

4. Application of Subsection (d).—

- (A) **In General.**—Under subsection (d), the court may impose a sentence concurrently, partially concurrently, or consecutively to the undischarged term of imprisonment. In order to achieve a reasonable incremental punishment for the instant offense and avoid unwarranted disparity, the court should consider the following:
- (i) the factors set forth in 18 U.S.C. § 3584 (referencing 18 U.S.C. § 3553(a));
 - (ii) the type (*e.g.*, determinate, indeterminate/parolable) and length of the prior undischarged sentence;
 - (iii) the time served on the undischarged sentence and the time likely to be served before release;
 - (iv) the fact that the prior undischarged sentence may have been imposed in state court rather than federal court, or at a different time before the same or different federal court; and
 - (v) any other circumstance relevant to the determination of an appropriate sentence for the instant offense.
- (B) **Partially Concurrent Sentence.**—In some cases under subsection (d), a partially concurrent sentence may achieve most appropriately the desired result. To impose a partially concurrent sentence, the court may provide in the Judgment in a Criminal Case Order that the sentence for the instant offense shall commence on the earlier of (i) when the defendant is released from the prior undischarged sentence; or (ii) on a specified date. This order provides for a fully consecutive sentence if the defendant is released on the undischarged term of imprisonment on or before the date specified in the order, and a partially concurrent sentence if the defendant is not released on the undischarged term of imprisonment by that date.
- (C) **Undischarged Terms of Imprisonment Resulting from Revocations of Probation, Parole or Supervised Release.**—Subsection (d) applies in cases in which the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense and has had such probation, parole, or supervised release revoked. Consistent with the policy set forth in Application Note 3 and subsection (f) of §7B1.3 (Revocation of Probation), the Commission recommends that the sentence for the instant offense be imposed consecutively to the sentence imposed for the revocation.
- (D) **Complex Situations.**—Occasionally, the court may be faced with a complex case in which a defendant may be subject to multiple undischarged terms of imprisonment that seemingly call for the application of different rules. In such a case, the court may exercise its discretion in accordance with subsection (d) to fashion a sentence of appropriate length and structure it to run in any appropriate manner to achieve a reasonable punishment for the instant offense.
- (E) **Imposition of Sentence.**—Unlike subsection (b), subsection (d) does not address an adjustment of the sentence for the instant offense for a period of imprisonment already served on the undischarged term of imprisonment. If the court does account for an undischarged term of imprisonment under subsection (d) in imposing the sentence, the Commission recommends that the court clearly state that the sentence was imposed pursuant to 18 U.S.C. § 3553(a), rather than as a credit for time served, to avoid confusion with the Federal Bureau of Prisons' exclusive authority provided under 18 U.S.C. § 3585(b) to grant credit for time served under certain circumstances.