

## Staff Issue Paper

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# Unranked Offense: Counterfeiting Currency under Minn. Stat. § 609.632

March 29, 2019

## Background

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At its March 14, 2019 meeting, the Commission reviewed and discussed Counterfeiting Currency to determine whether it was an appropriate offense to assign a severity level. The Commission asked staff for further analysis in order to make a decision.

## Review of Issue

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Counterfeiting Currency, under Minn. Stat. § [609.632](#), went into effect August 1, 2006. At that time, the Commission determined that the offense would be “Unranked.” Since then, there have been 121 Counterfeiting Currency cases sentenced, with 23 of those cases sentenced in 2017.

Counterfeiting Currency has three subdivisions, all of which require an intent to defraud. The statutory maximum depends on the subdivision and, in some cases, the face value of the counterfeited item or the value of the property or services sought (Table 1).

Table 1. Maximum Penalties Applicable to Counterfeiting of Currency, Minn. Stat. § 609.632

Subdivision	Offense Summary	Face Value, or Value of Property or Services Sought	Statutory Maximum
1: Manufacturing; printing	Makes, alters, scans, or copies, etc., U.S. currency, etc.	(Any)	20 years/ \$100,000
2: Means for false reproduction	Makes or possesses, etc., a plate, computer, printer, paper, or ink, etc., for false reproduction of U.S. currency, etc.	(Any)	
3: Uttering or possessing	With knowledge of, or reason to know, its character, utters, or possesses with intent to utter, counterfeit U.S. currency, etc.	More than \$35,000	10 years/ \$20,000
		More than \$5,000	
		More than \$1,000	5 years/ \$10,000
		\$1,000 or less and prior theft-related offense within 5 years	
	\$1,000 or less	Gross misd.	

Since 2006, sentencing courts have assigned Counterfeiting Currency the severity levels displayed in Table 2, below.

Table 2. Counterfeiting Currency under Minn. Stat. § 609.632, Assigned Severity-Level Rankings by Subdivision, 2006–2017

Counterfeiting Currency Minn. Stat. § 609.632, subdivision	Severity Level (SL)						Total
	SL 1	SL 2	SL 3	SL 4	SL 5	SL 8	
Subd. 1. Manufacturing; printing (20-year statutory maximum)	-	9	7	1	2	1	20
	-	45.0%	35.0%	5.0%	10.0%	5.0%	100%
Subd. 2. Means for false reproduction (20-year statutory maximum)	-	10	5	-	1	-	16
	-	62.5%	31.3%	-	6.3%	-	100%
Subd. 3. Uttering or possessing (Statutory maximum varies by value)	11	59	12	3	-	-	85
	12.9%	69.4%	14.1%	3.5%	-	-	100%
<b>Total</b>	11	78	24	4	3	1	121
	9.1%	64.5%	19.8%	3.3%	2.5%	0.8%	100%

## Further Analysis

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### Case Review

At its March 14, 2019 meeting, the Commission asked questions about the type of behavior present in the Manufacturing/Printing and Means for False Reproduction cases (subd. 1 & 2). MSGC staff reviewed these cases and determined there was a lack of information. There were few criminal complaints available. When complaints were available, few differences between subdivisions 1 and 2 were discerned; incorrect subdivision citations were observed; and monetary values were not reported.

MSGC staff also reviewed more recent data (2015–2017) for the Uttering or Possessing cases (subd. 3) to determine if there were patterns for assigning severity levels based on the face value, or value of property or services sought. Those results are displayed in Table 3.

*Table 3. Counterfeiting Currency – Uttering or Possessing, Severity-Level Rankings, 2015–2017*

Subd. 3. Uttering or possessing (Statutory maximum varies by value)	Severity Level (SL)			Total
	SL 1	SL 2	SL 3	
More than \$35,000 – Subd. 4(b)(1)	-	-	-	0
	-	-	-	100.0%
More than \$5,000 – Subd. 4(b)(2)	-	-	-	0
	-	-	-	100.0%
More than \$1,000 – Subd. 4(b)(3)(i)	-	6	-	6
	-	100.0%	-	100.0%
\$1,000 or less and prior theft-related offense within 5 years – Subd. 4(b)(3)(ii)	2	5	2	9
	22.2%	55.6%	22.2%	100.0%
Value Unknown	-	9	-	9
	-	100.0%	-	100.0%
<b>Total</b>	<b>2</b>	<b>20</b>	<b>2</b>	<b>24</b>
	<b>8.3</b>	<b>83.3</b>	<b>8.3</b>	<b>100.0%</b>

### How the Sentencing Guidelines Rank Similar Offenses

With one exception—financial exploitation of a vulnerable adult—all offenses that mention a value of less than \$5,000 (including a value of \$1,001 to \$5,000) are ranked at severity level (SL) 2. This includes the thirty offenses listed in Section 6, Theft Offense List. These offenses generally derive their statutory maximum from Minn. Stat. § 609.52, subd. 3(3), which is 5 years in prison and/or a \$10,000 fine.

Likewise, with the same exception, all offenses that mention a value of over \$5,000 are ranked at SL 3, including the offenses on the Theft Offense List. These offenses generally derive their statutory maximum from Minn. Stat. § 609.52, subd. 3(2), which is 10 years in prison and/or a \$20,000 fine.

