

2020 Regular Session Laws

Amendments to Crime Laws Affecting the Guidelines

May 21, 2020

Background

After each session, the Commission reviews “crime[s] created or amended by the legislature in the preceding session” for possible related modifications to the Sentencing Guidelines. In accordance with Minn. Stat. § 244.09, subd. 11, the Commission may make such modifications without advance submission to the Legislature. The following crimes, created or amended in the Minnesota Session Laws of the 2020 Regular Legislative Session, are subject to Commission review.

1. Amendments to Harassment and Stalking Affecting the Guidelines

2020 Minn. Laws [ch. 96](#)

[Chapter 96](#) of the 2020 Regular Session Laws amended the Harassment and Stalking statute. These revisions may be considered by the Commission for possible modification to the Sentencing Guidelines.

Description: The Harassment and Stalking statute, Minn. Stat. § 609.749, is amended. Subdivisions 1 and 1a, which define the term “harass” and relieve the prosecutor of the burden of proving specific intent to harass, are repealed. Subdivision 2 is amended, functionally replacing the repealed definition of “harass” with more limited elements and a new intent element, that the defendant must intend to kill, injure, harass, or intimidate the victim. The result is that either: that the victim must be placed in reasonable fear of substantial body harm to the victim or to members of the victim’s family or household; or that the result, the attempted result, or the reasonably expected result of the defendant’s behavior must be to cause substantial emotional distress to the victim. The eight enumerated ways by which one may harass another, also found in subdivision 2, are unchanged. Harassment remains a gross misdemeanor.*

The statutory maximums for the felony provisions in subdivisions 3, 4, and 5 are unchanged. The felony offenses in subdivision 3—Harassment (Aggravated Violations)—are changed only as follows:

- Subd. 3(a)(3) now requires the dangerous weapon to be used, not merely possessed.

* Not to be confused with civil harassment, which has a different definition. Civil harassment is not necessarily a crime, but may lead to the issuance of a restraining order, the violation of which is a crime. Minn. Stat. § [609.748](#).

- Subd. 3(a)(4) (involving harassment to tamper with a judicial proceeding) is no longer a standalone offense, but becomes an enhancement to subdivision 2 offenses (as all other felony Harassment offenses are).

In addition, all felony Harassment offenses are changed to the extent that they enhance subdivision 2 offenses, which are changed as described above. Stalking (subd. 5), on the other hand, remains a standalone offense with unchanged elements.

Similar changes are made to Minn. Stat. sections 609.79 and 609.795, which define as misdemeanors harassing phone calls and mailings.

Effective Date: August 1, 2020, and applies to crimes committed on or after that date.

References:

- Minn. Stat. § [609.749](#) (2018).
- *In re Welfare of A.J.B.*, 929 N.W.2d 840 (Minn. 2019).
- *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019).
- Minn. Stat. § [609.79](#) (2018).
- Minn. Stat. § [609.795](#) (2018).

Guidelines Considerations: Harassment and Stalking are ranked in § 5 of the Guidelines as follows:

- 609.749 subd. 3(a),(b) – Harassment (Aggravated Violations) – Severity Level 4
- 609.749 subd. 4(a) – Harassment (2nd Violation) – Severity Level 4
- 609.749 subd. 4(b) – Harassment (3rd or Subsequent Violations) – Severity Level 5
- 609.749 subd. 5 – Stalking – Severity Level 5

Additionally, the offenses are on the permissive-consecutive sentencing list in § 6.

Fiscal Note Estimated Impact: MSGC staff assumed that the bill would make it more difficult for prosecutors to establish the crime of Harassment, which would tend to decrease the number of such gross misdemeanor and felony prosecutions under Minn. Stat. § 609.749. It was assumed that there would be a similar effect with respect to misdemeanor prosecutions under Minn. Stat. §§ 609.79 & 609.795.

