

Bureau of Prisons Issues
Presentation at the
Annual National
Federal Sentencing Guidelines Seminar

FREQUENTLY ASKED QUESTIONS

DISCLAIMER: The subject matter areas of Sentence Computation, Primary Jurisdiction, Designations, and Early Release Eligibility based on successful completion of the Residential Drug Abuse Treatment Program (RDAP) are complex and fraught with exceptions to the general concepts outlined below. Accordingly, the following is only intended as a general guide and starting point.

In all cases, Bureau of Prisons (BOP) policy, federal regulations, federal statutes and relevant case law control the decision making process on particular fact situations and must be consulted. Relevant BOP Program Statements include, but are not limited to, PS 5880.28, Sentence Computation Manual (CCCA of 1984), PS 5880.30, Sentence Computation Manual (Old Law/Pre-CCCA of 1984), PS 5160.05, Designation of State Institution for Service of Federal Sentence, PS 5884.03, Good Conduct Time under the Prison Litigation Reform Act, PS 5100.08, Inmate Security Designation and Custody Classification, PS 5331.02, Early Release Procedures under 18 U.S.C. §3621(e), PS 5330.11, Psychology Treatment Programs, and PS 5162.05, Categorization of Offenses. Another useful tool is the legal article of "Interaction of Federal and State Sentences" found under the Publications section.

SENTENCE COMPUTATION AND PRIMARY JURISDICTION FAQ'S

Question: When will the BOP calculate my client's federal sentence?

Answer: Ordinarily, the BOP's Designation and Sentence Computation Center (DSCC) will calculate a federal sentence within 60 days after the date of designation. Your client's Unit Team will notify him of the projected release date shortly after he arrives at his designated institution.

Question: How will my client's release date be calculated?

Answer: BOP staff will determine when your client's federal sentence began and how many days of prior custody credit ("jail credit") should be awarded to the federal sentence. They will also subtract the number of good conduct time days your client is projected to earn, which depends on the sentencing scheme under which your client was sentenced.

Question: When will my client's federal sentence begin?

Answer: Federal statute provides that your client's federal sentence will begin when she is received in custody awaiting transportation to, or voluntarily surrenders to, the official detention facility at which her sentence is to be served. See 18 U.S.C. § 3585(a).

Question: What is the earliest date my client's federal sentence will begin?

Answer: The earliest date a federal sentence will begin is the date it was imposed.

Question: If my client's federal sentence was ordered to run concurrently to a previously imposed state sentence, when will it begin to run?

Answer: Your client's federal sentence will run from the date it was imposed. This will be after your client's state sentence was imposed. Your client's federal sentence will not run from the date the state sentence was imposed.

Question: My client was in state custody serving a state sentence, and he appeared before a federal judge pursuant to a writ. The federal sentence was imposed to run consecutively to the state sentence. When will my client's federal sentence begin?

Answer: Your client's federal sentence will begin when he completes or paroles from his state sentence.

Question: If my client appeared before a federal judge and was ordered to voluntarily surrender at a later date, when will her federal sentence begin?

Answer: If your client is released following sentencing and ordered to voluntarily surrender, her federal sentence begins on the date she voluntarily surrenders into federal custody.

Question: My client has received both a state and a federal sentence. What determines the order in which he will serve these sentences?

Answer: Primary jurisdiction generally determines the order in which the sentences are served. If your client is determined to be in primary state custody, he will ordinarily serve his state sentence first in a state facility, even if the state sentence was imposed after the federal sentence.

Question: What is primary jurisdiction?

Answer: Primary jurisdiction is a legal concept which determines the order in which sentences are served, based on which sovereign has primary jurisdiction.

Question: How is primary jurisdiction decided?

Answer: The sovereign which first arrested your client has primary jurisdiction over her. This sovereign has the authority to dispose of all proceedings against her first, e.g., by determining whether her charges will be dismissed, or whether she will be convicted and be sentenced to serve a term of imprisonment, etc.

Question: How can primary jurisdiction be transferred?

Answer: Primary jurisdiction can be transferred by bail release, dismissal of the state charges, parole release, expiration of state sentence, or an agreement between the sovereign authorities.

