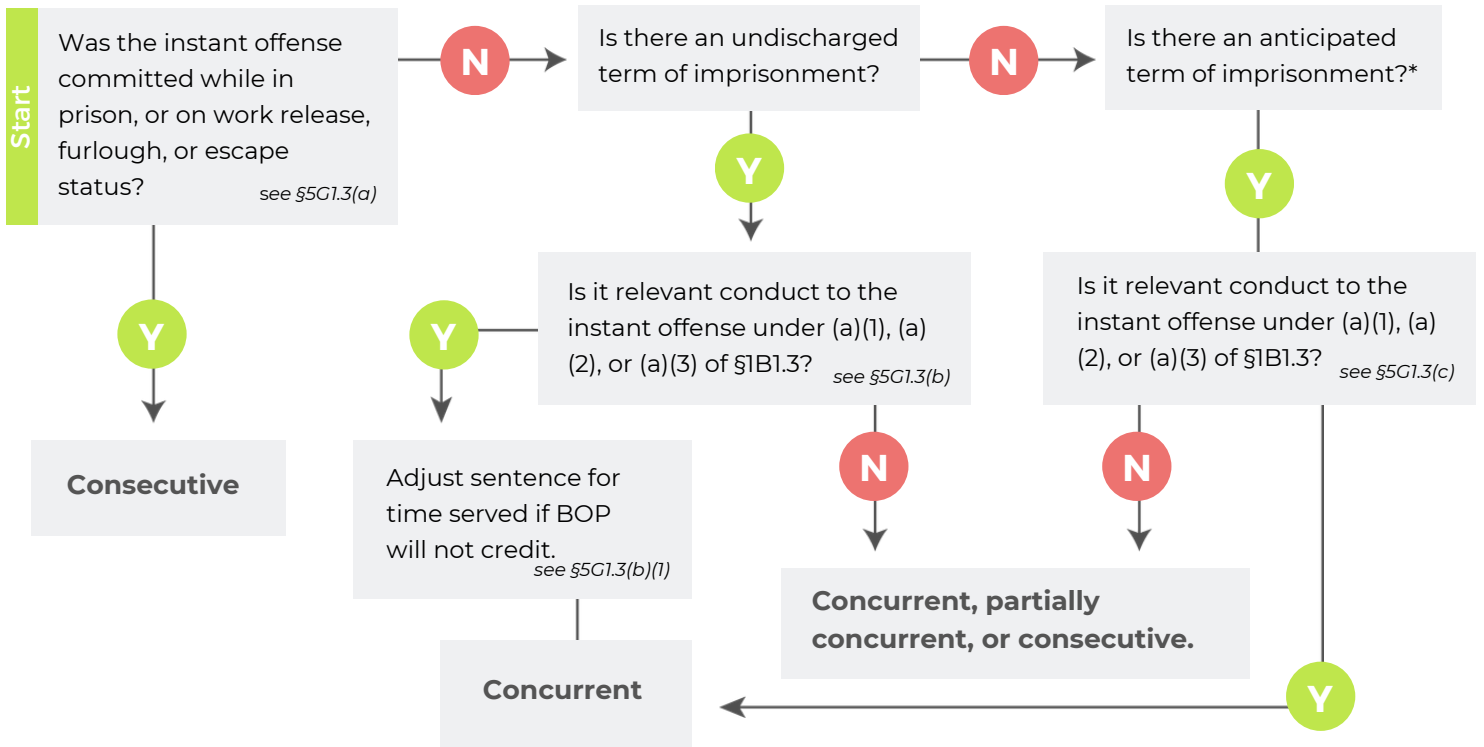




Undischarged Terms of Imprisonment

§5G1.3 – Imposing Sentence When the Defendant is Serving or Will Serve an Undischarged Term of Imprisonment or Has an Anticipated State Term of Imprisonment

HOW TO DETERMINE WHEN THE COURT SHOULD IMPOSE A CONSECUTIVE OR CONCURRENT SENTENCE



* The Supreme Court held that federal courts also generally have discretion to order that the sentences they impose will run concurrently with or consecutively to other state sentences that are anticipated but not yet imposed.

See *Setser v. United States*, 566 U.S. 231 (2012)

Key Points - Applying §5G1.3(b)

Section 5G1.3(b) is the **ONLY** section of the guideline that authorizes an adjustment to the federal sentence. **NO** adjustment is authorized under any other subsection.

When the court adjusts the sentence for the instant federal offense based upon the time the defendant has served on the undischarged term of imprisonment, this is not a departure or a variance from the guidelines. It is an adjustment under §5G1.3.

The conduct underlying the undischarged term of imprisonment must be relevant conduct to the instant offense under the provisions of §1B1.3(a)(1), (a)(2), or (a)(3).

Example

The instant offense is drug trafficking. The defendant is in state custody for possession of a firearm and has served one year of a two-year sentence. The firearm was possessed during the drug offense and the court applied §2D1.1(b)(1). The judge determines the appropriate sentence to be 63 months for the drug offense. Pursuant to §5G1.3(b), the judge is to adjust the instant federal sentence to 51 months, accounting for the one year served on the undischarged state term. The sentence will run concurrently.



Key Points Continued - **Applying §5G1.3(b)**

The court **CAN** adjust a sentence even if the adjustment would take the defendant's sentence below the mandatory minimum penalty.

When imposing the sentence, the court could say...

"Pursuant to the Sentencing Reform Act of 1984, you are committed to the custody of the Bureau of Prisons for a term of 60 months to commence immediately. (60 is the mandatory minimum sentence.) The term of 60 months is hereby reduced by 6 months for a total federal confinement of 54 months pursuant to USSC Section 5G1.3(b)."

Undischarged Terms of Imprisonment – **Special Rules**

If the undischarged term of imprisonment **results from a revocation** of probation, parole, or supervised release, the guideline recommends that the sentence for the instant offense shall be imposed to run consecutively to the sentence imposed for the revocation.

see §5G1.3 Application Note 4(C)

When a defendant is subject to **multiple undischarged terms of imprisonment** that call for the application of different rules, the court has the discretion under §5G1.3(d) to run the sentence for the instant offense concurrently, consecutively, or partially concurrently to the undischarged terms of imprisonment.

see §5G1.3 Application Note 4(D)

What if the Defendant Has a **DISCHARGED** Term of Imprisonment that is Relevant Conduct to the Instant Offense?

Section 5G1.3, Application Note 5 provides guidance:

Discharged Term of Imprisonment.—This guideline does not address an adjustment of the sentence for the instant offense for a period of imprisonment already served on a discharged term of imprisonment. Nonetheless, nothing in the Guidelines Manual abrogates a court's authority under 18 U.S.C. § 3553(a) to consider a previously completed term of imprisonment in determining an appropriate sentence where subsection (b) above would have provided an adjustment had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense.

This document is a supplement to the United States Sentencing Commission's podcast episode 22.2 titled, "Imposing a Sentence When the Instant Offense was Committed While Serving a Term of Imprisonment or When the Undischarged Term is Relevant Conduct."

Visit <https://www.ussc.gov/education/training-resources/sentencing-practice-talk> to access all episodes.

