

HF707 - 2UE - Criminal Sexual Conduct, Sexual Extortion

Chief Author: **Kelly Moller**
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**
 Date Completed: **3/30/2021 4:38:38 PM**
 Lead Agency: **Supreme Court**
 Other Agencies:
 Corrections Dept Public Defense Board
 Public Safety Dept Sentencing Guidelines Comm

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings) Dollars in Thousands	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept					
General Fund	-	112	429	823	1,292
Public Safety Dept					
General Fund	-	131	-	-	-
Supreme Court					
General Fund	-	482	449	449	449
State Total					
General Fund	-	725	878	1,272	1,741
Total	-	725	878	1,272	1,741
Biennial Total			1,603		3,013

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept					
General Fund	-	1.2	4.8	9.1	14.4
Public Safety Dept					
General Fund	-	-	-	-	-
Supreme Court					
General Fund	-	-	-	-	-
Total	-	1.2	4.8	9.1	14.4

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

The Department of Corrections anticipates significant fiscal impact in years not shown on the State Cost (Savings) Table. Please review the Long Term Fiscal Considerations section of the fiscal note for an explanation of the fiscal impact. The Public Defense Board anticipates that the proposed legislation will have a fiscal impact. However, an estimate cannot be

determined due to a lack of data.

LBO Signature: Maren Bardal **Date:** 3/30/2021 4:38:38 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Corrections Dept						
General Fund	-	112	429	823	1,292	
Public Safety Dept						
General Fund	-	131	-	-	-	
Supreme Court						
General Fund	-	482	449	449	449	
Total		-	725	878	1,272	1,741
Biennial Total				1,603		3,013
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Corrections Dept						
General Fund	-	112	429	823	1,292	
Public Safety Dept						
General Fund	-	131	-	-	-	
Supreme Court						
General Fund	-	482	449	449	449	
Total		-	725	878	1,272	1,741
Biennial Total				1,603		3,013
2 - Revenues, Transfers In*						
Corrections Dept						
General Fund	-	-	-	-	-	
Public Safety Dept						
General Fund	-	-	-	-	-	
Supreme Court						
General Fund	-	-	-	-	-	
Total		-	-	-	-	-
Biennial Total				-		-

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 Agency: **Supreme Court**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	482	449	449	449	449
Total	-	482	449	449	449	449
Biennial Total			931			898

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Maren Bardal **Date:** 3/30/2021 4:13:45 PM
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State Cost (Savings) Calculation Details

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*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	482	449	449	449	449
Total		-	482	449	449	449
Biennial Total				931		898
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	482	449	449	449	449
Total		-	482	449	449	449
Biennial Total				931		898
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

HF707-2UE at section 1 amends Minn. Stat. § 609.2325, Criminal Abuse, to remove the provisions governing sexual contact or penetration by a caregiver or facility staff person against a resident, patient, or client of the facility; at sections 2-11 amends Minn. Stat. § 609.341 (definitions applicable to criminal sexual conduct offenses) at subdivision 3 to modify the definition of “force;” at subdivision 7 to expand the definition of “mentally incapacitated” to include “that a person is under the influence of an intoxicating substance to a degree that renders them incapable of consenting or incapable of appreciating, understanding, or controlling the person’s conduct;” at subdivisions 11 and 12 to modify the statutory cross references in the definitions of “sexual contact” and “sexual penetration;” at subdivision 14 to clarify the definition of “coercion;” at subdivision 15 to amend the definition of “significant relationship” to include situations in which the actor is “an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complainant;” adds a new subdivision 24 to define all “prohibited occupational relationships;” adds a new subdivision 25 to define “caregiver;” adds a new subdivision 26 to define “facility;” and adds a new subdivision 27 to define “vulnerable adult.”

The bill at sections 12-15 amends Minn. Stat. § 609.342-345, Criminal Sexual Conduct in the First, Second, Third, and Fourth Degree, to separate offenses involving adult victims from those involving child victims, clarify the provisions, and modify the penalty provisions accordingly, and to eliminate from the third and fourth degree offenses the provisions specifically naming the various prohibited occupational relationships and to instead refer to that term as defined in section 609.341.

The bill at section 16 amends Minn. Stat. § 609.3451, Criminal Sexual Conduct in the Fifth Degree to separate crimes involving sexual penetration from those involving sexual contact, modify the penalty provisions accordingly, and increase the look back period for prior offenses for certain felony violations from 7 to 10 years. The bill at section 17 amends Minn. Stat. § 609.3455, Dangerous Sex Offenders, to add a reference to section 609.3458 (Sexual Extortion) to the definition of “conviction” and “sex offense” and to various mandatory sentencing and conditional release provisions, and to add additional statutory cross references.

The bill at section 18 adds a new Minn. Stat. § 609.3458, Sexual Extortion, making it a felony to engage in or compel submission to sexual contact or penetration by making certain threats, directly or indirectly, including threats to withhold or harm business, to bring criminal charges, to report immigration status, to disseminate private sexual images, and to withhold housing. The bill at section 19 creates the Predatory Offender Statutory Framework Working Group, convened by the Commissioner of Public Safety and including members from various agencies and entities, and requires the filing of a report by January 15, 2022. The bill at section 20 directs the Revisor to make necessary cross-reference changes, and at 21 repeals sections 609.293, subdivisions 1 and 5 (sodomy); 609.34 (fornication); and 609.36 (adultery).

Assumptions

It is assumed that most of the provisions of this bill will not significantly affect case filing rates or the time the Judicial Branch spends on Criminal Sexual Conduct cases, and instead could affect the outcome of the cases already filed under the current statutes.

It is assumed that some of the changes could increase the criminal sexual conduct case filing rate, including the addition of a new offense of Sexual Extortion, the amendment to the Fifth Degree offense to create a felony level penetration crime that doesn't require a showing of force or coercion, reducing the position of authority age differential from 48 to 36 months, expanding the age cap from 13 to 14 in a number of provisions, reducing the mistake of age defense from 120 to 60 months, expanding the list of prohibited occupational relationships in the education setting and adding false impersonation, and expanding the definition of significant relationship and the definition of mentally incapacitated. The rate of increase in case filings that will result from the bill is unknown.

Expenditure and/or Revenue Formula

According to 3 years of judicial branch data, there are an average of 2,634 CSC cases filed statewide per year. Although it is unknown, if overall the provisions of this bill resulted in a 5% increase in the case filing rate, that could result in approximately 132 additional cases filed statewide per year. Based on judicial branch data, the average sex crime case requires an average of 609 minutes of judge time. Based on a 78,000 judge year in minutes, a 5% increase could require an additional judge FTE statewide per year ($132 \times 609 = 80,388$ minutes). A judge unit consists of a judge, a law clerk, and a court reporter. The cost of a judge unit, including set up costs in the first year, is \$482,000 in FY22 and \$449,000 in subsequent years.

Long-Term Fiscal Considerations

The cost is permanent.

Local Fiscal Impact

References/Sources

Agency Contact:

Agency Fiscal Note Coordinator Signature: Janet Marshall

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HF707 - 2UE - Criminal Sexual Conduct, Sexual Extortion

Chief Author: **Kelly Moller**
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**
 Date Completed: **3/30/2021 4:38:38 PM**
 Agency: **Corrections Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

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State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	112	429	823	1,292	
Total	-	112	429	823	1,292	
Biennial Total			541		2,115	

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	1.2	4.8	9.1	14.4
Total	-	1.2	4.8	9.1	14.4

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

This fiscal note includes significant fiscal impact in years not shown on the State Cost (Savings) Table. Please review the Long Term Fiscal Considerations section of the fiscal note for an explanation of the fiscal impact.

LBO Signature: Maren Bardal **Date:** 3/25/2021 3:50:44 PM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

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Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
General Fund	-	112	429	823	1,292	
Total	-	112	429	823	1,292	
Biennial Total			541		2,115	
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	112	429	823	1,292	
Total	-	112	429	823	1,292	
Biennial Total			541		2,115	
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	
Total	-	-	-	-	-	
Biennial Total			-		-	

Bill Description

The proposed legislation would amend M.S. 609.2325 (Criminal Abuse), M.S. 609.341 (Definitions), M.S. 609.342 (First-Degree Criminal Sexual Conduct (CSC)), M.S. 609.343 (Second-Degree CSC), M.S. 609.344 (Third-Degree CSC), M.S. 609.345 (Fourth-Degree CSC), M.S. 609.3451 (Fifth-Degree CSC), and M.S. 609.3455 (Dangerous Sex Offenders; Life Sentences; Conditional Release).

It would also add a new law (proposed M.S. 609.3458) for Sexual Extortion.

Assumptions

The prison bed impact and fiscal impact to the Department of Corrections is based on assumptions provided by the Minnesota Sentencing Guidelines Commission (MSGC). Refer to the MSGC fiscal note for details.

The MSGC estimates the provisions of this bill would result in the eventual need for an additional 234 state prison beds.

The estimated year-by-year prison bed impact would be 12 beds in FY2022, 38 beds in FY2023, 62 beds in FY2024 and 93 beds in FY2025; eventually reaching 234 beds in FY2040 and each subsequent year.

The estimated impact to supervision caseloads statewide as a result of the provisions of this bill would be minimal. However, the accumulative effects could be significant as new penalties or criminal enhancements are enacted.

Prison bed costs are based on a marginal cost per diem of \$40.75 in FY2022, \$41.59 in FY2023, \$42.50 in FY2024 and \$43.47 in FY2025. This includes marginal costs for all facility, private and public bed rental, health care and support costs.

The annual cost is estimated by multiplying the number of prison beds needed by the subsequent annual per diem. Unless otherwise noted, prison beds are phased in on a quarterly basis.

Prison bed FTE impact for the increase in the offender population assumes 80 percent of the ongoing bed impact is personnel-related and the average salary per FTE is \$72,000 per year including benefits.

An effective date is not specified but it is assumed this bill would be effective August 1, 2021 and would apply to crimes committed on or after that date.

Expenditure and/or Revenue Formula

Costs for Prison Beds - DOC

Fiscal Year	2021	2022	2023	2024	2025
Number of Prison Beds	0	12	38	62	93
Cost of Prison Beds (in 000s)	\$0	\$112	\$429	\$823	\$1,292
FTEs	0	1.2	4.8	9.1	14.4

Long-Term Fiscal Considerations

Estimated prison bed costs would increase to \$3.713 million in FY2041 and continue into subsequent years.

