

2015 Minn. Sentencing Guidelines (as currently written)	Proposal 4: From Sept. 2015 MSGC Meeting
<p>***</p> <p><b>1. Purpose and Definitions</b></p> <p>***</p> <p><b>B. Definitions</b></p> <p>As used in these Sentencing Guidelines (or “Guidelines”), the following terms have the meanings given.</p> <p>1. Commitment. “Commitment” occurs when the offender is sentenced to the custody of the Commissioner of Corrections.</p> <p>2. Concurrent Sentence. When the court orders sentences to be “concurrent,” the court is ordering that multiple sentences be served at the same time.</p> <p>3. Consecutive Sentence. When the court orders sentences to be “consecutive,” the court is ordering that multiple sentences be served one after the other.</p> <p>***</p> <p><b>2.F. Concurrent/Consecutive Sentences</b></p> <p>Generally, when an offender is convicted of multiple current offenses, or when there is a prior felony sentence that has not expired or been discharged, concurrent sentencing is presumptive.</p>	<p>***</p> <p><b>1. Purpose and Definitions</b></p> <p>***</p> <p><b>B. Definitions</b></p> <p>As used in these Sentencing Guidelines (or “Guidelines”), the following terms have the meanings given.</p> <p>1. Commitment. “Commitment” occurs when the offender is sentenced to the custody of the Commissioner of Corrections.</p> <p>2. Concurrent Sentence. When the court orders sentences to be “concurrent,” the court is ordering that multiple sentences be served at the same time.</p> <p>3. Consecutive Sentence. When the court orders sentences to be “consecutive,” the court is ordering that multiple sentences be served one after the other <u>in the manner described in section 2.F.</u></p> <p>***</p> <p><b>2.F. Concurrent/Consecutive Sentences</b></p> <p>Generally, when an offender is convicted of multiple current offenses, or when there is a prior felony sentence that has not expired or been discharged, concurrent sentencing is presumptive.</p>

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<p>This section sets forth the criteria for imposing consecutive sentences. Imposition of consecutive sentences in any situation not described in this section is a departure. When the court imposes consecutive sentences, the court must sentence the offenses in the order in which they occurred.</p> <p><i>Comment</i>  <b>2.F.01.</b> Consecutive sentences are a more severe sanction because the intent is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses. The Commission recommends that the court consider carefully whether the purposes of the Guidelines (in terms of punishment proportional to the severity of the</p>	<p>This section sets forth the criteria for imposing consecutive sentences. Imposition of consecutive sentences in any situation not described in this section is a departure. When the court imposes consecutive sentences, the court must sentence the offenses in the order in which they occurred.</p> <p><u>If two or more sentences are consecutively executed at the same time and by the same court, the Commissioner of Corrections must aggregate the sentence durations into a single fixed sentence. The aggregate term of imprisonment must be served before the aggregate supervised release period.</u></p> <p><u>If a sentence is executed consecutively to an earlier executed sentence (executed at an earlier time or by a different court), and the offender has not yet been placed on supervised release for the earlier executed sentence, the Commissioner of Corrections must aggregate both terms of imprisonment into a single, fixed term of imprisonment. The offender will serve the longer of the two supervised release terms.</u></p> <p><u>If a sentence is executed consecutively to an earlier executed sentence after the supervised release date for the earlier sentence, any remaining supervised release term from the earlier executed sentence is tolled while the offender serves the consecutive term of imprisonment. The offender will serve what remains of the previously tolled supervised release term or the supervised release term for the consecutive sentence, whichever is longer.</u></p> <p><i>Comment</i>  <b>2.F.01.</b> Consecutive sentences are a more severe sanction because the intent is to confine the offender for a longer period than under concurrent sentences. If the severity of the sanction is to be proportional to the severity of the offense, consecutive sentences should be limited to more severe offenses. The Commission recommends that the court consider carefully whether the purposes of the Guidelines (in terms of punishment proportional to the severity of the</p>

