

Criminal Sexual Conduct Statutes in Minnesota: A General Overview

In Minnesota, criminal sexual conduct is classified into five statutory categories: first- through fifth-degree criminal sexual conduct. First-degree criminal sexual conduct carries the most severe penalties and fifth-degree carries the least severe. While each degree covers a variety of behavior with respect to the victim, first- and third-degree crimes apply to cases of sexual conduct involving sexual **penetration**; second-, fourth-, and fifth-degree crimes apply to cases of sexual conduct involving sexual **contact** without sexual penetration. Other related categories such as indecent exposure are not discussed in this fact sheet. **Note:** *This fact sheet is not intended as legal advice and is not meant to attempt to predict how a case will be charged or case outcomes. It is ultimately the prosecutor's decision how to charge a case after receiving information about the elements of the crime from law enforcement.*

How do you initially distinguish between all of the criminal sexual conduct crimes?

The elements of criminal sexual conduct (CSC) crimes first vary according to whether there was sexual penetration or sexual contact without penetration. If there was sexual penetration, then you must distinguish according to CSC-1 and CSC-3. If there was sexual contact, then you must distinguish according to CSC-2, CSC-4, and CSC-5.

In general, CSC-1 and CSC-2 apply to conduct involving personal injury to the victim (complainant); the use/threatened use of force, violence, or a dangerous weapon; or victims who are especially young. In general, CSC-3, CSC-4, and CSC-5 typically address less aggravated conduct and apply to other situations in which the victim did not consent to the sexual conduct, was relatively young, or was incapable of voluntarily consenting to the sexual conduct due to a particular vulnerability or due to the special relationship between the actor (perpetrator) and the victim.

What is sexual contact? See Minn. Stat. §609.341, subd. 11.

Sexual **contact** is the intentional touching of the victim's intimate parts by the actor or coerced touching by the victim of the actor's, complainant's, or another's intimate parts without the victim's consent. The touching of the clothing covering the immediate area of the intimate parts constitutes sexual

<p>What is sexual penetration? See Minn. Stat. §609.341, subd. 12.</p>	<p>contact, as does the intentional touching with seminal fluid or sperm by the actor of the victim’s body or clothing covering the victim’s body.</p> <p>Sexual penetration is any sexual, oral, or anal intercourse, or any intrusion, <i>however slight</i>, into the genital or anal openings of either the victim’s or the actor’s body by any part of the body of the other, another, or any object without the victim’s consent.</p>
<p>What is force? See Minn. Stat. §609.341, subd. 3.</p>	<p>Force means the infliction (or attempted/threatened infliction) by the actor of bodily harm or commission/threat of any other crime by the actor against the victim or another, which:</p> <ul style="list-style-type: none"> • Causes the victim to reasonably believe that the actor has the present ability to execute the threat; AND • if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.
<p>What is coercion? See Minn. Stat. §609.341, subd. 14.</p>	<p>Coercion means the use by the actor of words/circumstances that cause the victim reasonably to fear that the actor will inflict bodily harm upon the victim or another, OR the use by the actor of confinement, or superior size/strength, against the victim that causes the victim to submit to sexual penetration/contact against the victim’s will. Note that proof of coercion does not require proof of a specific act or threat.</p>
<p>What is consent? See Minn. Stat. §609.341, subd. 4.</p>	<p>Consent means words/overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the victim OR that the victim failed to resist a particular sexual act. For a more in-depth discussion of consent, see The Defense of Consent in Criminal Sexual Conduct Cases Fact Sheet.</p>
<p>What is Position of Authority? See Minn. Stat. §609.341, subd. 10.</p>	<p>A person in a position of authority includes but is not limited to any person who is a parent OR acting in place of a parent, charged with parental rights, duties, or responsibilities to a child, OR a person charged with any duty/responsibility for the health, welfare, or supervision of a child, no matter how brief, at the time of the act. Examples include, but are not limited to, a teacher, coach, babysitter, or step-parent.</p>
<p>What is significant relationship? See Minn. Stat. §609.341, subd. 15.</p>	<p>Significant relationship means that the actor is either: the complainant’s parent/ step-parent/guardian, OR any person related to the complainant by blood/marriage/adoption (including sibling/step-sibling, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, or great-aunt), OR an adult who jointly resides intermittently or regularly in the same dwelling as the complainant AND who is not the complainant’s spouse.</p>
<p>What is personal injury? See Minn. Stat. §609.341, subd. 8.</p>	<p>Personal injury means bodily harm (physical pain/injury, illness, or physical impairment), severe mental anguish, or pregnancy.</p>

What is mentally impaired/mentally incapacitated? See Minn. Stat. §609.341, subs. 6 and 7.

