

7.04. Criteria for Sentence of Extended Term of Imprisonment; Misdemeanors and Petty Misdemeanors

The Court may sentence a person who has been convicted of a misdemeanor or petty misdemeanor to an extended term of imprisonment if it finds one or more of the grounds specified in this Section. The finding of the Court shall be incorporated in the record

(1) The defendant is a persistent offender whose commitment for an extended term is necessary for protection of the public.

The Court shall not make such a finding unless the defendant has previously been convicted of two crimes, committed at different times when he was over [insert Juvenile Court age] years of age.

(2) The defendant is a professional criminal whose commitment for an extended term is necessary for protection of the public.

The Court shall not make such a finding unless:

(a) the circumstances of the crime show that the defendant has knowingly devoted himself to criminal activity as a major source of livelihood; or

(b) the defendant has substantial income or resources not explained to be derived from a source other than criminal activity.

(3) The defendant is a chronic alcoholic, narcotic addict, prostitute or person of abnormal mental condition who requires rehabilitative treatment for a substantial period of time.

The Court shall not make such a finding unless, with respect to the particular category to which the defendant belongs, the Director of Correction has certified that there is a specialized institution or facility which is satisfactory for the rehabilitative treatment of such persons and which otherwise meets the requirements of Section 6.09, Subsection (2).

(4) The defendant is a multiple offender whose criminality was so extensive that a sentence of imprisonment for an extended term is warranted.

The Court shall not make such a finding unless:

(a) the defendant is being sentenced for a number of misdemeanors or petty misdemeanors or is already under sentence of imprisonment for crime of such grades, or admits in open court the commission of one or more such crimes and asks that they be taken into account when he is sentenced; and

(b) maximum fixed sentences of imprisonment for each of the defendant's crimes, including admitted crimes taken into account, if made to run consecutively, would exceed in length the maximum period of the extended term imposed.

7.05. Former Conviction in Another Jurisdiction; Definition and Proof of Conviction; Sentence Taking into Account Admitted Crimes Bars Subsequent Conviction for Such Crimes

(1) For purposes of paragraph (1) of Section 7.03 or 7.04, a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been of a felony if sentence of death or of imprisonment in excess of one year was authorized under the law of such other jurisdiction, of a misdemeanor if sentence of imprisonment in excess of thirty days but not in excess of a year was authorized and of a petty misdemeanor if sentence of imprisonment for not more than thirty days was authorized.

(2) An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for purposes of Sections 7.03 to 7.05 inclusive, although sentence or the execution thereof was suspended, provided that the time to appeal has expired and that the defendant was not pardoned on the ground of innocence.

(3) Prior conviction may be proved by any evidence, including fingerprint records made in connection with arrest, conviction or imprisonment, that reasonably satisfies the Court that the defendant was convicted.

(4) When the defendant has asked that other crimes admitted in open court be taken into account when he is sentenced and the Court has not rejected such request, the sentence shall bar the prosecution or conviction of the defendant in this State for any such admitted crime.

7.06. Multiple Sentences; concurrent and Consecutive Terms

(1) Sentences of Imprisonment for More Than One Crime. When multiple sentences of imprisonment are imposed on a defendant for more than one crime, including a crime for which a previous suspended sentence or sentence of probation has been revoked, such multiple sentences shall run concurrently or consecutively as the Court determines at the time of sentence, except that:

(a) a definite and an indefinite term shall run concurrently and both sentences shall be satisfied by service of the indefinite term; and

(b) the aggregate of consecutive definite terms shall not exceed one year; and

(c) the aggregate of consecutive indefinite terms shall not exceed in minimum or maximum length the longest extended term authorized for the highest grade and degree of crime for which any of the sentences was imposed; and

(d) not more than one sentence for an extended term shall be imposed.

(2) Sentences of Imprisonment Imposed at Different Times. When a defendant who has previously been sentenced to imprisonment is subsequently sentenced to another term for a crime committed prior to the former sentence, other than a crime committed while in custody:

(a) the multiple sentences imposed shall so far as possible conform to Subsection (1) of this Section; and

(b) whether the Court determines that the terms shall run concurrently or consecutively, the defendant shall be credited with time served in imprisonment on the prior sentence in determining the permissible aggregate length of the term or terms remaining to be served; and

(c) when a new sentence is imposed on a prisoner who is on parole, the balance of the parole term on the former sentence shall be deemed to run during the period of the new imprisonment.

(3) Sentence of Imprisonment for Crime Committed While on Parole. When a defendant is sentenced to imprisonment for a crime committed while on parole in this State, such term of imprisonment and any period of reimprisonment that the Board of Parole may require the defendant to serve upon the revocation of his parole shall run concurrently, unless the Court orders them to run consecutively.

(4) Multiple Sentences of Imprisonment in Other Cases. Except as otherwise provided in this Section, multiple terms of imprisonment shall run concurrently or consecutively as the Court determines when the second or subsequent sentence is imposed.

(5) Calculation of Concurrent and Consecutive Terms of Imprisonment.

(a) When indefinite terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term.

(b) When indefinite terms run consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

(c) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indefinite term and both sentences are satisfied by serving the indefinite term.

(6) Suspension of Sentence or Probation and Imprisonment; Multiple Terms of Suspension and Probation. When a defendant is sentenced for more than one offense or a defendant already under sentence is sentenced for another offense committed prior to the former sentence:

(a) the Court shall not sentence to probation a defendant who is under sentence of imprisonment [with more than thirty days to run] or impose a sentence of probation and a

sentence of imprisonment [, except as authorized by Section 6.02(3)(b)); and

(b) multiple periods of suspension or probation shall run concurrently from the date of the first such disposition; and

(c) when a sentence of imprisonment is imposed for an indefinite term, the service of such sentence shall satisfy a suspended sentence on another count or a prior suspended sentence or sentence to probation; and

(d) when a sentence of imprisonment is imposed for a definite term, the period of a suspended sentence on another count or a prior suspended sentence or sentence to probation shall run during the period of such imprisonment.