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<p><i>offense and the offender’s criminal history) would be served best by concurrent rather than consecutive sentences.</i></p> <p><b>2.F.02.</b> <i>The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence. The Commissioner of Corrections aggregates the separate durations into a single fixed sentence. The terms of imprisonment and the periods of supervised release are aggregated as well. For example, if a court executes a 44-month fixed sentence, and a 24-month fixed sentence to be served consecutively to the first sentence, the Commissioner of Corrections aggregates the sentences into a single 68-month fixed sentence, with a specified minimum 45.3-month term of imprisonment and a specified maximum 22.7-month period of supervised release.</i></p> <p><i>44 months (first sentence)</i>  <i>+24 months consecutive (second sentence)</i>  <i>=68 months (fixed sentence)</i></p> <p><i>45.3 months (2/3 – term of imprisonment)</i>  <i>22.7 months (1/3 – supervised release)</i></p>	<p><i>offense and the offender’s criminal history) would be served best by concurrent rather than consecutive sentences.</i></p> <p><b>2.F.02.</b> <del><i>The service of the consecutive sentence begins at the end of any incarceration arising from the first sentence.</i></del> <u><i>When a sentence is executed consecutively to another executed sentence on the same day and before the same court, the Commissioner of Corrections aggregates the separate durations into a single fixed sentence. The two-thirds terms of imprisonment are aggregated and served consecutively; then, the one-third and the periods of supervised release terms are aggregated and served consecutively as well. For example, if a court executes a 44 month fixed sentence, and a 24 month fixed sentence to be served consecutively to the first sentence, the Commissioner of Corrections aggregates the sentences into a single 68 month fixed sentence, with a specified minimum 45.3 month term of imprisonment and a specified maximum 22.7 month period of supervised release.</i></u></p> <p><del><i>44 months (first sentence)</i></del>  <del><i>+24 months consecutive (second sentence)</i></del>  <del><i>=68 months (fixed sentence)</i></del>  <del><i>45.3 months (2/3 – term of imprisonment)</i></del>  <del><i>22.7 months (1/3 – supervised release)</i></del></p> <p><u><i>For example, if a court executes a 60-month fixed sentence, and, at the same time, executes a 21-month fixed sentence to be served consecutively to the first sentence, the Commissioner of Corrections must aggregate the 40-month and 14-month terms of imprisonment into a single 54-month fixed term of imprisonment, and must aggregate the supervised release terms of 20 months and 7 months into a single 27-month fixed term of supervised release to be served consecutively, as illustrated below:</i></u></p>

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	1st: 40-mo. term of imprisonment		1st: 20-mo. supervised release term	
		2nd: 14-mo. term of imp.		2nd: 7-mo. s.r.t.
	<b>= 54-mo. aggregate term of imprisonment</b>		<b>= 27-mo. agg. sup. rel. term</b>	
	<p><b><u>2.F.03.</u></b> <i>When two sentences are executed on different days or before different courts, the second sentence is consecutive to the first, and the offender has not yet been placed on supervised release for the first sentence at the time the second sentence is executed, then the terms of imprisonment will be aggregated. The first supervised release term will not run during the aggregate term of imprisonment, but the supervised release terms will run at the same time as each other.</i></p> <p><i>For example, Judge A sentences an offender to a 60-month executed sentence. Judge B later sentences the offender to a 21-month executed sentence, consecutive to the 60-month sentence. Neither of the offender’s two supervised release terms will begin until the offender has completed the term of imprisonment (including disciplinary confinement) for both offenses. When the supervised release terms do begin, they will not be aggregated, as they would have been if the consecutive sentences were executed by the same judge at the same time. Instead, the longer supervised term release will effectively control the duration and they will run simultaneously, as illustrated below:</i></p>			

