

# NAVIGATING THE INTERPLAY OF STATE & FEDERAL SENTENCES/DETAINEES

STEVE ROBERTS – FEDERAL DEFENDERS OF EASTERN WASHINGTON & IDAHO





- The client everyone wants a piece of

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## WHY DOES THIS MATTER

- Affects Sentence Length
- Opportunity to Argue for Concurrent vs. Consecutive
- Detainers increase Security Level Classification for Federal Custody
- Detainers can bar programming/work assignments
- Detainers prevent Inmate from Receiving Federal Halfway House (RRC)

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# TOPICS COVERED

- Federal Detainers
- The Primary Custody Doctrine.
- Brief overview of federal sentence computation & common issues that arise when dealing with pending state charges/sentence.
- The curious world of awarding credit for time-served
- Relevant Statutes and Guidelines.
- Practice Pointers.
- Helpful Contacts.
- Questions

# FEDERAL DETAINERS

- U.S. Marshals Service
  - Supervised Release Violations
  - Complaint/Indictment
- Immigration (DHS/ICE/CBP)

U.S. Department of Justice  
United States Marshals Service



## DETAINER AGAINST UNSENTENCED PRISONER BASED ON FEDERAL ARREST WARRANT

United States Marshal

(District)

(Return Address and Phone)

Please type or print neatly:

TO: \_\_\_\_\_ DATE: \_\_\_\_\_  
 \_\_\_\_\_ SUBJECT: \_\_\_\_\_  
 \_\_\_\_\_ AKA: \_\_\_\_\_  
 \_\_\_\_\_ DOB/SSN: \_\_\_\_\_  
 \_\_\_\_\_ REF. #: \_\_\_\_\_  
 \_\_\_\_\_ USMS #: \_\_\_\_\_  
 \_\_\_\_\_ CR #: \_\_\_\_\_

Please accept this Detainer against the above-named subject who is an unsentenced prisoner currently in your custody. The United States District Court for the \_\_\_\_\_ District of \_\_\_\_\_ has issued an arrest warrant(s) charging the subject with the commission of the following offense(s):

\_\_\_\_\_

Prior to the subject's release from your custody, please notify this office at once so that we may assume custody if necessary. If the subject is transferred from your custody to another detention facility, we request that you forward our Detainer to said facility at the time of transfer and advise this office as soon as possible.

The notice and speedy trial requirements of the Interstate Agreement on Detainers Act do NOT apply to this Detainer because the subject is not currently serving a sentence of imprisonment at the time the Detainer is lodged. **IF THE SUBJECT IS SENTENCED WHILE THIS DETAINER IS IN EFFECT, PLEASE NOTIFY THIS OFFICE AT ONCE.**

Please acknowledge receipt of this Detainer. Please provide one copy of this Detainer to the subject and FAX one copy to this office at \_\_\_\_\_ FAX No. \_\_\_\_\_.

RECEIPT	
Date:	_____
Signed:	_____
By:	_____
Title:	_____

Very truly yours,  
 \_\_\_\_\_  
 U.S. Marshal  
 Requested by: \_\_\_\_\_

Reset

Form USM-16A  
Rev. 01/2006

## Inmate Roster

Monday, November 22, 2021

### VODDER, COLBY D

print

County ID: 404604  
 Booking #: 210012974  
 Intake Date: 11/5/2021 at 11:29 AM  
 Case Number: USM  
 Case Added: 11/5/2021  
 RCW: 0043005: HOLD- U.S.MARSHALL  
 Case Number: 171002519  
 Case Added: 11/5/2021  
 Case Bond: \$1,000,000.00  
 Bond Set By: Spokane County Superior Court  
 RCW: 9A.32.030(1)(C)5: MURDER-1D(W/KIDNAPING)  
 Report Number: 2015-00441106 Report Agency: 001 - SPOKANE COUNTY

