

## Discussion Guide – Ideas and Rationale

This document is meant to accompany the Chair’s Memo and Policy Language materials for the May 8, 2026, meeting. It incorporates input shared by fellow Task Force members and will serve as a reference for agenda item #5. Please come prepared to share any additional ideas or suggestions during the discussion.

### 609.11 ideas

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#### Shane Baker’s Ideas

1. Increase use and possession of a gun to a Severity Level 7 crime.
2. Add explosives or like weapons to this provision treating on same level as firearms unless other laws have greater sanction.
3. Separate other dangerous weapons based on weapon use or harm:
  - a. Current law will be substantial bodily harm is a severity level 7
  - b. Keep “bodily harm or attempted bodily harm” at Severity level 6. Keep mandatory minimum sanctions.
  - c. Make “fear of bodily harm” a Severity level 5 offense. Eliminate mandatory minimum sentence here.
4. Increase Felon in Possession of Firearm with Crime of Violence to Severity Level 7 offense
5. Allow defense opportunity to motion for downward departures
6. Where hard mandatories exist, require judges to provide report was the hard mandatory law not followed, not merely why departure given.
7. Remove 5th Degree Drug offense from definition of crime of violence in Chapter 624 and MS 609.11.subd. 9 offenses.
8. Evaluate other MS 609.11 offenses and how any sanction operates

#### Shane Baker’s General Principles

- A. Link the mandatory penalties better to the guideline durations
- B. Increase penalties for greater criminal histories so mandatory minimum does not impact all offenders in the same manner despite criminal histories
- C. Reduce the “one size fits all” approach. The proposal to end the MS 609.11 is a one size fits all approach, simply in the other direction.

- D. Gun violence mandatory penalties should not be eliminated as the elimination would harm public safety.
- E. Gun use and possession should both be kept within these mandatory penalties. Gun possession in these crimes creates a public safety concern.
- F. Gun and drug crimes present public safety concerns and the near whole sale removal harms public safety.
- G. The reduction of the lifetime ban for crimes of violence in the extreme manner presented is beyond the mandate of this task force.
- H. Where judges ignore the hard mandatories, which do not allow for departures, should be addressed.
- I. The high departure rates do not necessarily indicate failure as one size fits all policy was given “escape hatch” of being soft mandatories.

**John Donovan’s Ideas**

**1. Pairing drive-by-shooting second-degree murder with drive-by shooting.**

**Rationale:** The Chair separated drive-by shootings into its own subpart because firearm use is already an element, so to add a penalty increase would be “unfair double-dipping.” That being the case, then we should consider putting drive-by-shooting second-degree murder (Minn. Stat. § 609.19, subd. 1(2)) into that same subpart because it also already has firearm use as an element. And first-degree murder also has a provision that includes drive-by shooting (Minn. Stat. § 609.185(a)(3)). That might also need to be moved.

**2. Reduction of the penalty for possession of ammunition by an ineligible person.**

**Rationale:** The Chair also made changes to the sections related to ineligible people in possession of a firearm and ammunition. I agree with all his changes to those sections, but I would add one more.

I would amend the penalty provision to separate out penalties for firearm possession and ammunition possession. I would reduce the penalty for possession of ammunition.

The current, nearly identical penalty provisions do not satisfy the policy concerns in the matrix we have been using in these evaluations. They flatten culpability and fail to distinguish between a firearm and ammunition, actions which present completely different levels of risk to public safety. It worsens disparities between those affected. It drains resources by having increased sentences for people who present less risk. And I’m not sure changing the sentencing provisions would affect victims or survivors given that this is a status crime, not a person offense. As to system functioning/feasibility, resource impact, and unintended consequences/risks, these changes align with those goals as well. A person who possesses ammunition, rather than a firearm, may be more likely to plead guilty knowing they are facing a less severe possible penalty. And a less-severe sanction may mean reduced prison populations, allowing those resources to flow to those who most need it

## Mark Reitz

1. My thinking on these man mins is that they are generally overbroad; because only a fraction of people who possess a gun would use it to shoot another person, we need to **focus incapacitation on shooters (fatal and non-fatal), not gun possessors.**

My preference is to **only provide a man min of any kind for cases in which a firearm was discharged during the underlying crime (or during immediate flight).** I would support that being a mandatory mandatory.

- a. This could be in combination with the raising of maximum sentences in other cases. I do not favor the inclusion of other dangerous weapons in any mandatory minimum. [The fact that I prefer this does not mean I would oppose other solutions that get rid of the current scheme and eliminate the mandatory minimums in 609.11]
2. I would **support a 10-year mandatory mandatory for discharging a firearm in the course of a crime** (which I realize is an increase in punishment).
3. **Replace the § 609.11 mandatory minimums with a maximum-penalty increase for committing a listed offense using a firearm** (See Chair's memo for more detail)

## 152 ideas

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### Shane Baker

1. **Remove 5th Degree Drug offense from definition of crime of violence in Chapter 624 and MS 609.11. subd. 9 offenses** (See General Principles above)

### John Donovan

1. **Addition of allowing defense counsel to move for a departure from the remaining mandatory minimums.**

**Rationale:** One addition I would make to the Chair's current proposal is amending section 243.166, subdivision 5(d), and section 152.021, subdivision 3(c), to permit defense counsel to move for departures in addition to the currently listed prosecutor- and court-initiated departure motions.

These changes align with the policy goals set forth in the matrix we have been using. At the outset, it's worth noting that even with these changes, a backstop remains: the district court still must find that substantial and compelling reasons support departing. So even though the amendment permits the defendant to move for a departure, it doesn't mean one will be granted. The court still has to decide. That decision will ensure that public safety is not undermined. At the same time, the departure will ensure that the sentence reflects the defendant's culpability as determined by the district court. And it ensures fair and equitable sentences in cases where two defendants are otherwise equal, but the prosecutor only moved for a departure in one case. They could now both receive the same sentence. As for system functioning/feasibility, resource impact, and unintended consequences/risks, these changes align with those goals as well. If a defendant has the ability to move for a departure, it may result in fewer trials. Where before a prosecutor's lack of agreement to a departure meant a defendant may take the risk of trial, now they can move for one without that agreement. It also avoids otherwise-coercive pleas. And it would ensure that resources are properly allocated: it could reduce prison populations and the institutions' limited treatment capacity.

### Mark Osler

1. I 100% support **taking narcotics crimes out of the crime of violence list altogether, including aggravated 1st degree.**
2. I also support **changing any lifetime ban to a 10-year crime-free period.**

### Nate Reitz

1. **Tighten up "crime of violence" list, and create a 10-year, crime-free off-ramp for the "crime of violence" lifetime firearms ban** (See Chair's memo for more detail)

## 243 ideas

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### Shane Baker

1. Evaluate POR alternatives to merely eliminating 1st time offense being removed from mandatory minimums.

### John Donovan

1. Addition of allowing defense counsel to move for a departure from the remaining mandatory minimums (see rationale above).

### Mark Osler

1. I also agree with Nate on the need to eliminate the Man min for 1st failure to register and would be ok with the man min for a 2d failure dropping to 1 year + 1 day.

### Nate Reitz

1. Adopt the 2022 recommendation of the Predatory Offender Statutory Framework Working Group (See Chair's memo for more detail)