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	<table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <tr> <td style="padding: 5px;">1st: 40-mo. term of imprisonment</td> <td style="padding: 5px;"></td> <td style="padding: 5px;">1st: 20-mo. supervised release term</td> </tr> <tr> <td style="padding: 5px;"></td> <td style="padding: 5px;">2nd: 14-mo. term of imp.</td> <td style="padding: 5px;">2nd: 7-mo. s.r.t.</td> </tr> <tr style="background-color: #ccc;"> <td colspan="2" style="padding: 5px;">= 54-mo. aggregate term of imprisonment</td> <td style="padding: 5px;">= 20-mo. sup. release</td> </tr> </table> <p><b><u>2.F.04.</u></b> <i>When an offender has already been placed on supervised release by the time the second, consecutive sentence is executed, the terms of imprisonment cannot be aggregated. In such a case, the first supervised release term stops running during the second term of imprisonment. When the offender is placed on supervised release for the consecutive sentence, the first supervised release term will resume; the offender will serve the remaining balance on the first supervised release term and the second supervised release term at the same time.</i></p> <p><i>For example, Judge A sentences an offender to a 60-month executed sentence. The offender serves a 40-month term of imprisonment and is placed on supervised release for 20 months. Five months after being placed on supervised release, Judge B sentences the offender to a 21-month executed sentence, consecutive to the 60-month sentence. During the ensuing 14-month term of imprisonment (and any disciplinary confinement thereafter), the first sentence’s supervised release term is tolled. Upon release, the offender will serve the remaining balance of the original supervised release term (now 15 months) simultaneous to the service of the consecutive sentence’s supervised release term. The longer supervised release term will effectively control the duration, as illustrated below:</i></p>	1st: 40-mo. term of imprisonment		1st: 20-mo. supervised release term		2nd: 14-mo. term of imp.	2nd: 7-mo. s.r.t.	= 54-mo. aggregate term of imprisonment		= 20-mo. sup. release
1st: 40-mo. term of imprisonment		1st: 20-mo. supervised release term								
	2nd: 14-mo. term of imp.	2nd: 7-mo. s.r.t.								
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<p>1. <u>Presumptive Consecutive Sentences.</u></p> <p>a. <u>Criteria for Imposing a Presumptive Consecutive Sentence.</u> Consecutive sentences are presumptive (required under the Guidelines) when:</p> <p>(1) the offender is:</p> <ul style="list-style-type: none"> <li>(i) serving an executed prison sentence;</li> <li>(ii) on escape status from an executed prison sentence;</li> <li>(iii) on supervised release; or</li> <li>(iv) on conditional release following release from an executed prison sentence (see conditional release terms in section 2.E.3); and</li> </ul>	<div style="text-align: center; margin-bottom: 20px;"> <p>20-mo. supervised release term</p> <table border="1" style="margin: auto;"> <tr> <td style="width: 60%;">1st: 40-mo. term of imprisonment</td> <td style="width: 5%;">5 mo.</td> <td style="width: 15%; text-align: center;">(tolled sup. release)</td> <td style="width: 20%; text-align: center;">15 mo. sup. release</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">2nd: 14-mo. term of imp.</td> <td style="text-align: center;">7-mo. s.r.t.</td> </tr> <tr> <td style="text-align: center;"><b>= 40-mo. term of imprisonment</b></td> <td style="text-align: center;"><b>= 5</b></td> <td style="text-align: center;"><b>= 14-mo. t.i.</b></td> <td style="text-align: center;"><b>= 15 mo. s.r.t.</b></td> </tr> </table> </div> <p>1. <u>Presumptive Consecutive Sentences.</u></p> <p>a. <u>Criteria for Imposing a Presumptive Consecutive Sentence.</u> Consecutive sentences are presumptive (required under the Guidelines) when:</p> <p>(1) the offender <del>is</del> <b>was, at the time of the current offense:</b></p> <ul style="list-style-type: none"> <li>(i) serving an executed <del>prison sentence;</del> <b>term of imprisonment, disciplinary confinement, or reimprisonment;</b> or</li> <li>(ii) on escape status from an executed <del>prison sentence</del> <b>term of imprisonment, disciplinary confinement, or reimprisonment;</b></li> <li><del>(iii) on supervised release; or</del></li> <li><del>(iv) on conditional release following release from an executed prison sentence (see conditional release terms in section 2.E.3); and</del></li> </ul>	1st: 40-mo. term of imprisonment	5 mo.	(tolled sup. release)	15 mo. sup. release			2nd: 14-mo. term of imp.	7-mo. s.r.t.	<b>= 40-mo. term of imprisonment</b>	<b>= 5</b>	<b>= 14-mo. t.i.</b>	<b>= 15 mo. s.r.t.</b>
1st: 40-mo. term of imprisonment	5 mo.	(tolled sup. release)	15 mo. sup. release										
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<p>(2) the presumptive disposition for the current offense(s) is commitment. The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment.</p> <p>b. <u>Finding the Presumptive Duration.</u> For each offense sentenced consecutively to another offense(s) under this section, the presumptive duration is the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, or the mandatory minimum for the offense, whichever is longer.</p> <p>c. <u>Exception When Presumptive Concurrent Sentence is Longer.</u> If the criteria in paragraph 2.F.1.a have been met but the total time to serve in prison would be longer if a concurrent sentence were imposed, a concurrent sentence is presumptive. Otherwise, a concurrent sentence is a departure.</p>	<p>(2) the presumptive disposition for the current offense(s) is commitment. <del>The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment.</del></p> <p>b. <u>Finding the Presumptive Duration.</u> The presumptive disposition for an escape from an executed sentence or for a felony assault committed by an inmate serving an executed term of imprisonment is always commitment. In all other cases, the presumptive disposition is determined using the criteria in section 2.C.</p> <p>c. <del>b.</del> <u>Finding the Presumptive Duration.</u> For each offense sentenced consecutively to another offense(s) under this section, the presumptive duration is the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, or the mandatory minimum for the offense, whichever is longer.</p> <p>d. <del>c.</del> <u>Exception When Presumptive Concurrent Sentence is Longer.</u> If the criteria in paragraph 2.F.1.a have been met but the total time to serve in prison would be longer if a concurrent sentence were imposed, a concurrent sentence is presumptive. Otherwise, a concurrent sentence is a departure.</p> <p>e. <u>Consecutive Sentences for Multiple Offenses.</u> When the court pronounces presumptive consecutive sentences for multiple offenses, each new offense will be sentenced at a Criminal History Score of 1. The new offenses will run concurrently to each other, but consecutive to the prior offense. Permissive consecutive sentencing under section 2.F.2 is not a departure if it would result in a longer sentence than the sentence resulting from this rule.</p>

