

# Minnesota Sentencing Guidelines Commission

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## Standard Consecutive vs. Aggregate Consecutive March 20, 2014

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**Background:** At its January 2014 meeting, the Commission requested staff review its 2012 annual dataset (most recent data) to determine the number of consecutive sentences that have been pronounced and whether the sentence was pronounced “standard” or “aggregate.” The Commission also wanted to know the types of offenses for which a consecutive sentence was pronounced. MSGC staff and Department of Corrections (DOC) staff met to discuss consecutive sentencing scenarios encountered by DOC.

**Consecutive Sentencing Policy:** Generally, concurrent sentencing is presumptive according to the Guidelines. However, there are instances in which consecutive sentences are required and instances in which consecutive sentences are allowable.

- (Presumptive) Consecutive Sentences are required when:
  1. The offender is: (i) serving an executed prison sentence; (ii) on escape status from an executed prison sentence; (iii) on supervised release; or (iv) on conditional release.
  2. The presumptive disposition for the current offense is commitment.
  3. The total time to serve in prison is longer if served consecutively when the presumptive sentence is calculated using a Criminal History Score of 1.Minn. Sentencing Guidelines § 2.F.1.
  
- (Permissive) Consecutive Sentences are allowed when:
  1. The offender: (i) has a prior unexpired offense on the permissive consecutive list and a current offense on the permissive consecutive list; (ii) has multiple current felony convictions for offenses on the permissive consecutive list; (iii) commits and is convicted for a new felony crime while on felony escape from lawful custody from a non-executed felony sentence.
  2. The presumptive disposition for the current offense is commitment.Minn. Sentencing Guidelines § 2.F.2.

**Consecutive Sentencing Scenarios:** Detailed below are the most frequently cited scenarios for consecutive sentencing to be used, the relevant Guidelines policy, number of cases and details about the offenses. For each scenario, MSGC and DOC staff identified whether the consecutive terms could or could not be aggregated.

**1. *Two sentences pronounced by the same judge on the same day. Could be multiple counts on the same complaint or multiple counts from multiple complaints. – Could be aggregated.***

- Permissive Consecutive – Guidelines allow consecutive sentences for multiple current felony convictions under § 2.F.2.a(1)(ii).
- Number of Cases in 2012: 87.

- Offense Type – The table below displays the most serious offense type involved in the consecutive group:

Scenario 1 - Offense Type	Frequency	Percent
Person	75	86.2
Property	5	5.7
Drug	1	1.1
Other	4	4.6
Child Pornography	1	1.1
Felony DWI	1	1.1
Total	87	100.0

- Person Offenses – Among the person offenses (including attempts) were:
  - 19 murder/manslaughter;
  - 17 criminal sexual conduct;
  - 14 assaults;
  - 8 first- or second-degree aggravated robbery;
  - 7 first-degree burglary with weapon or assault; and
  - 5 violations of restraining orders.
- Aggregation – For 84 cases, it appeared that aggregating the consecutive sentence would have been relatively straightforward. For the other three cases, there was time pronounced consecutively to a life or extremely long sentence, so the consecutive sentence appeared to be largely symbolic. In four cases, the notes on the case indicated that the court specifically pronounced an aggregated consecutive sentence or stated the total consecutive sentence length on the record.

**2. Two sentences pronounced by the same judge on the same date. One is a probation revocation; the other is a new offense. – Could be aggregated.**

- Permissive Consecutive – Guidelines allow consecutive sentences for prior felony sentence under § 2.F.2.a(1)(i).
- Number of Cases in 2012: Seven.
- Offenses:
  - 2 first-degree criminal sexual conduct;
  - 1 second-degree criminal sexual conduct;
  - 1 stalking;
  - 2 restraining order violations; and
  - 1 second-degree burglary of a dwelling.
- Aggregation – Sentences should be able to be aggregated but note that some of the revocations occur before or after the new sentence is pronounced (not at the same time).

