



MINNESOTA JUDICIAL TRAINING UPDATE

MINNESOTA JAIL CREDIT MANUAL

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1) **JAIL CREDIT PRINCIPLES:**

- a) **Concurrent Sentence:** A criminal defendant is entitled to jail credit for time spent in custody “in connection with the offense or behavioral incident being sentenced.” Minn. R.Crim. P. 27.03, subd. (B). It makes no difference for concurrent jail credit purposes if time spent in custody is pretrial, served as sentenced time or related to other charges. *State v. Morales*, 532 N.W.2d 268, 270 (Minn.App. 1995). *State v. Fritzke*, 529 N.W.2d 859, 862 (Minn.App.1994).
- b) **Presumptions – Sentence:** There is a statutory presumption that all sentences are concurrent unless the Court specifies a consecutive sentence. M.S. 609.15; MSG 2.F.01; **Probation:** There is a presumption that all probationary periods are concurrent unless the Court specifies that the probationary periods are to be consecutive or “stacked”. *Pageau v. State*, ___ N.W.2d ___, (Minn.App Sept. 10, 2012).
- c) **Minnesota Sentencing Guidelines (MSG):** The MSG governs the issuance of felony “sentences”; they do not govern or control misdemeanor sentences or conditions of stayed sentences (i.e. probationary jail terms). MSG 3.A.2.
- d) **Burden of Proof:** A defendant has the burden of establishing that he/she is entitled to jail credit for a specific period of time. Once that burden is met, the granting of jail credit is not discretionary with the trial Court. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn.2008).
- e) **Question of Fact and Law:** A district Court’s decision whether to award credit is a mixed question of fact and law; the district Court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances. *State v. Johnson*, 744 N.W.2d 376, 379 (Minn.2008).
- f) **Standards and Principles:** Awards of jail credit are governed by principles of fairness and equity and must be determined on a case-by-case basis. Jail credit is also subject to the standards established by the Sentencing Guidelines. See Minn. Sent. Guidelines 2.F. and 3.C.; *State v. Clarkin*, 817 N.W.2d 678 (Minn. 2012).
 - i) The total amount of time a defendant is incarcerated should not turn on irrelevant concerns, such as whether defendant pleads guilty or insists on his right to trial, or on any other factor subject to manipulation by the prosecutor. MSG 3.C.1.
 - ii) A defendant who cannot post bail because of indigence should serve the same time that a defendant in identical circumstances who is able to post bail would serve. MSG 3.C.01.
- g) **Stating Jail Credit:** When the Court sentences a defendant, it must state the number of days spent in custody in connection with the offense being sentenced. That credit must be deducted from the sentence and must include time spent in custody from a prior stay of imposition or execution of sentence. Minn. R. Crim. P. 27.03, sub. 4(B).

- h) **Out of State Credit:** Jail credit is allowed for time spent in another state only when the Minnesota offense was the “sole reason” for incarceration in the foreign jurisdiction. If any part of the time defendant spent in the out-of-state jail was in connection with the out-of-state charge, defendant is not entitled to jail credit for that time. See §7 (g).
- i) **Credit For Time Served in Federal Custody:** When a Minnesota sentence follows a federal sentence, state law presumes the state sentence is concurrent, therefore, defendant is entitled to credit; When a federal sentence follows a state sentence, federal law presumes the federal sentence is consecutive to the state sentence, therefore, defendant is not entitled to jail credit. See §7 (h)

2) **CONCURRENT SENTENCE - GENERAL RULE:**

- a) **General Rule:** A criminal defendant is entitled to jail credit for time spent in custody “in connection with the offense or behavioral incident being sentenced.” Minn. R.Crim. P. 27.03, subd. (B). It makes no difference for concurrent jail credit purposes if time spent in custody is pretrial, served as sentenced time or related to other charges. *State v. Morales*, 532 N.W.2d 268, 270 (Minn.App. 1995). *State v. Fritzke*, 529 N.W.2d 859, 862 (Minn.App.1994). In most cases involving a concurrent sentence, a defendant will be entitled to ALL time spent in custody (anywhere in the state for any reason) since the date of offense.

