

Federal Bureau of Prisons

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Sentencing Issues

Applicable Laws

- Old Law - For offenses committed before 11/01/87
- Sentencing Reform Act of 1984 (CCCA) -For offenses committed on or after 11/01/87
- Violent Crime Control and Law Enforcement Act of 1994 - effective 9/13/94
 - Added early release provisions for drug treatment
 - Added requirements to obtain GED or risk non vesting of Good Conduct Time
 - Increased possible sanctions for institution rules infractions
- Prison Litigation Reform Act of 1995 -effective 4/26/96
 - Added requirements to obtain GED or risk earning fewer days of Good Conduct Time
 - Good Conduct does not vest

Sentencing Issues

Potential Conflicts

- Sentencing Court determines:
 - the length of the prison sentence;
 - how it runs in relation to other sentences, e.g., concurrent, consecutive, etc.
- BOP determines:
 - when sentence commences 18 USC 3585(a)
 - prior custody credit - 18 USC 3585(b)
 - projected good conduct time - 18 USC 3624(b)
 - projected release date - 18 USC 3624(a)
 - place of imprisonment - 18 USC 3621(b)

Sentencing Issues

When does the sentence commence?

- Authority: 18 USC 3585(a): When defendant is received into custody at (or awaiting transport to) "facility at which sentence is to be served."
- The earliest date a federal sentence can commence is the date it was imposed.

Sentencing Issues

When does the sentence commence?

- A federal sentence does NOT begin to run when a federal defendant is produced for prosecution on a writ of habeas corpus ad prosequendum from state custody.
- Federal custody does NOT commence until the state lawfully relinquishes the prisoner on satisfaction of the state obligation.

Sentencing Issues

Prior Custody Credit

- 18 USC 3585(b)
- For offenses with date of offense on or after 11/01/87

Sentencing Issues

Prior Custody Credit

- Per US Supreme Court in US v. Wilson, BOP is authorized to calculate, not court.
- Credit given for time in "official detention"
 - (b)(1) as a result of the current offense; or
 - (b)(2) any other offense for which defendant was arrested **AFTER** commission of current offense, **which has not been credited towards another sentence.**

Sentencing Issues

Prior Custody Time Credit

- No prior custody credit for
 - Time spent in USMS custody while on a federal writ
 - Time spent serving a state sentence - 18 USC 3585(b)

Sentencing Credit

18 USC 3585(b)(1)

- (b)(1) - As a direct result of the offense for which the federal sentence was imposed, that has not been credited against another sentence.

Sentencing Credit

18 USC 3585(b)(2)

- Credit is given for time spent in official detention as a result of any federal, state or foreign arrest which is not related to the federal sentence if:
 - ▶ The time in official detention occurred AFTER the federal date of offense; and
 - ▶ The time in official detention has NOT been credited against another sentence.

Sentencing Issues

Prior Custody Credit

- Prior custody credit or jail time credit - the same
- In custody - physical incarceration in a jail-type institution or facility (generally NO CREDIT for home confinement, halfway house or other restrictive conditions of release on bond)

Sentencing Issues

Official Detention

- Reno v. Koray - The Supreme Court held that time spent under restrictive conditions of release (including time spent in a halfway house or similar facility) is not official detention entitling an inmate to prior custody credit.
- The Court found that the interaction of the Bail Reform Act and 3585 (b) supported the BOP's interpretation that a defendant is either **released** (with no credit for time under conditions of release) or **detained** (with credit for time in official detention).

Sentencing Issues

Date of Offense on J&C Controls

- The BOP primarily uses the date of offense shown on the J&C for purposes of computing the sentence and awarding prior custody credit under 18 USC 3585.
- BOP staff may also refer to the Presentence Investigation Report or other source documents to verify the date of offense and to determine prior custody credit.

Sentencing Issues

Date of Offense Example

- For example, in a conspiracy case, the date of offense could reflect the date a conspiracy ended. But the defendant's participation and arrest could have occurred prior to this date. Therefore, the defendant could be entitled to additional jail credit under 3585(b)(1), since the official detention after the arrest was directly related to the offense.

Sentencing Issues

One Day Rule

- The Bureau awards one day of prior custody credit for **any** time spent in official detention, regardless of whether that time was **1 hour or 24 hours**, so long as the other conditions of 18 USC 3585(b) are met.

Sentencing Issues

Civil Contempt

- Time spent serving a civil contempt sentence prior to trial and/or sentencing does not constitute prior custody credit toward the sentence that is eventually imposed or any criminal sentence that has been interrupted.

Sentencing Issues

Good Conduct Time (GCT)

- Authority: 18 USC 3624(b)
- Available only for sentences longer than one year
- BOP awards 54 days GCT at the end of each year actually served
- The 54 days of GCT is equivalent to 14.79% off of a year and a day sentence. At this rate, an inmate may earn 0.148 days of GCT for each day served.

Sentencing Issues

Primary/Secondary Jurisdiction Issues

- Core principles:
 - BOP follows law of primary custody/jurisdiction
 - Sovereign of first arrest has primary custody/jurisdiction to complete its criminal process first, including service of sentence
- Taylor v. Reno, 164 F.3d 440 (9th Cir. 1998)

Sentencing Issues

Primary Jurisdiction

- Arrest date vs. sentencing date - The sovereign that first sentences the defendant does NOT determine primary jurisdiction.
- Rather the sovereign that first arrests the defendant has primary jurisdiction, regardless of the order in which the sentences are imposed.

