
Minnesota Sentencing Guidelines Commission

Consecutive Sentencing Involving Attempt or Conspiracy

June 5, 2013

Attempts or Conspiracies and Consecutive Sentencing

Description: The MSGC Office received a question regarding when to cut the presumptive duration in half for an attempt under Minn. Stat. § 609.17: before the duration is brought down to a criminal history score of 0 or 1, or after.

Guidelines Considerations: MSGC staff advise practitioners that the rule for finding the presumptive duration when applying consecutive sentencing to an attempt or conspiracy offense is to first locate the duration at a Criminal History Score of 0 or 1 (as appropriate), and then to cut that duration in half. This guidance is derived from reading Minn. Sentencing Guidelines §§ 2.F and 2.G together.

Minn. Sentencing Guidelines § 2.G. states that when an offender is sentenced for an attempted offense under Minn. Stat. § 609.17 or conspiracy to commit an offense under Minn. Stat. § 609.175, the presumptive duration is one-half of that found in the appropriate cell on the applicable Grid for the underlying offense.

Minn. Sentencing Guidelines § 2.F.1.b , governing presumptive consecutive sentencing, states that, for each offense sentenced consecutive to another offense, 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 greater.

Minn. Sentencing Guidelines § 2.F.2.a, governing permissive consecutive sentencing, states that for each offense sentenced consecutive to another offense, 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.

Question: Should the commentary to § 2.F be amended to clarify that if the court sentences an attempted offense consecutively, the presumptive duration is one-half of the duration found in the appropriate cell on the applicable Grid at a Criminal History Score of 1 for presumptive consecutive sentences and at a Criminal History Score of 0 for permissive consecutive sentences?

MSGC Staff Recommendation: Staff recommends adding two new comments: one following the section on presumptive consecutive sentences, and one following the section on permissive consecutive sentences, as outlined on the next page.

Possible Modifications:

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2.F.104. 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 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.

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2.F.203. 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.

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