

Possible Further Amendments to the Sentencing Guidelines in Light of Recent Legislation

July 21, 2020

1. Amendments to Harassment and Stalking Affecting Comment 2.E.03 (2020 Regular Session)

Background and Description: After the Commission’s June 11, 2020, review of 2020 legislative amendments to Harassment and Stalking, a member of the public in attendance asked MSGC staff about the interplay between the amendment to Minn. Stat. § 609.749, subd. 3(a)(3), and the mandatory minimum penalties established by Minn. Stat. § 609.11. Reflecting on this question after the meeting, staff realized that the Commission may wish to change comment 2.E.03 in light of the 2020 statutory change.

Guidelines Considerations: Comment 2.E.03 lists offenses that by definition involve a dangerous weapon, and for which a mandatory minimum sentence under [Minn. Stat. § 609.11](#) (applicable to certain offenses committed with a firearm or other dangerous weapon) always applies. Relying on the list in comment 2.E.03, MSGC staff looks for a departure report whenever the court does not commit to the Commissioner of Corrections for the mandatory minimum duration or the presumptive duration (whichever is greater).

In 2018, the Commission adopted staff’s recommendation to delete from the list Minn. Stat. § 609.749, subd. 3(a)(3), because the offense’s elements were satisfied by mere possession of a dangerous weapon. While mere possession of a *firearm* during the commission of an applicable crime is sufficient to require the mandatory minimum, mere possession of *another dangerous weapon* is not: For a dangerous weapon other than a firearm, Minn. Stat. § 609.11, subd. 4, requires that the weapon be “used” in some way, not merely possessed.

In 2020, the Legislature amended Minn. Stat. § 609.749, subd. 3(a)(3). Effective August 1, 2020, the crime now requires the dangerous weapon to be “used” in some way during the commission of the offense.* With this change, it appears that the offense, by definition, now qualifies for mandatory sentencing under Minn. Stat. § 609.11. It therefore appears appropriate to restore this offense to the list in comment 2.E.03.

* The law amended Minn. Stat. § 609.749, subd. 3(a)(3), as follows: “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~~ was used in any way in the commission of the offense ...” [2020 Minn. Laws ch. 96, § 3](#).

MSGC Staff Recommendation: Because Minn. Stat. § 609.749, subd. 3(a)(3), now requires the dangerous weapon to be used, not merely possessed, modify comment 2.E.03 to list that offense. In addition, for the sake of style consistency, make the first instance of the word “firearm” within the comment lowercase because it is not part of an offense title. The recommended changes follow:

Proposed modifications to 2019 (or 2020) Minn. Sentencing Guidelines comment 2.E.03:

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~~ firearm under Minn. Stat. § 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; Harassment (Aggravated Violations) with a dangerous weapon under Minn. Stat. § 609.749, subd. 3(a)(3); 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. 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.*

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2. Technical Amendment Affecting Failure to Report Danger to Child’s Health (2020 1st Special Session)

Background: During the 2020 1st Special Session, the Legislature passed an act relating to human services. Among other provisions, the act reorganized an existing section, Minn. Stat. § 626.556 (Reporting of Maltreatment of Minors), under a new chapter, Minn. Stat. chap. 260E. No changes were made to the criminal statutory maximums or elements currently found in Minn. Stat. § 626.556, subd. 6. Governor Walz signed the act into law on June 18, 2020.

[2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 7, § 8.](#)

Description: Certain professionals who work with children are mandated reporters of child maltreatment under Minn. Stat. § 260E.06. Minn. Stat. § 260E.08 provides misdemeanor and gross misdemeanor penalties for a mandated reporter’s failure to report child maltreatment.

In addition to mandated reporters, Minn. Stat. § 260E.06 also imposes a similar reporting duty upon a parent, guardian, or other caretaker who employs spiritual means or prayer for treatment in lieu of medical care, if the lack of medical care may cause serious danger to the child’s health. Minn. Stat. § 260E.08 provides gross misdemeanor penalties for a parent, guardian, or caretaker who who fails to report under such circumstances if the person knows or reasonably should know that the child’s health is in serious danger, and the child suffers substantial or great bodily harm due to the lack of medical care. If the child

dies because of the lack of medical care, the person is guilty of a felony and may be sentenced to imprisonment for not more than two years or to payment of a fine of not more than \$4,000, or both.

Effective Date: Not specified (Aug. 1, 2020, per Minn. Stat. § 645.02). Signed by Governor June 18, 2020.

Guidelines Considerations: Failure to Report under Minn. Stat. § 626.556, subd. 6(c), has been an unranked felony offense from its [1994 enactment](#) until its 2020 repeal. MSGC staff has no record of any sentences for the offense (through 2018). When repealed by [2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 7, § 39](#), the offense was reorganized and replaced with § 260E.08(c). There were no changes to the offense’s statutory maximum or elements.

