

SENTENCING MEMORANDUM NO. 4
REVISED JULY 28, 2011

SENTENCING COMMITTEE MEMORANDUM NO. 4 - *Commencement of the Level IV Portion of a Sentence Where Level V is Suspended on the Date of Sentencing*

To: Superior Court Judges

From: Sentencing Committee

Date: October 24, 2008

The following shall apply with respect to the commencement date of any Level IV portion of any sentence where (a) the defendant is being held at Level V or the SVOP Center on the date of sentencing, **and** (b) the Level V portion of the sentence is suspended for a Level IV sentence on the date of sentencing, and (c) the defendant is being held at Level V or the SVOP Center only on the case being sentenced and is not serving any other Level V or Level IV sentence:

Where the Level V portion of a sentence is suspended on the date of sentencing, to be followed by Level IV, the Level IV portion of the sentence will always commence on the date of sentencing.

Example 1: In this example, the defendant is sentenced on July 16, 2007. The defendant has been incarcerated continuously since June 1, 2007 on that case. The sentence is as follows:

Effective June 1, 2007, the defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of 2 years; **the balance** suspended for 1 year at Level 4 Crest Program. Upon successful completion of the Level 4 Crest, the balance is suspended for 1 year at Level 3 Aftercare. The defendant will be held at Level V until placed at Level 4 Crest.

The commencement date of the Level IV Crest Program in the above example is July 16, 2007, the date of sentence. Entry into the Crest Program may be delayed, but it is important to note that the Level IV term begins on the date of the sentence.

Example 2: In this example, the date sentence is imposed is the same, July 16, 2007. The date of the defendant's detention, June 1, 2007, is also the same, but the effective date of the sentence is July 16, 2007, with credit time given back to June 1, 2007. The sentence is as follows:

Effective July 16, 2007, the defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of 2 years, with credit for 45 days previously served; **the balance** is suspended for 6 months at Supervision Level 4 House Arrest, followed by 1 year at Supervision Level 3. The defendant shall be held at Supervision Level 5 until placed at Supervision Level 4 House Arrest.

The commencement date of Level IV House Arrest in this example is also July 16, 2007, even if he is held at Level 5 for a period of time awaiting a bracelet for House Arrest.

Example 3: In this example, the defendant was taken into custody in lieu of bail, either on new charges or to answer a VOP, on June 1, 2007, and is placed administratively by the Department of Correction at the Level IV SVOP Center. Notwithstanding that the Department of Correction is housing the defendant at the SVOP Center, his legal status is that of a Level 5 detentioner being held in lieu of bail. Sentencing occurs on July 16, 2007. Thus the defendant has been held at the VOP Center for 45 days prior to the date of sentencing. The intent of the sentencing judge is that the defendant serve an actual total of 90 days at the VOP center. Two forms of sentencing would be as follows:

(a). **Effective July 16, 2007**, the defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of two years, with credit for 45 days previously served; **the balance** is suspended for 45 days at Level IV SVOP center, followed by 1 year at Supervision Level 3.

OR

(b). **Effective June 1, 2007**, the defendant is placed in the custody of the Department of Correction at Supervision Level 5 for a period of 2 years; **the balance** is suspended for 45 days at Level IV VOP center, followed by 1 year at Supervision Level 3.

The intent of the sentence is that the defendant will serve a total of 90 days at the SVOP Center, but in both examples he is given credit on the Level 5 portion of his sentence for the 45 days he was in the legal status of a Level 5 detentioner prior to July 16, 2007.

Note: Where the defendant is held post-date of sentencing at Level 5 waiting to go to Level 4, as in Examples 1 and 2 above, time waiting at Level 5 post-date of sentencing to go to Level 4 is credited to **both** the Level 4 portion of the sentence and the underlying Level 5 term.

In above Examples 1 and 2, where a defendant's Level 4 time commences on July 16, 2007, but the defendant is held at Level 5 for 1 month until August 16 before being transferred to the Level 4 placement, that 1 month is credited to both the Level 4 portion of the sentence and the original 2 year Level 5 term. In reality, the double crediting of L4 and L5 time only becomes relevant if the judge doesn't include sufficient Level 4 time while waiting for a L4 treatment program (Crest) and the wait time consumes the time necessary for completion of the program. This would result in DOC advising the Court that it can't place the defendant in the program. Also any subsequent sentence must give the defendant credit for the time held at L5 prior to entering the L4 program.

Example 4: Lop off the credit time and note same. Instead of saying "3 years at supervision level 5 with credit for 87 days", say "2 years 9 months and this takes into consideration the credit time, suspended for 6 months at supervision level 4 home confinement." The defendant would begin his Level 4 Home Confinement sentence that day, and the 87 days would not be taken off of the home confinement portion of the sentence. (There is an ASOP logical operator that the case managers use in this scenario that states "the level 5 time imposed in today's sentence takes into consideration all time previously served.")