Note – Defendant’s Arrest or Filing of a Complaint: The starting point for most Jail credit calculations will commence on the date a defendant is arrested or a complaint is issued (whichever occurs first). Minn. R. Crim. P. 27.03, subd. (B). However, the starting point could occur earlier if the Minnesota Supreme Court “*Clarkin*” jail credit rule applies. The new “*Clarkin*” jail credit rule is set out below in (b):

- b) **Jail Credit – Starting Point (The “*Clarkin*” Rule):** In *State v. Clarkin*, the Minnesota Supreme Court established a new rule for calculating when jail credit begins. An award of jail credit is appropriate for time spent in custody after the date when:
 - (1) the State has completed its investigation in a manner that does not suggest manipulation by the State, and
 - (2) the State has probable cause and sufficient evidence to prosecute its case against the defendant with a reasonable likelihood of actually convicting the defendant of the offense for which he is charged.” *State v. Clarkin*, 817 N.W.2d 678, 689 (Minn. 2012).

Best Practice Recommendation: In order to avoid the risk of a Jail Credit hearing to determine application of the ‘Clarkin’ rule, it is recommended that attorneys stipulate (if possible) to the amount of jail credit as part of a negotiated plea agreement.

- c) **Two Exceptions:** There are two exceptions to the above general rule. A defendant does not receive jail credit for:
- i) Cases involving consecutive sentencing. *See* §3;
 - ii) Time spent in custody in another state. *See* §7 (g).
- d) **Presumption:** There is a statutory presumption that ALL sentences are concurrent unless the Court specifies a consecutive sentence. This presumption cannot be circumvented by later modification. M.S. 609.15, subd. 1(a); *State v. Rasinski*, 527 N.W.2d 593 (Minn. App. 1995).

3) **CONSECUTIVE SENTENCE - GENERAL RULES:**

- a) **General Rule “Jail Credit” (“solely-in-connection with”):** If defendant receives a consecutive sentence, defendant is entitled to receive jail credit only for time served SOLELY in connection with the charged offense. Credit is NOT given for time served in connection with an unrelated offense. *State v. Clarkin*, 817 N.W.2d 678 (Minn. 2012); MSG 2.F.

Note: Caution: Some jurisdictions have been known to use the phrase “additional days” to denote a consecutive sentence – there is no authority for the use of that phrase and it is not a recommended practice. When imposing a consecutive sentence the court should be clear, specific and precise as to its intent.

- b) **Warning – Is Period of Probation Concurrent or Consecutive?** When the Court orders a stayed sentence to run consecutive to all other sentences ONLY the imposed or stayed jail is consecutive – NOT probation. The period of probation is ALWAYS concurrent unless the Court separately orders probation to be “stacked” or run “consecutive” or clearly states the total number of years that defendant will be on probation. *Pageau v. State*, 820 N.W.2d 271, (Minn.App.2012).

RULE OF THUMB: Although the term “sentence” is not expressly defined by case law or statute, for purposes of the above rule the terms “sentence” and “probation” are clearly separate and distinct from each other. “Sentence” refers to the amount of imposed or stayed jail; “Probation” refers to a condition of the sentence – not the sentence itself. See presumptions (c) below.

c) Presumptions – Sentence vs. Probation:

- a. Sentences:** There is a statutory presumption that all sentences are concurrent unless the Court specifies a consecutive sentence. M.S. 609.15;
- b. Probation:** There is also a presumption that all probationary periods are concurrent unless the Court specifies that probationary periods are consecutive or “stacked”. *Pageau v. State*, 820 N.W.2d 271, (Minn.App.2012).

d) Consecutive Sentence is Always last in Time: A sentence may be ordered to run consecutive only to other sentences that have already been imposed or jail terms already served or being served (known or unknown).

For example (unknown prior sentence): The Court issues a robbery sentence to run consecutive to an already imposed sentence out of Ramsey County. The Court is not aware that defendant is also serving a different sentence in Duluth. The Court’s current robbery sentence is still consecutive to the Duluth sentence even though no one knew about it and the Court did not specifically reference it. Otherwise, a defendant could manipulate the consecutive sentence by not disclosing his other sentences. See *State v. Jennings*, 448 N.W.2d 374 (Minn.App.1989).