Inmate Name	Inmate ID	Inmate Location	Bondable	Total Bond
VALDEZ III, GUILLERMO				\$0.00
VANBUREN, BRIAN B				\$2,000.00
VANDENBERG, CRYSTAL MARIE	210013297	Spokane County Jail Inmate	YES	\$1,000.00
VANLANHAM, BRANDON L	210013511	Spokane County Jail Inmate	NO	\$500.00
VASQUEZ, GABRIEL G	210007682	Spokane County Jail Inmate	YES	\$25,000.00
VELAZQUEZ-GUMESINDO, ERIK	200009346	Spokane County Jail Inmate	NO	\$0.00
VERHAAG, MICHAEL R	210013252	Spokane County Jail Inmate	YES	\$750.00
VICTOR, BOBBY L	210010085	Geiger Facility Inmate	NO	\$0.00
VILLAGOMEZ, DANIEL	210011936	Spokane County Jail Inmate	NO	\$0.00
VODDER, COLBY D	210012974	Spokane County Jail Inmate	NO	\$1,000,000.00

Showing 1 to 10 of 10 names

First Previous 1 Next Last

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# WHOSE CLOCK IS RUNNING? THE PRIMARY CUSTODY DOCTRINE

**Primary custodian** – The sovereign that first arrests an individual.

**Secondary custodian** – The next sovereign in line.

**The primary custody doctrine:** The sovereign that first arrests an individual has primary custody unless that sovereign relinquishes it to another sovereign. (bail release, dismissal of state charges, parole release, expiration of state sentence).

- The sovereign with primary custody is entitled to have the individual serve the sentence imposed by it before a sentence imposed by any other jurisdiction.
- It is the secondary custodian who can run a sentence concurrent to any sentence imposed by the primary custodian.

## AUTHORITY FOR THE DOCTRINE

- 18 U.S.C. § 3584 – Multiple sentences of imprisonment
- 18 U.S.C. § 3585 – Calculation of a term of imprisonment
- 18 U.S.C. § 3621 – Imprisonment of a convicted person





# BASIC FEDERAL SENTENCE COMPUTATION

**18 U.S.C. § 3585.** Calculation of a term of imprisonment

(a) **Commencement of a sentence** – A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

(b) **Credit for prior custody** – A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—

(1) as a result of the offense for which the sentence was imposed; or

(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

***That has not been credited against another sentence.***

# BASIC FEDERAL SENTENCE COMPUTATION

18 U.S.C. § 3585 requires the Bureau of Prisons to answer two questions:

**(1) When did the federal sentence commence?**

- **Easy answer:** a federal sentence commences when the United States receives the individual for the purpose of serving a federal sentence. *See Chambers v. Holland*, 920 F.Supp. 618, 621 (M.D. Pa. 1996). Generally speaking, that means the date a sentence is imposed or the date the individual self-surrenders to a designated institution.
- A sentencing court cannot “backdate” the commencement of a federal sentence. *U.S. v. Gonzalez*, 192 F.3d 350, 353 (2d Cir. 1999).

**(2) Whether the individual receives prior custody credit?**

- Can be a bit more complicated...

# DO I GET CREDIT FOR TIME SPENT IN PRETRIAL CUSTODY?

**18 U.S.C. § 3585(b)(1)** – You will receive credit for any time spent in official detention in relation to offense for which the sentence was imposed.

- Client is arrested by federal officials for federal unlawful possession of firearm offense on **1/1/2021**. Remains in custody pending trial. Pleads guilty and is sentenced in federal court on **9/1/2021**. Does he get prior custody credit?

**18 U.S.C. § 3585(b)(2)** – You will receive credit for any time spent in official detention as a result of any other charge for which you were arrested after the commission of the offense for which the sentence was imposed.

# THE DOUBLE CREDIT PROHIBITION

18 U.S.C. § 3585(b) prohibits prior custody credit when the time in custody was awarded towards another sentence.

- The prohibition applies only to time spent in custody *prior to* the commencement of the federal sentence.

## *Example:*

Client is arrested on state charges **1/1/2020**. The state sentences her on **2/1/2020** to 12 months.

She's brought into federal custody on a writ of *habeas corpus ad prosequendum* on **3/1/2020**. She's

at the Spokane County Jail until she pleads guilty and is sentenced in federal court on **9/1/2020**.

