

609.485 ESCAPE FROM CUSTODY.

Subdivision 1. **Definition.** "Escape" includes departure without lawful authority and failure to return to custody following temporary leave granted for a specific purpose or limited period.

Subd. 2. **Acts prohibited.** Whoever does any of the following may be sentenced as provided in subdivision 4:

(1) escapes while held pursuant to a lawful arrest, in lawful custody on a charge or conviction of a crime, or while held in lawful custody on an allegation or adjudication of a delinquent act;

(2) transfers to another, who is in lawful custody on a charge or conviction of a crime, or introduces into an institution in which the latter is confined, anything usable in making such escape, with intent that it shall be so used;

(3) having another in lawful custody on a charge or conviction of a crime, intentionally permits the other to escape;

(4) escapes while in a facility designated under section 253B.18, subdivision 1, pursuant to a court commitment order after a finding of not guilty by reason of mental illness or mental deficiency of a crime against the person, as defined in section 253B.02, subdivision 4a. Notwithstanding section 609.17, no person may be charged with or convicted of an attempt to commit a violation of this clause;

(5) escapes while in or under the supervision of a facility designated under section 246B.01, subdivision 2a; 246B.02; 253B.18, subdivision 1; 253D.07, subdivision 3; or Minnesota Statutes 1992, section 526.10;

(6) escapes while on pass status or provisional discharge according to section 253B.18 or chapter 253D; or

(7) escapes while a civilly committed sex offender in the Minnesota sex offender program as defined in section 246B.01, subdivision 1a, or subject to a court hold order under chapter 253D.

For purposes of clauses (1) and (7), "escapes while held in lawful custody" or "escapes while a civilly committed sex offender in the Minnesota sex offender program" includes absconding from electronic monitoring or removing an electronic monitoring device from the person's body.

Subd. 3. **Exceptions.** This section does not apply to a person who is free on bail or who is on parole or probation, or subject to a stayed sentence or stayed execution of sentence, unless the person (1) has been taken into actual custody upon revocation of the parole, probation, or stay of the sentence or execution of sentence, (2) is in custody in a county jail or workhouse as a condition of a stayed sentence, or (3) is subject to electronic monitoring as a condition of parole, probation, or supervised release.

Subd. 3a. **Dismissal of charge.** A felony charge brought under subdivision 2, clause (4) shall be dismissed if the person charged voluntarily returns to the facility within 30 days after a reasonable effort has been made to provide written notice to the person that failure to return within 30 days may result in felony charges being filed.

Subd. 4. **Sentence.** (a) Except as otherwise provided in subdivision 3a, whoever violates this section may be sentenced as follows:

(1) if the person who escapes is in lawful custody for a felony, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both;

(2) if the person who escapes is in lawful custody after a finding of not guilty by reason of mental illness or mental deficiency of a crime against the person, as defined in section 253B.02, subdivision 4a, to imprisonment for not more than one year and one day or to payment of a fine of not more than \$3,000, or both;

(3) if the person who escapes is in lawful custody for a gross misdemeanor or misdemeanor, or if the person who escapes is in lawful custody on an allegation or adjudication of a delinquent act, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both;

(4) if the person who escapes is under civil commitment under section 253B.18, to imprisonment for not more than one year and one day or to payment of a fine of not more than \$3,000, or both; or

(5) if the person who escapes is under a court hold, civil commitment, or supervision under chapter 253D, Minnesota Statutes 2012, section 253B.185, or Minnesota Statutes 1992, section 526.10, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) If the escape was a violation of subdivision 2, clause (1), (2), or (3), and was effected by violence or threat of violence against a person, the sentence may be increased to not more than twice those permitted in paragraph (a), clauses (1) and (3).

(c) Unless a concurrent term is specified by the court, a sentence under this section shall be consecutive to any sentence previously imposed or which may be imposed for any crime or offense for which the person was in custody when the person escaped.

(d) Notwithstanding paragraph (c), if a person who was committed to the commissioner of corrections under section 260B.198 escapes from the custody of the commissioner while 18 years of age, the person's sentence under this section shall commence on the person's 19th birthday or on the person's date of discharge by the commissioner of corrections, whichever occurs first. However, if the person described in this clause is convicted under this section after becoming 19 years old and after having been discharged by the commissioner, the person's sentence shall commence upon imposition by the sentencing court.

(e) Notwithstanding paragraph (c), if a person who is in lawful custody on an allegation or adjudication of a delinquent act while 18 years of age escapes from a local juvenile correctional facility, the person's sentence under this section begins on the person's 19th birthday or on the person's date of discharge from the jurisdiction of the juvenile court, whichever occurs first. However, if the person described in this paragraph is convicted after becoming 19 years old and after discharge from the jurisdiction of the juvenile court, the person's sentence begins upon imposition by the sentencing court.

