



## Issues Related to Escape from Custody

Staff Presentation to the Commission  
May 9, 2019

## Escape from Custody under Minn. Stat. § 609.485

A. Ranking Escape from  
Electronic Home  
Monitoring

B. Apparent Guidelines  
Conflicts Regarding  
Escape while Under  
Sentence

## A. Ranking Escape from Electronic Home Monitoring (EHM)

- Escape from EHM is “Unranked.” (Eff. 8/1/2018)
- Then, staff recommended “Unranked” because information was there was 1 case since 2002.
- Now, staff knows there were 26 cases since 2006.
- **Questions for the Commission:** Does the Commission wish to rank the offense? If so, at what severity level?

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## Guidelines and Statutory Considerations

- Escape from EHM under Minn. Stat. § 609.485, subd. 4(f):

(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

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## Guidelines and Statutory Considerations: Table 1. Severity Levels, Stat. Max., Cases Sentenced, 2006-17

Statute	Title	Severity Level	Stat. Max.	No. (Percent) Cases Sentenced
609.485 subd. 4(a)(1)	Escape from Felony Offense (lawful custody)	3	5 years	768 (94.9%)
609.485 subd. 4(a)(2)	Escape, Mental Illness	1	1 year & 1 day	0 (0.0%)
609.485 subd. 4(a)(3)	Escape with Violence from Gross Misdemeanor or Misdemeanor Offense	Unranked	2 years	1 (0.1%)
609.485 subd. 4(a)(4)	Escape from Civil Commitment	1	1 year & 1 day	4 (0.5%)
609.485 subd. 4(a)(5)	Escape from Civil Commitment, Sexually Dangerous Persons	3	5 years	5 (0.6%)
609.485 subd. 4(b)	Escape with Violence from Felony Offense	8	10 years	5 (0.6%)
<i>609.485 subd. 4(f)</i>	<i>Escape from Electronic Home Monitoring</i>	<i>Unranked</i>	<i>5 years</i>	<i>26 (3.2%)</i>
<b>Total</b>	<b>Escape from Custody</b>			<b>809 (100.0%)</b>

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## A. Ranking Escape from Electronic Home Monitoring (EHM)

### Staff Recommendation:

- Assigning a severity level.
- Rank at Severity Level 3.
- Because all 26 cases were ranked at Severity Level 3, because similar offenses with the same statutory maximum (5 years) are ranked at Severity Level 3, and to avoid ranking Escape from EHM more severely than Escape from Felony Offense, assigning a ranking of Severity Level 3 may be most appropriate.

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## B. Three Apparent Guidelines Conflicts

1. Guidelines sec. 2.C.3.e, Presumptive Sentence
  2. Guidelines sec. 2.F.2, Permissive Consecutive Sentences
  3. Appendix 1, Mandatory and Presumptive Sentences Reference Table
- **Questions for Commission:** Does the Commission wish to conform the Guidelines?

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## 2016: Commission Eliminated Presumptive Consecutive Sentencing for Offenders on Supervised/Conditional Release

### [2.F.]1. Presumptive Consecutive Sentences.

- a. Criteria for Imposing a Presumptive Consecutive Sentence. Consecutive sentences are presumptive (required under the Guidelines) when:

(1) the offender ~~is~~ was, at the time of the current offense:

(i) serving an executed ~~prison sentence; term of imprisonment, disciplinary confinement, or reimprisonment; or~~ \* \* \*

- 2016 Modifications to Sec. 2.F.1.a(1) Minn. Sentencing Guidelines and Commentary

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## What We Missed in 2016: Section 2.C.3.e Still Refers to “Escape From an Executed Sentence”

[2.C.3]e. Offenses Committed While Under State Authority. The presumptive disposition for escape from an executed sentence, felony assault committed by an inmate serving an executed term of imprisonment, or assault on secure treatment facility personnel is commitment. It is presumptive for escape from an executed sentence and for felony assault committed by an inmate serving an executed term of imprisonment to be sentenced consecutively to the offense for which the inmate was confined. The presumptive duration is determined by the presumptive sentencing consecutive policy (see section 2.F.1, Presumptive Consecutive Sentences).

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- 2018 Sec. 2.C.3.e Minn. Sentencing Guidelines and Commentary

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## What We Also Missed in 2016: Section 2.F.2 Still Refers to “Escape From an Executed Prison Sentence”

[2.F.2.a(2)](i). Felony Escape. If the offender is convicted of felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – and the offender did not escape from an executed prison sentence, the escape may be sentenced consecutively to the sentence for which the offender was confined.

- 2018 Sec. 2.F.2.a(2)(i) Minn. Sentencing Guidelines and Commentary

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## Related issue: Appendix 1 Misstates the Guidelines

### Guidelines § 2.C.3.e

[2.C.3]e. Offenses Committed While Under State Authority. The presumptive disposition for escape from an executed sentence, felony assault committed by an inmate serving an executed term of imprisonment, or assault on secure treatment facility personnel is commitment. \* \* \*

### Appendix 1. Mandatory and Presumptive Sentences Reference Table

Statute	Offense	Prerequisite or Conditions	Minimum Duration
609.485	Escape	Offense committed during "Term of Imprisonment" portion of executed sentence	Grid Time

From 2018 Minn. Sentencing Guidelines

## B. Apparent Guidelines Conflicts Regarding Escape while Under Sentence

### Staff Recommendation:

- Reconcile the apparent conflicts between sections 2.C, 2.F.1, and 2.F.2, and Appendix 1.