

DC Sentencing Commission Approves Modification to the Definition of a Short Split Sentence (Sentencing Guideline Manual 3.4) in Response to Delays Resulting From the Impact of COVID-19 Pandemic on Court Operations and Sentencing Procedures. This modification becomes effective immediately.

Modification to Guideline 3.4 Definition of “Short Split Sentences”

Whenever the court faces delays in connection with the invocation of D.C. Code § 11-947, or the circumstances that caused the invocation of Section 11-947, the court may impose a compliant “short split” sentence by (a) imposing a prison term in the appropriate range and the supervised release term, (b) suspending execution of any time up to and including time served (which may be more than 6 months), (c) suspending all of the supervised release term, and (d) placing the defendant on probation for a period not to exceed five years.

Explanatory Note

This definitional change of “short split” is written with a broad interpretation in mind. The modified definition may be applied to any person that can demonstrate that they have been impacted by delays in court or criminal legal system operations connected to the use of the statutory authority that permits the chief judge to toll or suspend proceedings in the Superior Court of the District of Columbia or the circumstances that warranted the invocation of this authority. The modified definition applies equally to individuals impacted by delays related to the invocation of the statute regardless of whether the case was filed before or after the statute’s invocation. For example, individuals with cases pending at the time of the invocation would be able to invoke the modified definition with an appropriate showing. Similarly, individuals impacted by delays following the termination of the invocation would also have the ability to invoke the modified definition with an appropriate showing.

The Commission recognizes that the definitional change expands the current definition of a short split sentence when there are delays connected to the closure of the court; the tolling or suspension of proceedings; or the functioning of government and defense counsel, including the ability to convene grand juries or to investigate cases. The change is not intended to preclude the court from imposing a long split sentence in the appropriate circumstances.

The Commission further recognizes that because of the effective date of this change, there may be some individuals already sentenced who wish to have the sentencing court consider this change in determining the appropriateness of the sentence previously imposed in light of the Chief Judge’s order dated March 18, 2020, suspending, tolling, and extending statutory and rule-based time limits. The Commission believes that the Superior Court of the District of Columbia Criminal Rule 35 provides the court and parties with the authority to seek a reconsideration of the sentence.

For example, an individual who was pending sentencing on March 25, 2020 for robbery and who was in offense Group 6 with a criminal history score in Box A, would be eligible to receive a short split sentence even if the individual was held 9 months prior to his sentencing date. The judge would be permitted to impose a compliant short split sentence by sentencing the individual to 18 months of incarceration, execution of sentence suspended as to all but 9 months (the time the individual has served) and placing the individual on 1 year of probation. Similarly, this definitional change could also be applied to a defendant who is arrested in June of 2021, is held pretrial and who pleads guilty to burglary in December 2021. When this individual appears for sentencing in February 2022, he would have already served 8 months of incarceration prior to sentencing and presumably any order issued under DC Code § 11-947 would have expired. However, if the delay between arrest and sentencing was connected to the prior invocation of § 11-947 or the circumstances that led to its invocation, for example the impact of Covid-19 on the ability to convene grand juries, the Court may impose a compliant short split sentence in Group 7, Box A by imposing a sentence of 14 months, suspending the execution of all of the sentence except for 8 months (the time already served) and placing the individual on 1 year of probation.

If you have questions regarding the application of the modified definition of “short split,” please contact the Sentencing Commission at scdc@dc.gov or Barbara Tombs-Souvey, Executive Director at 202-430-1764.