authority to impose an imprisonment sentence on the current offense to run concurrently with or consecutively to the prior undischarged term. 18 U.S.C. § 3584(a). Exercise of that authority, however, is predicated on the court's consideration of the factors listed in 18 U.S.C. § 3553(a), including any applicable guidelines or policy statements issued by the Sentencing Commission.''.

This is a two-part amendment. First, this amendment clarifies the application of subsections (a) and (b) of this guideline. Second, in circumstances covered by the policy statement in subsection (c), this amendment affords the sentencing court additional flexibility to impose, as appropriate, a consecutive, concurrent, or partially concurrent sentence in order to achieve a reasonable punishment for the instant offense.

Authority to impose a partially concurrent sentence is found in the Sentencing Reform Act of 1984 (SRA). In enacting 28 U.S.C. § 994(l)(1), Congress contemplated that 18 U.S.C. § 3584 would allow imposition of partially concurrent sentences, in addition to fully concurrent or consecutive sentences. ("It is the Committee's intent that, to the extent feasible, the sentences for each of the multiple offenses be determined separately and the degree to which they should overlap be specified.") S. Rep. No. 225, 98th Cong., 1st Sess. 177 (1983). Without the ability to fashion such a sentence, the instruction to the Commission in 28 U.S.C. § 994(l)(1) to provide a reasonable incremental penalty for additional offenses could not be implemented successfully in certain situations, particularly when the defendant's release date on an undischarged term of imprisonment cannot be determined readily in advance (e.g., in the case of an indeterminate sentence subject to parole release).

Prior to the SRA, only the Bureau of Prisons had the authority to commence a federal sentence prior to the defendant's release from imprisonment on a state sentence. See, e.g., United States v. Segal, 549 F.2d 1293, 1301 (9th Cir. 1977). SRA legislative history pertaining to 18 U.S.C. § 3584 indicates that this new section was intended to authorize imposition of a federal prison sentence to run concurrently or consecutively to a state prison sentence. "This * * * [section 3584] changes the law that now applies to a person sentenced for a Federal offense who is already serving a term of imprisonment for a state offense." S. Rep. No. 225, supra at 127. "Thus, it is intended that this provision be construed contrary to the holding in United States v. Segal. * *'' Id. (at 127 n.314). See United States v. Hardesty, 958 F.2d 910, 914

(stating that, under section 3584, "Congress has expressly granted federal judges the discretion to impose a sentence concurrent to a state prison term"), aff'd en banc, 977 F.2d 1347 (9th Cir. 1992).

3. Section 1B1.10(c) is amended by deleting "and 506" and inserting in lieu thereof "505, 506, and 516".

The Commentary to § 1B1.10 captioned "Background" is amended in the fourth paragraph by inserting an asterisk immediately following "old guidelines"; and by inserting, as a note, following the Background Commentary:

"*So in original. Probably should be 'to fall above the amended guidelines'.".

This amendment expands the listing in §1B1.10(d) to implement the directive in 28 U.S.C. §994(u) in respect to guideline amendments that may be considered for retroactive application. The amendment also makes an editorial addition to the Commentary to §1B1.10 (Retroactivity of Amended Guideline Range).

In addition, the Commission has updated the "Historical Notes" following the amended guideline sections, and has made a number of additional minor conforming and editorial revisions to improve the internal consistency and appearance of the Manual.

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