e) Multiple Consecutive Sentences: When multiple sentences are consecutive, jail credit should be applied to only the first sentence because to do otherwise would constitute “double credit”. *Effinger v. State*, 380 N.W.2d 483, 489 (Minn. 1986); *State v. Allen*, 482 N.W.2d 228, 233 (Minn. Ct. App. 1992). Allowing such double credit “would defeat the purpose of consecutive sentencing”. *State v. Elting*, 480 N.W.2d 152 (Minn.App.1992); MSG 3.C.2 (double jail credit shall not be given to consecutive sentences).

f) Life Sentence Exception: The above rule of applying jail credit only to the first consecutive sentence does NOT apply when the Court imposes “multiple consecutive life sentences”. Where a Court has imposed consecutive life sentences, applying credit to only one consecutive sentence results in no credit at all to the sentence, because while the single credited sentence would be reduced, the other life sentences would remain intact. Jail credit must be applied to all of the consecutive life sentences in order to have any real diminishing effect. *State v. Allen*, 482 N.W.2d 228 (Minn.App. 1992).

g) Correcting Mistakes: Under Minnesota law, jail credit is to be automatically deducted from a sentence. Minn. R. Crim. P. 27.03, subd 4(B). If the granting or denial of jail credit renders a sentence unauthorized by law, the Court has authority to correct the sentence by adding or vacating the award of jail credit. Minn. R. Crim. P. 27.03 subd 9; *State v. Taylor*, A03-62 (Minn.App. Aug. 5, 2003).

h) Defendant Currently In Jail/Prison For Prior Offense: In order to avoid de facto concurrent sentences, when a current offense is sentenced consecutive to a prior offense for which the offender is already serving time in prison or jail, no jail credit shall be awarded on the current consecutive offense. MSG 3.C.03.

i) Presumptive Consecutive Sentence: Consecutive sentencing is presumptive when the conviction is for a crime committed by an offender serving an executed prison sentence, on supervised or conditional release, on escape status from an executed prison sentence, or in cases of felony DWI sentences in which the offender has a qualified prior DWI conviction. MSG 2.F.1. When a consecutive sentence is presumptive, a concurrent sentence “constitutes a departure from the presumptive sentence *except* if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive.” *State v. Clarkin*, 817 N.W.2d 678, 685-686 (Minn. 2012). A presumptive consecutive sentence is calculated using a criminal history score of one. *State v. Clarkin*, at 686; MSG 11.F.1.

j) Permissive Consecutive Sentence: For each offense sentenced consecutive to another offense(s), other than those that are presumptive, a zero criminal history score, or the mandatory minimum for the offense, whichever is greater, shall be used in determining the presumptive duration. MSG 11.F.2.

k) Consecutive Probationary Jail: Because the Sentencing Guidelines do not govern conditions of stayed sentences, even if the felony sentence and period of probation is concurrent, any jail term ordered as a condition of probation may be run consecutive to any other sentence in order to ensure defendant does not receive unintended jail credit for time served on unrelated or unknown offenses. (See section 7 below for a more detailed discussion on this issue.)

EXAMPLE OF CONSECUTIVE SENTENCE GENERAL RULE:

- 1) On Jan 1st defendant charged with Anoka County Robbery and a warrant is issued;
- 2) On Feb 1st defendant pleads guilty to Ramsey County DWI and serves 30 days in jail;
- 3) On March 1st defendant finishes DWI sentence but is held on the Anoka County Robbery warrant; he remains in continuous custody;
- 4) On April 1st defendant pleads guilty to Anoka County Robbery;
- 5) On May 1st defendant is sentenced on Anoka County Robbery: 36 month COC, stay of execution; probation for 5 years, 120 days jail imposed as a condition of probation:
 - i. **If Sentence Is Concurrent** – Defendant entitled to credit for ALL time served since January 1st (date of complaint/warrant) to the date of sentencing (May 1st); Total jail credit = 90 days (60 days from the Anoka Robbery and 30 days from the DWI);

- ii. **If Sentence Is Consecutive** – defendant is entitled to receive jail credit only for time served SOLELY in connection with charged offense (the Anoka Robbery), credit is NOT given for time served in connection with any unrelated offense (the Ramsey DWI): Total jail credit = 60 days (from March 1st to May 1st).