References:

- Minn. Stat. § [626.556](#) (2018).
- [2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 7, § 39](#).
- [2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 7, § 8](#).
- Minn. Stat. § [645.02](#) (2018).

Fiscal Note Estimated Impact: Not requested.

Demographic Impact Statement: Not estimated.

MSGC Staff Recommendation: Because no changes were made to statutory maximums or elements, maintain existing unranked severity level and make technical and clarifying amendments as follows.

Modifications to 2019 (or 2020) Minn. Sentencing Guidelines §§ 5.A & 5.B:

5.A. Offense Severity Reference Table

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

* * *

Severity Level	Offense Title	Statute Number
UNRANKED	Failure to Report <u>Danger to Child’s Health (Death)</u>	626.556, subd. 6 <u>260E.08(c)</u>

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5.B. Severity Level by Statutory Citation

Offenses subject to a mandatory life sentence, including first-degree murder and certain sex offenses under Minn. Stat. § 609.3455, subdivision 2, are excluded from the Guidelines by law.

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Statute Number	Offense Title	Severity Level
626.556, subd. 6 <u>260E.08(c)</u>	Failure to Report <u>Danger to Child's Health (Death)</u>	Unranked

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3. Use of Force by Peace Officers (2020 2nd Special Session)

Background: During the 2020 2nd Special Session, the Legislature passed an act relating to public safety, providing law enforcement peer counseling, critical incident stress management, residency incentives, crisis intervention and mental illness crisis training, autism training, and duty to intercede and report for peace officers. The act expands membership of the Board of Peace Officer Standards and Training, prohibits warrior-style training, and provides community relations advisory council, certain peace officer data and reporting, peace officer grievance arbitration selection procedures and reports, and appropriates money. The act amends 2018 Minn. Stat. §§ 609.06 and 609.066 which regulates authorized use of force and authorized use of deadly force by peace officers. On July 21, 2020, Governor Walz issued a press release stating that he looked forward to signing the act into law.

[2020 Minn. Laws 2nd Spec. Sess. ch. 1, §§ 8–10.](#)

Description: Among its other provisions, the act changes two sections of the Criminal Code, Chapter 609.

Section 8 amends Minn. Stat. § 609.06, which authorizes use of force in certain circumstances, including the reasonable use of force by a public officer executing a duty imposed by law. Section 8 adds an exception: peace officers may not use chokeholds, hog-tying, or face-down transport unless the circumstances would permit use of deadly force under Minn. Stat. § 609.066.

Note that the act did not add chokeholds, hog-tying, or face-down transport to the definition of “deadly force” found in Minn. Stat. § 609.066, subd. 1; that definition remains unchanged.*

* Minn. Stat. § 609.066, subd. 1, states, in part, “For the purposes of this section, “deadly force” means force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing,

Sections 9 and 10 amend Minn. Stat. § 609.066, which authorizes peace officers to use deadly force in certain circumstances. First, section 9 adds a subdivision reciting the Legislature’s intent as to the limited manner in which peace officers ought to use the deadly force authorized by § 609.066. Second, section 10 strengthens and clarifies the criteria for evaluating which threats qualify for use of deadly force. Third, section 10 eliminates the current statutory authority for a peace officer to use deadly force to apprehend someone who has committed or attempted to commit a felony involving the use or threatened use of deadly force, absent reasonable grounds to believe the person will cause further death or great bodily harm unless immediately apprehended.

Effective Date: Section 8 is effective the day following enactment. Sections 9 and 10 are effective March 1, 2021.

Guidelines Considerations: The act indirectly affects all forcible crimes by narrowing the circumstances in which peace officers accused of such crimes may claim a defense. Because the elements of the crimes themselves are not changed, however, staff recommends no resulting modifications to the Sentencing Guidelines.

The specific offense of Assault 1st Degree, Deadly Force – Peace Officer or Correctional Employee (Min. Stat. § 609.221, subd. 2; Severity Level 9; mandatory minimum 10 years imprisonment) employs the term “deadly force” as defined in Minn. Stat. § 609.066: The offense is committed when someone assaults an on-duty peace officer, prosecuting attorney, judge, or correctional employee with such deadly force. Because the act did not change the definition of “deadly force” itself, staff recommends no resulting modifications to the Sentencing Guidelines.

References:

- Minn. Stat. § [609.06](#) (2018).
- Minn. Stat. § [609.066](#) (2018).
- Minn. Stat. § [609.221, subd. 2](#) (2018).

Fiscal Note Estimated Impact: Not requested.

Demographic Impact Statement: Not estimated.

MSGC Staff Recommendation: Take no action because the act’s changes do not directly affect the Sentencing Guidelines.

death or great bodily harm. The intentional discharge of a firearm, other than a firearm loaded with less lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force.”