Local Fiscal Impact

There would be some impact to local correctional resources as a result of this bill. The MSGC estimates there would be 71 new probation cases statewide. People placed on probation are likely to receive some jail time as a condition of probation. The MSGC estimates there would be a need for 13 additional jail beds.

References/Sources

Minnesota Sentencing Guidelines Commission

Department of Corrections staff

Agency Contact: Karen Juneski 651-361-7259

Agency Fiscal Note Coordinator Signature: Chris Dodge

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Date: 3/25/2021 3:05:48 PM

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HF707 - 2UE - Criminal Sexual Conduct, Sexual Extortion

Chief Author: **Kelly Moller**
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**
 Date Completed: **3/30/2021 4:38:38 PM**
 Agency: **Public Defense Board**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

This fiscal note has been reviewed and complies with the Uniform Standards and Procedures. This proposed legislation has a fiscal impact. However, an estimate cannot be determined due to a lack of data.

LBO Signature: Maren Bardal **Date:** 3/15/2021 5:59:07 PM
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State Cost (Savings) Calculation Details

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*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
	Total	-	-	-	-	-
	Biennial Total			-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
	Total	-	-	-	-	-
	Biennial Total			-		-
2 - Revenues, Transfers In*						
	Total	-	-	-	-	-
	Biennial Total			-		-

Bill Description

HF 707 proposes several amendments to the criminal sexual conduct statutes. This bill would codify many of the recommendations of the Criminal Sexual Conduct Statutory Reform Working Group, which submitted its report in January 2021.

The bill revises the statutory scheme for first to fourth degree criminal sexual conduct to separate the sexual offenses involving adult victims and those involving child victims. It also creates the new felony offenses of fifth-degree sexual penetration and sexual extortion.

It expands the types of people and cases subject to higher levels of CSC offenses.

- Expands the definition of “mentally incapacitated” to include people who voluntarily became intoxicated.*
- Expands the definition of “coercion” to (a) remove the requirement that the complainant must fear the defendant, as opposed to someone else, might harm the complainant; and (b) remove the causation requirement (that is, the requirement that the state prove that the defendant use the coercion to accomplish the sexual conduct).
- Expands the definition of “significant relationship” to include a parent’s significant other who does not reside with the parent or complainant.
- Expands list of eligible “occupational relationships” to include licensed and non-licensed educators and caregivers for vulnerable adults, creating a new crime for these particular occupational relationships.*
- Creates a new felony version of fifth-degree CSC for nonconsensual sexual penetration. (Two-year statutory maximum sentence. No conditional release term).*
- Expands the age eligibility for certain crimes against young complainants from “under 13” to “under 14.” If the defendant is more than 36 months older than the complainant, the crime is first-degree (penetration) or second-degree (contact). If the actor is less than 36 months (actor is a teenager), the crime is third-degree (penetration) or fourth-degree (sexual contact).
- Expands the age differential for position of authority offenses. Currently defendants must be 48 months older than the complainant; the bill reduces that to include defendants 36 months older than the complainant.
- Reduces the availability of mistake-of-age defenses. The current law provides defendants 10 years or less older than a complainant 13 or older can claim mistake of age. The bill reduces that to defendants 5 years or less older than the complaint and makes the defense available only when the complainant is 14 or older.
- Removes “force” from 3rd and 4th degree CSC. This is to address the longstanding concern that first-degree CSC with force/personal injury and third-degree CSC/force cover basically the same conduct and the same

results. The state can still prove a 3rd or 4th degree offense occurred with coercion.

- Reduces the age disparity for fourth-degree sexual contact cases involving complainants ages 14 to less than 16 without force to 36 months older than the complainant. The current threshold includes defendants 48 months older than the complainant.

The bill also creates a new crime of “sexual extortion.” This is basically blackmailing someone into sexual conduct. (10-year statutory max for sexual contact; 15-year statutory max for sexual penetration). This new crime includes some conduct with is broad and vague, raising constitutional issues, which will include the likelihood that these cases will be appealed.

Assumptions

Overall, if enacted this bill would lead to many more people being charged with more serious versions of criminal sexual conduct crimes. The addition of these new crimes and the expansions of other provisions in the statutes would bring many more persons into the criminal justice system.

The magnitude of these changes is uncertain.

Expenditure and/or Revenue Formula

There will be additional costs incurred for attorney and support staff, and forensic experts, and psychological experts.

It has been our experience that when there are significant changes to the law that a number of cases get appealed or a post-conviction remedy is filed, this will add to the impact of this legislation, and while unknown it could be significant.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact:

Agency Fiscal Note Coordinator Signature: Kevin Kajer

Phone: 612-279-3508

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HF707 - 2UE - Criminal Sexual Conduct, Sexual Extortion

Chief Author: **Kelly Moller**
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**
 Date Completed: **3/30/2021 4:38:38 PM**
 Agency: **Public Safety Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	131	-	-	-	-
Total	-	131	-	-	-	-
Biennial Total			131			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-
Total	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Maren Bardal **Date:** 3/25/2021 8:27:18 AM
Phone: 651-284-6429 **Email:** maren.bardal@lbo.leg.mn

State Cost (Savings) Calculation Details

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Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
General Fund	-	131	-	-	-	-
Total	-	131	-	-	-	-
Biennial Total			131			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	131	-	-	-	-
Total	-	131	-	-	-	-
Biennial Total			131			-
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

Section 19: Creates the Predatory Offender Statutory Framework Working Group which is to be overseen by DPS (the Bureau of Criminal Apprehension will be the division of DPS to oversee the work, itself). Those to be included are representatives from the following: Department of Corrections (must have specific expertise on juvenile justice reform), city and county prosecuting agencies, statewide crime victim coalitions, the Minnesota judicial branch, the Minnesota Board of Public Defense, private criminal defense attorneys, the Department of Public Safety, the Department of Human Services, the Sentencing Guidelines Commission, state and local law enforcement agencies, and other interested parties.

The commissioner is to ensure that the working group is balanced among the various representatives and reflects a broad spectrum of viewpoints, and is inclusive of marginalized communities as well as victim and survivor voices.

The working group must examine and assess the predatory offender registration (POR) laws, including, but not limited to, the requirements placed on offenders, the crimes for which POR is required, the method by which POR requirements are applied to offenders, and the effectiveness of the POR system in achieving its stated purpose. Public POR information is to be provided to the group upon request and the working group is encouraged to seek assistance from the state court administrator’s office to obtain relevant data.

A report on the findings and recommendations of the workgroup is to be submitted by January 15, 2022.

Assumptions

The BCA will be responsible for convening the task force on behalf of the Department of Public Safety.

The task force would meet in eight half-day sessions from roughly July through January and meetings would held in the Twin Cities Metro Area.

The BCA would handle all logistics for reimbursements and expenses, would initiate communication with the task force members, and would participate as subject matter experts and leaders as needed.

However, the BCA would contract out the administration, research, management, and report writing to Wilder Research, which was used for the Missing and Murdered Indigenous Women’s Task Force Report. This would be done via the Management Analysis and Development Division (MAD) at the Minnesota Department of Management & Budget, which charges 8% of the final fee for the administration of the contract.

Expenditure and/or Revenue Formula

All consulting hour estimates below will vary upon complexity and the needs of the report and workgroup.

Activities (with estimates of consulting hours):

- **Planning and preparation**, including working with BCA to develop a project plan and to orient a chair of the task force (30 hours)
- **Task force management and logistics**, including developing resources for task force administration, organizing meeting dates and locations, and routine communication with the task force (70 hours)
- **Research and analysis for the task force**, such as comparison research, survey research, stakeholder sessions, or other qualitative data collection or engagement. (150 hours)
- **Task force meeting design, facilitation, and documentation**, including designing participatory and decision making processes for the meetings, developing materials for the task force (such as a charter), facilitating task force and planning meetings, and documenting task force meetings and preparing summaries. (260 hours)
- **Drafting the required report**, including writing or compiling necessary background information, summarizing the task force's process, finalizing the task force's recommendations, and ensuring document accessibility. (100 hours)
- Ongoing project management and client communications (110 hours)

Cost (estimated): \$121,680 (720 hours x rate of \$169.00 per hour at maximum)

MAD charges 8% of the final fee for administration of the contract, which would be \$9,734.40.

In total, the cost for the workgroup would be \$131,414.40.

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

Agency Contact: Olivia Anderson 651-793-2713

Agency Fiscal Note Coordinator Signature: Rita Wurm

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HF707 - 2UE - Criminal Sexual Conduct, Sexual Extortion

Chief Author: **Kelly Moller**
 Committee: **Public Safety and Criminal Justice Reform Finance and Policy**
 Date Completed: **3/30/2021 4:38:38 PM**
 Agency: **Sentencing Guidelines Comm**

State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact	X	

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Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Maren Bardal **Date:** 3/25/2021 3:24:02 PM
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State Cost (Savings) Calculation Details

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Biennial Total			-			-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total	-	-	-	-	-	-
Biennial Total			-			-
2 - Revenues, Transfers In*						
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

This bill amends Minn. Stat. sections 609.2325 (Criminal Abuse); 609.341 (Definitions); 609.342 (First-Degree Criminal Sexual Conduct (CSC)), 609.343 (Second-Degree CSC); 609.344 (Third-Degree CSC); 609.345 (Fourth-Degree CSC); 609.3451 (Fifth-Degree CSC); and 609.3455 (Dangerous Sex Offenders; Life Sentences; Conditional Release); and proposes a new law under Minn. Stat. section 609.3458 for Sexual Extortion.

Section 1 removes from the Criminal Abuse statute those offenses that become Third- and Fourth-Degree CSC elsewhere in the bill.

Section 2 reorganizes the definition of “force” to separate (1) infliction of bodily harm from (2) the attempted or threatened infliction of such harm or of any other crime. Section 2 also removes the requirement that the inflicted, attempted, or threatened infliction of bodily harm causes the complainant to submit.

Section 3 expands the definition of “mentally incapacitated” to include being under the influence of an intoxicating substance to a degree that renders a person incapable of consenting or incapable of appreciating, understanding, or controlling the person’s conduct.

Section 4 amends the cross-reference in the definition of “sexual contact” to correspond to the bill’s renumbering of the offenses of Second- and Fourth-Degree CSC.