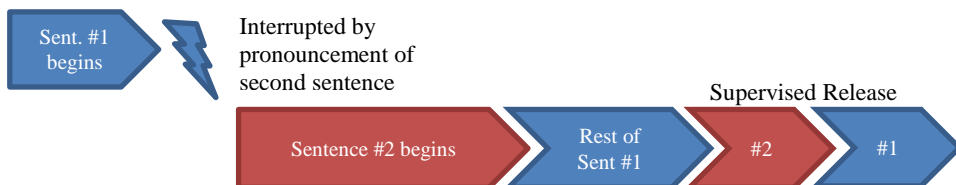
3. *Two sentences pronounced by different judges in different counties. The judge in county #1 pronounces a sentence. Later, the judge in county #2 pronounces a sentence and states that it is consecutive to the sentence that was pronounced in county #1. These two events typically happen close in time; the offender is being transported from one place to the other to handle multiple offenses. – Could be aggregated.*

- Permissive Consecutive – Guidelines allow consecutive sentences for multiple current felony convictions (in separate counties) under § 2.F.2.a(1)(ii).
- Number of Cases in 2012: Four.
- Offenses:
  - 1 first-degree assault;
  - 1 second-degree criminal sexual conduct;
  - 1 third-degree criminal sexual conduct;
  - 1 second-degree burglary of a dwelling.
- Aggregation: Sentences should be able to be aggregated.

4. *Two sentences pronounced by different judges in different counties, but there is a lag time between sentencing dates. The judge in county #1 pronounces sentence and says it is consecutive to whatever is ordered in county #2. The judge pronounces sentence in county #2 as a normal single sentence. – Aggregated sentence is unclear.*

- Permissive Consecutive – Guidelines allow consecutive sentences for prior felony sentence under § 2.F.2.a(1)(i); or multiple current felony convictions (in separate counties) under § 2.F.2.a(1)(ii).
- Feedback is that sometimes the first judge will know what is going to happen in the second county, sometimes not.
- Creates a problem for DOC because the offender begins to serve time on the sentence that is supposed to be consecutive to another (pronounced in county #1) before the sentence to which it is supposed to be consecutive (county #2) is even pronounced. Is DOC supposed to stop the first sentence and have the offender start serving time on the second sentence?
- We questioned whether this was a legitimate sentencing practice. Need to do some legal research to see if there is any guidance to support or refute this practice.
- Number of Cases in 2012: None were identified.

Illustration:



5. *When pronouncing two stays of execution, the judge states on the record that the prison terms are consecutive. Later, the terms are executed. – Could be aggregated.*

- Permissive Consecutive – Guidelines allow consecutive sentences for multiple current felony convictions under § 2.F.2.a(1)(ii), but the “stayed” sentences are dispositional departures.
- Number of Cases: 112.
- Offense Type – The table below displays the most serious offense type involved in the consecutive group:

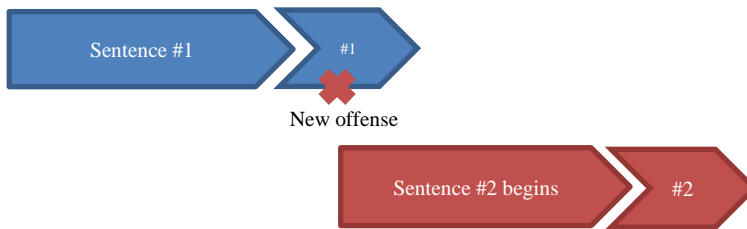
Scenario 5 - Offense Type	Frequency	Percent
Person	39	34.8
Property	6	5.4
Drug	1	.9
Other	16	14.3
Non-Person Sex Offenses	4	3.6
Felony DWI	46	41.1
Total	112	100.0