She's sentenced to 10 months.

Q: When does Client's federal sentence commence?

Q: Does Client's federal sentence get any credit for the time between 3/1/2020 and 9/1/2020?

## IN OTHER WORDS...

- A federal judge normally cannot “back date” the start of a federal sentence.
  - The sentence starts on the date of sentencing, at the earliest;
  - It is up to the BOP sentence computation staff to determine what, if any, credits prior to that date are applied against the sentence; and
  - Language as to credit for time-served in a Judgment and Commitment Order (J&C) are ignored by the BOP.\*
- You don't normally get “double credit” for time already served.

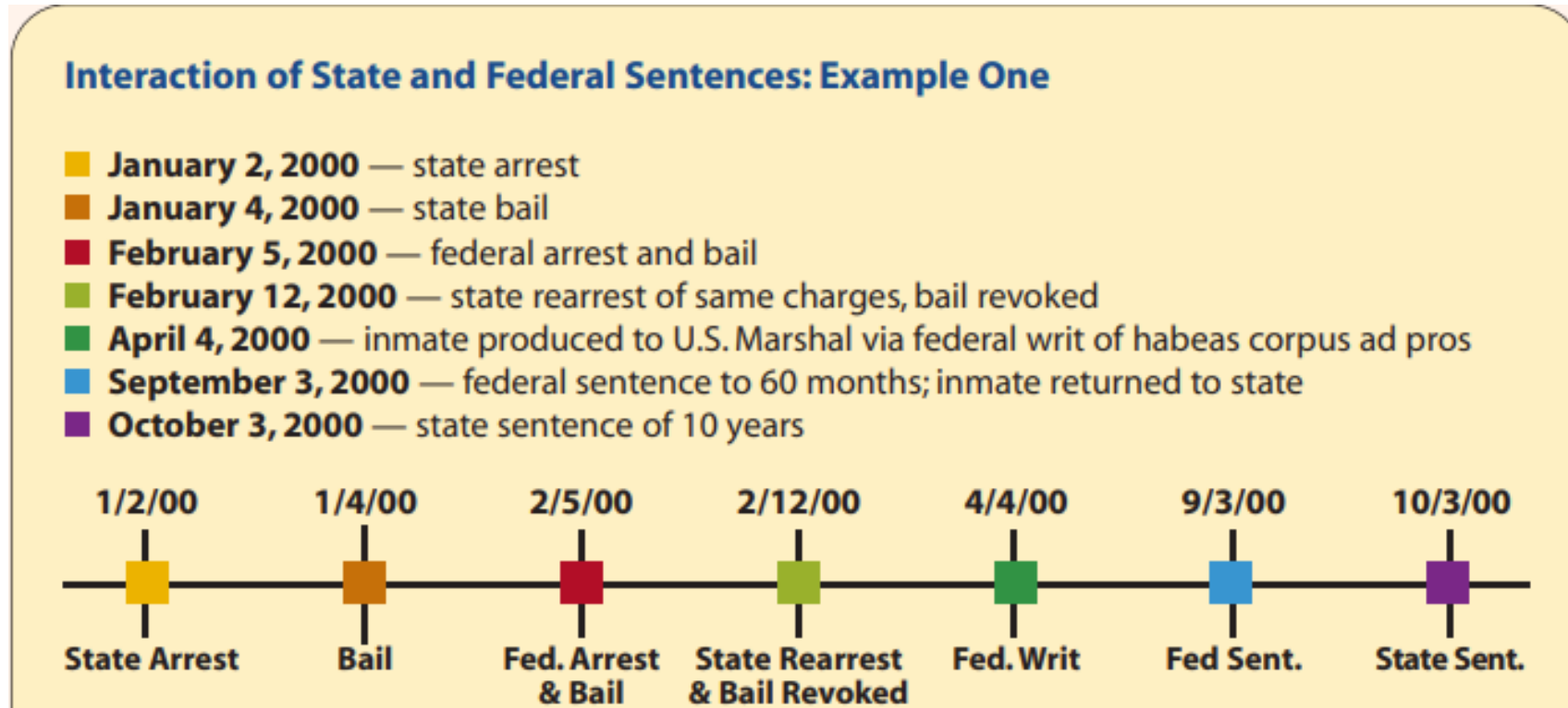