A much smaller number of offenses have a value threshold of over \$35,000, all of which have a statutory maximum of 20 years in prison and/or a \$100,000 fine:

- Ranked at SL 7 – Financial Exploitation of a Vulnerable Adult (Over \$35,000).
- Ranked at SL 6 – Medical Assistance Fraud (Over \$35,000); and Theft Over \$35,000 (applies only to subdivisions relating to theft by false representation, including theft by check; theft by trick; and diversion of corporate property).
- Ranked at SL 5 – Check Forgery (Over \$35,000); and Financial Transaction Card Fraud (Over \$35,000).

## Questions for Commission

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Does the Commission wish to rank some or all subdivisions of Counterfeiting Currency? Does it wish to make severity-level distinctions based on subdivision or values? Does it wish to make distinctions based on monetary thresholds used in the Theft Offense List?

To be consistent with the rankings, monetary thresholds, and statutory maximums of other offenses, including the Theft Offense List, the Commission may consider it appropriate to assign violations of subdivision 3, with the penalty provisions of subdivision 4(b)(3) (Counterfeiting of Currency, Uttering or Possessing (\$5,000 or Less)), a severity ranking of SL 2.

For the same reason, the Commission may consider it appropriate to assign violations of subdivision 3, with the penalty provisions of subdivision 4(b)(2) (Counterfeiting of Currency, Uttering or Possessing (\$5,001–\$35,000)), a severity ranking of SL 3.

To be consistent with the rankings and statutory maximums of offenses with a monetary threshold of \$35,000, the Commission may consider it appropriate to assign violations of subdivision 3 (Counterfeiting of Currency, Uttering or Possessing), with the penalty provisions of subdivision 4(b)(1) (\$35,000 or More), a severity ranking of SL 5 or SL 6, or it may wish to leave the offense unranked.

Pending clearer patterns in sentencing data, the Commission may wish to leave unranked the offenses without monetary thresholds: violations of subdivisions 1 (Counterfeiting of Currency, Manufacturing/Printing) and 2 (Counterfeiting of Currency, Means for False Reproduction).

**609.632 COUNTERFEITING OF CURRENCY.**

Subdivision 1. **Manufacturing; printing.** Whoever, with the intent to defraud, falsely makes, alters, prints, scans, images, or copies any United States postal money order, United States currency, Federal Reserve note, or other obligation or security of the United States so that it purports to be genuine or has different terms or provisions than that of the United States Postal Service or United States Treasury is guilty of counterfeiting and may be sentenced as provided in subdivision 4.

Subd. 2. **Means for false reproduction.** Whoever, with intent to defraud, makes, engraves, possesses, or transfers a plate or instrument, computer, printer, camera, software, paper, cloth, fabric, ink, or other material for the false reproduction of any United States postal money order, United States currency, Federal Reserve note, or other obligation or security of the United States is guilty of counterfeiting and may be sentenced as provided in subdivision 4.

Subd. 3. **Uttering or possessing.** Whoever, with intent to defraud, utters or possesses with intent to utter any counterfeit United States postal money order, United States currency, Federal Reserve note, or other obligation or security of the United States, having reason to know that the money order, currency, note, or obligation or security is forged, counterfeited, falsely made, altered, or printed, is guilty of offering counterfeited currency and may be sentenced as provided in subdivision 4.

Subd. 4. **Penalty.** (a) A person who is convicted of violating subdivision 1 or 2 may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both.

(b) A person who is convicted of violating subdivision 3 may be sentenced as follows:

(1) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the counterfeited item is used to obtain or in an attempt to obtain property or services having a value of more than \$35,000, or the aggregate face value of the counterfeited item is more than \$35,000;

(2) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the counterfeited item is used to obtain or in an attempt to obtain property or services having a value of more than \$5,000, or the aggregate face value of the counterfeited item is more than \$5,000;

(3) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if:

(i) the counterfeited item is used to obtain or in an attempt to obtain property or services having a value of more than \$1,000 or the aggregate face value of the counterfeited item is more than \$1,000; or

(ii) the counterfeited item is used to obtain or in an attempt to obtain property or services having a value of no more than \$1,000, or the aggregate face value of the counterfeited item is no more than \$1,000, and the person has been convicted within the preceding five years for an offense under this section, section 609.24; 609.245; 609.52; 609.53; 609.582, subdivision 1, 2, or 3; 609.625; 609.63; or 609.821, or a statute from another state or the United States in conformity with any of those sections, and the person received a felony or gross misdemeanor sentence for the offense, or a sentence that was stayed under section 609.135 if the offense to which a plea was entered would allow the imposition of a felony or gross misdemeanor sentence; or

(4) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the counterfeited item is used to obtain or in an attempt to obtain property or services having a value of no more than \$1,000, or the aggregate face value of the counterfeited item is no more than \$1,000.

Subd. 5. **Aggregation; venue.** In any prosecution under this section, the value of the counterfeited United States postal money orders, United States currency, Federal Reserve notes, or other obligations or securities of the United States, offered by the defendant in violation of this section within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section. When two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the counterfeited items was forged, offered, or possessed, for all of the offenses aggregated under this subdivision.

**History:** 2006 c 260 art 1 s 27