Sections 4 and 5 substitute “under 14” for all “under 13” age references in the definitions of “sexual contact” and “sexual penetration.”

Section 6 amends the definition of “coercion” in two ways. First, when the definition is met by the complainant’s reasonable cause to fear the infliction of bodily harm, the bill deletes the requirement that the feared harm be of the actor’s infliction, in particular. Second, when the definition is met by the use by the actor of confinement or superior size or strength, the bill deletes the requirement that this behavior causes the complainant to submit against her will, substituting for that requirement the requirement that the behavior is used to accomplish the act.

Section 7 expands the definition of “significant relationship” to include an adult who is or was involved in a significant romantic or sexual relationship with the parent of a complaint.

Section 8 creates the definition of “prohibited occupational relationship.” The section specifies various combinations of occupations and circumstances in which sexual contact or penetration is prohibited. Most of these are consistent with the preexisting classifications in subds. 1(h)-(p) of Minn. Stat. § 609.344 & 609.345, except that, for several of the occupations, a false impersonator of the occupation is treated equally with an actual member of the occupation; and, for peace officers, a lawful use of force is a defense to sexual contact or penetration. In addition, Section 4 specifies two new categories of occupational relationships. One applies to complainants who are secondary school students. The actor must either be a licensed teacher at the complainant’s school, or, if an adult at least four years older than the complainant, then a licensed teacher at any primary or secondary school or an employee or contractor at the complainant’s school. The other applies to

residents of hospitals, nursing homes, and other facilities. The actor must be a caregiver, although, for residents who are not vulnerable adults impaired in judgement or capacity, there are exceptions for personal care attendants and preexisting consensual sexual relationships.

Sections 9, 10, and 11 cross-reference the definitions of “caregiver,” “facility,” and “vulnerable adult” found in section 609.232 (Crimes Against Vulnerable Adults; Definitions).

Section 12 amends sections 609.342 (First-Degree CSC), and separates adult victims and child victims by moving child victims into a new subd. 1a, as described in Table 1. Subdivision 1a is referenced in subd. 2 (Penalty).

Table 1. 609.342 (First-Degree CSC) Recodified

Current Subd.	Description	Guidelines Sev. Level	New Subd.	Description
609.342	<u>Adult Victim</u>		1	Sexual Penetration
1(a)	Victim under 13, Actor 3 years older	A		
1(b)	Victim 13-15, Actor 4 years older & Pos. Authority	A		
1(c)	Fear Great Bodily Harm	A	1(a)	Fear Great Bodily Harm
1(d)	Dangerous Weapon	A	1(b)	Dangerous Weapon
1(e)(i)	Personal Injury and Uses Force or Coercion	A	1(c)(i)	Personal Injury and Uses Coercion
1(e)(i)	Personal Injury and Uses Force or Coercion	A	1(c)(ii)	Personal Injury and Uses Force (<u>attempts/threats only</u>)
1(e)(ii)	Personal Injury and Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless	A	1(c)(iii)	Personal Injury and Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless
			1(d)	<u>Actor uses force (inflicts bodily harm)</u>
1(f)(i)	Accomplice and use Force or Coercion	A	1(e)(i)	<u>Actor or</u> Accomplice and use Force or Coercion
1(f)(ii)	Accomplice and Dangerous Weapon	A	1(e)(ii)	<u>Actor or</u> Accomplice and Dangerous Weapon
1(g)	Victim under 16, Significant Relationship	A		
1(h)(i)	Under 16, Sig. Relation. and Force or Coercion	A		
1(h)(ii)	Under 16, Sig. Relation. and Personal Injury	A		
1(h)(iii)	Under 16, Sig. Relation. and Multiple Acts	A		
609.342	<u>Victim Under Age 18</u>	-	1a	Sexual Penetration with Victim under 18 or Sexual Contact with Victim under 14
		-	1a(a)	Fear Great Bodily Harm
		-	1a(b)	Dangerous Weapon
		-	1a(c)(i)	Personal Injury and Uses Coercion
		-	1a(c)(ii)	Personal Injury and Uses Force (<u>attempts/threats only</u>)
		-	1a(c)(iii)	Personal Injury and Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless
		-	1a(d)(i)	<u>Actor or</u> Accomplice and use Force or Coercion
		-	1a(d)(ii)	<u>Actor or</u> Accomplice and Dangerous Weapon
		-	1a(e)	Victim under 14, and Actor more than 36 mos. older
		-	1a(f)(i)	Victim 14 but less than 16, and Actor more than 36 mos. older
		-	1a(f)(ii)	Victim 14 but less than 16, and Actor Current or Recent Position of Authority

		-	1a(g)	<u>Victim under 16, and Actor has Significant Relationship</u>
		-	1a(h)(i)	<u>Victim under 16, and Actor has Significant Relationship, and Uses Force or Coercion</u>
		-	1a(h)(ii)	<u>Victim under 16, and Actor has Significant Relationship, and Personal Injury</u>
		-	1a(h)(iii)	<u>Victim under 16, and Actor has Significant Relationship, and Sexual Abuse with Multiple Acts</u>
		-	1a(i)	<u>Actor uses force (inflicts bodily harm)</u>

Section 13 amends sections 609.343 (Second-Degree CSC), and separates adult victims and child victims by moving child victims into a new subd. 1a, as described in Table 2. Subdivision 1a is added to subd. 2 (Penalty) paragraph (a). Paragraph (b) for a presumptive executed sentence of 90 mos.) are recodified to align with offenses previously having a 90-mos. presumptive executed sentence i.e., new subd. 1, clause (a), (b), (c), or (d); and subd. 1a, clause (a), (b), (c), (d), (h), or (i). The new “force” (with bodily harm inflicted) provisions are included among those offenses with the 90-month presumptive executed sentence.

Table 2. 609.343 (Second-Degree CSC) Recodified.

Current Subd.	Description	Guidelines Sev. Level	New Subd.	Description
609.343	Adult Victim		1	Sexual Contact
1(a)	Victim under 13, Actor 3 years older	D		
1(b)	Victim 13-15, Actor 4 years older & Pos. Authority	D		
1(c)	Fear Great Bodily Harm	B	1(a)	Fear Great Bodily Harm
1(d)	Dangerous Weapon	B	1(b)	Dangerous Weapon
1(e)(i)	Personal Injury and Uses Force or Coercion	B	1(c)(i)	Personal Injury and Uses Coercion
1(e)(i)	Personal Injury and Uses Force or Coercion	B	1(c)(ii)	Personal Injury and Uses Force (attempts/threats only)
1(e)(ii)	Personal Injury and Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless	B	1(c)(iii)	Personal Injury and Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless
			1(d)	<u>Actor Uses Force (inflicts bodily harm)</u>
1(f)(i)	Accomplice and use Force or Coercion	B	1(e)(i)	<u>Actor or Accomplice and use Force or Coercion</u>
1(f)(ii)	Accomplice and Dangerous Weapon	B	1(e)(ii)	<u>Actor or Accomplice and Dangerous Weapon</u>
1(g)	Victim under 16, Significant Relationship	D		
1(h)(i)	Under 16, Sig. Relation. and Force or Coercion	B		
1(h)(ii)	Under 16, Sig. Relation. and Personal Injury	B		
1(h)(iii)	Under 16, Sig. Relation. and Multiple Acts	B		
609.343	Victim Under Age 18	-	1a	Sexual Contact
		-	1a(a)	<u>Fear Great Bodily Harm</u>
		-	1a(b)	<u>Dangerous Weapon</u>
		-	1a(c)(i)	<u>Personal Injury and Uses Force or Coercion</u>
		-	1a(c)(ii)	<u>Personal Injury and Uses Force (attempts/threats only)</u>
		-	1a(c)(iii)	<u>Personal Injury and Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless</u>
		-	1a(d)(i)	<u>Actor or Accomplice and use Force or Coercion</u>
		-	1a(d)(ii)	<u>Actor or Accomplice and Dangerous Weapon</u>
		-	1a(e)	<u>Victim under 14, and Actor more than 36 mos. older</u>
		-	1a(f)	<u>Victim 14 but less than 16, and Actor more than 36 mos. Older or Current or Recent Position of</u>

				<u>Authority</u>
		-	<u>1a(g)</u>	<u>Victim under 16, and Actor has Significant Relationship</u>
		-	<u>1a(h)(i)</u>	<u>Victim under 16, and Actor has Significant Relationship, and Uses Force or Coercion</u>
		-	<u>1a(h)(ii)</u>	<u>Victim under 16, and Actor has Significant Relationship, and Personal Injury</u>
		-	<u>1a(h)(iii)</u>	<u>Victim under 16, and Actor has Significant Relationship, and Sexual Abuse with Multiple Acts</u>
		-	<u>1a(i)</u>	<u>Actor Uses Force (inflicts bodily harm)</u>

Section 14 amends sections 609.344 (Third-Degree CSC), and separates adult victims and child victims by moving child victims into a new subd. 1a, as described in Table 3. Subdivision 1a is added to subd. 2 (Penalty). Paragraph (2), which contains a 5-year statutory maximum for a conviction where the actor was no more than 48 months but more than 24 months older, is amended and aligns with the offense previously having the 5-year statutory maximum i.e., new subd. 1a, clause (b).

Table 3. 609.344 (Third-Degree CSC) Recodified.

