

# Minnesota Sentencing Guidelines Commission

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## Possible Re-Ranking of Child Neglect or Endangerment September 28, 2016

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**Issue:** In August of 2016, the Sherburne County Attorney’s Office contacted MSGC and requested that the Commission review the Severity Level 1 ranking of felony neglect or endangerment of child under Minn. Stat. § [609.378](#).

**Background:** A person is guilty of gross misdemeanor child neglect who “willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child’s age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child’s physical, mental, or emotional health ... .” Subdivision 1(a)(1).

A person is guilty of gross misdemeanor child endangerment who “endangers [a] child’s person or health by ... intentionally or recklessly causing or permitting [the] child to be placed in a situation likely to substantially harm the child’s physical, mental, or emotional health or cause the child’s death ... .” Subd. 1(b)(1). Alternatively, a person commits the offense who endangers a child’s person or health by knowingly causing or permitting the child to be present where controlled substance crime 1st through 4th Degree, or possession of substances with intent to manufacture methamphetamine, is being committed. Subd. 1(b)(2).

A person is guilty of gross misdemeanor child endangerment by firearm access who “intentionally or recklessly causes a child under 14 years of age to be placed in a situation likely to substantially harm the child’s physical health or cause the child’s death as a result of the child’s access to a loaded firearm ... .” Subd. 1(c).

Each of these gross misdemeanors is enhanced to a felony, with a maximum 5-year prison sentence and \$10,000 fine, if the neglect or endangerment “results in substantial harm to the child’s physical, mental, or emotional health.” Subds. 1(a)(1) & 1(b)(2). In the case of child endangerment by firearm access, substantial harm to the child’s physical health only—not mental nor emotional health—is sufficient to enhance the offense to a felony. Subd. 1(c).

“Substantial harm to the child’s physical, mental, or emotional health,” a term unique in Minnesota Statutes to § 609.378, is not statutorily defined.<sup>1</sup> A similar term is found in Minn.

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<sup>1</sup> A related term, “substantial child endangerment,” is defined in the context of reporting maltreatment of minors, and that definition includes the phrase “neglect ... that substantially endangers the child’s physical or

Stat. § [609.02, subd. 7a](#): “ ‘Substantial bodily harm’ means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member.” “Substantial bodily harm” is used in various contexts within the criminal code; for example, its infliction will elevate an assault from the fifth degree (Minn. Stat. § [609.224](#)) to the third degree (Minn. Stat. § [609.223](#)). Unlike the term used in Minn. Stat. § 609.378, however, “substantial bodily harm” has no mental or emotional component, and does not use the term “health.”

**Guidelines Considerations:** Felony child neglect is currently ranked at Severity Level 1. The presumptive disposition is “stayed” at a Criminal History Score 5 or less, and “commitment” at Criminal History Score 6 or more. The presumptive duration ranges from 12 months and one day at Criminal History Score 0, 1, and 2, to 19 months (with a prison range from 17 to 22) at Criminal History Score 6. Felony child neglect under Minn. Stat. § [609.378](#), is on the list of offenses eligible for permissive consecutive sentences in Guidelines § 6.

The Commission may wish to consider a severity level no higher than Severity Level 5 because the presumptive sentence duration exceeds the statutory maximum of five years (60 months) at Criminal History Score 6. If an offender also had a Custody Status Point, a three-month enhancement would be applied, bringing the presumptive duration up to 51 months (with a prison range from 44 to 60).

**Possible Comparison Offenses:** Although no other offenses are enhanced to a felony due to the presence of “substantial harm to [the victim’s] physical, mental, or emotional health,” a limited basis for comparison may be found in those offenses that are enhanced due to the presence of “substantial bodily harm,” as discussed above.

Table 1, below, lists all offenses that are enhanced from a less severe crime to a more severe crime due to the presence of substantial bodily harm.<sup>2</sup> Several of the offenses would be, like Child Neglect/Endangerment, gross misdemeanors if not enhanced due to the harm. Each offense listed in Table 1 carries a statutory maximum penalty equal to, or less than, the statutory maximum penalty for Child Neglect/Endangerment (5 years imprisonment and a \$10,000 fine).

