

Minnesota Sentencing Guidelines Commission

Certain Offenses Involve a Dangerous Weapon by Definition: Comment 2.E.03 in Mandatory Sentences Section

September 14, 2017

(Revised for Discussion: October 12, 2017)

Issue: Guidelines commentary references applicable offenses listed in Minn. Stat. § [609.11](#), subd. 9 that, by definition, involve a dangerous weapon. These offenses are always presumptive commitments because, by virtue of the conviction statute, a dangerous weapon was involved.

Missing from the list is aggravated controlled substance crime in the first degree with a firearm under Minn. Stat. § [152.021](#), subd. 2b(1),¹ which, by definition, involves the use or possession of a firearm, and therefore always triggers Minn. Stat. § 609.11, subd. 5.²

Also missing from the list is controlled substance crime in the first or second degree with a firearm under Minn. Stat. § [152.021](#), subd. 1(2)(i) (first-degree sale, 10 or more grams of cocaine or meth with a firearm) or 2(a)(2)(i) (first-degree possession, 25 or more grams of cocaine or meth with a firearm), or Minn. Stat. § [152.022](#), subd. 1(2)(i) (second-degree sale, 3 or more grams of cocaine or meth with a firearm) or 2(a)(2)(i) (second-degree possession, 10 or more grams of cocaine or meth with a firearm).³

Present on the list is aggravated stalking while possessing a dangerous weapon. While mere possession of a dangerous weapon other than a firearm is sufficient to satisfy the

¹ “Subd. 2b. **Aggravated controlled substance crime in the first degree.** A person is guilty of aggravated controlled substance crime in the first degree if the person violates subdivision 1, clause (1), (2), (3), (4), or (5), or subdivision 2, paragraph (a), clause (1), (2), or (3), and the person or an accomplice sells or possesses 100 or more grams or 500 or more dosage units of a mixture containing the controlled substance at issue and ... (1) the person or an accomplice possesses on their person or within immediate reach, or uses, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm”

² “Subd. 5. **Firearm.** (a) Except as otherwise provided in paragraph (b), any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, had in possession or used, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm, shall be committed to the commissioner of corrections for not less than three years, nor more than the maximum sentence provided by law. ...”

³ Each of the four offenses contains the following element: “(i) the person or an accomplice possesses on their person or within immediate reach, or uses, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm;”

aggravated stalking element of possessing a dangerous weapon under Minn. Stat. § 609.749, subd. 3(a)(3),⁴ it is insufficient to trigger Minn. Stat. § 609.11, subd. 4.⁵

Guidelines Considerations: The mandatory sentences section of the Guidelines contains the general rule that the presumptive disposition is commitment for an offender convicted of an offense with a statutory mandatory minimum. “[W]hen an offender is convicted of an offense with a statutory mandatory minimum sentence of one year and one day or more, the presumptive disposition is commitment even if the presumptive sentence would ordinarily fall within the shaded area on the applicable Grid.” Minn. Sentencing Guidelines § 2.E.1. Comment 2.E.03 contains references to those offenses that involve a dangerous weapon by definition; therefore, the presumptive disposition is commitment.

Questions for the Commission:

1. Does the Commission wish to add aggravated controlled substance crime in the first degree with a firearm under Minn. Stat. § 152.021, subd. 2b(1), **and controlled substance crime in the first or second degree with a firearm under Minn. Stat. § 152.021, subd. 1(2)(i) or 2(a)(2)(i), or Minn. Stat. § 152.022, subd. 1(2)(i) or 2(a)(2)(i)**, to the offenses listed in 2.E.03?
2. Does the Commission wish to remove Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under Minn. Stat. § 609.749, subd. 3(a)(3), from the offenses listed in 2.E.03?

~~Both of t~~These changes are illustrated below:

[Section 2]E. Mandatory Sentences

* * *

***2.E.03.** Some offenses by statutory definition involve a dangerous weapon, and therefore the mandatory minimum provision dealing with dangerous weapons always applies:*
Aggravated Controlled Substance Crime in the First Degree with a Firearm under Minn. Stat.

⁴ “Subd. 3. **Aggravated violations.** (a) A person who commits any of the following acts is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both: ... (3) commits any offense described in subdivision 2 and possesses a dangerous weapon at the time of the offense ...”

⁵ “Subd. 4. **Dangerous weapon.** Any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a dangerous weapon other than a firearm, shall be committed to the commissioner of corrections for not less than one year plus one day, nor more than the maximum sentence provided by law. ...”

§ 152.021, subd. 2b(1); *Controlled Substance Crime in the First or Second Degree with a firearm under Minn. Stat. § 152.021, subd. 1(2)(i) or 2(a)(2)(i), or Minn. Stat. § 152.022, subd. 1(2)(i) or 2(a)(2)(i); Assault in the Second Degree under Minn. Stat. § 609.222; Certain Persons Not to Have Firearms or Ammunition under Minn. Stat. §§ 624.713, subd. 2(b) and 609.165, subd. 1b; and Drive-By Shootings under Minn. Stat. § 609.66; and Stalking (Aggravated Violations) and Possessing a Dangerous Weapon under Minn. Stat. § 609.749, subd. 3(a)(3).* The presumptive disposition for these types of offenses is imprisonment and the presumptive duration is the mandatory minimum sentence prescribed for the conviction offense or the cell time, whichever is longer.