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<p>d. <u>Departure Factor</u>. If there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime, the court may depart from the presumptive consecutive sentence and impose a concurrent sentence.</p> <p>e. <u>Felony Driving While Impaired (DWI)</u>. Minn. Stat. § 169A.28 subd. 1 requires a consecutive sentence when the court sentences an offender for a felony DWI and:</p> <ul style="list-style-type: none"> <li>(1) the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence; and</li> <li>(2) the disposition for the current offense will be probation; <b>but not</b></li> <li>(3) when the disposition for the current offense will be commitment.</li> </ul> <p>If the court pronounces a consecutive sentence, the presumptive duration is based on a Criminal History Score of 1. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense.</p> <p><i>Comment</i>  <b>2.F.101.</b> This section establishes criteria requiring the use of consecutive sentences under the Guidelines. These are called “presumptive consecutive sentences.” When consecutive sentencing is presumptive, it is a departure to give concurrent sentences.</p> <p><b>2.F.102.</b> When the court pronounces presumptive consecutive sentences for multiple offenses, each new offense will be sentenced at a Criminal History Score of 1. The new offenses will run concurrently to each other, but consecutive to the prior offense.</p> <p><i>For example, an offender is convicted of Escape from Custody and First-Degree Burglary of an Occupied Dwelling following escape from an executed sentence. The term of imprisonment</i></p>	<p>f. <del>d.</del> <u>Departure Factor</u>. If there is evidence that the defendant has provided substantial and material assistance in the detection or prosecution of crime, the court may depart from the presumptive consecutive sentence and impose a concurrent sentence.</p> <p>g. <del>e.</del> <u>Felony Driving While Impaired (DWI)</u>. Minn. Stat. § 169A.28 subd. 1 requires a consecutive sentence when the court sentences an offender for a felony DWI and:</p> <ul style="list-style-type: none"> <li>(1) the offender has a prior unexpired misdemeanor, gross misdemeanor or felony DWI sentence; and</li> <li>(2) the disposition for the current offense will be probation; <b>but not</b></li> <li>(3) when the disposition for the current offense will be commitment.</li> </ul> <p>If the court pronounces a consecutive sentence, the presumptive duration is based on a Criminal History Score of 1. Any pronounced probationary jail time should be served consecutively to any remaining time to be served on the prior DWI offense.</p> <p><i>Comment</i>  <b>2.F.101.</b> This section establishes criteria requiring the use of consecutive sentences under the Guidelines. These are called “presumptive consecutive sentences.” When consecutive sentencing is presumptive, it is a departure to give concurrent sentences.</p> <p><b>2.F.102.</b> When the court pronounces presumptive consecutive sentences for multiple offenses, each new offense will be sentenced at a Criminal History Score of 1. The new offenses will run concurrently to each other, but consecutive to the prior offense.</p> <p><i>For example, an offender is convicted of Escape from Custody and First-Degree Burglary of an Occupied Dwelling following escape from an executed sentence. The term of imprisonment</i></p>