(7) Offense Committed While Under Suspension of Sentence or Probation. When a defendant is convicted of an offense committed while under suspension of sentence or on probation and such suspension or probation is not revoked:

(a) if the defendant is sentenced to imprisonment for an indefinite term, the service of such sentence shall satisfy the prior suspended sentence or sentence to probation; and

(b) if the defendant is sentenced to imprisonment for a definite term, the period of the suspension or probation shall not run during the period of the suspension or probation shall not run during the period of such imprisonment; and

(c) if sentence is suspended or the defendant is sentenced to probation, the period of such suspension or probation shall run concurrently with or consecutively to the remainder of the prior periods, as the Court determines at the time of sentence.

7.07. Procedure on Sentence; Pre-sentence Investigation and Report; Remand for Psychiatric Examination; Transmission of Records to Department of Correction

(1) The Court shall not impose sentence without first ordering a pre-sentence investigation of the defendant and according due consideration to a written report of such investigation where:

(a) the defendant has been convicted of a felony; or

(b) the defendant is less than twenty-two years of age and has been convicted of a crime;

or

(c) the defendant will be [placed on probation or] sentenced to imprisonment for an extended term.

(2) The Court may order a pre-sentence investigation in any other case.

(3) The pre-sentence investigation shall include an analysis of the circumstances attending the commission of the crime, the defendant's history of delinquency or criminality, physical and mental condition, family situation and background economic status, education, occupation and personal habits and any other matters that the probation officer deems relevant or the Court directs to be included.

(4) Before imposing sentence, the Court may order the defendant to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the Court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or mental hospital or the Court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the Court.

(5) Before imposing sentence, the Court shall advise the defend or his counsel of the factual contents and the conclusions of any pre-sentence investigation or psychiatric examination and afford fair opportunity, if the defendant so requests, to controvert them. The sources of confidential information need not, however, be disclosed.

(6) The Court shall not impose a sentence of imprisonment for an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to him of the ground proposed. Subject to the limitation of Subsection (5) of this Section, the defendant shall have the right to hear and controvert the evidence against him and to offer evidence upon the issue.

(7) If the defendant is sentenced to imprisonment, a copy of the report of any pre-sentence investigation or psychiatric examination shall be transmitted forthwith to the Department of correction [or other state department or agency] or, when the defendant is committed to the custody of a specific institution, to such institution.

7.08. Commitment for Observation; Sentence of Imprisonment for Felony Deemed Tentative for Period of One Year; Re-sentence on Petition of Commissioner of Correction

(1) If, after pre-sentence investigation, the court desires additional information concerning an offender convicted of a felony or misdemeanor before imposing sentence, it may order that he be committed, for a period not exceeding ninety days, to the custody of the Department of Correction, or, in the case of a young adult offender, to the custody of the Division of Young Adult Correction, for observation and study at an appropriate reception or classification center. The Department and the Board of Parole, or the Young Adult Divisions thereof, shall advise the Court of their findings and recommendations on or before the expiration of such ninety-day period. If the offender is thereafter sentenced to imprisonment, the period of such commitment for observation shall be deducted from the maximum term and from he minimum, if any, of such sentence.

(2) When a person has been sentenced to imprisonment upon conviction of a felony,

whether for an ordinary or extended term, the sentence shall be deemed tentative, to the extent provided in this section, for the period of one year following the date when the offender is received in custody by the Department of Correction [or other state department or agency].

(3) If, as a result of the examination and classification by the Department of Correction [or other state department or agency] of a person under sentence of imprisonment upon conviction of a felony, the Commissioner of Correction [or other department head] is satisfied that the sentence of the Court may have been based upon a misapprehension as to the history, character or physical or mental condition of the offender, the Commissioner, during the period when the offender's sentence is deemed tentative under Subsection (2) of this Section shall file in the sentencing Court a petition to re-sentence the offender. The petition shall set forth the information as to the offender that is deemed to warrant his re-sentence and may include a recommendation as to the sentence to be imposed.

(4) The Court may dismiss a petition filed under Subsection (3) of this Section, it shall re-sentence the offender and may impose any sentence that might have been imposed originally for the felony of which the defendant was convicted. The period of his imprisonment prior to re-sentence and any reduction for good behavior to which he is entitled shall be applied in satisfaction of the final sentence.

(6) For all purposes other than this Section, a sentence of imprisonment has the same finality when it is imposed that it would have if this Section were not in force.

(7) Nothing in this Section shall alter the remedies provided by law for vacating or correcting an illegal sentence.

7.09. Credit for Time of Detention Prior to Sentence; Credit for Imprisonment Under Earlier Sentence for the Same Crime

(1) When a defendant who is sentenced to imprisonment has previously been detained in any state or local correctional or other institution following his [conviction of] [arrest for] the crime for which such sentence is imposed, such period of detention following his [conviction] [arrest] shall be deducted from the maximum term, and from the minimum, if any, of such sentence. The officer having custody of the defendant shall furnish a certificate to the Court at the time of sentence, showing the length of such detention of the defendant prior to sentence in any state or local correctional or other institution, and the certificate shall be annexed to the official records of the defendant's commitment.

(2) When a judgment of conviction is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the maximum term, and from the minimum, if any, of the new sentence. The officer having custody of the defendant shall furnish a certificate to the Court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

