion does not require proof of a specific act or threat.

Accomplices!

Readability! ←



**Separating
force from coercion and
force from personal injury**

Levels of sex offenses

Criminal Sexual Conduct 5

Act:
Nonconsensual **sexual contact**
(ie, groping)

Level:
Gross
Misdemeanor
Not registerable

Criminal Sexual Conduct 4

Act:
Nonconsensual **sexual contact**
PLUS enhancer
(ie. force or coercion,
physically helpless,
prohibited occupation)

Level:
Felony (level E)
24mo. stayed –
120mo. commit
Registerable

Criminal Sexual Conduct 3

Act:
Nonconsensual **penetration**
PLUS
force/coercion

Level:
Felony (level C)
48-180mo.
commit
Registerable

Criminal Sexual Conduct 2

Act:
Nonconsensual **sexual contact**
PLUS enhancer
PLUS personal
injury

Level:
Felony (level B)
90-300mo.
commit
Registerable

Criminal Sexual Conduct 1

Act:
Nonconsensual **penetration**
PLUS
force/coercion
PLUS personal
injury

Level:
Felony (level A)
144-360mo.
commit
Registerable



Force

MS 609.341, subd. 3.

“means the infliction . . .
by the actor of bodily
harm”

Personal injury

MS 609.341, subd. 8.

"means bodily harm . . . or
severe mental anguish or
pregnancy”

Force revised

Cause pain or injury

MS 609.341, subd. 3. Force

"Force" means either (1) the infliction by the actor of bodily harm; or (2) the attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which
~~(a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.~~

Attempted or threatened infliction, or threat of other crime



Criminal Sexual Conduct 3

MS 609.344, subd. 1.

(a) the actor uses ~~force or coercion~~ to accomplish the penetration;

...

(c) the actor uses force, as defined in section 609.341, subdivision 3, clause (2)



The threats one



Criminal Sexual Conduct 1

MS 609.344, subd. 1.

(c) the actor causes personal injury to the complainant, and either any of the following circumstances exist:

(i) the actor uses ~~force or coercion~~ to accomplish the act; or

(ii) the actor uses force, as defined in section 609.341, subdivision 3, clause (2); or

→ The threats one

...

(d) the actor uses force as defined in section 609.341, subdivision 3, clause (1)

→ The pain or injury one



Upshots and speculation

- Increased severity for inflicting pain/injury
- More counts?
- Preference for (d)?
- Unanimity issues?
 - *State v. Epps*, 949 N.W.2d 474 (Minn. App. 2020) – jury need not unanimously agree whether actor used force or coercion



Establishing a felony crime for nonconsensual penetration

Levels of sex offenses

Criminal Sexual Conduct 5

5

Act:

Nonconsensual **sexual contact** (ie, groping)

Level:

Gross
Misdemeanor
Not registerable

Criminal Sexual Conduct 4

4

Act:

Nonconsensual **sexual contact** **PLUS** enhancer (ie. force or coercion, physically helpless, prohibited occupation)

Level:

Felony (level E)
24mo. stayed – 120mo. commit
Registerable

Criminal Sexual Conduct 3

3

Act:

Nonconsensual **penetration** **PLUS** enhancer

Level:

Felony (level C)
48-180mo. commit
Registerable

Criminal Sexual Conduct 2

2

Act:

Nonconsensual **sexual contact** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level B)
90-300mo. commit
Registerable

Criminal Sexual Conduct 1

1

Act:

Nonconsensual **penetration** **PLUS** enhancer **PLUS** personal injury

Level:

Felony (level A)
144-360mo. commit
Registerable



CSC5 revised

609.3451 Criminal Sexual Conduct in the Fifth Degree

Subdivision 1. Sexual penetration; crime defined.

A person is guilty of criminal sexual conduct in the fifth degree: if the person engages in nonconsensual sexual penetration.

...

Subd. 3. Felony.

(a) A person is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$10,000, or both, if the person violates subdivision 1.



CSC5 revised

609.3451 Criminal Sexual Conduct in the Fifth Degree

Subdivision 1. Sexual penetration; crime defined.

A person is guilty of criminal sexual conduct in the fifth degree: if the person engages in nonconsensual sexual penetration.

...

Subd. 3. Felony.

(a) A person is guilty of a felony and may be sentenced to imprisonment for **not more than two years** or to payment of a fine of not more than \$10,000, or both, if the person violates subdivision 1.