Current Subd.	Description	Guidelines Sev. Level	New Subd.	Description
609.344	Adult Victim		1	Sexual Penetration
1(a)	Victim <13, Perpetrator must be a juvenile	D		
1(b) w/ ref. subd. 2(1)	Victim 13-15, Actor 4 years older	D		
1(b) w/ ref. subd. 2(2)	Actor between 24 mos. and 48 mos. Older than victim	G		
1(c)	Force or Coercion	C	1(a)	Coercion
1(d)	Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless	C	1(b)	Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless
		C	1(c)	Force (<u>attempts/threats only</u>)
			1(d)	Actor in a Prohibited Occupational Relationship with Victim
609.344	Victim Under Age 18		1a	Sexual Penetration
			<u>1a(a)</u>	<u>Victim under 14, and Actor no more than 36 mos. older</u>
			<u>1a(b)</u>	<u>Victim at least 14 but less than 16, and Actor more than 36 mos. older (Affirmative Defense if Actor no more than 60 mos. older)</u>
			<u>1a(c)</u>	<u>Coercion</u>
			<u>1a(d)</u>	<u>Actor Knows or has Reason to Know that Victim is Mentally Impaired, Mentally Incapacitated, or Physically Helpless</u>
1(e)	Victim 16-18, Actor 48 mos. older and Current or Recent Position of Authority	D	<u>1a(e)</u>	Victim 16-18, <u>Actor 36 mos. older</u> and Current or Recent Position of Authority
1(f)	Victim 16-18, Significant Relationship	D	<u>1a(f)</u>	Victim 16-18, Significant Relationship
1(g)(i)	Sig. Relation. and Force or Coercion	C	<u>1a(g)(i)</u>	Sig. Relation. and Used Coercion
1(g)(ii)	Sig. Relation. and Personal Injury	C	<u>1a(g)(ii)</u>	Sig. Relation. and Personal Injury
1(g)(iii)	Sig. Relation. and Multiple Acts over Time	C	<u>1a(g)(iii)</u>	Sig. Relation. and Multiple Acts over Time
1(h)	Psychotherapist - Patient	C	1a(h)	Force (<u>attempts/threats only</u>)
1(i)	Psychotherapist Former Patient Emot-Dependent	C	1a(i)	Actor in a Prohibited Occupational Relationship with Victim
1(j)	Psychotherapist & Therapeutic Deception	C		
1(k)	Deception/False Rep. for Medical Purpose	C		
1(l)	Clergy	C		

1(m)	Correctional Employee	C		
1(n)	Special Transportation Service	C		
1(o)	Massage Therapist	C		
1(p)	Peace Officer	C		

Section 15 amends sections 609.345 (Fourth-Degree CSC), and separates adult victims and child victims by moving child victims into a new subd. 1a, as described in Table 4. Subdivision 1a is added to subd. 2 (Penalty).

Table 4. 609.345 (Fourth-Degree CSC) Recodified

Current Subd.	Description	Guidelines Sev. Level	New Subd.	Description
609.345	Adult Victim		1	Sexual Contact
1(a)	Victim <13, Perpetrator must be a juvenile	F		
1(b)	Victim 13-15, Actor 4 years older or Pos. Authority	F		
1(c)	Force or Coercion	E	1(a)	Coercion
1(d)	Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless	E	1(b)	Victim Mentally Impaired, Mentally Incapacitated, or Physically Helpless
		E	1(c)	Force (<u>attempts/threats only</u>)
			1(d)	Actor in a Prohibited Occupational Relationship with Victim
609.345	Victim Under Age 18		1a	Sexual Penetration
			1a(a)	Victim under 14, and Actor no more than 36 mos. older
			1a(b)	Victim at least 14 but less than 16, and Actor more than 24 mos. older (Affirmative Defense if Actor no more than 60 mos. older)
			1a(c)	Coercion
			1a(d)	Actor Knows or has Reason to Know that Victim is Mentally Impaired, Mentally Incapacitated, or Physically Helpless
1(e)	Victim 16-18, Actor 48 mos. older and Current or Recent Position of Authority	F	1a(e)	Victim 16-18, Actor 36 mos. older and Current or Recent Position of Authority
1(f)	Victim 16-18, Significant Relationship	F	1a(f)	Victim 16-18, Significant Relationship
1(g)(i)	Sig. Relation. and Force or Coercion	E	1a(g)(i)	Sig. Relation. and Used Coercion
1(g)(ii)	Sig. Relation. and Personal Injury	E	1a(g)(ii)	Sig. Relation. and Personal Injury
1(g)(iii)	Sig. Relation. and Multiple Acts over Time	E	1a(g)(iii)	Sig. Relation. and Multiple Acts over Time
1(h)	Psychotherapist—Patient	E	1a(h)	Force (<u>attempts/threats only</u>)
1(i)	Psychotherapist—Former Patient Emot. Dependent	E	1a(i)	Actor in a Prohibited Occupational Relationship with Victim
1(j)	Psychotherapist & Therapeutic Deception	E		
1(k)	Deception/False Rep. for Medical Purpose	E		
1(l)	Clergy	E		
1(m)	Correctional Employee	E		
1(n)	Special Transportation Service	E		
1(o)	Massage Therapist	E		
1(p)	Peace Officer	E		

Section 16 amends sections 609.3451 (Fifth-Degree CSC), adding 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. See Table 5.

Table 5. 609.3451 (Fifth-Degree CSC) Recodified

Current Subd.	Description	Guidelines Sev. Level	New Subd.	Description
				Adults
			1 & 3(a)	Nonconsensual Sexual Penetration
			1 & 3(b)(1)	Nonconsensual Sexual Penetration within 10 years of previous conviction or adjudication
1(1) & 3(a)(2)	Nonconsensual Sexual Contact within 7 years of previous conviction	F	1a(2) & 3(b)(2)	Nonconsensual Sexual Contact Child Present within 10 years of previous conviction or adjudication
1(2) & 3(a)(1)	Presence of Minor under 16	F		
			1a(1) & 3(b)(3)	Nonconsensual Sexual Contact Child Present, 2 or more previous conviction under 1a(1) or non-MN conforming offense

Section 17 amends section 609.3455 (Dangerous Sex Offenders; Life Sentences; Conditional Release). The new Minn. Stat. § 609.3458 (Sexual Extortion) is included among the sex offenses subject to the section’s provisions. The provisions requiring life sentences for certain First- and Second-Degree CSC offenses (excluding most age-related offenses) when a heinous element is present are updated with the correct cross-references caused by the bill’s recodification; the new “force” offenses are included among these provisions.

Section 18 creates a new section 609.3458 (Sexual Extortion). The offense is defined under subdivision 1 and separated into paragraph (a) where a person who engages in sexual contact with another person and compels the other person to submit to the contact by making direct or indirect threats; and paragraph (b) where a person who engages in sexual penetration with another person and compels the other person to submit to the penetration by making direct or indirect threats. The penalty is defined in subdivision 2 as a felony with a 10-year statutory maximum or fine of \$20,000, or both, if the person violates subdivision 1, para (a); or a 15-year statutory maximum or fine of \$30,000, or both, if the person violates subdivision 1, para (b). Persons are subject to conditional release and no person may be charged with an attempt.

Section 19 creates a Predatory Offender Statutory Framework Working Group to be convened by the Commissioner of Public Safety.

Section 20 instructs the Revisor of Statutes to make conforming cross-reference changes.

Section 21 repeals the offenses of sodomy, fornication, and adultery.

The bill’s effective date is not specified.

Assumptions

While no effective date is specified in the bill, it is assumed effective August 1, 2021, and applicable to crimes committed on or after that date, per Minn. Stat. section 645.02.

It is assumed that the Minnesota Sentencing Guidelines Commission (MSGC) will generally retain existing severity-level (SL) rankings of CSC offenses, except as noted in Table 6. It is assumed that the severity of all First-Degree CSC offenses will remain ranked at SL A. It is assumed that all Second-Degree CSC offenses will remain ranked at SL D, unless the 90-month mandatory minimum penalty applies, in which case they will remain or become ranked at SL B. It is assumed that the new occupational-relationship offenses will be ranked consistently with existing rankings for the existing occupational-relationship offenses. Due to its low statutory maximum penalty, it is assumed that the new two-year Fifth-Degree CSC felony will be ranked at SL G, below the SL F ranking assigned to the seven-year Fifth Degree felony.

Table 6 contains the assumptions made about how cases under the existing statutory scheme will be treated under the new statutory scheme.

Table 6. Table of Recodification Assumptions

It is assumed that	of offenses under existing statute	ranked at SL	will prosecuted under new statute	assumed to be ranked at SL	because
100%	609.342 1(a)	A	609.342 1a(e)	A	the existing offense is included within the new offense.
100%	609.342 1(b)	A	609.342 1a(e) or 609.342 1a(f)	A	the existing offense is included within the new offenses.
100%	609.342 1(c)	A	609.342 1(a) or 609.342 1a(a)	A	the existing offense is included within the new offenses.
100%	609.342 1(d)	A	609.342 1(b) or 609.342 1a(b)	A	the existing offense is included within the new offenses.
100%	609.342 1(e)	A	609.342 1(c), 609.342 1(d), 609.342 1a(c), or 609.342 1a(i)	A	the existing offense is included within the new offenses.
100%	609.342 1(f)	A	609.342 1(d) or 609.342 1a(d)	A	the existing offense is included within the new offenses.
100%	609.342 1(g)	A	609.342 1a(g)	A	the existing offense is included within the new offense.
100%	609.342 1(h)	A	609.342 1a(h)	A	the existing offense is included within the new offense.
100%	609.343 1(a)	D	609.343 1a(e)	D	the existing offense is included within the new offense.
100%	609.343 1(b)	D	609.343 1a(e) or 609.343 1a(f)	D	the existing offense is included within the new offenses.
Nearly 100%	609.343 1(c)	B	609.343 1(a) or 609.343 1a(a)	B	the existing offense is included within the new offenses. There will be some cases involving genital-to-genital contact of a 13-year-old that will now be prosecuted under 609.342.1a(a), but the number of these cases is unknown and is assumed to be small.
Nearly 100%	609.343 1(d)	B	609.343 1(b) or 609.343 1a(b)	B	the existing offense is included within the new offenses. There will be some cases involving genital-to-genital contact of a 13-year-old that will now be prosecuted under 609.342.1a(b), but the number of these cases is unknown and is assumed to be small.
Nearly 100%	609.343 1(e)	B	609.343 1(c), 609.343 1(d), 609.343 1a(c), or 609.343 1a(i)	B	the existing offense is included within the new offenses. There will be some cases involving genital-to-genital contact of a 13-year-old that will now be prosecuted under 609.342.1a(c), but the number of these cases is unknown and is assumed to be small.
Nearly 100%	609.343 1(f)	B	609.343 1(d) or 609.343 1a(d)	B	the existing offense is included within the new offenses. There will be some cases involving genital-to-genital contact of a 13-year-old that will now be prosecuted under 609.342.1a(d), but the number of these cases is unknown and is assumed to be small.
100%	609.343 1(g)	D	609.343 1a(g)	D	the existing offense is included within the new offense
100%	609.343 1(h)	B	609.343 1a(h)	B	the existing offense is included within the new offense.
100%	609.344 1(a)	D	609.344 1a(a)	D	the existing offense is included within the new offense.
two-thirds	609.344 1(b) with 2(1)	D	609.344 1a(b) with 2(1)	D	13-year-olds are assumed to be one-third of the potential victim pool under existing law, which encompasses 13-, 14-, and 15-year-olds.
one-third	609.344 1(b) with 2(1)	D	609.342 1a(e)	A	13-year-olds are assumed to be one-third of the potential victim pool under existing law;

