

SENTENCING M E M O R A N D U M

SENTENCING COMMITTEE RECOMMENDATION NO. 7 - *Length of Probation or Suspension of Sentence.*

To: Superior Court Judges

Date: January 29, 2010

The Sentencing Committee submits the following information and recommendations concerning length of probation or suspension of sentence.

1. Except as otherwise provided herein, under Senate Bill 50, now codified at 11 Del. C. § 4333, the length of any period of probation or suspension of sentence cannot exceed the following:
 - a. 2 years for any violent felony. Violent felonies are defined in 11 Del. C. § 4201(c).
 - b. 18 months for any Title 16 offense.
 - c. 1 year for any offense not covered by a. or b.
2. If a defendant is serving sentences on 2 or more cases, the consecutive period of probation or suspension of sentence on all cases cannot exceed the applicable 2 years, 18 months or 1 year limits just set forth. If the consecutive period of probation or suspension of sentence under two or more cases does exceed these limits, the sentences are deemed concurrent **by operation of law**. However, see paragraph 3 below for an exception if the defendant commits an offense while serving a period of probation or suspension of sentence.
3. The following are exceptions under which a period of probation or suspension of sentence may exceed the Senate Bill 50 limits:
 - a. If a defendant commits an offense while serving a period of probation or suspension of sentence, the sentence for the new offense must comply with Senate Bill 50 limits, but it may be consecutive to other sentences even if that causes the total length of probation or suspension of sentence to exceed Senate Bill 50 limits.
 - b. Sentences for sex offenses defined in 11 Del. C. § 761, if the sentencing

court determines on the record that a longer period of probation or suspension of sentence will reduce the likelihood that the offender will commit a sex offense or other violent offense in the future.

c. Sentences for violent felonies, if the sentencing court determines on the record that the public safety will be enhanced by a longer period of probation or suspension of sentence.

d. To any sentence if the court determines on the record that a longer period of probation or suspension of sentence is necessary to ensure collection of restitution ordered, except that any period of probation longer than Senate Bill 50 limits must be at Level 1 - Restitution Only.

e. Senate Bill 50 limitations may be exceeded by up to 90 days if the sentencing court determines that the defendant has not yet completed a substance abuse treatment program ordered by the court, provided that each extension under this exception shall be preceded by a hearing and by a finding on the record that such extension is necessary to facilitate the completion of the substance abuse treatment program.

Where a period of probation or suspension of sentence is imposed under one of the foregoing exceptions, the sentence order should include a note so indicating. The note should indicate which exception is applicable. ASOP is programmed to accommodate this.

4. For purposes of calculating maximum lengths of periods of probation or suspension of sentence, **any period of a sentence served at Supervision Level 4 is not counted.** Thus, the following sentence for a violent felony complies with Senate Bill 50 without an exception: “The defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of 10 years, suspended after 5 years for 5 year at Level 4 House Arrest, suspended after 1 year for 2 years at Supervision Level 3, hold at Supervision Level 5 for 4.”
5. Finally, the aggregate of the levels of supervision in a sentence cannot exceed the sentence’s maximum term of commitment. For example, if a defendant is sentenced to 5 years at Supervision Level 5, suspended after 4 years for 1 year at Supervision Level 4 House Arrest, the maximum term of the commitment is exhausted and no probation at Level 3, 2 or 1 can be added. Another example: if a defendant is sentenced to 5 years at Supervision Level 5, suspended after 3 years for 2 years at Supervision Level 4 House Arrest, suspended after 1 year for 1 year at Supervision Level 3, the maximum term of the commitment is exhausted.

Provided, however, that:

- a. where the remaining part of a commitment is less than 1 year, up to 1 year of probation may be imposed (Example: 3 years at Level 5, suspended after 2 years 6 months, followed by 1 year at Level III);
- b. probation can exceed the maximum term of the commitment under 11 Del. C. § 4204(l) (see Sentence Memo 7); and
- c. for the purposes of ensuring the payment of restitution, the Court shall retain jurisdiction over the offender until the amount of restitution has been paid in full.