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)	CRIMINAL HISTORY SCORE						
	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)(j)(k)(l)(m)(n)(o) (p) (e.g., contact, & force, & injury with bodily harm)</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)(j)(k)(l)(m)(n)(o) (p) (e.g., penetration & force coercion/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>131-180¹⁸³</i>	180 <i>153-180²¹⁶</i>
<i>CSC 2nd Degree-1a(e)(f)(a)(b)(g) (age) (e.g., contact & victim under 13)</i> <i>CSC 3rd Degree-1a(a)(e)(f) or 1a(b) with 2(1) (age) (e.g., penetration & child victim)</i>	D 36	48	60 <i>51-72</i>	70 <i>60-84</i>	91 <i>78-109</i>	119 <i>102-142</i>	140 <i>119-168</i>
<i>CSC 4th Degree-1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i)(j)(k)(l)(m)(n)(o) (p) (e.g., contact & force coercion/occupation)</i> <i>Dissemination of Child Pornography²</i>	E 24	36	48	60 <i>51-72</i>	78 <i>67-93</i>	102 <i>87-120</i>	120 <i>102-120²</i>
<i>CSC 4th Degree-1a(a)(b)(e)(f) (age) (e.g., contact & child victim)</i> <i>CSC 5th Degree-3(b) (subsequent) Possession of Child Pornography (Subseq./Pred. Off./Under 13)</i>	F 18	27	36	45 <i>39-54</i>	59 <i>51-70</i>	77 <i>66-92</i>	84 <i>72-100</i>
<i>CSC 3rd Degree-1a(b) with 2(2) (i.e., penetration & child victim 24-48 mo. younger)</i> <i>Possession of Child Pornography Solicit Child for Sexual Conduct²</i>	G 15	20	25	30	39 <i>34-46</i>	51 <i>44-60</i>	60 <i>51-60²</i>
<i>CSC 5th Degree-3(a) (nonconsensual penetration)</i>	H <i>12¹</i>	<i>14</i>	<i>16</i>	<i>18</i>	<i>24</i>	<i>24²</i> <i>24-24</i>	<i>24²</i> <i>24-24</i>
<i>Failure to Register as a Predatory Offender</i>	H I <i>12¹</i> <i>12¹-14</i>	<i>14</i> <i>12¹-16</i>	<i>16</i> <i>14-19</i>	<i>18</i> <i>16-21</i>	<i>24</i> <i>21-28</i>	<i>30</i> <i>26-36</i>	<i>36</i> <i>31-43</i>

Not registerable

¹ 12¹=One year and one day



Expanding protections for children



Age-based offense age ranges

- Victim under 13
- Victim 13 -15
- Victim 16-17 PLUS position of authority or significant relationship



Revised ranges

- Victim under 143
- Victim 143 -15
- Victim 16-17 PLUS position of authority or significant relationship



Offenses impacted

- Sexual contact or penetration (CSC 1-4)
- Prostitution (609.324)
- Child pornography (617.247)
- Use of Minor in Sexual Performance (617.246)



Other age modifications

- Narrowed the permissible age gap
 - 4 years to 3 years
- Reduced applicability of mistake of age defense
 - Available for actors less than 60 months older than the victim (previously 120 months) for some offenses



Significant relationship

MS 609.341, subd. 15. Significant relationship

"Significant relationship" means a situation in which the actor is:

...

- (4) an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complainant.



Establishing a Sexual Extortion Crime



Sexual Extortion

MS. 609.3458

- Subd. 1 – compelled sexual contact
 - Statutory max 10 years
 - Level E (= CSC4 – Force/Coercion)
- Subd. 2 – compelled sexual penetration
 - Statutory max 15 years
 - Level C (=CSC3 – Force/Coercion)



Sexual Extortion

(1) a threat to withhold or harm the complainant's trade, business, profession, position, employment, or calling;

(2) a threat to make or cause to be made a criminal charge against the complainant, whether true or false;

(3) a threat to report the complainant's immigration status to immigration or law enforcement authorities;

(4) a threat to disseminate private sexual images of the complainant as specified in section 617.261, nonconsensual dissemination of private sexual images;

(5) a threat to expose information that the actor knows the complainant wishes to keep confidential; or

(6) a threat to withhold complainant's housing, or to cause complainant a loss or disadvantage in the complainant's housing, or a change in the cost of complainant's housing



Removing the statute of limitations



Statute of Limitations

5313. Limitations—Indictments for murder may be found at any time after the death of the person killed; in all other cases, indictments shall be found and filed in the proper court within three years after the commission of the offence; but the time during which the defendant shall not be an inhabitant of, or usually resident within, this state, shall not constitute any part of the said limitation of three years. (7255)

Revised laws 1905



Statute of Limitations

- Juvenile victim: 9 years after offense or 3 years after reported to law enforcement
- Adult victim: 9 years after commission of offense
- All cases: no statute of limitations if evidence exists that is capable of being tested for DNA