Sentencing Issues

Primary/Secondary Jurisdiction Issues

- Primary custody/jurisdiction can be surrendered by agreement (comity), release (bail, escape), or expiration of sentence.
- Other sovereigns may "borrow" (writ) dft from primary jurisdiction, impose sentence, and return dft without breaking primary custody.
- Order of state/federal sentence imposition is irrelevant; sovereign with primary custody has priority.

Sentencing Issues

Primary/Secondary Jurisdiction

- When state has primary custody:
 - ▶ State court cannot effect transfer of state inmate into federal custody by making state sentence consecutive to previously imposed federal sentence.
 - ▶ BOP will ordinarily refuse to take inmate.

Primary/Secondary Jurisdiction

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Primary/Secondary Jurisdiction

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Primary Jurisdiction

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Sentencing Issues

18 USC 3584 (c)

- Multiple terms of imprisonment ordered to run consecutively or concurrently, shall be treated for administrative purposes as a single, aggregate term of imprisonment.

Sentencing Issues

Concurrent/Consecutive Sentences

- Multiple terms of imprisonment imposed at the same time run concurrently unless the Court orders or statute mandates the terms to run consecutively.
 - ▶ E.g., different counts on the same judgment
- Multiple terms of imprisonment imposed at different times run consecutively unless the Court orders the terms to run concurrently.
 - ▶ E.g., cases with different docket numbers and different sentencing dates

Sentencing Issues

Consecutive/Concurrent Sentences

- If the Federal Judgment is silent, the sentence is assumed consecutive - 18 USC 3584 (a)
- The BOP interprets 18 USC 3584 to permit the federal judge to order the federal sentence concurrent to a state sentence.

Concurrent/Consecutive Sentence

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Inmate Request for Concurrent Service

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Inmate's Request for Concurrent Service

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Sentencing Issues

Place of Incarceration

- The primary custodian is responsible for the custody of the defendant until primary jurisdiction is relinquished.
- If a defendant has been arrested by the state and the state never relinquished custody, the defendant must serve his state sentence in state custody.

Sentencing Issues

Place of Incarceration

- Production of a defendant via a federal writ does not shift the primary jurisdiction to federal authorities.
- The federal judge may not order immediate delivery of a defendant in primary state custody to serve his federal sentence in a federal facility.

Sentencing Issues

Place of Incarceration

- The state sentencing judge cannot order the state prisoner to be transported to a federal institution to serve his state sentence.
- The state court has no authority to order how a federal sentence will be computed or served.

Sentencing Issues

Place of Incarceration

- If the defendant is in primary state custody and the state sentencing judge orders the state sentence concurrent with the federal sentence, this has no impact on when the federal sentence will commence.
- State authorities can request transfer to federal custody with an understanding that the state will pay the costs of incarceration.

Sentencing Issues

Requests to Transfer Custody

- State requests to transfer custody from the state to the federal government should be directed to: Delbert G. Sauers, DSCC Chief, DSCC, 346 Marine Forces Drive, Grand Prairie, TX 75051.
- Requests from inmates to have their federal sentence begin running should also be directed to the DSCC.

Sentencing Issues

Ordering Credit vs. Adjusting Term of Imprisonment

- 18 USC §3585(b) only authorizes awarding credit if it has not been credited towards another sentence.
- USSG §5G1.3 expressly authorizes the Court to adjust the term of imprisonment for time the Bureau will not credit toward the federal sentence.

Sentencing Issues

Ordering Credit vs. Adjusting Term of Imprisonment

- The Sentencing Commission has provided the following guidance at Application Note 3.(E):
 - ▶ To avoid confusion with the BOP's exclusive authority provided under 18 USC 3585(b) to grant credit for time served under certain circumstances, the Commission recommends that any downward departure under this application note be clearly stated on the Judgment in a Criminal Case Order as a downward departure pursuant to §5G1.3 (c), rather than as a credit for time served.

HYPO #1 ***Primary State, Fed Silent***

STA SSI RTN ST RLS DATE
1/1/06 2/1/06 6/1/06 1/1/07

DFO WHC FSI Silent ESB/Primary Fed RLS DATE
1/1/05 3/1/06 5/1/06 1/1/07 9/18/15

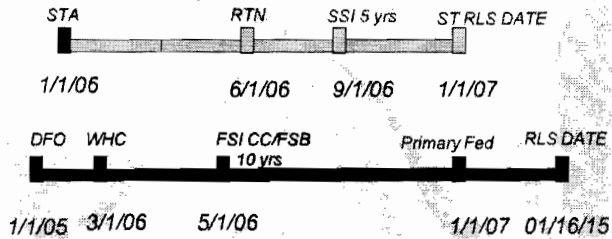
HYPO #2 ***Primary State, Fed Concurrent***

STA SSI RTN ST RLS DATE
1/1/06 2/1/06 6/1/06 1/1/07

DFO WHC FSI CC Primary Fed RLS DATE
1/1/05 3/1/06 5/1/06 1/1/07 1/16/15

HYPO #3

Primary State, Fed Concurrent



How to Get Information about the BOP

Options

- ▶ Public website - www.bop.gov
 - Program Statements
 - Inmate Locator
 - Legal Resource Guide
- ▶ Sonya Cole, Assistant General Counsel - DSCC (972) 352-4425
- ▶ Jennifer Dannels, Attorney Advisor - DSCC (972) 595-3188
- ▶ DSCC Main Phone Number (972) 352-4400