- Person Offenses – Among the person offenses (including attempts) were:
  - 15 assaults;
  - 7 violations of restraining orders;
  - 4 first-degree aggravated robbery;
  - 3 criminal vehicular homicides; and
  - 1 criminal sexual conduct.
- Among the non-person sex offenses were:
  - 3 failure to register as sex offenders; and
  - 1 child pornography possession/dissemination.
- Other Offenses – Among the other offenses were:
  - 11 escapes; and
  - 4 fleeing police.
- Aggregation – It might be difficult to determine aggregation because not all of these sentences were pronounced consecutive to another offense that was sentenced at the same time. It is possible that some of these cases are not truly consecutive. MSGC staff eliminated cases in which it was clear that the consecutive portion of the sentence was the conditional confinement or probation period, rather than the sentence itself. Often it was not specified that the prison terms were to be served consecutively if the stayed sentences were ever revoked.

**6. Offender commits a new offense while on supervised release for a prior offense. The sentence for the new offense is pronounced consecutive to the prior sentence.**  
– *Aggregated sentence usually cannot be determined.*

- Presumptive Consecutive – Guidelines require a consecutive sentence under § 2.F.1.a(1) unless a concurrent sentence would be longer under § 2.F.1.c.
- There is some question as to when to start the second sentence. When pronounced (shown below) or after accountability time for the release violation has been served.

Illustration:



- Number of 2012 Cases:
  - 630 (12%) of offenders with presumptive prison sentences committed their offenses while on supervised release;
  - 515 of 630 offenders received a prison sentence;
  - 23 of 515 offenders received consecutive sentences;
  - 17 of 23 offenders; the offense was consecutive to an offense other than the supervised release revocation; and
  - 6 of 23 offenders received a sentence consecutive to the supervised release revocation.
- Offenses:
  - 1 first-degree criminal sexual conduct;
  - 1 receiving stolen property;
  - 1 felon in possession of a gun;
  - 1 escape;
  - 1 felony DWI; and
  - 1 failure to register as predatory offender.
- Aggregation – Impossible to determine what the aggregated sentence would be because the accountability time is not known at the time of sentence. Therefore, it is not known if a consecutive or concurrent sentence would result in a longer sentence.

**7. Offender commits a new offense (e.g., assault) while in prison. The sentence for the new offense is pronounced consecutive to the sentence the offender was already serving.**  
– *Could be aggregated.*

- Presumptive Consecutive – For escape from prison, the Guidelines call for presumptive consecutive sentence under § 2.F.1.a(1), unless a concurrent sentence would be longer under § 2.F.1.c.

- Number of 2012 Cases with Consecutive Sentences: 18.
- Offenses (all occurring while the offenders were incarcerated):
  - 7 third-degree assaults;
  - 7 fourth-degree assaults,
  - 2 second-degree assaults;
  - 1 terroristic threats; and
  - 1 bringing contraband into prison.
- Aggregation – relatively straightforward. In two cases, the consecutive sentence was pronounced consecutively to a life sentence or an extremely long sentence, so the consecutive sentence was largely symbolic.

**8. *Offender commits a new offense while on conditional release. The sentence for the new offense is pronounced consecutive to the offense for which the offender was on conditional release. – Aggregated sentence usually cannot be determined.***

- Presumptive Consecutive – Guidelines call for presumptive consecutive sentence under § 2.F.1.a(1) unless a concurrent sentence would be longer under § 2.F.1.c.
- Number of Cases 2012 Cases:
  - 23 (0.6%) of offenders receiving prison sentences committed their offenses while on supervised release – none received a consecutive sentence.
  - One offender received a consecutive stayed sentence (domestic assault- mitigated dispositional departure).
- Aggregation – Impossible to determine what the aggregated sentence would be because the accountability time is not known at the time of sentence. Therefore, it is not known if a consecutive or concurrent sentence would result in a longer sentence.

**9. *Offender commits a new offense while on escape status. The sentence for the new offense is pronounced consecutive to the offense from which the offender escaped custody. – Aggregated sentence usually cannot be determined.***

- Presumptive Consecutive – Guidelines require consecutive sentence under § 2.F.1.a(1) unless a concurrent sentence would be longer under § 2.F.1.c.
- Number of Cases: None were identified.