Statute of Limitations Revised

Solicitation/Promotion of prostitution/Sex Trafficking

CSC1 – CSC4

MS 628.26

e) ~~Indictments or complaints for violation of sections 609.322 and 609.342 to 609.345, if the victim was under the age of 18 years at the time the offense was committed, shall may be found or made and filed in the proper court within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities at any time after the commission of the offense.~~

~~(f) Notwithstanding the limitations in paragraph (e), indictments or complaints for violation of sections 609.322 and 609.342 to 609.344 may be found or made and filed in the proper court at any time after commission of the offense, if physical evidence is collected and preserved that is capable of being tested for its DNA characteristics. If this evidence is not collected and preserved and the victim was 18 years old or older at the time of the offense, the prosecution must be commenced within nine years after the commission of the offense.~~



**Creating new prohibited
occupational relationships**



School employees

MS 609.341, subd. 24(2)

(ix) the complainant was enrolled in a secondary school and:

(A) the actor was a licensed educator employed or contracted to provide service for the school at which the complainant was a student;

(B) the actor was age 18 or older and at least 48 months older than the complainant and was employed or contracted to provide service for the secondary school at which the complainant was a student; or

(C) the actor was age 18 or older and at least 48 months older than the complainant, and was a licensed educator employed or contracted to provide services for an elementary, middle, or secondary school;



Caregivers

MS 609.341, subd. 24(2)

(x) the actor was a caregiver, facility staff person, or person providing services in a facility, and the complainant was a vulnerable adult who was a resident, patient, or client of the facility who was impaired in judgment or capacity by mental or emotional dysfunction or undue influence; or

(xi) the actor was a caregiver, facility staff person, or person providing services in a facility, and the complainant was a resident, patient, or client of the facility. This clause does not apply if a consensual sexual personal relationship existed prior to the caregiving relationship or if the actor was a personal care attendant.



Formerly under Criminal Abuse MS 609.2325

Felony crimes now



Reorganizing the statute for readability

Adult vs. Child victims

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MINNESOTA STATUTES 2020

609.342

609.342 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

Subdivision 1. **Crime defined.** A person who engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(b) the complainant is at least 13 years of age but less than 16 years of age and the actor is more than 48 months older than the complainant and in a current or recent position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(c) circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(d) the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

(e) the actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) the actor uses force or coercion to accomplish the act; or

(ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(f) the actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

(i) an accomplice uses force or coercion to cause the complainant to submit; or

(ii) an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

(g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the act. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the act, and:

(i) the actor or an accomplice used force or coercion to accomplish the act;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 2. **Penalty.** (a) Except as otherwise provided in section 609.3455; or Minnesota Statutes 2004, section 609.109, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 30 years or to a payment of a fine of not more than \$40,000, or both.



Adult vs. Child victims

- Subdivision 1 – Adult victims
- Subdivision 1a – Child victims

Prohibited occupational relationships

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MINNESOTA STATUTES 2020

609.344

609.344 CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE.

Subdivision 1. **Crime defined.** A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense. Consent by the complainant is not a defense;

(c) the actor uses force or coercion to accomplish the penetration;

(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a current or recent position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:

(i) the actor or an accomplice used force or coercion to accomplish the penetration;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred:

(i) during the psychotherapy session; or

(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists.

Consent by the complainant is not a defense;

(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception. Consent by the complainant is not a defense;

609.344

MINNESOTA STATUTES 2020

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(k) the actor accomplishes the sexual penetration by means of deception or false representation that the penetration is for a bona fide medical purpose. Consent by the complainant is not a defense;

(1) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:

(i) the sexual penetration occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or

(ii) the sexual penetration occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;

(n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, and the sexual penetration occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense;

(o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual penetration occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant; or

(p) the actor is a peace officer, as defined in section 626.84, and the officer physically or constructively restrains the complainant or the complainant does not reasonably feel free to leave the officer's presence. Consent by the complainant is not a defense. This paragraph does not apply to any penetration of the mouth, genitals, or anus during a lawful search.

Subd. 2. **Penalty.** Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced:

(1) to imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000, or both; or

(2) if the person was convicted under subdivision 1, paragraph (b), and if the actor was no more than 48 months but more than 24 months older than the complainant, to imprisonment for not more than five years or a fine of not more than \$30,000, or both.

A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. **Stay.** Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.



Prohibited occupational relationships

- Definitions section
 - 609.341, subdivision 24



Effective date
Sept 15, 2021



Late effective date

- Special session
- Significant review by Minn. Sentencing Guidelines Commission



Nonlegislative Actions



Sentencing Guidelines

- Assigning rankings
- Rework sentencing grids
- Considered proposal to increase child victim severity levels



Predatory Offender Working Group

- Assess POR laws
 - Requirements placed on offenders
 - Crimes for which POR is required
 - Method by which POR is applied
 - Effectiveness of POR system in achieving stated purpose
- Report due January 14, 2022



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