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<p><i>remaining on the original offense from which the offender escaped is 18 months. Each of the new offenses will have a presumptive consecutive sentence duration found at a Criminal History Score of 1: Escape from Custody (Severity Level 3), 13 months; Burglary (Severity Level 6), 27 months. The two sentences will run concurrently to each other, and the longer of the two durations will be added to the time remaining on the original term of imprisonment (here, 27 months will be added to the time remaining on the original 18-month sentence). Aggregated, the new presumptive consecutive sentence duration is 45 months.</i></p> <p><b>2.F.103.</b> A concurrent sentence is presumptive if the result is that an offender will serve longer in prison. For example, an offender with a Criminal History Score of 6 is on supervised release. The offender has one month remaining until the sentence expires when the offender commits a theft over \$5,000 (Severity Level 3). The Guidelines would typically recommend that the theft run consecutively to the unexpired prior except that a concurrent sentence is longer; therefore, a concurrent sentence is presumptive.</p> <p>1 month (before expiration of sentence)                      +13 months (Severity Level 3; Criminal History Score of 1)                      =14 months consecutive                      vs.                      23 months concurrent (Severity Level 3; Criminal History Score of 6)</p> <p><b>2.F.104.</b> If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a presumptive consecutive sentence, the</p>	<p><i>remaining on the original offense from which the offender escaped is 18 months. Each of the new offenses will have a presumptive consecutive sentence duration found at a Criminal History Score of 1: Escape from Custody (Severity Level 3), 13 months; Burglary (Severity Level 6), 27 months. The two sentences will run concurrently to each other, and the longer of the two durations will be added to the time remaining on the original term of imprisonment (here, 27 months will be added to the time remaining on the original 18-month sentence). Aggregated, the new presumptive consecutive sentence duration is 45 months.</i></p> <p><b>2.F.103.</b> A concurrent sentence is presumptive if the result is that an offender will serve longer in prison. For example, an <span style="background-color: #ADD8E6;">offender inmate</span> with a Criminal History Score of 6 <span style="background-color: #ADD8E6;">assaults a prison guard during his term of imprisonment and has only one month remaining until his supervised release term is scheduled to begin.</span> <del>is on supervised release. The offender has one month remaining until the sentence expires when the offender commits a theft over \$5,000 (Severity Level 3).</del> The Guidelines would typically recommend that the <span style="background-color: #ADD8E6;">theft assault</span> run consecutively to the unexpired prior except that a concurrent sentence is longer; therefore, a concurrent sentence is presumptive.</p> <p>1 month (before <span style="background-color: #ADD8E6;">expiration of sentence scheduled supervised release date</span>)  <del>+13 months (Severity Level 3; Criminal History Score of 1)</del>  <del>=14 months consecutive</del>                      vs.  <del>23 months concurrent (Severity Level 3; Criminal History Score of 6)</del>  <del>+12 mos. and 1 day (Severity Level 1; Criminal History Score of 1)</del>  <del>=13 mos. and 1 day, consecutive</del>                      vs.  <del>19 months, concurrent (Severity Level 1; Criminal History Score of 6)</del></p> <p><b>2.F.104.</b> If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a presumptive consecutive sentence, the</p>

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*presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, for an attempted aggravated robbery offense sentenced presumptive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 1 (58 months), is divided in half – making the presumptive duration 29 months.*

**2. Permissive Consecutive Sentences.**

a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section. For each felony offense sentenced consecutively to another felony offense(s), the court must use a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure.

(1) Specific Offenses; Presumptive Commitment. Consecutive sentences are permissive if the presumptive disposition for the current offense(s) is commitment and paragraph (i), (ii), or (iii) applies. If the court pronounces a consecutive stayed sentence under one of these paragraphs, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

(i) Prior Felony Sentence. A current felony conviction for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences may be

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*presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 1, then applying the rules for attempts and conspiracy set forth in section 2.G.2. ~~For example, for an attempted aggravated robbery offense sentenced presumptive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 1 (58 months), is divided in half – making the presumptive duration 29 months.~~*

**2. Permissive Consecutive Sentences.**

a. Criteria for Imposing a Permissive Consecutive Sentence. Consecutive sentences are permissive (may be given without departure) only in the situations specified in this section. ~~For each felony offense sentenced consecutively to another felony offense(s), the court must use a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure.~~

(1) Specific Offenses; Presumptive Commitment. Consecutive sentences are permissive if the presumptive disposition for the current offense(s) is commitment, as outlined in section 2.C, and paragraph (i), (ii), or (iii) applies. If the court pronounces a consecutive stayed sentence under one of these paragraphs, the stayed sentence is a mitigated dispositional departure, but the consecutive nature of the sentence is not a departure. The consecutive stayed sentence begins when the offender completes the term of imprisonment and is placed on supervised release.