5) MISDEMEANORS v. FELONIES (LIMITATIONS):

a) Felonies: Unless specifically authorized by the Sentencing Guidelines, a felony sentence cannot be ordered to run consecutive to any other sentence (i.e. felony, gross misdemeanor or misdemeanor). However, because the Sentencing Guidelines do not govern conditions of stayed sentences, even if a sentence itself is concurrent, any jail term ordered as a condition of probation may be run consecutive to any other sentence (i.e. misdemeanor, gross misdemeanor or felony) in order to ensure defendant does not receive unintended jail credit for time served on unrelated or unknown offenses. See section 7 below for a more detailed discussion on this issue.

Note: The maximum amount of probationary jail time cannot exceed the maximum amount of time the defendant would be required to serve in prison if the sentence had been executed. *State v. Gilbertson*, 455 N.W.2d 59, 59 (Minn. 1990). Trial Court may not impose probationary jail term which exceeds two-thirds of a defendant's presumptive guidelines sentence. MSG 3.A.202; *State v. Parson*, 457 N.W.2d 261 (Minn. App. 1990).

b) Misdemeanors & Gross Misdemeanors: Sentencing Guidelines limitations on consecutive sentencing do not apply to non-felony cases or probation violation jail sanctions. Misdemeanor, gross misdemeanor sentences, and/or probationary jail terms may be run consecutive to each other or to a felony sentence. *State v. Perkins*, Minn. Ct. App., Finance and Commerce, July 12, 1996 p. 72 (unpublished decision).

Note: In misdemeanor, gross misdemeanor or felony cases, the actual amount of time served in jail as a condition of probation can never exceed two-thirds of the imposed sentence.

6) PROBATION REVOCATIONS – SENTENCE EXECUTED:

a) Concurrent Sentence: If the original sentence was concurrent, defendant is entitled to credit for all time served in custody for any reason from the date of the offense (i.e. date of arrest, date of formal charging or date the State acquired probable cause and sufficient evidence to prosecute its case against the defendant with a reasonable likelihood of actually convicting the defendant, whichever occurs first), to the date the sentence is executed. *State v. Clarkin*, 817 N.W.2d 678, 689 (Minn. 2012).

b) Consecutive Sentence:

- i) **Jail Served Prior to Original Sentencing:** If the original sentence was consecutive, defendant is entitled to credit for all time served SOLELY in connection with the charged offense, prior to the date of original sentencing. Defendant is not entitled to credit for time served in connection with unrelated offenses occurring prior to the date of original sentencing.
- ii) **Jail Served After Original Sentencing:** Even if the original sentence was consecutive, the defendant is entitled to credit for any time served in custody for an unrelated offense **if** the sentence for the unrelated offense was imposed after the date of the original sentence UNLESS the time served after the date of original sentencing was part of a separate consecutive sentence (i.e. you cannot apply time served on one consecutive sentence as jail credit against a different consecutive sentence because they are mutually exclusive).

Explanation of Above Rules: The Court can only order a sentence to be consecutive to another sentence that has already been imposed or time in jail for an unrelated offense that has already been served. Any sentence imposed for an unrelated offense that occurs after the date of defendant's original sentencing (regardless of whether the original sentence was concurrent or consecutive) is by operation of law, a concurrent sentence unless the Court specifies it is consecutive. **Therefore:**

- i. **Concurrent:** If the original sentence was concurrent the defendant is entitled to receive credit for any time served as part of that subsequent sentence regardless of whether the subsequent sentence is concurrent or consecutive, as long as it was imposed after the date of original sentencing.
- ii. **Consecutive:** If the original sentence was consecutive, and the subsequent sentence is consecutive, the defendant is not entitled to receive credit for any time served as part of the subsequent consecutive sentence. (i.e. you cannot apply time served on one consecutive sentence as jail credit against a different consecutive sentence because they are mutually exclusive).

EXAMPLE OF PROBATION REVOCATION RULE, CONSECUTIVE SENTENCE EXECUTED:

- 1) On Jan 1st defendant charged with Anoka County Robbery and a warrant is issued;
- 2) On Feb 1st defendant pleads guilty to Ramsey County DWI and serves 30 days in jail;
- 3) On March 1st defendant finishes DWI sentence but is held on the Anoka County Robbery warrant; he remains in continuous custody;
- 4) **Anoka County Robbery Sentencing Date:** Defendant pleads guilty to the Anoka County Robbery and on May 1st defendant is sentenced: CONSECUTIVE 36 month COC, stay of execution; 120 days jail imposed as a condition of probation:

- i. **Because Sentence is Consecutive** – defendant is entitled to receive jail credit only for time served SOLELY in connection with charged offense (the Anoka Robbery), credit is NOT given for time served in connection with any unrelated offense (the Ramsey DWI): Total jail credit = 60 days (from March 1st to May 1st);
 - ii. **After Jail Credit is Awarded Defendant Serves 20 Additional Days:** Total sentence of 120 days less 40 days for good time less 60 days jail credit = 20 days left to serve).
- 5) August 1st defendant is sentenced on an unrelated Dakota County Assault charge and serves 30 day in jail (Court does not specify consecutive so sentence is deemed concurrent);
- 6) **Probation Revocation:** October 1st defendant's Anoka Robbery probation is revoked and Court executes the 36 month consecutive prison sentence:
- i. **What is Defendant's Jail Credit?** In addition to the 60 days credit the defendant received on the date of original sentencing, he is also entitled to credit for an additional 50 days served after the date of original sentencing (20 days of probationary jail plus 30 days served on the assault charge) for a total jail credit of 110 days to be applied against his 36 month prison sentence;
 - ii. **What if The August 1st Dakota County Assault Sentence Had Been Consecutive?** If the August 1st Assault sentence or the resulting 30 day probationary jail term had been ordered to run consecutive then defendant would not receive credit for that time against the Anoka Robbery executed sentence. (i.e. you cannot apply time served on one consecutive sentence as jail credit against a different consecutive sentence because they are mutually exclusive).

7) **PROBATION REVOCATIONS – REINSTATE WITH ADDITIONAL JAIL:**

- a) **Concurrent or Consecutive Sentence:** Whenever the Court reinstates probation and orders an additional jail term as a consequence for the violation, defendant is entitled to credit for all time served in custody, for any reason, from the date of the probation violation to the date of the Probation Violation Hearing (date the jail sanction is imposed). This applies whether the original sentence was concurrent or consecutive.
- i) **Risk of Unintended Jail Credit:** If the Court does not order the probation violation jail term to be consecutive, the defendant may receive credit for time served on an unrelated matter (between the date of violation and the violation hearing) that was unknown to the Court. That would be unfortunate especially if the Court's intent was that defendant serve the additional jail as a specific consequence for the violation.

ii) **How to Avoid the Risk of Unintended Jail Credit:** In order to avoid the risk of defendant receiving unintended jail credit, the Court should either specify the exact number of days of credit defendant is awarded or the Court should order that the probation violation jail term be consecutive so the only jail credit awarded is time spent SOLELY in connection with the probation violation. Regardless of whether the original sentence was concurrent or consecutive, the Court can still order that a probationary jail sanction be consecutive in order to avoid the risk of an unintended jail credit.

Note: What if Sentence is Subsequently Executed? In the above example, if the original sentence was concurrent, but the Court orders a probation violation jail sanction to be consecutive (done in order to avoid unintended jail credit) although the defendant will not receive credit against his/her probation violation jail sanction for time served on unrelated offenses, he/she will receive full credit for all time served (even for unrelated matters) if the original sentence is ever executed.

Note: Cannot Exceed Two-Thirds of Guidelines Sentence: The maximum amount of accumulated probationary jail time cannot exceed the maximum amount of time the defendant would be required to serve in prison if the sentence had been executed (i.e. two-thirds of a defendant's presumptive guidelines sentence). MSG 3.A.202; *State v. Peterson*, 784 N.W.2d 843, 846 (Minn.App.2010).

Note: Unauthorized Modification of Court Ordered Jail Credit: Once the Court specifies the amount of jail credit the defendant is entitled to receive, no one other than the Court has authority to modify the amount of jail credit authorized by the Court. The occasional practice of jail facilities, based on new or additional information, modifying (sua sponte) the amount of jail credit ordered by the Court is highly improper. If a mistake is discovered, a proposed order setting forth the correct amount of jail credit should be submitted to the Court.

