

Minnesota Sentencing Guidelines Commission

Possible Change to Permissive Consecutive Sentence Policy: Fleeing Peace Officer in Motor Vehicle (No Injury)

May 16, 2013

Description: Rice County Attorney Paul Beaumaster has requested that the Sentencing Guidelines Commission consider adding the offense of fleeing a peace officer in a motor vehicle without any resulting injury under Minn. Stat. § [609.487](#), subd. 3 to the permissive consecutive sentencing list.

Guidelines Considerations: Fleeing a peace officer in a motor vehicle is governed by Minn. Stat. § 609.487. Subdivision 3 defines the felony offense of fleeing a peace officer in a motor vehicle, but in this subdivision, injury is not an element of the offense. The statutory maximum sentence is 3 years. This subdivision is not currently on the list of offenses eligible for permissive consecutive sentencing. *See* Minn. Sentencing Guidelines § 6.

Subdivision 4 of Minn. Stat. § 609.487 also defines a felony offense of fleeing a peace officer, but contains several sub-paragraphs that increase the penalty when the act results in substantial bodily harm, great bodily harm, or death. The statutory maximum sentences range from 5 to 40 years, and all of these offenses are currently on the list of offenses eligible for permissive consecutive sentencing. *See* Minn. Sentencing Guidelines § 6.

The following table summarizes the applicable Severity Level rankings and inclusion or non-inclusion of the offenses on the permissive consecutive sentencing list.

MN Statute	Offense Title	Severity Level	Currently on Permissive Consecutive List?
609.487 subd. 3	Fleeing Peace Officer	1	No
609.487 subd. 4(a)	Fleeing Peace Officer (Death)	10	Yes
609.487 subd. 4(b)	Fleeing Peace Officer (Great Bodily Harm)	6	Yes
609.487 subd. 4(c)	Fleeing Peace Officer (Substantial Bodily Harm)	4	Yes

In addition to being on the list of eligible offenses, to qualify for permissive consecutive sentencing, the offense must have a presumptive disposition of commitment. Minn. Sentencing Guidelines § 2.F.2.a(1). Therefore, if fleeing (no injury) were added to the list of eligible offenses, the offense would have to have a Criminal History Score of 6 or more in order to qualify for permissive consecutive sentencing.

There are, however, two inconsistencies raised by statute. Minn. Stat. § [609.035](#), subd. 5 permits consecutive sentencing if the offender commits another offense as part of the same conduct as the fleeing offense. The statute does not differentiate between the fleeing offense in subdivision 3 (no injury) and the fleeing offenses in subdivision 4 (injury or death). Therefore, regardless of the Commission's designation of the offenses as eligible for permissive consecutive sentencing, when the offender is punished for multiple convictions arising from the same course of conduct, and one is a fleeing offense of any kind, the sentences may be consecutive. Additionally, when consecutive sentencing occurs pursuant to Minn. Stat. 609.035, subd. 5, the presumptive disposition does NOT need to be commitment. *See* Minn. Sentencing Guidelines § 2.F.2.a(2)(iii).

Sentencing Practices: 2011 MSGC Monitoring Data indicated that –

- **Same Course of Conduct:** 2 fleeing cases with Criminal History Score of 6 (or more) were sentenced with another offense from the same course of conduct.
 - 1 received a consecutive sentence; and
 - 1 received a concurrent sentence.

- **Multiple Sentences:** 10 fleeing cases with Criminal History Score of 6 (or more) would qualify for permissive consecutive under the suggested changes:
 - 6 cases had multiple counts of fleeing police; and
 - 4 cases were sentenced with another offense currently on the permissive consecutive list.
 - 1 case – Sentenced at same time as 2 other offenses on list; and
 - 1 case – Sentenced to an aggravated durational departure on the other offense.