(f) Notwithstanding paragraph (a), any person who escapes or absconds from electronic monitoring or removes an electric monitoring device from the person's body is guilty of a crime and shall be sentenced to imprisonment for not more than one year or to a payment of a fine of not more than \$3,000, or both. A person in lawful custody for a violation of section 609.185, 609.19, 609.195, 609.20, 609.205, 609.2112, 609.2113, 609.2114, 609.221, 609.222, 609.223, 609.2231, 609.342, 609.343, 609.344, 609.345, 609.3451, or civil commitment under chapter 253D, or Minnesota Statutes 2012, section 609.21, and who escapes or absconds from electronic monitoring or removes an electronic monitoring device while under sentence may be sentenced to imprisonment for not more than five years or to a payment of a fine of not more than \$10,000, or both.

History: 1963 c 753 art 1 s 609.485; 1969 c 248 s 1; 1971 c 23 s 50; 1982 c 557 s 10; 1984 c 628 art 3 s 11; 1986 c 385 s 1-3; 1986 c 444; 1988 c 515 s 2,3; 1990 c 499 s 7,8; 1994 c 636 art 2 s 38,39; 1995 c 226 art 2 s 20,21; 1996 c 305 art 1 s 120,121; 1996 c 408 art 3 s 28,29; 1999 c 139 art 4 s 2; 2000 c 441 s

2,3; 2002 c 314 s 7,8; 2005 c 136 art 17 s 26,27; 2006 c 260 art 1 s 24,25; 2009 c 111 s 14,15; 2011 c 76 art 1 s 66; 2011 c 102 art 2 s 3; 2013 c 49 s 22; 2014 c 180 s 9

Staff Issue Paper

Unranked Offense: Felony Escape from Electronic Home Monitoring (EHM) under Minn. Stat. § 609.485

March 14, 2019

Issue

Felony Escape from EHM under Minn. Stat. § 609.485, subd. 4(f) went into effect August 1, 2002.¹ At that time, the offense was unintentionally omitted from the Offense Severity Reference Table; i.e., Guidelines § 5.A. Effective August 1, 2018, the Commission explicitly designated felony Escape from EHM as an “Unranked” offense.

Since 2006, there have been 26 Escape from EHM cases, with nine of these cases sentenced in 2017.² All 26 cases have been assigned a Severity Level 3.

Escape from felony offense under Minn. Stat. § 609.485, subd. 4(a)(1), is also assigned a Severity Level 3. It is unclear to MSGC staff if district court judges were aware that felony escape from EHM was an unranked offense. According to MSGC data, the mitigated departure rate was 50 percent, and one of the reasons for departure was “offense less onerous,” indicating that judges may have given a lower severity level than Severity Level 3 if they thought that was available.

Sentencing Guidelines and Statutory Considerations

Escape from EHM under Minn. Stat. § 609.485, subd. 4(f), is a gross misdemeanor unless the escapee was 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. chapter 253D. The statutory maximum sentence for this felony is five years.

¹ Minn. Session Laws, 2002, Regular Session, Ch. 314, S. 7, 8.

² Twenty-six cases may be lower than the actual number because MSGC staff was counting felony escape from EHM as escape from felony offense under Minn. Stat. § 609.485, subd. 4(a)(1) until 2006.

A number of felony offenses are intentionally left unranked by the Commission. In determining how, and if, offenses should be assigned a severity level, the Commission considers 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.³

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
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

Discussion for the Commission

Does the Commission wish to reexamine felony escape from EHM and assign a severity level?

One of the responsibilities of the Commission is to assign severity-level rankings to new crimes and to consider whether amended crimes need modifications. The Commission bases its decisions, in part, on the level of harm caused by the offense, similarly ranked offenses, and the culpability of the offender. Statutory maximums are also considered.

The Commission may decide:

1. What severity level should be assigned?

³ 2018 Minn. Sentencing Guidelines § 2.A.4.

2. Should the offense be added to the list in Section 6 (Offenses Eligible for Permissive Consecutive Sentences)?
3. *Should the offense be added to the list in Section 8 (Severe Violent Offense List)?*
4. Are there other modifications that must be made to the Guidelines?

Appendix: 2018 Minn. Sentencing Guidelines §§ 2.A.4

4. Unranked Offenses. Some offenses are designated as unranked offenses. When the court sentences an unranked offense, the court must assign an appropriate severity level for the offense and specify on the record why that particular level was assigned. The court may consider, but is not limited to, the following factors:
 - a. the gravity of the specific conduct underlying the unranked offense;
 - b. the severity level assigned to any ranked offense with elements that are similar to the elements of the unranked offense;
 - c. the conduct of and severity level assigned to other offenders for the same unranked offense; and
 - d. the severity level assigned to other offenders engaged in similar conduct.

If an offense is omitted from the Offense Severity Reference Table, the offense is considered unranked.

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2.A.04. *An unranked offense typically has one or more of the following characteristics: (1) the offense is rarely prosecuted; (2) the offense covers a wide range of underlying conduct; or (3) the offense is new and the severity of a typical offense cannot yet be determined. If a significant number of future convictions are obtained under one or more of the unranked offenses, the Commission will reexamine the ranking of these offenses and assign an appropriate severity level for a typical offense. Practitioners can contact the Commission for information on severity levels assigned to unranked offenses.*

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