On the other hand, it was assumed that the bill would avoid the constitutional infirmities of Minn. Stat. § 609.749 identified in *In re Welfare of A.J.B.*, 929 N.W.2d 840 (Minn. 2019), and *State v. Peterson*, 936 N.W.2d 912 (Minn. Ct. App. 2019). It was assumed that this would tend to increase the number of misdemeanor, gross misdemeanor, and felony prosecutions under the statutes.

The extent of these tendencies to increase and decrease prosecutions for felony harassment and stalking was not known. It was assumed that they would generally offset each other and would not result in an increase in the number of cases sentenced. Therefore, no long-term fiscal impact was assumed.

Demographic Impact Statement: Did not meet screening significance threshold.

MSGC Staff Recommendation: Because no changes were made to statutory maximums and no new felonies were created as a result of the amendments, staff recommends making no modifications.

2. Citation for Criminal Vehicular Homicide in First-Degree DWI

2020 Minn. Laws [ch. 83, art. 1, § 57](#)

[Chapter 83, art. 1, § 57](#) of the 2020 Regular Session Laws, the Revisor’s Bill, included technical amendments to Minn. Stat. § 169A.24, subd. 1, that affect Appendix 1 of the Guidelines.

Description: One of the ways a person is guilty of First-Degree Driving While Impaired (DWI) is if they have previously been convicted of felony Criminal Vehicular Homicide (CVH) or Criminal Vehicular Operation (CVO) under Minn. Stat. §§ 609.2112, 609.2113, or 609.2114. The “paragraph (a)” is missing for two references in Minn. Stat. § 169A.24, subd. 1(3)(iii). The law corrects the omission by inserting “paragraph (a)” in subd. 1(3)(iii) as displayed, below.

- CVH under Minn. Stat. § 609.2112, subd. 1, [paragraph \(a\)](#); and
- CVO; Unborn Child under Minn. Stat. § 609.2114, subd. 1, [paragraph \(a\)](#).

Effective Date: Not specified (Aug. 1, 2020, per Minn. Stat. § 645.02).

References:

- Minn. Stat. §§ [169A.24](#); [609.2112](#); [609.2113](#); [609.2114](#) (2018).
- Minn. Stat. § [609.21](#) (2012).
- Minn. Stat. § [609.21](#) (2006).
- 2019 Minn. Sentencing Guidelines § 2.C.3.d & Appendix 1.

Guidelines Considerations: If the current conviction is for felony DWI and if, prior to the commission of the current offense, a person had a previous conviction for a felony DWI or for a CVH or CVO as defined in Minn. Stat. § 169A.24, subd. 1(3), the presumptive disposition is commitment.

Appendix 1 is a reference table that lists statutes that are presumptive commitment, either because of a statutory mandatory minimum in Guidelines § 2.E or because of a policy in Guidelines § 2.C. In the case of felony DWI with a prior CVH or CVO, it is a commitment because of a policy in § 2.C. The table is intended to help users determine why an offense requires a presumptive commitment and helps the user determine the presumptive duration. The “paragraph (a)” is missing from the “Prerequisite or Conditions” for CVH under Minn. Stat. § 609.2112, subd. 1, *paragraph (a)* and CVO; Unborn Child under Minn. Stat. § 609.2114, subd. 1, *paragraph (a)*.

MSGC Staff Recommendation: Modify the “Prerequisite or Conditions” for this entry and insert the missing “paragraph (a)” as follows.

Proposed modifications to 2019 Minn. Sentencing Guidelines Appendix 1:

Appendix 1. Mandatory and Presumptive Sentences Reference Table

This table is for convenience when applying mandatory sentences (section 2.E) and presumptive sentences (section 2.C). It is not exhaustive.

* * *

Statute	Offense	Prerequisite or Conditions	Minimum Duration
169A.24, subd. 1(3)	Driving while Intoxicated	Prior Criminal Vehicular Homicide or Operation under Minn. Stat. § 609.2112.1(a)(2) thru (6); § 609.2113.1(2) thru (6); § 609.2113.2(2) thru (6); § 609.2114.1(a)(2) thru (6); § 609.2114.2(2) thru (6)	Grid Time

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