What is physically helpless? See Minn. Stat. §609.341, subd. 9.

What are the elements of Criminal Sexual Conduct in the First Degree?
See Minn. Stat. §609.342

What are the elements of Criminal Sexual Conduct in the Second Degree? See Minn. Stat. §609.343.

Mentally impaired means that a person, as a result of inadequately developed or impaired intelligence OR a substantial psychiatric disorder of thought/mood, lacks the judgment to give reasoned consent to sexual conduct. **Mentally incapacitated** means a person, as a result of the influence of alcohol, a narcotic, anesthetic, or any other substance administered to that person without his/her agreement, lacks the judgment to give reasoned consent to sexual conduct.

Physically helpless means that a person is either: asleep/not conscious, OR unable to withhold consent/withdraw consent because of a physical condition, OR unable to communicate nonconsent AND the condition is known/should have been known.

A person violates CSC-1 if he engages in sexual **penetration** with another person OR sexual **contact with someone under 13** AND any of the following circumstances exists:

- The victim is **less than 13 years old** AND the actor is **more than 3 years older** than the victim;
- The victim is **between 13 and 16** AND the actor is **more than 4 years older** AND uses a **position of authority** to make the victim submit;
- The victim, based on circumstances at the time of the act, has a **reasonable fear of imminent great bodily** harm to self or others;
- The actor is **armed with a dangerous weapon**/uses an article the victim reasonably believes to be a dangerous weapon AND **uses/threatens to use** it to cause the victim to submit;
- The actor **causes personal injury** to victim AND actor either: uses **force or coercion** to accomplish sexual penetration OR knows/has reason to know the victim is **mentally impaired/incapacitated/physically helpless**;
- The actor is **aided/abetted by any accomplice** AND the accomplice either: uses **force or coercion** OR is **armed with a dangerous weapon** used to cause the victim to submit;

The victim is **under 16 years old** at the time of penetration, AND the actor has a **significant relationship** with the victim, AND either: the **actor/accomplice used force or coercion** to accomplish penetration, OR the victim suffered **personal injury**, OR the sexual abuse involved multiple **acts committed over an extended time period**.

A person violates CSC-2 if he engages in sexual **contact** with another person AND any of the special circumstances required for a violation of CSC-1 also exists. To distinguish between CSC-1 and CSC-2, therefore, note that sexual penetration is required for CSC-1, while sexual contact without sexual penetration is the sexual conduct required for CSC-2. However, note also that sexual contact involving a complainant under 13 is a violation of CSC-1, not CSC-2, to protect victims who are extremely young.

What are the elements of Criminal Sexual Conduct in the Third Degree? See Minn. Stat. §609.344.

A person violates CSC-3 if he engages in sexual **penetration** with another person AND any of the following circumstances exists:

