

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	11 years (8 + 3 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 yrs)
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