See BOP Program Statement 5880.28

## PRACTICE POINTER: WRITS

- Writs of *habeas corpus ad prosequendum* do **not** change custody status.
- Get defense counsel involved early to negotiate case/custody status/writ
- Use Interstate Agreement on Detainers Act (IADA) as last resort where you cannot get a writ or detainer resolved

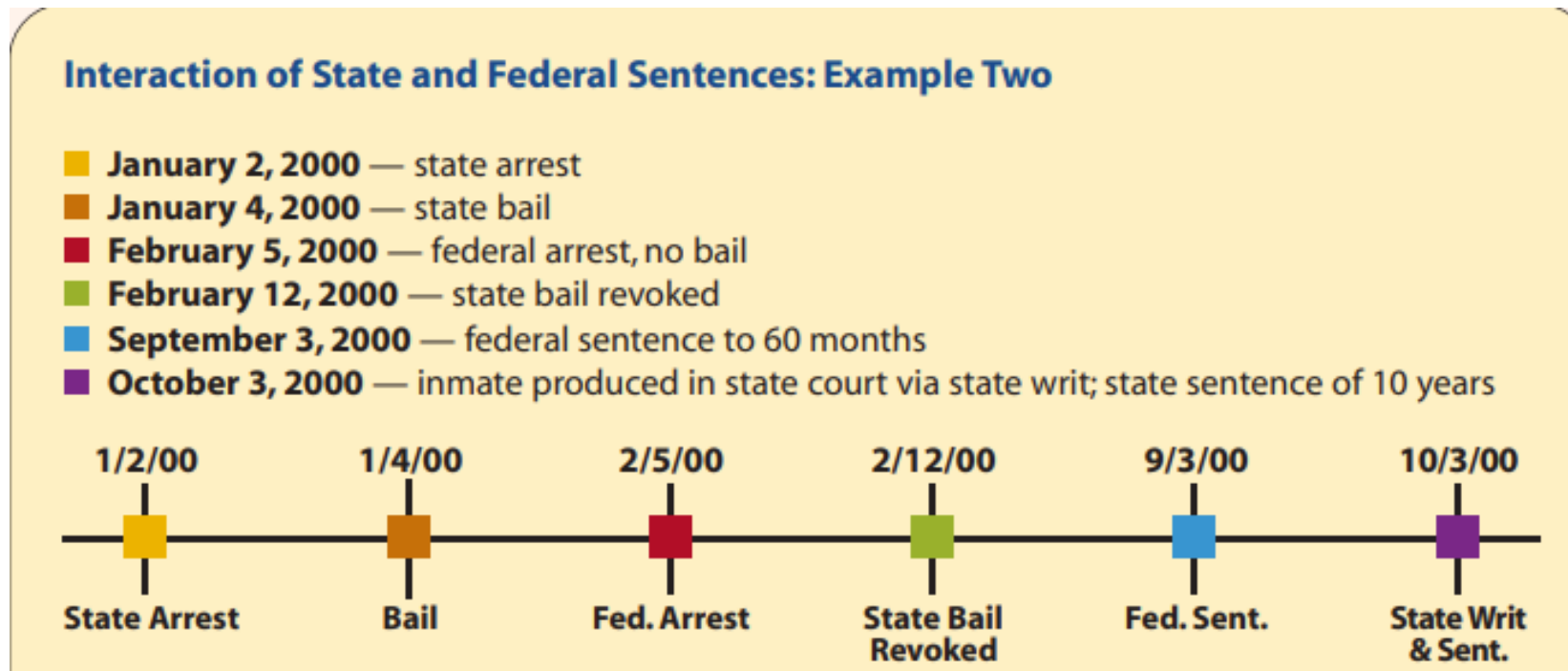
(The IADA applies only to "a person (who) has entered upon a term of imprisonment in a penal or correctional institution")

# SAMPLE SCENARIO # 1



**State** is the primary custodian. State arrested client on 2/12/00 and did not relinquish jurisdiction. State sentence is primary. Federal sentence may be consecutive or concurrent to state term.

