

Minnesota Sentencing Guidelines Commission

Consecutive Sentencing Policy Proposals to Resolve Consecutive Supervised Release Issues November 6, 2014

Issue Statement: There is a problem with Guidelines section 2.F related to consecutive sentences and the administration of the supervised release period for executed consecutive sentences. Currently, Department of Corrections' (DOC) practice for implementing the term of supervised release in consecutive sentences differs from the policy in Minn. Sentencing Guidelines comment 2.F.02; this results in the supervised release period of consecutive sentences not being uniformly administered. Three different proposals to modify the Guidelines are outlined below. Guidelines' language has been drafted for each proposal.

Proposal 1: This proposal would make the current DOC practice explicit in the Guidelines. The supervised release portion of the first sentence would continue to run during the second sentence's term of imprisonment. As a result, the offender would serve the first supervised-release term, or at least part of it, in prison.

- **Proposal 1 Example:** If an offender was sentenced to 21 months consecutively to a 60-month sentence, the offender would serve 54 months in prison, followed by 7 months on supervised release because of the overlap in the supervised release, as illustrated below.



- **Proposal 1 Critique:** The supervised release term served in the community is relatively short compared to the imprisonment time.
- **Proposal 1 Considerations for the Commission:** If the Commission intends to change the Guidelines according to Proposal 1, it must consider the following:
 1. Move Proposal 1 language to a public hearing;
 2. Decide whether to include staff technical changes (yellow language, attached);
 3. Decide whether to include staff policy proposal to abolish presumptive consecutive sentencing for offenders on supervised or conditional release (blue language, attached).

Proposal 2: This proposal would move the comment that describes how to administer a consecutive sentences into the Guidelines. That is, that the two executed sentences are to be summed. The two-thirds term of imprisonment is served, then the one-third term of supervised release is served. Under this proposal, the offender would serve a longer period of time on supervised release than in Proposal 1.

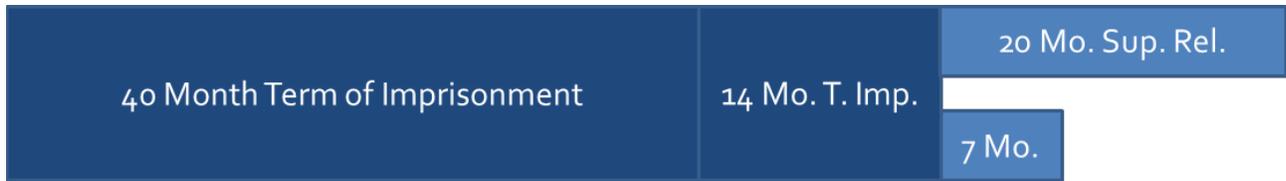
- **Proposal 2 Example:** If an offender was sentenced to 21 months consecutively to a 60-month sentence, the offender would serve 54 months in prison, followed by 27 months on supervised release, as illustrated below.

40 Month Term of Imprisonment	14 Mo. T. Imp.	20 Mo. Sup. Rel.	7 Mo.
Aggregate 54 Month Term of Imprisonment		Agg. 27 Mo. Sup. Release	

- **Proposal 2 Critique:** There would be an estimated increased in supervision costs from \$146,400 to \$312,360, per year. The estimate does not include any possible increase in cost for supervised release revocations to prison which result from the offenders’ additional time spent on supervision and potential for revocation.
- **Proposal 2 Considerations for the Commission:** If the Commission intends to change the Guidelines and submit Proposal 2, it must consider the following:
 1. Move Proposal 2 language to a public hearing;
 2. Select Timing Alternative 1 (gray language, attached), Timing Alternative 2 (green language, attached) or neither;
 3. Decide whether to include staff technical changes (yellow language, attached);
 4. Decide whether to include staff policy proposal to abolish presumptive consecutive sentencing for an offense committed while on supervised or conditional release (blue language, attached).

Proposal 3: Proposal 3 is intended as a compromise to Proposal 1 and Proposal 2, in which the terms of imprisonment would be summed and served consecutively, but the longest supervised release term would be served. This would allow for longer supervision than under Proposal 1, and would be uniformly applied because it would be explicitly stated in the Guidelines.

- **Proposal 3 Example:** If an offender was sentenced to 21 months consecutively to a 60-month sentence, the offender would serve 54 months in prison, followed by 20 months on supervised release, as illustrated below.



- **Proposal 3 Critique:** There are still unresolved issues with Proposal 3 that exist in Proposal 2, as well.
- **Proposal 3 Considerations for the Commission:** If the Commission intends to change the Guidelines and submit Proposal 3, it must consider the following:
 1. Move Proposal 3 language to a public hearing;
 2. Select Timing Alternative 1 (gray language, attached), Timing Alternative 2 (green language, attached) or neither;
 3. Decide whether to include staff technical changes (yellow language, attached);
 4. Decide whether to include staff policy proposal to abolish presumptive consecutive sentencing for an offense committed while on supervised or conditional release (blue language).

Staff Policy Proposal to Remove Requirement for Presumptive Consecutive Sentences for Offense Committed on Supervised Release:

The current policy provides that consecutive sentences are presumptive, unless a concurrent sentence would result in a longer sentence. Because offenders on supervised release will always have a Criminal History Score of at least 1 (for the custody-status point), and likely higher, a concurrent sentence will always be equal to or longer than a consecutive sentence (which only employs a Criminal History Score of 1 in the presumptive-consecutive scheme); absent the consideration of possible DOC action regarding supervised release revocation.

Since the court does not know what the DOC will do, it is impossible to determine whether a concurrent or consecutive sentence will be longer. Because the concurrent grid-time will always be equal to or longer than the consecutive grid-time, very few offenders who commit offenses on supervised release actually receive a consecutive sentence.

In 2012, 630 offenders who had presumptive prison dispositions committed the offense while on supervised release or parole. Of the 545 sentenced to prison, only 18 received a consecutive sentence and only 6 of them received a sentence that was consecutive to the supervised release offense. The other 12 received permissive consecutive sentences. If the presumptive

consecutive policy is removed, the court may still impose a consecutive sentence if the offense qualifies under the permissible consecutive rules i.e., presumptive consecutive offense and on the list of qualifying offenses in the Guidelines.

- **Staff Policy Proposal Example:** While on supervised release, an offender with a Criminal History Score of 4 commits, and is sentenced for, a new Severity Level 4 offense. (See illustration, below.)



- **Staff Policy Proposal Critique:** There would be a few cases that would no longer be eligible for a consecutive sentence.