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mental health ...” An example of such endangerment (failure to thrive) is given. Minn. Stat. § [626.556](#), subd. 2(o)(3).

<sup>2</sup> Minn. Stat. § [609.222](#), subd. 2 (assault with a dangerous weapon resulting in substantial bodily harm) is omitted from Table 1. Although subd. 2 has a greater statutory maximum penalty than subd. 1 (assault with a dangerous weapon) due to the presence of substantial bodily harm, the Minnesota Sentencing Guidelines assign severity level 6 equally to both offenses.

Each offense listed in Table 1 is ranked at Severity Level 5, 4, 3, or 1.

At Severity Level 5, the presumptive disposition is “commitment” at Criminal History Score 3. The presumptive duration ranges from 18 months at Criminal History Score 0, to 48 months (with a prison range from 41 to 57) at Criminal History Score 6.

At Severity Level 4, the presumptive disposition is “commitment” at Criminal History Score 4. The presumptive duration ranges from 12 months and one day at Criminal History Score 0, to 30 months (with a prison range from 26 to 36) at Criminal History Score 6.

At Severity Level 3, the presumptive disposition is “commitment” at Criminal History Score 4. The presumptive duration ranges from 12 months and one day at Criminal History Score 0, to 23 months (with a prison range from 20 to 27) at Criminal History Score 6.

At Severity Level 1, the presumptive disposition is “commitment” at Criminal History Score 6. The presumptive duration ranges from 12 months and one day at Criminal History Score 0, to 19 months (with a prison range from 17 to 22) at Criminal History Score 6.

**Table 1. Offenses with Elevated Severity Due to Substantial Bodily Harm**

Crime	Minn. Stat. section	Severity Level	Statutory Maximum	Elevated From
Deprivation of Vulnerable Adult	<a href="#">609.233</a> , subd. 3(2)	5	5 yrs. & \$5,000	Gross misdemeanor
False Imprisonment (child restraint)	<a href="#">609.255</a> , subd. 3(c)	4	5 yrs. & \$10,000	Felony; Severity Level 3
Fleeing Peace Officer	<a href="#">609.487</a> , subd. 4(c)	4	5 yrs. & \$10,000	Felony; Severity Level 1
Criminal Abuse of Vulnerable Adult	<a href="#">609.2325</a> , subd. 3(a)(3)	4	5 yrs. & \$10,000	Gross misdemeanor
Malicious Punishment of Child	<a href="#">609.377</a> , subd. 5	4	5 yrs. & \$10,000	Gross misdemeanor
Assault 3rd Degree	<a href="#">609.223</a> , subd. 1	4	5 yrs. & \$10,000	Misdemeanor
Assault of an Unborn Child 2nd Degree	<a href="#">609.2671</a>	4	5 yrs. & \$10,000	Misdemeanor
Obstructing Legal Process, Arrest, etc.	<a href="#">609.50</a> , subd. 2(1)(ii)	3	5 yrs. & \$10,000	Misdemeanor
Depriving Another of Cust. or Parental Rights	<a href="#">609.26</a> , subd. 6(a)(2)(i)	3	4 yrs. & \$8,000	Felony; Severity Level 1

Crime	Minn. Stat. section	Severity Level	Statutory Maximum	Elevated From
Criminal Vehicular Operation	<a href="#">609.2113</a> , subd. 2	3	3 yrs. & \$10,000	Gross misdemeanor
Duty to Render Aid	<a href="#">609.662</a> , subd. 2(b)(2)	1	1 yr., 1 day, & \$3,000	Gross misdemeanor

**Number of Child Neglect/Endangerment Cases:** From 2010 through 2015, 46 offenders were sentenced for child neglect under Minn. Stat. § 609.378, all of whom had a presumptive “stayed” disposition. Of the 46 offenders sentenced, 3 (7%) received an aggravated dispositional departure. Two of the three offenders who received “commitment” sentences requested them. Of the 43 offenders who received a pronounced stayed sentence, six (14%) received a non-felony sentence. Of the 3 offenders who received prison, 2 (67%) received an aggravated durational departure and no one received a mitigated durational departure (Table 2).

