

## Appendix 2. 2021 Proposed Guidelines Modifications

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The following proposed modifications have been adopted by the Commission and are hereby submitted to the Legislature. Each modification is to the August 1, 2020, edition of the Minnesota Sentencing Guidelines and Commentary; each has a specified effective date of August 1, 2021; and each will apply as provided in section 3.G of the Guidelines, unless the Legislature by law provides otherwise.

### Appendix 2.1. Amendments to Harassment and Stalking (2020 Regular Session)

**Proposed Modifications:** On January 14, 2021, after a public hearing, the Commission, on a vote of 11 to 0, adopted a proposal to make modifications resulting from an amendment in 2020 Minn. Laws [ch. 96](#). Because Minn. Stat. § 609.749, subd. 3(a)(3), now requires the dangerous weapon to be used, not merely possessed, a conviction will now necessarily require application of the mandatory minimum. Accordingly, the Commission adopted a proposal to modify Comment 2.E.03 to list that offense among the offenses to which the mandatory minimum sentence always applies. In addition, for the sake of style consistency, the first instance of the word “firearm” within the comment is made lowercase because it is not part of an offense title.

*Proposed modifications to 2020 Minn. Sentencing Guidelines Comment 2.E.03, effective August 1, 2021:*

**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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**Appendix 2.2. Technical Amendments Affecting Failure to Report Danger to Child’s Health (2020 1st Special Session)**

**Proposed Modifications:** On January 14, 2021, after a public hearing, the Commission, on a vote of 11 to 0, adopted a proposal to make modifications resulting from an amendment in 2020 Minn. Laws 1st Spec. Sess. ch. 2, art. 7, § 8. 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. Because no changes were made to statutory maximums or elements, the Commission proposes to maintain the offense’s existing severity as unranked, and to make technical and clarifying amendments.

*Proposed modifications to 2020 Minn. Sentencing Guidelines sections 5.A & 5.B, effective August 1, 2021, and applicable to crimes committed on or after that date:*

**5.A. Offense Severity Reference Table**

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

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**5.B. Severity Level by Statutory Citation**

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

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### Appendix 2.3. Use of Minors in Sexual Performance

**Proposed Modifications:** On January 14, 2021, as a result of its review of its child pornography sentencing guidelines and after a public hearing, the Commission, on a vote of 11 to 0, adopted a proposal to increase the severity levels assigned to Use of Minors in Sexual Performance (Minn. Stat. § 617.246). This includes child pornography production (subd. 2); ownership or operation of a child pornography dissemination or reproduction business (subd. 3); and dissemination of child pornography for profit (subd. 4).

- **Enhanced Offenses.** The modifications increase, from Severity Level D to Severity Level C, the severity level assigned to Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13).
- **Base Offenses.** The modifications increase, from Severity Level E to Severity Level D, the severity level assigned to Use of Minors in Sexual Performance.

*Proposed modifications to 2020 Minn. Sentencing Guidelines sections 5.A & 5.B, effective August 1, 2021, and applicable to crimes committed on or after that date:*

#### 5.A. Offense Severity Reference Table

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Severity Level	Offense Title	Statute Number
C	<u>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)</u>	<u>617.246, subd. 2(b), 3(b), 4(b)</u>
D	<u>Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)</u>	<u>617.246, subd. 2(b), 3(b), 4(b)</u>

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Severity Level	Offense Title	Statute Number
D	<u>Use of Minors in Sexual Performance</u>	<u>617.246, subd. 2(a), 3(a), 4(a)</u>
E	<u>Use of Minors in Sexual Performance</u>	<u>617.246, subd. 2(a), 3(a), 4(a)</u>

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#### 5.B. Severity Level by Statutory Citation

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<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
617.246 subd. 2(b) 3(b) 4(b)	Use of Minors in Sexual Performance (Subsequent, by Predatory Offender, or Child Under 13)	<del>D</del> <u>C</u>

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<b>Statute Number</b>	<b>Offense Title</b>	<b>Severity Level</b>
617.246 subd. 2(a) 3(a) 4(a)	Use of Minors in Sexual Performance	<del>E</del> <u>D</u>

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