					see discussion below.
50% (adult cases)	609.344 1(b) with 2(2)	G	609.344 1a(b) with 2(2)	G	no adult perpetrators are within 48 months of a 13-year-old victim's age; the offender pool is assumed to be halved because the eligible age range is halved (from 24-48 mo. to only 36-48 mo.).
90%	609.344 1(c)	C	609.344 1(a), 609.344 1(c), 609.344 1a(c), or 609.344 1a(h)	C	the new offenses are included within the existing offense.
10%	609.344 1(c)	C	609.342 1(d) or 609.342 1a(i)	A	the new "force" offense is included within the existing offense; see discussion below.
100%	609.344 1(d)	C	609.344 1(b) or 609.344 1a(d)	C	the existing offense is included within the new offense.
100%	609.344 1(e)	D	609.344 1a(e)	D	the existing offense is included within the new offense.
100%	609.344 1(f)	D	609.344 1a(f)	D	the existing offense is included within the new offense.
100%	609.344 1(g)	C	609.344 1a(g)	C	the existing offense is similar to the new offense.
100%	609.344 1(h)-(p)	C	609.344 1(c)	C	the existing offenses are similar to the new offense.
100%	609.345 1(a)	F	609.345 1a(a)	F	the existing offense is included within the new offense.
two-thirds	609.345 1(b)	F	609.345 1a(b) with 2(1)	F	13-year-olds are assumed to be one-third of the potential victim pool under existing law.
one-third	609.345 1(b)	F	609.343 1a(e)	D	13-year-olds are assumed to be one-third of the potential victim pool under existing law; see discussion below. There will be some cases involving genital-to-genital contact of a 13-year-old that will now be prosecuted under 609.342.1a(e), but the number of these cases is unknown and is assumed to be small.
90%	609.345 1(c)	E	609.345 1(a), 609.345 1(c), 609.345 1a(c), or 609.345 1a(h)	E	the new offenses are included within the existing offense.
10%	609.345 1(c)	E	609.343 1(d) or 609.343 1a(i)	B	the new "force" offense is included within the existing offense; see discussion below.
100%	609.345 1(d)	E	609.345 1(b) or 609.345 1a(d)	E	the existing offense is included within the new offense.
100%	609.345 1(e)	F	609.345 1a(e)	F	the existing offense is included within the new offense.
100%	609.345 1(f)	F	609.345 1a(f)	F	the existing offense is included within the new offense.
100%	609.345 1(g)	E	609.345 1a(g)	E	the existing offense is similar to the new offense.
100%	609.345 1(h)-(p)	E	609.345 1(c)	E	the existing offenses are similar to the new offense.
69%	609.3451 1(1) with 2	gross misd.	609.3451 1 with 3(a)	G	it is assumed that penetration implies contact, that the new felony penetration offense is therefore included within the existing contact offense, and that the number of penetration cases will be to the number of mere contact cases as existing CSC 3 cases are to existing CSC 4 cases.
31%	609.3451 1(1) with 2	gross misd.	609.3451 1a(1) with 2	gross misd.	(see reasons stated above).
69%	609.2325 1(b)	gross misd.	609.344 1(c)	C (1 case per year moves to SL C)	it is assumed that the new offense will supplant the existing offense, and that the number of penetration cases will be to the number of contact cases as existing CSC 3 cases are to existing CSC 4 cases.
31%	609.2325 1(b)	gross misd.	609.345 1(c)	E (1 case per third year move to SL E)	(see reasons stated above).

It is assumed that, where the third and fifth columns in Table 6 show identical before-and-after rankings, there will be no state or local correctional impact. The impact of recodification is therefore estimated only where the two columns differ.

The bill changes age thresholds for First- through Fourth-Degree CSC. “Under 13” is changed to “under 14,” and “at least 13” is changed to “at least 14.” As shown in Table 6, it is assumed that this change will cause one-third of Third- and Fourth-Degree CSC offense based solely on the victim’s age (“statutory rape”) to become First- and Second-Degree CSC offenses. This assumption is based on the following logic: Third- and Fourth-Degree CSC statutory rape offenses presently apply to 13-, 14-, and 15-year-old victims. The bill reduces that applicability to 14- and 15-year-old victims only, moving cases involving 13-year-old victims to First- and Second-Degree CSC offense. Because the number of statutory rape cases involving 13-year-old victims is not known, it is assumed that victims of the offense are equally distributed among the ages of 13, 14, and 15. Thus, it is assumed that one-third of Third- and Fourth-Degree CSC statutory rape cases involve 13-year-old victims, and will become First- and Second-Degree CSC cases as a result of the bill. Combined, these changes are estimated eventually to require an additional 164 prison beds (Table 13).

The bill adds a new force (with bodily harm inflicted) offense to First- and Second-Degree CSC. The bill also deletes “force” from Third- and Fourth-Degree CSC (force/coercion), and creates new Third- and Fourth-Degree CSC offenses involving force without bodily harm inflicted (involving attempts and threats).

Under existing law, offenses involving force are Third- or Fourth-Degree CSC (force/coercion) cases. As a general rule, force cases are First- or Second-Degree CSC only if personal injury also results. Because “personal injury” includes bodily harm, and use of “force” may be proven by the infliction of bodily harm, it is possible that, when the “force” in question is the infliction of bodily harm, the terms “force” and “personal injury” may be redundant. If so, this bill could be viewed as merely eliminating that redundancy, in which case there would be no correctional impact to this change.

On the other hand, it is plausible that some prosecutors, facing a case involving sexual penetration or contact facilitated by bodily harm (defined as “physical pain or injury, illness, or any impairment of physical condition,” Minn. Stat. § 609.02), are now reluctant to seek a First- or Second-Degree conviction where the same bodily harm (e.g., physical pain) constituted both the “force” and the “personal injury” needed to prove a First- or Second-Degree CSC offense. This is particularly true in light of the fact that at least one district court judge has held such a charging practice to be unconstitutional. In light of the discussion of this district court decision in a 2013 law review article, and adoption of the decision’s underlying analysis by the article’s author, it is plausible that some prosecutors are not charging First- or Second-Degree CSC in such cases, but will do so upon enactment of this bill. It is therefore assumed that some Third- and Fourth-Degree CSC (force/coercion) cases will elevate to First- and Second-Degree CSC (force with bodily harm) under this bill.

The number of cases that will be elevated is not known. It is assumed that no cases in which coercion, but not force, was provable will elevate under this bill. Likewise, it is assumed that no cases in which the force in question consisted not of the infliction of bodily harm, but only of an attempt or threat, will elevate. Unfortunately, data distinguishing “force” cases from “coercion” cases, or bodily-harm force cases from attempts/threats force cases, are not available. Without data, it is assumed that 10 percent of Third- and Fourth-Degree CSC (force/coercion) cases will elevate to First- and Second-Degree CSC (force with bodily harm) under this bill.

From 2017 through 2019, there was an annual average of 34 sentences for Minn. Stat. § 609.344, subd. 1(c) (Third-Degree CSC (force/coercion)). During the same time period, there was an annual average of 22 sentences for Minn. Stat. § 609.345, subd. 1(c) (Fourth-Degree CSC (force/coercion)). Applying the 10-percent assumption above, it is assumed that 3 cases annually will elevate from SL C to SL A, and 2 sentences annually will elevate from SL E to SL B.

From 2017 through 2019, the imprisonment rate for third-degree CSC under § 609.344, subd. 1(c) was 60 percent and the average pronounced sentence was 84 months (serve 2/3=56 months). During the same time period, the imprisonment rate for first-degree CSC under § 609.342, subd. 1(c), was 97 percent and the average pronounced sentence was 214 months (serve 2/3=143 months). Therefore, it is assumed that all three of the cases moving from CSC 3 to CSC 1 will receive a prison sentence of 214 months. This will result in the eventual need for 23 additional prison beds a year.

From 2017 through 2019, the imprisonment rate for fourth-degree CSC under § 609.345, subd. 1(c) was 21 percent and the average pronounced sentence was 78 months (serve 2/3=52 months). During the same time period, the imprisonment rate for second-degree CSC under § 609.343, subd. 1(c) was 80% and the average pronounced sentence was 94 months (serve 2/3=63 months). Therefore, it is assumed that both of the cases moving from CSC 3 to CSC 1 will receive a prison sentence of 94 months. This will result in the eventual need for 7 additional prison beds a year.

It is therefore estimated that the combined prison bed impact for elevating 10 percent of Third- and Fourth-Degree CSC

(force/coercion) cases to First- and Second-Degree CSC (force with bodily harm) will be 30 beds.

Section 17 adds the new First- and Second-Degree CSC offense (force with bodily harm) to the list of offenses for which a life sentence is required when a heinous element is present. The life sentence is without the possibility of release if multiple heinous elements are present, or if the offender had a previous First- through Third-Degree CSC sentence (Minn. Stat. § 609.3455, subd. 2); otherwise, the minimum term of imprisonment is based on the Sentencing Guidelines presumptive sentence (subd. 3).

It is assumed that the addition of the new force offense to this list will cause some increase in the number of life sentences resulting from Minn. Stat. § 609.3455, subds. 2 and 3. The magnitude of this increase is not known. It is assumed that the increase will be proportional to the increase in force cases elevated, as assumed above.

From 2017 through 2019, there was an annual average of 49 First-Degree CSC sentences under subdivisions that would, if a heinous element were present, qualify the offender for a life sentence. Those subdivisions are Minn. Stat. § 609.342, subd. 1(c), (d), (e), (f), or (h). Likewise, from 2017 through 2019 there was an annual average of 33 Second-Degree CSC sentences under subdivisions that would, if a heinous element were present, qualify the offender for a life sentence. Those subdivisions are Minn. Stat. § 609.343, subd. 1(c), (d), (e), (f), or (h). It was assumed above that 3 First-Degree CSC cases will be added to this number annually. Because 3 is 6 percent of 49, the number of First-Degree CSC offenses subject to life sentences is assumed to increase by 6 percent. Likewise, it was assumed above that 2 Second-Degree CSC cases will be added to this number annually. Because 2 is 6 percent of 33, the number of Second-Degree CSC offenses subject to life sentences is also assumed to increase by 6 percent.