(i) Prior Felony Sentence. A current felony conviction for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences may be

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<p>sentenced consecutively to a prior felony sentence that has not expired or been discharged if the prior felony conviction:</p> <ul style="list-style-type: none"> <li>(a) is for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences; or</li> <li>(b) is from a jurisdiction other than Minnesota and would be equivalent to a crime on the list in section 6.</li> </ul> <p>The presumptive disposition for the prior offense(s) must also be commitment as outlined in section 2.C. A non-Minnesota conviction is equivalent to a crime on the list in section 6 if it would both be defined as a felony in Minnesota, and received a sentence that in Minnesota would be a felony-level sentence, including the equivalent of a stay of imposition.</p> <ul style="list-style-type: none"> <li>(ii) <u>Multiple Current Felony Convictions</u>. If the offender is being sentenced for multiple current felony convictions for crimes on the list of offenses eligible for permissive consecutive sentences in section 6, the convictions may be sentenced consecutively to each other.</li> <li>(iii) <u>Felony Conviction After Escape (Non-Executed Sentence)</u>. If the offender commits and is convicted for a new felony crime while on felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – from a non-executed felony sentence, the new felony conviction may be sentenced consecutively to the sentence for the escape or the offense for which the offender was confined.</li> </ul>	<p>sentenced consecutively to a prior felony sentence that has not expired or been discharged if the prior felony conviction:</p> <ul style="list-style-type: none"> <li>(a) is for a crime on the list in section 6 of offenses eligible for permissive consecutive sentences; or</li> <li>(b) is from a jurisdiction other than Minnesota and would be equivalent to a crime on the list in section 6.</li> </ul> <p>The presumptive disposition for the prior offense(s) must also be commitment as outlined in section 2.C. A non-Minnesota conviction is equivalent to a crime on the list in section 6 if it would both be defined as a felony in Minnesota, and received a sentence that in Minnesota would be a felony-level sentence, including the equivalent of a stay of imposition.</p> <ul style="list-style-type: none"> <li>(ii) <u>Multiple Current Felony Convictions</u>. If the offender is being sentenced for multiple current felony convictions for crimes on the list of offenses eligible for permissive consecutive sentences in section 6, the convictions may be sentenced consecutively to each other.</li> <li>(iii) <u>Felony Conviction After Escape (Non-Executed Sentence)</u>. If the offender commits and is convicted for a new felony crime while on felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – from a non-executed felony sentence, the new felony conviction may be sentenced consecutively to the sentence for the escape or the offense for which the offender was confined.</li> </ul>

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<p>(2) <u>Other Offenses</u>. Consecutive sentences for the following offenses are always permissive and there is no dispositional departure if the sentences are executed.</p> <p>(i) <u>Felony Escape</u>. 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.</p> <p>(ii) <u>Felony Conviction After Escape (Executed Sentence)</u>. If the offender committed and is convicted for a new felony crime committed while on felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – from an executed felony sentence, the new felony may be sentenced consecutively to the sentence for the escape.</p> <p>(iii) <u>Fleeing a Police Officer; Criminal Sexual Conduct</u>. The court may impose consecutive sentences as permitted under Minn. Stat. § 609.035, subds. 5 and 6 if both of the following occur:</p> <p>(a) the offender is convicted of either of the following offenses:</p> <ul style="list-style-type: none"> <li>• Fleeing a Peace Officer in a Motor Vehicle, as defined in Minn. Stat. § 609.487; or</li> <li>• Criminal Sexual Conduct in the First through Fourth Degrees with force or violence, as defined in Minn. Stat. §§ 609.342 through 609.345; and</li> </ul> <p>(b) the court imposes punishment for any other crime committed by the defendant as part of the same conduct.</p> <p>(iv) <u>Felony Assault in a Local Jail or Workhouse</u>. If the offender is convicted of felony assault committed while in a local jail or workhouse, the felony assault conviction may be sentenced consecutively to any other executed</p>	<p>(2) <u>Other Offenses</u>. Consecutive sentences for the following offenses are always permissive and there is no dispositional departure if the sentences are executed.</p> <p>(i) <u>Felony Escape</u>. 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.</p> <p>(ii) <u>Felony Conviction After Escape (Executed Sentence)</u>. If the offender committed and is convicted for a new felony crime committed while on felony escape from lawful custody – as defined in Minn. Stat. § 609.485 – from an executed felony sentence, the new felony may be sentenced consecutively to the sentence for the escape.</p> <p>(iii) <u>Fleeing a Police Officer; Criminal Sexual Conduct</u>. The court may impose consecutive sentences as permitted under Minn. Stat. § 609.035, subds. 5 and 6 if both of the following occur:</p> <p>(a) the offender is convicted of either of the following offenses:</p> <ul style="list-style-type: none"> <li>• Fleeing a Peace Officer in a Motor Vehicle, as defined in Minn. Stat. § 609.487; or</li> <li>• Criminal Sexual Conduct in the First through Fourth Degrees with force or violence, as defined in Minn. Stat. §§ 609.342 through 609.345; and</li> </ul> <p>(b) the court imposes punishment for any other crime committed by the defendant as part of the same conduct.</p> <p>(iv) <u>Felony Assault in a Local Jail or Workhouse</u>. If the offender is convicted of felony assault committed while in a local jail or workhouse, the felony assault conviction may be sentenced consecutively to any other executed</p>