**Table 2. Departure Rates for Child Neglect/Endangerment; Sentenced 2010-2015<sup>3</sup>**

Total Sentenced	Dispositional Departure			Durational Departure (received prison)			Durational Departure (received stayed sentence)		
	None	Aggravated	Mitigated	None	Aggravated	Mitigated	None	Aggravated	Mitigated (non-felony)
46	43 (93%)	3 (7%)	0 (0%)	1 (33%)	2 (67%)	0 (0%)	37 (86%)	0 (0%)	6 (14%)

**Original Ranking Decision:** The following is an excerpt of the May 27, 1993, minutes of the Minnesota Sentencing Guidelines Commission:

*The Commission meeting was held on May 27, 1993, in the Main Dining Room of the Commodore Hotel in St. Paul, Minnesota. Chairman Gernes called the meeting to order at 3:25PM. Members present were [Winona County Attorney] Julius Gernes, [Chief Deputy Steele County Sheriff] James Dege, [Tenth Judicial District Chief Public Defender] Jenny Walker, [Ramsey County Probation Officer] Stan Suchta, [Court of Appeals] Judge R. A. Randall, and [Second Judicial District] Judge Edward Wilson. Steve Alpert of the Attorney General’s Office was also present. Public attendance included Mr. Raymond Truelson, Jr., private citizen and Paul Scoggin, Hennepin County Attorney’s Office.*

<sup>3</sup> These data differ from the MSGC Information Response prepared for the Sherburne County Attorney’s Office on June 15, 2016, in that they have been updated to include six (6) offenders sentenced in 2015.

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The Commission then returned to the consideration of proposed modifications related to legislation passed in the last session.

**CHILD NEGLECT/ENDANGERMENT**

*[Executive Director] Deb Dailey noted that currently the child neglect/ endangerment provisions are all gross misdemeanors. The new language creates felony level neglect and endangerment offenses. The new felony offenses all carry a maximum sentence of five years/\$10,000.*

*Ms. Dailey explained the amended language which includes the following changes and additions:*

- 1) M.S. § 609.378, Subd. 1 (a): A felony level offense when neglect results in substantial harm to the child's physical, mental or emotional health. (Ms. Dailey noted that the substantial harm appears to be different from the substantial bodily harm that is currently defined in law to mean bodily injury which Involves a temporary but substantial disfigurement or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ or which causes a fracture of any bodily member. She stated this definition seems to be broader as it includes not just physical but also mental and emotional health.)*
- 2) M.S. § 609.378, Subd. 2 (b): The word 'recklessly' was added to the endangerment statute. Under the new language, endangerment includes recklessly, as well as intentionally, causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental or emotional health or cause the child's death. Subd. 2(b)(2) also defines endangerment as knowingly causing or permitting a child to be present when any person is selling or possessing a controlled substance. The offense is a felony if the endangerment results in substantial harm to the child's physical, mental, or emotional health.*
- 3) M.S. § 609.378, Subd. 2 (c): A new provision covering "A person who intentionally or recklessly causes a child under 14 years of age to be placed in a situation likely to substantially harm the child's physical health or cause the child's death as a result of the child's access to a loaded firearm is*

*guilty of child endangerment...". If the endangerment results in substantial harm, the offense is a felony; otherwise it is a gross misdemeanor.*

*Ms. Dailey noted that all of these offenses would otherwise be gross misdemeanors but in circumstances where substantial harm results they become felonies. She noted a similar crime is Malicious Punishment of a Child Resulting in Substantially Bodily Harm which is currently ranked at severity level IV. Ms. Dailey suggested the Commission evaluate whether these offenses are as egregious as malicious punishment offense or, whether, perhaps because of the different definition of substantial harm, they should be treated less seriously than malicious punishment.*

*Judge Wilson noted that the cases he has seen regarding child neglect/endangerment have involved crack cocaine and filthy living conditions. Chairman Gernes noted that solicitation of a child to engage in sexual conduct is severity level III and malicious punishment of a child is severity level IV. He also noted that injury of an unborn child during the commission of a crime is ranked at IV. He believed that these offenses have the same culpability as soliciting a child to engage in sexual conduct.*

**MOTION** was made and seconded to propose ranking M.S. § 609.378; Subd. 1 (a); Subd. 2 (b); and Subd. 2(c) at severity level I.

**MOTION** carried.

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