From 2010 through 2019, 6 offenders sentenced for Minn. Stat. § 609.342, subd. 1(c), (d), (e), (f), or (h), received life sentences under Minn. Stat. § 609.3455, subd. 2 or 3. All were first-degree offenders; therefore, no additional beds are projected due to life sentences for second-degree offenders. If those first-degree offenders had received their presumptive sentences, they would have filled 64 beds. Four of those offenders received life without the possibility of release. If it is assumed that those offenders will remain in prison until death (per the Period Life Table published by the Social Security Administration), and the others will remain in prison till eligible for release consideration (100% of presumptive sentence), 13 more beds are expected due to these life sentences. A six percent increase in this number would be 1 bed. It is therefore assumed that section 17 will result in the eventual need for 1 prison bed, beginning in FY2034.

Section 16 amends Fifth-Degree CSC. It is assumed that age is immaterial to 609.3451 (Fifth-Degree CSC), subdivision 1, engaging in nonconsensual sexual penetration. According to the MJB data, there were 243 GM Fifth-Degree CSC convictions from 2017 to 2019. It is assumed that all the new felony nonconsensual sexual penetration cases will be taken from the existing gross misdemeanor nonconsensual sexual contact cases, as there is now no nonconsensual sexual penetration offense and it is assumed that penetration implies contact. To estimate volume, it is assumed that the ratio of the penetration cases to the contact cases will be identical to the ratio of Third-Degree CSC (penetration) cases Fourth-Degree CSC (contact) cases. Because Third Degree CSC cases (520 cases) comprise 69 percent of Third- and Fourth-Degree CSC cases (520+233 cases), it is assumed that 69 percent of those gross misdemeanor Fifth-Degree CSC (an annual average of 56 cases) will become felony Fifth-Degree CSC, which, it has been assumed, the Commission will rank at Severity Level G. It is assumed that the new cases moving from gross misdemeanor to felony are different and will have lower criminal history scores than existing felony Fifth-Degree CSC, which involve repeat offenders. Because it is assumed that this new offense will be ranked at a severity level in which only cases with a criminal history score of 4 or more receive a prison sentence, it is assumed that prison-bed impact will be negligible. However, it is assumed that the majority of these new felony fifth-degree cases will be probation cases and will receive time in a local correctional facility as a condition of probation at a rate and duration similarly to some fourth-degree CSC cases. See Table 15 for local-bed estimated impact.

Section 1 repeals Minn. Stat. § 609.2325 (Criminal Abuse), subd. 1(b), which the bill replace with new Third- and Fourth Degree CSC offenses.

It is assumed that the elements of the repealed offense are substantially identical to those of the new CSC offenses involving caregivers and facility residents. It is therefore assumed that existing gross misdemeanor penalty (repealed subd. 3(b)) will effectively be replaced by the bill's felony CSC penalties. According to MJB data, there were three such gross misdemeanor cases from 2017 to 2019.

The existing Criminal Abuse statute is not structured in a way that distinguishes between penetration and contact. Using the same rationale applied to Fifth-Degree CSC, it is assumed that 69 percent of the cases will involve penetration and be Third-Degree CSC, and 31 percent of the cases will involve contact and be Fourth-Degree CSC.

It is assumed that, for the second to the last row of Table 6 related to 69 percent of the existing gross misdemeanor criminal abuse cases one case per year will receive a prison sentence because the imprisonment rate at SL C is 57

percent, and that the average prison sentence will be 75 months (2/3 term of imprisonment: 50 mos.) and will eventually amount to four beds per year beginning with one bed in FY2023, two beds in FY2024, and three beds in FY2025, and four beds in FY2026, and every year after. See Table 13 for prison-bed estimates of the recodifications and Table 14 for the prison-bed timing.

It is assumed that, the last row of Table 6 related to 31 percent of the existing gross misdemeanor criminal abuse cases one case every three years will result in a stayed prison sentence because it is assumed the offense will be ranked at SL F where the imprisonment rate is 21.8 percent. Therefore, it is estimated that this provision will have no prison impact. See Table 13 for prison-bed estimates of the recodifications, Table 14 for the prison-bed timing, and Table 15 for local-bed estimated impact.

Section 3 expands the definition of “mentally incapacitated.”

It is assumed that a very small minority of intoxicants are ingested without the person’s agreement as the present definition requires. It is assumed that the bill’s alternative definition of “mentally incapacitated,” lacking such a requirement, will therefore be much more widely used, in practice, than the existing definition. It is assumed that this alternative definition will significantly increase the number of convictions for those offenses that contain the element that “the actor kn[ew] or ha[d] reason to know that the complainant [wa]s mentally impaired, mentally incapacitated, or physically helpless.” (These are hereinafter referred to as the “MI/PH offenses.”) Although the bill recodifies the MI/PH offenses, the impact estimate will be based on the existing MI/PH offenses; namely, first- and second-degree CSC under subd. 1(e)(ii) of Minn. Stat. §§ 609.342 & 609.343, and third- and fourth-degree CSC under subd. 1(d) of Minn. Stat. §§ 609.344 & 609.345.

According to a 2018 Star Tribune analysis of more than 1,000 sexual assault reports, the conviction rate in cases in which the victim was intoxicated was 5 percent, whereas the conviction rate in cases in which the victim was not intoxicated was 9 percent. It is assumed that much, or all, of this differential is accounted for by the legal requirement that, unless accompanied by force, coercion, or physical helplessness (generally, being asleep or unconscious), voluntary intoxication is generally insufficient to cause a sex act to become CSC. It is therefore assumed that much or all of this differential will be eliminated by the redefinition of “mentally incapacitated.” Because 9 percent is 80 percent greater than 5 percent, it is assumed that, among the MI/PH offenses, the number of sentences may increase by as much as 80 percent. Because other factors than the “mentally incapacitated” definition may account for non-convictions in intoxicated-victim cases, a 50 percent increase is assumed.

It is assumed that the expansion of mental incapacitation will not affect the severity levels assigned to the MI/PH offenses. Table 7 displays the severity levels, number of sentences and expected increases for the MI/PH offenses in the three years from 2017 to 2019.

Table 7. Number of Offenders Sentenced, MI/PH Offenses and Estimated Annual Increase in Number of Cases, 2017-2019

Degree	Statute	Severity Level	Total No. Sentenced	Average No. per Year	Estimated No. Increase Per Year Based on 50%
First	609.342 1(e)(ii)	A	10	3	1
Second	609.343 1(e)(ii)	B	5	2	1
Third	609.344 1(d)	C	61	20	10
Fourth	609.345 1(d)	E	57	19	10

It is assumed that any additional cases sentenced will have criminal history scores comparable to the criminal history scores observed for the cases sentenced for the existing MI/PH offenses. These cases had limited criminal histories; the average score was 1.00.

Any new first-, second- or third-degree offenses will have presumptive prison dispositions. Given the assumed low criminal history scores, most of the additional fourth-degree cases will be recommended stayed probation sentences according to the Guidelines. As a result of this policy change, it is assumed there will be 5 additional third-degree CSC probation cases, and 9 additional fourth-degree probation cases (Table 9). See Table 15 for local-bed estimated impact.

Table 8 displays the imprisonment rates, average sentences, and two-thirds of the average sentences for the MI/PH cases sentenced from 2017 to 2019. Persons receiving prison sentences typically serve two-thirds of their pronounced sentences. Also displayed is the estimated number of new prison cases.

Table 8. Imprisonment Rates, Average Pronounced Sentences, Estimated Number of Additional Prison Sentences: MI/PH Offenses, 2017-2019

Degree	No. Cases and Imprisonment Rate	Avg. Duration of Prison Sentence	Avg. Duration Serve (2/3 Sentence)	Est. No. Additional Prison Cases
First-	10 (70%)	198 months	132 months	1
Second-	5 (100%)	131 months	87 months	1
Third-	61 (53%)	64 months	43 months	5
Fourth-	57 (12%)	85 months	57 months	1

Table 9 displays the local confinement rates, average pronounced local confinement, and two-thirds of the average local confinement for the MI/PH cases sentenced from 2017 to 2019. Persons receiving local confinement typically serve two-thirds of the pronounced duration.

Table 9. Local Confinement Rates, Average Pronounced Durations, Estimated Number of Additional Probation Cases: MI/PH-CSC Offenses, 2017-2019

Degree	No. Cases and Local Confinement Rate	Average Duration of Local Confinement	Average Duration Serve (2/3 Sentence)	Estimated No. Additional Probation Cases
First	3 (30%)	303 days	202 days	0
Second	0 (0%)	---	---	0
Third	29 (48%)	202 days	135 days	5
Fourth	42 (74%)	171 days	114 days	9

Section 6 redefines “coercion.”

It is assumed that the changes to the definition of “coercion” for the most part clarify, rather than expand, the definition’s scope. While there may be some expansion due to the fact that anyone not just the actor may inflict the feared bodily harm, and that the victim’s submission against her will is not required, it is not known to what extent these changes will make a practical difference in the difficulty of proving the offense. No impact from the redefinition of “coercion” is therefore estimated.

Section 7 expands the definition of “significant relationship” to include a parent’s boyfriend or girlfriend.

It is assumed that a parent who has given her/his boyfriend/girlfriend sufficient access to her/his child to sexually contact the child has also entrusted the same boyfriend/girlfriend with some degree of parental authority at some time. In light of the broad definition of “position of authority” (POA), it is assumed that a boyfriend/girlfriend likely meets this definition under existing law. It is also assumed, given the likelihood that the parent’s boyfriend/girlfriend is significantly closer to the parent’s generation than the child’s, that the boyfriend/girlfriend is at least 4 years older than the child (3 years, under the bill). Thus, it is assumed that all crimes that may be prosecuted under the redefinition of “significant relationship” are already being prosecuted under the existing POA statutes.

Existing POA statutes are Minn. Stat. §§ 609.342, subd. 1(b) (victim aged 13-15, penetration), 609.343, subd. 1(b) (victim aged 13-15, contact), 609.344, subd. 1(e) (victim aged 16-18, penetration), & 609.345, subd. 1(e) (victim aged 16-18, contact).