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<p>prison sentence if the presumptive disposition for the other offense was commitment as outlined in section 2.C.</p> <p><i>Comment</i>  <b>2.F.201.</b> <i>The Commission establishes criteria that permits, but does not require, the use of consecutive sentences in instances listed in the Guidelines. This is called “permissive consecutive sentences.”</i></p> <p><b>2.F.202.</b> <i>If an offender is given permissive consecutive sentences, the presumptive duration for each offense sentenced consecutive to another offense(s) is determined by using the zero criminal history column, or the mandatory minimum, whichever is longer. The purpose of this procedure is to count an offender’s criminal history score only one time in the computation of consecutive sentence durations.</i></p> <p><b>2.F.203.</b> <i>If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a permissive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 0, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, for an attempted aggravated robbery offense sentenced permissive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 0 (48 months), is divided in half – making the presumptive sentence 24 months.</i></p>	<p>prison sentence if the presumptive disposition for the other offense was commitment as outlined in section 2.C.</p> <p style="background-color: #FFFF00;"><b>b. Finding the Presumptive Duration.</b> <u>For each felony offense sentenced consecutively to another felony offense(s), the court must use a Criminal History Score of 0, or the mandatory minimum for the offense, whichever is longer, to determine the presumptive duration. A consecutive sentence at any other duration is a departure.</u></p> <p><i>Comment</i>  <b>2.F.201.</b> <i>The Commission establishes criteria that permits, but does not require, the use of consecutive sentences in instances listed in the Guidelines. This is called “permissive consecutive sentences.”</i></p> <p><b>2.F.202.</b> <i>If an offender is given permissive consecutive sentences, the presumptive duration for each offense sentenced consecutive to another offense(s) is determined by using the zero criminal history column, or the mandatory minimum, whichever is longer. The purpose of this procedure is to count an offender’s criminal history score only one time in the computation of consecutive sentence durations.</i></p> <p><b>2.F.203.</b> <i>If the offense is an attempt under Minn. Stat. § 609.17, or a conspiracy under Minn. Stat. § 609.175, and the court pronounces a permissive consecutive sentence, the presumptive duration for each offense sentenced consecutively to another offense is determined by first locating the duration in the appropriate cell on the applicable Grid at a Criminal History Score of 0, then applying the rules for attempts and conspiracy set forth in section 2.G.2. For example, <span style="background-color: #FFFF00;">for in the case of</span> an attempted aggravated robbery offense sentenced permissive consecutive to another offense, the duration found at Severity Level 8 and Criminal History Score of 0 (48 months), is divided in half – making the presumptive sentence 24 months.</i></p>