- The victim is **less than 13 years old** AND the actor is **no more than 3 years older** than the victim;
- The victim is **between 13 and 16** AND the actor is **more than 2 years older**;
- The actor uses **force or coercion** to accomplish the penetration;
- The actor knows/has reason to know the victim is **mentally impaired/incapacitated/ physically helpless**;
- The victim is **between 16 and 18** AND the actor is **more than 4 years older** AND uses a **position of authority** to make the victim submit;
- The victim is between 16 and 18 AND the actor has a **significant relationship** with the victim at the time of the sexual penetration, AND either: the **actor/accomplice used force or coercion** to accomplish penetration, OR the victim suffered **personal injury**, OR the sexual abuse involved **multiple acts committed over an extended period of time**.
- The actor is a **psychotherapist**, the victim is a patient, AND the act occurred during a therapy session or during the ongoing therapy relationship; OR the victim is a **former patient** AND is **emotionally dependent** upon the psychotherapist; OR the victim is a **patient/former patient** AND the penetration occurred by means of **therapeutic deception**;
- The actor accomplishes penetration by means of **deception or false representation** that it is for a **bona fide medical purpose**;
- The actor is/purports to be a member of the **clergy** AND the victim and actor are **not married** AND either: the penetration occurred **during a meeting** where victim **sought/received religious/spiritual advice/aid/comfort** from the actor OR the during a period of **meetings as part of an ongoing basis** where the victim **sought/received religious/spiritual advice/aid/comfort** from the actor;
- The **actor is an employee/independent contractor/volunteer** of a state, county, city or privately operated **adult/juvenile correctional system**, secure treatment facility, or treatment facility providing services to clients civilly committed as **mentally ill/dangerous, sexually dangerous person, or sexual psychopathic personalities** AND the victim is a **resident of a facility/under supervision** of the correctional system.
- The actor **provides/is an agent** of an entity that provides **special transportation services** AND the victim **uses the special transportation service** AND the sexual penetration occurred **during/immediately before or after** the actor **transported** the victim;
- The actor **performs massage** or other bodywork for hire AND the victim was a **user of those services** AND nonconsensual penetration occurred **during/immediately before or after** the actor performed/was **hired to perform** those services for the victim.

<p>What are the elements of Criminal Sexual Conduct in the Fourth Degree? See Minn. Stat. §609.345.</p>	<p>A person violates CSC-4 if he engages in sexual contact with another person AND any of the special circumstances required for a violation of CSC-3 also exists. To distinguish between CSC-3 and CSC-4, therefore, note that sexual penetration is required for CSC-3, while sexual contact without sexual penetration is the sexual conduct required for CSC-4.</p>
<p>What are the elements of Criminal Sexual Conduct in the Fifth Degree? See Minn. Stat. §609.3451.</p>	<p>A person violates CSC-5 if:</p> <ul style="list-style-type: none"> • The actor engages in nonconsensual contact with any victim; or • The actor engages in masturbation or lewd exhibition of the genitals in the presence of a minor under age 16, knowing/having reason to know the minor is present. <p>Note that sexual contact in CSC-5 does not include the intentional touching of the clothing covering the immediate area of the buttocks. However, it does include the intentional removal/attempted removal of clothing covering the complainant’s intimate parts AND the nonconsensual touching by the complainant of the actor’s intimate parts, effected by the actor if done with sexual or aggressive intent.</p>
<p>What are the differences in terms of penalties for violations of criminal sexual conduct statutes?</p>	<p>CSC-1 carries the most severe penalties, then CSC-2, and so on, with CSC-5 carrying the least severe penalties. CSC-1, -2, -3, and -4 are all felony-level offenses, while CSC-5 is a gross misdemeanor. However, certain repeat violations of CSC-5 are classified as felonies. See Minn. Stat. §609.342 to 609.3451 for more specific sentencing guidelines, including the maximum statutory penalty for each degree of the crime and the presumptive sentence for each degree of the crime, as well as the Sentencing Guidelines Grid for CSC. Note: <i>Sentencing decisions are subject to a number of complex factors so do not attempt to determine the probable sentence for CSC conviction without consulting with the prosecutor in the case.</i></p>
<p>Are any defenses allowed for charges of Criminal Sexual Conduct?</p>	<p>Yes. In some cases, mistake as to age or consent to the act can be asserted as a defense to CSC charges. However, Minn. Stat. Sections 609.342–609.3451 do specifically state when such defenses cannot be asserted. For example, in cases where the victim is under a certain age and the actor is older than the victim by a certain number of months, when the actor is in a position of authority over the victim, or when the actor has a special relationship to the victim are cases when such defenses are not allowed. See The Defense of Consent in Criminal Sexual Conduct Cases Fact Sheet for a more detailed explanation of the consent defense in particular.</p>

The Sexual Violence Justice Institute
Minnesota Coalition Against Sexual Assault
161 St Anthony Ave Suite 1001
St Paul, MN 55102
651.209.9993
www.mncasa.org

Updated July 2018