

## §5G1.2

### 2. Mandatory Minimum and Mandatory Consecutive Terms of Imprisonment (Not Covered by Subsection (e)).—

(A) **In General.**—Subsection (a) applies if a statute (i) specifies a term of imprisonment to be imposed; and (ii) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment. *See, e.g.,* 18 U.S.C. § 924(c) (requiring mandatory minimum terms of imprisonment, based on the conduct involved, and also requiring the sentence imposed to run consecutively to any other term of imprisonment) and 18 U.S.C. § 1028A (requiring a mandatory term of imprisonment of either two or five years, based on the conduct involved, and also requiring, except in the circumstances described in subparagraph (B), the sentence imposed to run consecutively to any other term of imprisonment). Except for certain career offender situations in which subsection (c) of §4B1.1 (Career Offender) applies, the term of years to be imposed consecutively is the minimum required by the statute of conviction and is independent of the guideline sentence on any other count. *See, e.g.,* the Commentary to §§2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) and 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) regarding the determination of the offense levels for related counts when a conviction under 18 U.S.C. § 924(c) is involved. Subsection (a) also applies in certain other instances in which an independently determined and consecutive sentence is required. *See, e.g.,* Application Note 3 of the Commentary to §2J1.6 (Failure to Appear by Defendant), relating to failure to appear for service of sentence.

(B) **Multiple Convictions Under 18 U.S.C. § 1028A.**—Section 1028A of title 18, United States Code, generally requires that the mandatory term of imprisonment for a violation of such section be imposed consecutively to any other term of imprisonment. However, 18 U.S.C. § 1028A(b)(4) permits the court, in its discretion, to impose the mandatory term of imprisonment on a defendant for a violation of such section “concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person for an additional violation of this section, provided that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the Sentencing Commission . . .”.

In determining whether multiple counts of 18 U.S.C. § 1028A should run concurrently with, or consecutively to, each other, the court should consider the following non-exhaustive list of factors:

- (i) The nature and seriousness of the underlying offenses. For example, the court should consider the appropriateness of imposing consecutive, or partially consecutive, terms of imprisonment for multiple counts of 18 U.S.C. § 1028A in a case in which an underlying offense for one of the 18 U.S.C. § 1028A offenses is a crime of violence or an offense enumerated in 18 U.S.C. § 2332b(g)(5)(B).
- (ii) Whether the underlying offenses are groupable under §3D1.2 (Groups of Closely Related Counts). Generally, multiple counts of 18 U.S.C. § 1028A should run concurrently with one another in cases in which the underlying offenses are groupable under §3D1.2.
- (iii) Whether the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2) are better achieved by imposing a concurrent or a consecutive sentence for multiple counts of 18 U.S.C. § 1028A.

(C) **Imposition of Supervised Release.**—In the case of a consecutive term of imprisonment imposed under subsection (a), any term of supervised release imposed is to run concurrently with any other term of supervised release imposed. *See* 18 U.S.C. § 3624(e).