The number of parental boyfriends/girlfriends included within these POA cases is not known. The CSC Statutory Reform Working Group, which recommended this change, described the “situation of a child being abused by their parent’s intimate partner who does not live in the home” as “common.” Based on this adjective, it is assumed that 20 percent of POA cases involve a parent’s non-cohabitant boyfriend or girlfriend, and that prosecutors will charge 20 percent of POA cases as significant-relationship cases after enactment of the bill.

With respect to First-Degree CSC cases, no impact is assumed, because POA and significant-relationship cases are ranked at equal severity (SL A).

With respect to Second-, Third-, and Fourth-Degree CSC cases: In general, the change is assumed to have no impact, because POA and significant-relationship cases are generally ranked at equal severity. If one of three enhancing factors (force*/coercion, personal injury, or multiple acts over time) is present, however, a significant-relationship offense’s

severity is elevated. It is assumed that the ratio of those significant-relationship cases with and without an enhancing factor present will apply to the POA cases that become significant-relationship cases under the bill.

*Second-Degree CSC only.

With respect to Second-Degree CSC cases only: In 2019, 67 percent of existing significant-relationship cases were enhanced (29 cases under Minn. Stat. § 609.343, subd. 1(h), compared with 43 cases under both subd. 1(g) & 1(h)). It is therefore assumed that, of the 20 percent of POA cases assumed to become significant-relationship cases due to the bill's redefinition of "significant relationship," 67 percent will increase their severity level due to the presence of a severity-enhancing factor, for a total of 13 percent of all Second-Degree CSC POA cases. As a result, 1 case will elevate from SL D to SL B and will have a 90-month presumptive prison sentence provided in statute resulting in the need for five additional prison beds.

With respect to Third-, and Fourth-Degree cases only: In 2019, 16 percent of the existing significant-relationship cases were enhanced (see Table 10). It is therefore assumed that, of the 20 percent of POA cases assumed to become significant-relationship cases due to the bill's redefinition of "significant relationship," 16 percent will increase their severity level due to the presence of a severity-enhancing factor, for a total of 3 percent of all Third- and Fourth-Degree CSC POA cases. One third-degree case will increase from SL D to SL C, and one fourth-degree case will increase from SL F to SL E. Because one Third-Degree CSC will move to SL C, where all offenses have presumptive prison dispositions, it is assumed this case will receive a prison sentence. One Fourth-Degree CSC will move to SL E, where only cases with criminal history scores of 2 or more receive presumptive prison dispositions. Since the current cases have criminal history scores of 0, it is assumed this case will not receive a prison sentence.

Table 10. Significant-Relationship Cases with and without Enhancing Factors Present, 2019

Degree	Cases without Significant Relationship Enhancing Factors (subd. 1(f))	Cases with Significant Relationship Enhancing Factors (subd. 1(g))	Total
Third-	11	3	14
Fourth-	15	2	17
Total	26	5	31
Percent	84%	16%	100%

The bill reduces the age gaps required for CSC offenses.

Currently, all POA offenses, and the offenses described in subds. 1(b) of Minn. Stat. § 609.344 & 609.345 (hereinafter "statutory rape"), require that the perpetrator be more than 48 months older than the victim. The bill reduces that age gap to 36 months.

The bill does not change the penalty provisions. In particular, Section 10 does not change the penalty provision for Third-Degree CSC statutory rape, which provides for more severe penalties if the defendant is "no more than 48 months but more than 24 months older than" the victim, even though the offense itself no longer refers to the 24-month age gap. It is assumed that Third-Degree CSC statutory rape cases where the age gap is greater than 24 months, but not greater than 36 months, will no longer be crimes under the bill, notwithstanding the 24-month reference in the penalty provision. This will result in fewer prosecutions for SL G offenses. It is assumed that the lesser, five-year statutory maximum penalty for Third-Degree CSC will continue to apply to statutory rape cases where the age gap is greater than 36 months, but not greater than 48 months, and that the MSGC will continue to rank this offense at SL G. Because the eligible offender age range for the SL G offense is cut in half (from 24-48 mo. older than the victim to only 36-48 mo. older), it is assumed that the offender pool is also cut in half, and that the number of SL G Third-Degree CSC sentences will also be cut in half.

According to MSGC monitoring data, from 2017-2019, 45 persons were sentenced for Third-Degree CSC ranked at SL G (average of 15 a year). There was only one prison sentence. If the number sentenced for this offense is cut in half, there will be no prison bed impact. Seven fewer offenders a year will be placed on probation.

Because Section 10 leaves unchanged the penalty provision where the age gap is greater than 48 months, it is assumed that the existing 15-year statutory maximum will continue to apply, and that the MSGC will continue to rank this offense at SL D. Because it is assumed that none of Section 10's changes alter the SL D offense, it is assumed that there will be no correctional impact with respect to SL D Third Degree CSC statutory rape offenses.

With respect to the remaining age-gap provisions (POA offenses and Minn. Stat. § 609.345, subd. 1(b)), it is assumed that the number of prosecutions and sentences under the affected provisions will increase. The magnitude of this increase is

not known.

In Third-Degree CSC’s statutory rape provision, Minn. Stat. § 609.344, subd. 1(b), present law provides different penalties depending on the age gap. If the age gap is 48 months or more, the offense is ranked at SL D; if the age gap is between 24 months and 48 months, the offense is ranked at SL G. From 2017 to 2019, there were 258 Third-Degree CSC statutory rape cases with the larger age gap and 45 cases with the smaller age gap. Put another way, the existence of the 24-month age gap increased the number of Third-Degree CSC statutory rape cases by 17 percent compared to having the 48-month age gap alone. Because the bill is creating a 36-month age gap, rather than a 24-month age gap, it is assumed that the bill will increase the number of Fourth-Degree CSC statutory rape cases by lesser degree, by nine percent rather than by 17 percent, an increase of four cases over three years. Because there will be only one additional Fourth-Degree CSC case each year and that case is unlikely to receive a prison sentence, it is assumed that there will be no prison beds; however, it is assumed there will be one additional fourth-degree probation case statewide annually. See Table 13 for prison-bed estimates of the recodifications, Table 14 for the prison-bed timing, and Table 15 for local-bed estimated impact.

While there will also be some increase in the POA offenses, it is plausible to assume that persons in positions of authority over children will likely be older than persons who commit statutory rape in general. Thus, for POA offenses, it is assumed that the increase will be reduced again, to four percent. With only one additional prison case (First-Degree CSC) over three years (Table 11), it is assumed that the projected prison bed impact will be four beds per year. See Table 13 for prison-bed estimates of the recodifications and Table 14 for the prison-bed timing.

Table 11. Imprisonment Rates, Average Pronounced Sentences, Estimated Number of Additional Prison Sentences: POA Offenses, 2017-2019

Degree & Statute	No. Cases and Imprisonment Rate	Avg. Duration of Prison Sentence	Avg. Duration Serve (2/3 Sentence)	Est. 4% Increase in Cases	Est. No. Additional Prison Cases
First- 609.342 sub. 1(b)	28 (86%)	192 months	128 months	1	1
Second- 609.343 sub. 1(b)	23 (22%)	90 months	60 months	1	0
Third- 609.344 sub. 1(e)	16 (6%)	60 months	40 months	1	0
Fourth- 609.345 sub. 1(e)	10 (0%)	---	---	0.4	0

The bill limits the mistake-of-age defense.

Currently, a mistake-of-age defense is available to statutory rape charges. The defense is available only to defendants who are within 10 years of the victims’ ages. The bill reduces that window to 5 years.

It is assumed that this limitation will reduce the number of acquittals in statutory-rape cases. The magnitude of that decrease is not known. Because the window is reduced by half, it is assumed that the bill’s limitation may reduce the application of the defense by half, and thus reduce the number of acquittals based on the defense by half.

Presently, the only factual questions in statutory rape cases are (1) the complainant’s age on the offense date, (2) the age difference between the actor and the complainant, (3) whether sexual penetration or contact occurred, and (4) whether the actor reasonably believed the complainant was at least 16 years of age. It is assumed that there is generally little question about the first of these two questions, which pertain to known ages and dates, and that acquittals generally result from a failure of proof on the last two of these questions, sexual penetration/contact and mistake of age.

It is assumed that mistake of age is generally not an issue where the actor is a member of the complainant’s family, because the actor has likely known the complainant his or her entire life and is well aware of the complainant’s age. According to Minn. Judicial Branch data, for statutory rape cases filed from 2015 to 2017 in which MOC codes do not reflect a familial relationship between the actor and the complainant, there were 7 acquittals for third-degree CSC and 12 acquittals for fourth-degree. It is plausible that approximately half of these acquittals resulted from failure of proof on the question of sexual penetration or contact, and half resulted from a successful mistake-of-age defense. Thus, it is assumed that half of those non-family statutory rape cases would have resulted in a conviction if the mistake-of-age defense had not been available.

It was previously assumed that the bill will reduce the number of those acquittals by half. It is therefore assumed that one-

quarter of those non-family statutory rape cases would have resulted in a conviction under the bill's curtailment of the defense. Based on that assumption, it is assumed that the number of statutory rape cases will increase by 2 (third-degree) and 3 (fourth-degree) in each year following the enactment of the bill. Because the offenses are ranked at SL D & SL F where few cases receive prison sentences (imprisonment rates 16% and 18%, respectively), it is assumed that these cases will not go to prison. However, it is assumed that these cases will receive conditional confinement as part of their probationary sentence. See Table 15 for local-bed estimated impact.

The bill creates a new occupational relationship offense that applies to adult high school student victims.

The perpetrator must either be a licensed teacher at the student's school, or, if an adult at least four years older than the student, then a licensed teacher at any primary or secondary school or an employee or contractor at the student's school.

It is assumed that 16- and 17-year-old high school students are protected by the existing Third-Degree and Fourth-Degree CSC POA offenses, subds. 1(e) of Minn. Stat. §§ 609.344 & 609.345. It is assumed that the new occupational relationship offense will represent some fraction of those cases in number. From 2017 to 2019, the average annual case volume for Third-Degree and Fourth-Degree CSC POA offenses was 5 and 3 cases, respectively.