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<p><b>2.F.204.</b> <i>The Commission's policies on permissive consecutive sentences outline the criteria that are necessary to permit consecutive sentences without the requirement to cite reasons for departure. Courts may pronounce consecutive sentences in any other situation by citing reasons for departure. Courts may also pronounce durational and dispositional departures both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in section 2.D.</i></p> <p><b>2.F.205.</b> <i>Consecutive sentences are permissive for multiple current felony convictions even when the offenses involve one victim and a single course of conduct, but only when the presumptive disposition is commitment. However, consecutive sentencing is not permissive for multiple current felony convictions involving one victim and a single course of conduct if the court is giving an upward durational departure on any of the current conviction offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.</i></p> <p><b>2.F.206.</b> <i>An offender given a consecutive sentence for a crime committed while using or possessing metal-penetrating bullets under Minn. Stat. § 624.7191, subd. 3, can get up to the three-year statutory maximum without departing from the Guidelines. The length of the consecutive sentence is left to the discretion of the court. For example, an offender with a Criminal History Score of 0 is sentenced to a presumptive 48 months prison for aggravated robbery in the first degree, and next is sentenced to 36 months prison consecutively for possessing metal-penetrating bullets.</i></p>	<p><b>2.F.204.</b> <i>The Commission's policies on permissive consecutive sentences outline the criteria that are necessary to permit consecutive sentences without the requirement to cite reasons for departure. Courts may pronounce consecutive sentences in any other situation by citing reasons for departure. Courts may also pronounce durational and dispositional departures both upward and downward in cases involving consecutive sentencing if reasons for departure are cited. The reasons for each type of departure should be specifically cited. The procedures for departures are outlined in section 2.D.</i></p> <p><b>2.F.205.</b> <i>Consecutive sentences are permissive for multiple current felony convictions even when the offenses involve one victim and a single course of conduct, but only when the presumptive disposition is commitment. However, consecutive sentencing is not permissive for multiple current felony convictions involving one victim and a single course of conduct if the court is giving an upward durational departure on any of the current conviction offenses. The Commission believes that to give both an upward durational departure and a consecutive sentence when the circumstances involve one victim and a single course of conduct can result in disproportional sentencing unless additional aggravating factors exist to justify the consecutive sentence.</i></p> <p><b>2.F.206.</b> <i>An offender given a consecutive sentence for a crime committed while using or possessing metal-penetrating bullets under Minn. Stat. § 624.7191, subd. 3, can get up to the three-year statutory maximum without departing from the Guidelines. The length of the consecutive sentence is left to the discretion of the court. For example, an offender with a Criminal History Score of 0 is sentenced to a presumptive 48 months prison for aggravated robbery in the first degree, and next is sentenced to 36 months prison consecutively for possessing metal-penetrating bullets.</i></p>



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<p>3. <u>Crime Committed for the Benefit of a Gang</u>. When the court imposes a presumptive or permissive consecutive sentence for a crime committed for the benefit of a gang under Minn. Stat. § 609.229, subd. 3, the presumptive duration includes additional months as outlined in section 2.G.</p> <p>4. <u>Pre-Guidelines Cases</u>. If a sentence is imposed consecutively to an offense committed before May 1, 1980, the consecutive sentence begins after completion of any incarceration arising from the prior sentence.</p> <p><i>Comment</i>  <b>2.F.401.</b> <i>The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for offenders sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for offenders revoked and re-imprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.</i></p> <p><i>If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase “completion of any incarceration arising from the prior sentence” means the target release date the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980, or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole for the pre-Guidelines offense.</i></p>	<p>3. <u>Crime Committed for the Benefit of a Gang</u>. When the court imposes a presumptive or permissive consecutive sentence for a crime committed for the benefit of a gang under Minn. Stat. § 609.229, subd. 3, the presumptive duration includes additional months as outlined in section 2.G.</p> <p>4. <u>Pre-Guidelines Cases</u>. If a sentence is imposed consecutively to an offense committed before May 1, 1980, the consecutive sentence begins after completion of any incarceration arising from the prior sentence.</p> <p><i>Comment</i>  <b>2.F.401.</b> <i>The Commissioner of Corrections has the authority to establish policies regarding durations of confinement for offenders sentenced for crimes committed before May 1, 1980, and will continue to establish policies for the durations of confinement for offenders revoked and re-imprisoned while on parole or supervised release, who were imprisoned for crimes committed on or after May 1, 1980.</i></p> <p><i>If an offender is under the custody of the Commissioner of Corrections pursuant to a sentence for an offense committed on or before April 30, 1980, and if the offender is convicted of a new felony committed on or after May 1, 1980, and is given a presumptive sentence to run consecutively to the previous indeterminate sentence, the phrase “completion of any incarceration arising from the prior sentence” means the target release date the Commissioner of Corrections assigned to the inmate for the offense committed on or before April 30, 1980, or the date on which the inmate completes any incarceration assigned as a result of a revocation of parole for the pre-Guidelines offense.</i></p>