## SAMPLE SCENARIO # 2



**Federal** is primary custodian. Feds were last to arrest and did not relinquish jurisdiction. Whether state sentence is concurrent or consecutive is a question for state authorities.



# REAL SCENARIO # 1

IT IS HEREBY FURTHER ORDERED that, pursuant to I.C. § 19-2513, you, **JACOB**

**LEROY PECKHAM**, are sentenced as follows:

Count I - 2 years fixed; 3 years indeterminate; for a total term not to exceed 5 years.

Count II - 2 years fixed; 3 years indeterminate; for a total term not to exceed 5 years.

X **Concurrent** WITH FEDERAL CASES Consecutive

“Any term of imprisonment imposed upon the revocation of probation or supervised release *shall be ordered to be served consecutively* to any sentence of imprisonment that the defendant is service, whether or not the sentence of imprisonment being served resulted from the conduct that forms the basis of the revocation of probation or supervised release.” U.S.S.G §7B1.3(f).

# THE SECONDARY SOVEREIGN HAS THE POWER TO IMPOSE A CONCURRENT SENTENCE

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term  
of : 24 Months

To be served concurrent to term imposed in 2:17-CR-195-RMP-1; with 12 Months to be served concurrent to term imposed in Defendant's Kootenai County, State of Idaho Case No. CR-28-20-4701 and 12 Months Consecutive to Defendant's Kootenai County, State of Idaho Case No. CR-28-20-4701.

## REAL SCENARIO # 2

- Client was arrested on 8/14/2019 on state charges.
- On 8/20/2019, he was indicted on federal unlawful reentry charge.
- State sentenced him on 1/3/2020. 41 months custody. (projected to complete state sentence on 11/22/2021)
- Brought into federal custody on a writ of habeas corpus *ad prosequendum* on 2/5/2020.