It is assumed that 75 percent of the population of seniors in high school turns 18 at some point during their senior year, with the remaining 25 percent turning 18 after graduation. It is therefore assumed that, during the school year, 37.5 percent of 18-year-olds are school age, on average. It is assumed that 100 percent of 16- and 17-year-olds are school age. It is assumed that the number of secondary students age 18 is 37.5 percent as large as the number of secondary students age 16, and 37.5 percent as large as the number of secondary students age 17. It is assumed, then, that the number of 18-year-old secondary students is 18.75 percent as large as the combined number of secondary students age 16 and 17. For purposes of these assumptions, it is assumed that some secondary students are older than 18; that some 18-year-olds do not complete their secondary education; and that these tendencies will cancel each other out.

Based on these assumptions, it is assumed that the new occupational relationship offense's case volume will be 18.75 percent as large as the case volume of the existing Third-Degree and Fourth-Degree CSC POA offenses involving 16- and 17-year-old students and high school authorities. Among Third-Degree and Fourth-Degree POA cases sentenced from 2017 to 2019, 22 percent of assailants were identified by Minnesota Offense Codes as some sort of family member, who, it is assumed, would not be a school authority. It is therefore assumed that the total increase in violations may be as much as 78 percent of 18.75 percent, or 14.6 percent, and that the number of offenses sentenced for the new offense will represent no more than 14.6 percent of the existing Third-Degree and Fourth-Degree CSC POA offenses. Not all non-family POA cases involve teachers or school employees, so it is assumed that the increase will be lower than 14.6 percent; an increase of 7 percent is assumed, resulting in one new Third Degree CSC occupational relationship case sentenced every three years and one new Fourth-Degree CSC occupational relationship case sentenced every five years. Consistent with the other occupational relationship offenses, it is assumed that the new occupational relationship offenses will be ranked higher than existing POA offenses, at SL C (Third-Degree) and SL E (Fourth-Degree). It is estimated that this will result in the need for one prison bed per year. See Table 13 for prison-bed estimates and Table 14 for the prison-bed timing.

Section 18 creates a new crime of Sexual Extortion.

It is assumed that Sexual Extortion is a new offense, not derived from a preexisting offense. The number of new offenses is unknown. 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). Because of the similarities between this compulsion and the definition of "coercion" found in the CSC statutes, it is assumed that the new offense's case volume may be related to the number of existing Fourth-Degree CSC and Third-Degree CSC cases involving coercion (now codified at subds. 1(c) of Minn. Stat. §§ 609.344 & 609.345). The magnitude of the relationship is not known.

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" Based on the use of the terms "many" and "regularly," it is assumed that the number of Sexual Extortion cases will not be insignificant. It is therefore assumed that the volume of sexual Extortion cases involving penetration and contact will approximate 10 percent of the case volume of subd. 1(c) cases in Minn. Stat. § 609.344 & 609.345, respectively.

The Minnesota Sentencing Guidelines Commission assigns a severity level to new felony offenses. It bases these rankings, in part, on statutory maximum penalties. When sexual contact is compelled, the crime of Sexual Extortion has

the same statutory maximum penalty as Fourth-Degree CSC. When sexual penetration is compelled, the crime has the same statutory maximum penalty as Third-Degree CSC. The Minnesota Sentencing Guidelines Commission has ranked those offenses at C and D (Third-Degree) and at E and F (Fourth-Degree), and it is assumed that the Commission will rank these offenses similarly. Because the Commission may plausibly view the compulsion of Sexual Extortion to be equivalent to the coercion of CSC, it is assumed that the Commission will choose to rank the penetration offense at SL C and the contact offense at SL E (Table 12). See Table 13 for prison-bed estimates of the recodifications and Table 14 for the prison-bed timing.

Table 12. Imprisonment Rates, Average Pronounced Sentences, Estimated Number of Additional Prison Sentences: Sexual Extortion, 2017-2019

Degree & Statute	No. Cases and Imprisonment Rate	Avg. Duration of Prison Sentence	Avg. Duration Serve (2/3 Sentence)	Est. 10% Increase in Cases	Est. No. Additional Prison Cases
Third- 609.344 sub. 1(c)	103 (59%)	84 months	56 months	10	6
Fourth- 609.345 sub. 1(c)	86 (21%)	78 months	52 months	9	2

Expenditure and/or Revenue Formula

NA

Long-Term Fiscal Considerations

Based on the above assumptions, the long-term fiscal considerations are a total 234 prison beds. Table 13 details the prison bed estimates. Table 14 displays the prison-bed timing.

Table 13. Table of Prison Bed Estimates, HF 707

Section	It is assumed that	offenses under existing statute	ranked at SL	will be prosecuted under new statute	assumed to be ranked at SL	eventual prison beds needed in Fiscal Year	and the estimated prison beds needed are
6 (MI/PH)	50% increase	MI/PH cases	Various	Various	Existing SLs	2032	14
12 & 14 (Age 13 to CSC 1)	one-third	609.344 1(b) with 2(1)	D	609.342 1a(e)	A	2039	162
13 & 15 (Age 13 to CSC 2)	one-third	609.345 1(b)	F	609.343 1a(e)	D	2028	2
16 (CSC 5 Penetration)	69%	609.3451 1(1) with 2 (76 GM cases from 19)	gross misd.	609.3451 1 with 3(a)	G	---	Negligible
8 (Abuse Penetration)	69%	609.2325 1(b)	gross misd.	609.344 1(c)	C	2023	1
8 (Abuse Contact)	31%	609.2325 1(b)	gross misd.	609.345 1(c)	E	2025	1 every 3 years
7 (Sig. Rel. CSC 3 & 4)	3%	POA	D & F	609.344 1a(f) & 609.345 1a(f)	C & E	2025	1 every 3 years
7 (Sig. Rel. CSC 2)	20%	POA	D	609.343 1a(g) or 1a(h)	B	2029	5
12-15 (POA Age Gap)	4% increase	Various	A, D, E, F	Various	A, D, E, F	2026	4
18 (Extort)	10% increase	609.344 & 609.345 1(c)	C & E	609.3458	C & E	2029	12
14 & 15	One-half acquittals	609.344 &	D & F	609.344 &	D & F	---	0

(Mistake Age)		609.345 1(b)		609.345 1a(b)			
14 & 15 (Adult High School)	7%	609.344 & 609.345 1(e)	D & F	609.344 & 609.345 1a(e)	C & E	2028	1
12 & 13 (Force - CSC 1 & 2)	10%	609.344 & 609.345 1(c)	C & E	609.342 & 609.343 1(d) 1a(i)	A & B	2033	30
17 (Force - CSC 1 & 2 Heinous)	6% increase	609.3455 subd. 2 & 3	(Life)	Same	(Life)	2034	1
Total							234

Table 14. Prison-Bed Timing

FY	Sec. 6: MI/PH	Sec. 7: Sig. Rel. CSC 3 & 4	Sec. 8: Abuse	Sec. 12-15: POA Age Gap	Sec. 14: Move 1/3 609.344 s. 1(b) to CSC 1	Sec. 15: Move 1/3 609.345 s. 1(b) to CSC 2	Sec. 18: Extort	Sec 14 & 15: Adult High School	Sec. 7: Sig. Rel. CSC 2	Sec 12, 13 & 17: Force CSC	Total
2022	1	0	0	0	9	0	1	0	0	1	12
2023	4	0	1	1	26	0	4	0	1	1	38
2024	6	0	1	2	43	0	6	0	2	2	62
2025	8	1	2	3	62	1	8	1	3	4	93
2026	9	0	1	4	83	1	11	1	4	8	122
2027	10	0	1	4	102	1	11	1	5	11	146
2028	11	1	2	4	122	2	11	1	5	14	173
2029	12	0	1	4	147	2	12	1	5	18	202
2030	12	0	1	4	153	2	12	1	5	21	211
2031	13	1	2	4	159	2	12	1	5	25	224
2032	14	0	1	4	159	2	12	1	5	28	226
2033	14	0	1	4	160	2	12	1	5	30	229
2034	14	1	2	4	160	2	12	1	5	31	232
2035	14	0	1	4	160	2	12	1	5	31	230
2036	14	0	1	4	161	2	12	1	5	31	231
2037	14	1	2	4	161	2	12	1	5	31	233
2038	14	0	1	4	161	2	12	1	5	31	231
2039	14	0	1	4	162	2	12	1	5	31	232
2040	14	1	2	4	162	2	12	1	5	31	234

Local Fiscal Impact

Based on the assumptions made above, the local impact of this bill will be an estimated 71 new probation cases statewide. People placed on probation are likely to receive some time in a local correctional facility as a condition of probation. The estimated local bed impact statewide is 13 beds, which will most likely come from the sections detailed in Table 15, below.

Table 15. Local Bed Estimates of Recodification

Section	No. Cases and Est. Confinement Rate	Est. Avg. Local Confinement	Avg. Service (2/3 Sentence)	Est. Local Beds
6 (MI/PH Third-Degree)	5 (48%)	202 days	135 days	1
6 (MI/PH Fourth-Degree)	9 (74%)	171 days	114 days	2
15 (POA Age Gap Fourth-Degree)	1 (74%)	171 days	114 days	0
16 (CSC 5 Penetration)	56 (74%)*	171 days	114 days	13

14 & 15 (Mistake Age)	3 (75%)	132 days	88 days	Less than 1
14 & 15 (Adult High School)	18 (92%)	196 days	130 days	6
14 (CSC3 at SL G halved)	7 fewer a year (84%)	108 days	72 days	7 fewer
Total	71			16

* Confinement rate based on Fourth-Degree CSC.

References/Sources

MSGC Monitoring Data, 2009-2019

Minnesota Judicial Branch Data, 2015-2019

CSC Statutory Reform Working Group Report to the Legislature, Jan. 2021 (retrieved Feb. 15, 2021, at <https://dps.mn.gov/divisions/ojp/forms-documents/Documents/CSC%20SRWG/FINAL%20PHASE/CSC%20Working%20Group%20Report%20to%20the%20Legislature%20-%20January%202021%20Final.pdf>).

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Local Beds (Section 6 Third Degree): Based on the average local confinement term 202 days, assuming service of 2/3 of the pronounced sentence (135 days). 2 cases (5 cases x .48 conditional confinement rate) x 135 days = 324 ÷ 365 days = 1 local bed.

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