8) **WHAT ABOUT:**

a) **Huber/Work Release:** Credit for a full day is to be given for each day spent in confinement with work release privileges. Minn. Stat. § 631.425; *State v. Jackson*, 557 N.W.2d 552, 553-54 (Minn. 1996); MSG 3.C.05; *State v. Osborne*, 2009 WL 1311648 (Minn.App, May 12, 2009).

b) **Home Electronic Monitoring:** Credit for time spent in custody as a condition of a stayed sentence is limited to time spent in jails, workhouses, and regional correctional facilities. Electronic Home Monitoring does not constitute “time spent in custody” for which jail credit should be received. *State v. Wilkinson*, 539 N.W.2d 249, 252 (Minn. Ct. App. 1995); MSG 3.C.04.

c) **Residential Treatment Facilities/Hospitals/Furloughs:**

General Rule: Credit for time spent in custody as a condition of a stayed sentence is limited to time spent in jails, workhouses, and regional correctional facilities. Credit should NOT be extended for time spent in any other institution, including residential treatment facilities, UNLESS THE COURT FINDS, based on evidence presented, that the level of confinement and limitations imposed at a facility are the “functional equivalent” of those imposed at a jail, workhouse, or regional correctional facility. Courts must look closely at the facts of each case to determine the level of confinement and limitations imposed on a defendant. Whether a residential treatment facility or any other facility meets the “functional equivalent” test is a case-by-case determination; the label given a facility is not determinative. *Asfaha v. State*, 665 N.W.2d 523, 528 (Minn. 2003) (juvenile certified to Adult Court was entitled to jail credit for time spent in residential treatment facility); MSG 3.C.3; *State v. Osborne*, A08-0760 (Minn.App. May 12, 2009).

What About Furloughs? A defendant released from jail to a treatment facility on a FURLOUGH is not automatically entitled to credit for time spent at the treatment facility. The jail credit focus remains on whether the treatment facility is the “functional equivalent” of a jail. *Ponicki v. State*, A06-2241 (Minn.App. Oct. 30, 2007).

Case Law Examples:

- (1) *State v. Razmyslowski*, 668 N.W.2d 681, 684 (Minn. Ct. App. 2003): Defendant earned jail credit for time spent in a state correctional hospital for a Court-ordered Intensive Treatment Program, because security fences surrounded the hospital, entry to the hospital was through electronically controlled gate, closed circuit television monitored facility, staff made regular counts, rounds and recorded attendance at sessions, patients followed strict daily schedule, rooms had bars on windows, and most patients were not free to roam building or grounds;
- (2) *State v. Johnson*, 744 N.W.2d 376, 380 (Minn. 2008): Credit denied to defendant for time spent in a secure treatment facility when the placement in that facility is based upon a prior civil commitment and is unrelated to the criminal charges for which he was sentenced.

- d) **Weekend Jail Sentences: Partial Days in Jail:** In computing jail credit, each day or portion of a day in jail should be counted as one full day of credit. MSG 3.C.05. For example, a defendant who spends part of a day in confinement on the day of arrest and part of a day in confinement on the day of release should receive a full day of credit for each day. *State v. Jackson*, 557 N.W.2d 552, 554 (Minn. 1996).
- e) **Jail Sentences Nine Days or Less – No Good Time Allowed:** Any person sentenced for a term to any county jail, workhouse or correctional work farm, whether the term is part of an executed sentence or is imposed as a condition of probation shall, when sentenced to serve ten days or more, diminish the term of the sentence one day for each two days served, commencing on the day of arrival, during which the person has not violated any rule of discipline of the place where the person is incarcerated. M.S 643.29 subd. 1.
- f) **Good Time Credit:** Projected good time credit (sentence reduced by one day for each two days served, which equals one-third of imposed or executed jail time) should be subtracted from the sentence before credit for time in custody between arrest and sentencing is subtracted. M.S. 643.29, subd 1; MSG 3.C.4; *State v. Barg*, 391 N.W.2d 773, 775 (Minn. 1986).
- g) **Out of State Custody: Solely-In-Connection Rule (the Willis rule):** Jail credit is allowed for time spent in another state only when the Minnesota offense was the “sole reason” for incarceration in the foreign jurisdiction. If any part of the time defendant spent in the out-of-state jail was in connection with the out-of-state charge, defendant is not entitled to jail credit for that time; *State v. Hadgu*, 681 N.W.2d 30, 32-33 (Minn.App.2004); *State v. Willis*, 376 N.W.2d 427 (Minn.1985); *State v. Novak*, 2011 WL 206166 (Minn.App., Jan. 25, 2011); *State v. Parr*, 414 N.W.2d 776, 779-80 (Minn. Ct. App. 1987) (defendant not entitled to credit for time spent in New York jail, even though hold or detainer had been lodged by Minnesota).
- Exception – If defendant demands execution of Minnesota probationary sentence when serving jail time in another state, defendant is entitled to credit for the time spent in out-of-state custody:** However, this exception to the “solely-in-connection” rule only applies if the other state has a presumption in favor of concurrent sentencing, as does Minnesota. For example: North Dakota and California have concurrent sentencing presumptions. Wisconsin and Wyoming do not. *State v. Jennings*, 448 N.W.2d 374 (Minn.App.1989).

