

# Minnesota Sentencing Guidelines Commission

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## Inadvertently Unranked Offense: Escape from Electronic Home Monitoring (EHM) September 14, 2017

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**Issue:** Escape from EHM under Minn. Stat. § [609.485](#), subd. 4(f) was established in law in 2002. It is a felony when a person escapes or absconds from electronic monitoring or removes an electronic monitoring device while under sentence for murder; manslaughter; criminal vehicular homicide; criminal vehicular operation; criminal vehicular homicide or injury of an unborn child; first-, second-, third-, fourth-degree assault; first-, second-, third-, fourth-, fifth-degree criminal sexual conduct; or civil commitment under Minn. Stat. § [253D](#). The statutory maximum sentence is five years. The offense is unintentionally omitted from the Offense Severity Reference Table i.e., Guidelines § 5.A; therefore, it is considered unranked. Since the law was established, MSGC is aware of one person receiving a sentence for escape from EHM in 2016.

**Guidelines Consideration:** There are a number of felony offenses that are intentionally left unranked by the Commission. In determining how, and if, offenses should be assigned a severity level, the Commission will consider how district courts have generally sentenced the offenses, along with the maximum penalty established by the Legislature, rankings for similar crimes, and other relevant information. When crimes are unranked, it may be because they are so seldom charged that no sentencing patterns are discernible, because they are new crimes that are not easily comparable to existing offenses, or because the offense encompasses such a wide range of behavior that it is best to allow the sentencing court discretion in determining the severity level. When an offense is unranked, the court must assign an appropriate severity level for the offense and specify on the record why that particular level was assigned. Guidelines § 2.A.4.

Below is a list of the severity-level rankings and statutory maximums for escape.

| Statute               | Title  | Severity Level | Stat. Max. |
|-----------------------|--|----------------|------------|
| 609.485 subd. 4(b)    | Escape with Violence from Felony Offense                 | 8              | 10 years   |
| 609.485 subd. 4(a)(1) | Escape from Felony Offense                               | 3              | 5 years    |
| 609.485 subd. 4(a)(5) | Escape from Civil Commitment, Sexually Dangerous Persons | 3              | 5 years    |

| Statute               | Title  | Severity Level | Stat. Max.     |
|-----------------------|--|----------------|----------------|
| 609.485 subd. 4(a)(2) | Escape, Mental Illness   | 1              | 1 year & 1 day |
| 609.485 subd. 4(a)(4) | Escape from Civil Commitment                                       | 1              | 1 year & 1 day |
| 609.485 subd. 4(a)(3) | Escape with Violence from Gross Misdemeanor or Misdemeanor Offense | Unranked       | 2 years        |

**Question for the Commission:** Does the Commission wish to assign a severity level to escape from EHM under Minn. Stat. § 609.485, subd. 4(f) or list it as an “unranked” offense in Guidelines §§ 5.A and 5.B?

**Staff Recommendation:** Because MSGC staff knows of only one conviction since the law was passed, staff recommends listing the offense in the Guidelines and officially designating it as “unranked,” as outlined below:

**5.A. Offense Severity Reference Table**

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| Severity Level | Offense Title                                 | Statute Number             |
|----------------|---|----------------------------|
| UNRANKED       | <u>Escape from Electronic Home Monitoring</u> | <u>609.485, subd. 4(f)</u> |

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**5.B. Severity Level by Statutory Citation**

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| Statute Number             | Offense Title                                 | Severity Level  |
|----------------------------|---|-----------------|
| <u>609.485, subd. 4(f)</u> | <u>Escape from Electronic Home Monitoring</u> | <u>Unranked</u> |