### **Who has primary custody?**

- Pleaded guilty to federal charge on 9/18/2020
- Sentencing hearing: 12/8/2020

## U.S.S.G. § 5G1.3

### **Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment**

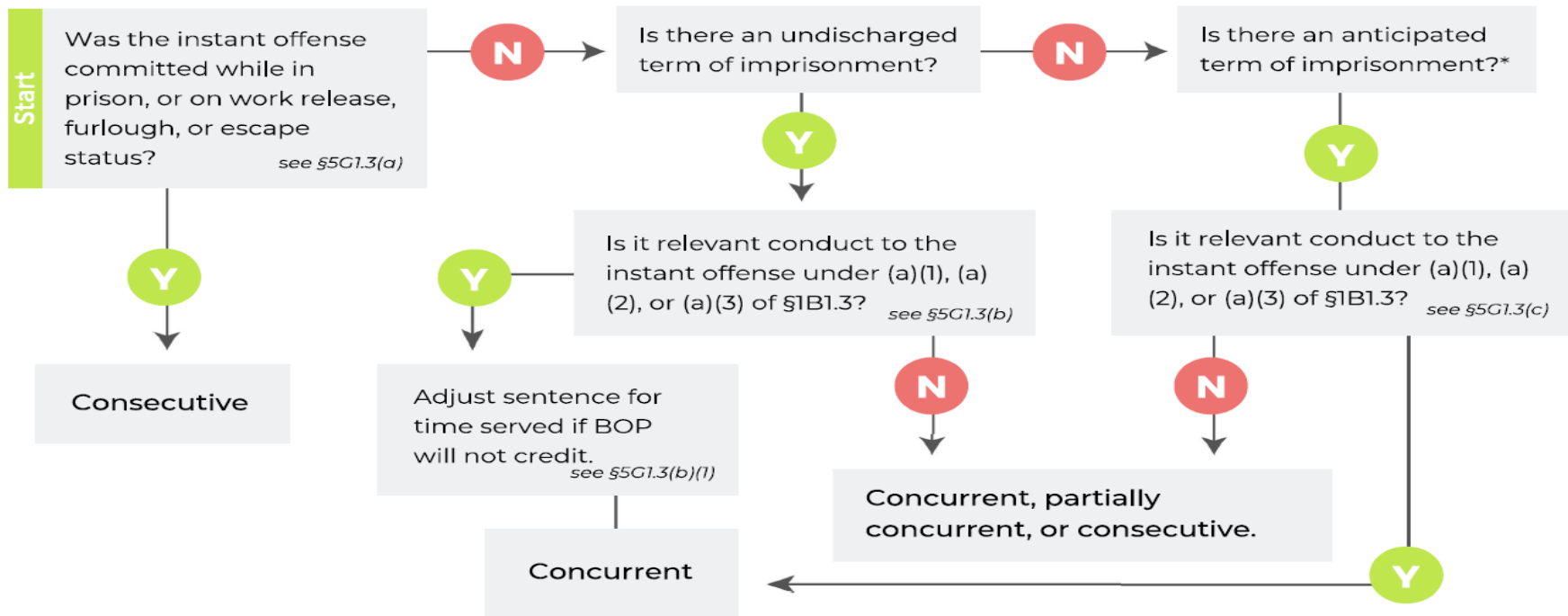
- (a) If the instate offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentence for, but before commencing service, such term imprisonment, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment.
- (b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of §1B1.3 (Relevant Conduct), the sentence for the instance offense shall be imposed as follows:
  - (1) The court shall adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and
  - (2) The sentence for the instant offense shall be imposed to run concurrently to the remainder of the undischarged term of imprisonment.
- (c) If subsection (a) does not apply, and a state of imprisonment is anticipated to result from another offense that is relevant conduct to the instant offense of conviction under the provisions of subsection (a)(1), (a)(2), or (a)(3) of §1B1.3 (Relevant Conduct), the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment.
- (d) (Policy Statement) In any other case involving an undischarged term of imprisonment, the sentence for the instant offense may be imposed to **run concurrently, partially concurrently, or consecutively** to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense.



# Undischarged Terms of Imprisonment

§5G1.3 – Imposing Sentence When the Defendant is Serving or Will Serve an Undischarged Term of Imprisonment or Has an Anticipated State Term of Imprisonment

## HOW TO DETERMINE WHEN THE COURT SHOULD IMPOSE A CONSECUTIVE OR CONCURRENT SENTENCE



\* The Supreme Court held that federal courts also generally have discretion to order that the sentences they impose will run concurrently with or consecutively to other state sentences that are anticipated but not yet imposed.

See *Setser v. United States*, 566 U.S. 231 (2012)

# Practice Pointer: U.S.S.G. § 5G1.3

- ▶ Provides guidance on how judges should approach cases where there is a state sentence or pending state case.
- ▶ Advisory only, but helpful for judges who tend to follow the guidelines.
- ▶ Has three specific scenarios and the catch-all

**§5G1.3 - IMPOSITION OF A SENTENCE ON A DEFENDANT SUBJECT TO AN UNDISCHARGED TERM OF IMPRISONMENT OR ANTICIPATED STATE TERM OF IMPRISONMENT**

(d) (Policy Statement) In any other case involving an undischarged term of imprisonment, the sentence for the instant offense may be imposed to run concurrently, partially concurrently, or consecutively to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense.

## REAL SCENARIO # 2

### **IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 11 Months as to Count 1 of the Indictment to be served concurrent to Defendant's sentence imposed in Grays Harbor, State of Washington, Superior Court Case No. 19-1-00649-14 imposed on 01/03/2020

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## LANGUAGE IS IMPORTANT!!!

If the state has primary custody, and the federal court's judgment and sentence order is silent on concurrent/consecutive time, then the Bureau of Prisons will assume the federal sentence is *consecutive* to the state sentence. *See* 18 U.S.C. § 3584(a) (“Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.”).