h) Time Served in Federal Custody:

(a) Whether a defendant is entitled to credit for time spent in federal custody depends on whether the Minnesota and federal sentences are deemed concurrent or consecutive with each other. Whether a sentence is concurrent or consecutive is determined by the terms of the second sentence. *State v. Peterson*, 235 N.W.2d 801, 802 (1975); *State v. Jennings*, 448 N.W.2d 374 (Minn.App.1989);

(b) If Federal Sentence is First in Time and Minnesota Sentence is Second: When a Minnesota sentence follows a federal sentence, state law presumes the state sentence is concurrent. If the Minnesota sentence is concurrent then a defendant has the right to demand execution of his state sentence while serving the federal sentence. The defendant would then be entitled to jail credit even though the time spent in jail was not served “solely-in connection with” his Minnesota offense. *State v. Peterson, supra*; *State v. Jennings*, 448 N.W.2d at 375; *State v. Moses*, No. A08-2194 (Minn.Ct.App. Sept 15, 2009).

(c) If Minnesota Sentence is First in Time and Federal Sentence is Second: When a federal sentence follows a state sentence, federal law presumes the federal sentence is consecutive to the state sentence. If the sentences are consecutive then the “solely-in-connection” rule applies and defendant would not be entitled to jail credit for time served in connection with his federal sentence because the time was not served solely in connection with the Minnesota offense. *State v. Jennings, at 375*; *State v. Wakefield*, 263 N.W.2d 76, 77 (Minn.1978); *State v. Moses*, No. A08-2194 (Minn.Ct.App. Sept 15, 2009); U.S. Sentencing Guidelines Manual § 5G1.3 (2002).

i) Juvenile Facilities: Credit is given for time spent in a juvenile facility awaiting certification for prosecution as an adult. *State v. Brom*, 463 N.W.2d 758, 765-66 (Minn.1990). In addition, when a juvenile’s EJJ (Extended Juvenile Jurisdiction) designation is vacated and the adult sentence is executed the defendant is entitled to jail credit for time spent in a secured juvenile facility (i.e. MCF Red Wing). *State v. Garcia*, 683 N.W.2d 294 (Minn. 2004) (Supreme Court held that M.S. 260B.130 subd 5 which precluded EJJ’s from receiving jail credit was unconstitutional.).

j) Crimes Committed by Defendant While in Prison or Supervised Released:

“Consecutive sentences are presumptive when the conviction is for a crime committed by an offender serving an executed prison sentence, by an offender on supervised release, on conditional release, or on escape status from an executed

prison sentence”. MSG 2.F.1. Since the sentence is presumed consecutive, the defendant cannot receive jail credit for time served for remainder of the prison sentence or for violations of supervised or conditional release. When a consecutive sentence is presumptive, a concurrent sentence “constitutes a departure from the presumptive sentence *except* if the total time to serve in prison would be longer if a concurrent sentence is imposed in which case a concurrent sentence is presumptive.” *State v. Clarkin*, 817 N.W.2d 678, 685-686 (Minn. 2012). A presumptive consecutive sentence is calculated using a criminal history score of one. *State v. Clarkin*, at 686.

- k) **Jail Time Served in Civil Cases: (i.e. Child Support Contempt, etc.):** Under Minn. R. Crim. P. 27.03, subd, 4(B) and relevant case law, the “type” of custody (civil versus criminal) is not a factor. Moreover, the distinction between jail time served in civil and criminal cases is a distinction without a difference. *State v. Quinn*, A11-776, 2011 WL 3903309 (Minn. Ct. App. Sept. 6, 2011) (Defendant awarded jail credit for time spent in custody as a result of a constructive civil contempt order for non-payment of child support).



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