

# Getting it Right: Doing the SB 201 Math

Sentencing formulas for individual, concurrent and consecutive terms on qualifying offenses.  
Judge Sean C. Gallagher, Ohio Court of Appeals, Eighth District.

## Individual term (R.C. 2929.144(B)(1))

The minimum term for qualifying F-1 or F-2 offenses is selected by the trial judge from the existing sentencing ranges in R.C. 2929.14(A)(1)(a) or (A)(2)(a).

The maximum term is the minimum term plus 50% or ½ of that minimum term imposed on that qualifying offense being sentenced. Thus, if the judge selects 10 years as the minimum term, the maximum term is 15 years. (50% or ½ of 10 years = 5 years) The indefinite range is 10-15 years.

## Concurrent terms (R.C. 2929.144(B)(3))

Unlike individual terms where the minimum and maximum terms are always derived from the same qualifying F-1 or F-2 offense, when sentencing multiple counts to concurrent terms ***different*** offenses (or terms) can form the basis of first the minimum term and then the maximum term.

The ***minimum*** term is derived from the ***longest*** of the minimum terms imposed, while the ***maximum*** term is derived from the ***longest minimum*** term for the ***most serious qualifying felony*** being sentenced. See 2929.144(B)(3).

4 counts are run concurrent:

Count #	Degree of Offense	Min/Def Term	Actual Min. Term	Maximum Term
Count 1	F-1 qualifying	6 years	N/A	3 years (8-11 years)
Count 2	F-2 qualifying	8 years	8 years	N/A
Count 3	F-1 qualifying	5 years	N/A	N/A
Count 4	F-3 non-qualifying	3 years	N/A	N/A

The minimum term is derived from count 2 because it is the ***longest minimum term*** imposed (8 years). The maximum term is derived from count 1 because it is the ***longest minimum term*** (6 years) for the ***most serious qualifying felony***. 50% or ½ of 6 years is 3 years. R.C. 2929.14(A)(1)(a) & (A)(2)(a) and 2929.144(B)(3) require only one maximum term be imposed. Note: The range (8 to 11 years) is derived from two separate counts.

## Consecutive terms (R.C. 2929.144(B)(2))

When sentencing to consecutive terms, the judge will still have to make the findings in R.C. 2929.14(C)(4).

The new law requires a court to aggregate (add together) any consecutively imposed terms (regardless of whether they are qualifying or non-qualifying) and establish an “aggregate minimum term. The aggregate minimum term is simply all the terms, on all the offenses (qualifying and non-qualifying), being imposed consecutively, added together to achieve an “aggregate minimum term.” (Example: 10 years + 5 years + 4 years + 1 year (all consecutive) = 20 years. 20 years is the aggregate minimum term.)

The **longest minimum term** (qualifying) or **definite term** (non-qualifying) from the **most serious felony offense** will control the determination of the maximum term. Note: The longest term or most serious offense doesn’t have to be a qualifying offense for consecutive sentencing.

4 counts are run consecutive:

Count #	Degree of Offense	Min/Def Term	Actual Min Term	Maximum Term
Count 1	F-1 qualifying	6 years	N/A	25 years (22 + 3)
Count 2	F-2 qualifying	8 years	N/A	N/A
Count 3	F-1 qualifying	5 years	N/A	N/A
Count 4	F-3 non-qualifying	3 years	N/A	N/A
Aggregate of consecutive terms:		N/A	22 years	N/A

The aggregate minimum term derived from the individual terms is 22 years, (6+8+5+3 = 22 years). The maximum term is derived from count 1 and the 6-year term (50% or ½ of 6 years = 3 years) because it is the longest minimum term from the most serious felony offense. Individually, count 1 is not the longest minimum term, but it is the longest minimum term for **the most serious offense** so it trumps the longer minimum term of 8 years from count 2 because count 2 is only a F-2 offense.

Rare circumstance where non-qualifying term controls:

Count #	Degree of Offense	Min/Def Term	Actual Min Term	Maximum term
Count 1	F-1 non-qualifying	11 years	N/A	32.5 years (27+5.5)
Count 2	F-2 qualifying	8 years	N/A	N/A
Count 3	F-1 qualifying	5 years	N/A	N/A
Count 4	F-3 non-qualifying	3 years	N/A	N/A
Aggregate of consecutive terms:		N/A	27 years	N/A

The aggregate minimum term is 27 years, (11+8+5+3 = 27 years). The maximum term is derived from the non-qualifying count 1 and the 11-year term (50% or ½ of 11 years = 5.5 years) because it is the longest **definite** term and that term is longer than the longest **minimum** term (5 years) from the other F-1 offense for the qualified offense in count 3. Count 1 is not a qualified offense, but its **definite** 11-year term is the longest term (minimum or definite) of **the most serious offense** so it trumps the longest minimum term of 5 years from the qualified offense in count 3 that is also a F-1.

***For questions, comments, additions or corrections contact Judge Sean C. Gallagher directly at 216-348-4838 or at scg@8thappeals.com***