# NOW WHAT??

STRATEGIZING WHAT IS BEST FOR YOUR CLIENT





# OVERLAPPING SENTENCES HAVE CONSEQUENCES

- ❑ Detainers affect placement
  - ❑ State or federal system
  - ❑ Can have an especially outsized impact on federal designation
- ❑ Detainers affect sentence length
  - ❑ Can disqualify someone from RRC placement in BOP
  - ❑ Can disqualify someone from state parole or other early release
- ❑ Detainers affect programming
  - ❑ State detainer can bar people from some programs or move them to the bottom of the list for others
  - ❑ Can keep people out of more favorable work assignments

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# ASK YOURSELF WHAT DO YOU WANT TO DO HERE?

- What judge is more likely to impose a concurrent sentence?
- Where is it best for your client to serve a sentence?
- Will a state matter be dismissed or otherwise favorably resolved if your client never appears on it?



## PRACTICE POINTER: CONCURRENT TIME

- Know your judges
  - State and federal
- Try to work out a global agreement to concurrent time
  - Happens more often than you might think
- Timing of proceeding matters
- Consider attending the federal matter
- Arrange custody to help the client have the best shot at concurrent sentences

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## PRACTICE POINTER: CUSTODY SWAPS

- Arranging to have the primary custodian surrender custody for a strategic reason
- This makes everyone nervous!
- It takes a motion or two:
- Motion for Writ of Habeas Corpus Ad Prosequendum
- Must coordinate process with USMS before filing (confirm detainer)!!!
- Motion to revoke release or OR in the State.
- Can do them the other way around too, if that makes sense.

## PRACTICE POINTER: JUDGMENT ORDER

- ❑ The Judgment and Commitment should be as clear as possible
- ❑ Avoid ambiguity that might be read against your client
- ❑ Can help with post-sentence review
- ❑ Come to the sentencing with your preferred language typed on a piece of paper to hand to the courtroom deputy
- ❑ Double check after filing



## THE JUDGMENT THAT DOES IT ALL

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 30 months as to Count 1 of the Indictment, to run concurrently with the violation of probation sentence imposed in the Circuit Court of Maryland, Prince Georges County, Docket No.: CT170041A in the custody of the Maryland Commissioner of Corrections in the Maryland State Facility he designates with credit for time served from 11/20/2018 to 07/25/2019 pursuant to 18 U.S.C. 3585(b)(2) and BOP Policy Statement 5880.28 because time spent in federal detention occurred after the commission of the offense, before the state sentence was imposed and has not been credited towards any other sentence.



# The Nightmare Scenario

HOW TO, MAYBE, FIX IT



# The Scenario:

EVERYONE THINKS CLIENT IS GOING TO GET CONCURRENT TIME, BUT CLIENT ENDS UP WITH CONSECUTIVE TIME.



# How to fix it

- ▶ Never hurts to ask for a revised J&C
- ▶ State court remedies
  - ▶ Sentence modification
  - ▶ Other collateral attacks
- ▶ IAC

# Helpful contacts

- ▶ The AUSA on the Federal Case (really!)
- ▶ BOP Regional Counsel Office
- ▶ Commitment office or similar at your state corrections department
- ▶ Federal Defender Office
- ▶ Local state public defender office
- ▶ Federal Defender Training Division Hotline – 800-788-9908
- ▶ Be creative! Lots of people can help!

Questions?

A thick, dark grey hand-drawn underline is positioned below the word "Questions?". To the right of the underline, the tip of a black pen is visible, pointing towards the end of the underline.

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# CALL US!!!

- Steve Roberts – Trial Attorney, Federal Defenders of Eastern WA & Id.
- [Steve\\_Roberts@fd.org](mailto:Steve_Roberts@fd.org)
- 509-505-2151



# ADDITIONAL RESOURCES

- Included Materials
  - *Federal Sentence Computation Applied to the Interaction of Federal and State Sentences*, Henry J. Sadowski, National Association of Criminal Defense Lawyers (NACDL) (2014).
  - *United States v. Evans*, 159 F.3d 908 (4th Cir. 1998).
  - BOP Program Statement 5880.28.