Question: Does a writ transfer primary jurisdiction?

Answer: A writ does not ordinarily transfer primary jurisdiction.

Question: My client is in state custody serving a state sentence. My client has also received a federal sentence which she has not yet begun serving. How can I request my client's federal sentence begin?

Answer: You can write the Designation and Sentence Computation Center (DSCC) at 346 Marine Forces Drive, Grand Prairie, TX 75051. You should enclose a copy of your client's federal sentence and request that it begin. You should also enclose an original executed copy of a DOJ Form 361 Certificate of Identity. This form is located at www.bop.gov under Inmate Matters, Sentence Computations, and then the hyperlink to the authorization form.

Alternatively, your client can write the DSCC directly at the address above and enclose a copy of his federal judgment. In either case, the DSCC will conduct a review and reply to the sender with a written decision of its determination.

Question: My client was originally arrested by state authorities. She was writtied into USMS custody to face federal charges. She received a federal sentence. Will she receive prior custody credit on her federal sentence for time she spent in USMS custody?

Answer: Pursuant to federal statute, she will only receive credit for time spent on federal writ if the state did not credit that time to her state sentence. If the state never imposed a sentence, the Bureau will credit all time spent in custody on the federal writ as long as it was after the date she committed her federal offense. See 18 U.S.C. § 3585(b).

Question: Will the Bureau award my client prior custody credit on his current federal sentence for time that was credited to a state sentence?

Answer: No. Pursuant to federal statute, your client will only receive credit towards his federal sentence if that time was not credited towards another sentence, and other statutory requirements are met. See 18 U.S.C. § 3585(b).

Question: How much Good Conduct Time (GCT) will my client earn?

Answer: This answer depends on the sentencing scheme under which your client was sentenced. If she committed her federal offense on or after November 1, 1987, she will earn 54 days of GCT for each year she serves on her term of imprisonment. If she does not have a high school diploma or general equivalency diploma (GED) and is not successfully working towards a GED, she will earn 42 days of GCT per each year served. She will not earn GCT

on sentences of 12 months or less. See 18 U.S.C. § 3624(b).

DESIGNATION FAQs

Question: How soon after sentencing will my client know where he is designated?

Answer: When the BOP receives the request for designation from the U.S. Marshals Service (USMS), it will take approximately seven days to process the request and notify the USMS. The USMS will then notify your client of his designated facility. If extenuating circumstances exist, such as serious medical issues or incomplete documentation, the designation process may take longer.

Question: The court ordered my client to be designated to a certain facility. Why was she not designated there?

Answer: Under 18 U.S.C. § 3621(b), the BOP is the final designating authority. The BOP is required to consider the following when designating offenders to facilities: the resources of the facility contemplated, the nature and circumstances of the offense, the offender's history and characteristics, any statement by the court that imposed the sentence recommending a type of facility as appropriate, and any pertinent policy statement issued by the Sentencing Commission. The BOP makes every attempt to designate an offender to the facility recommended by the sentencing court. However, if the court recommends a facility which does not meet your client's security level, medical or programming needs, or the BOP's need to manage its population, the BOP will designate your client to an appropriate institution which meets these needs.

Question: When will my client be considered for a transfer closer to home?

Answer: Consideration will be given for a nearer release transfer after an inmate has maintained clear conduct for eighteen months at his designated institution.

EARLY RELEASE ELIGIBILITY FAQs

Question: What drug abuse treatment programs does the BOP offer?

Answer: The BOP offers several drug abuse treatment programs, including the Non-Residential Drug Abuse Treatment Program, the Residential Drug Abuse Treatment Program (RDAP), and the Community Transition Drug Abuse Treatment Program. The BOP also offers a Drug Abuse Education course at every facility.

Question: Do any of these programs offer inmates the incentive of early release?

Answer: Yes. RDAP offers an early release incentive. If an inmate successfully completes all 3 phases of RDAP, he or she may be released up to one year early from the term the inmate must otherwise serve. See 18 U.S.C. §3621(e)(2)(B).

Question: How does my client participate in RDAP?

Answer: If she wants to participate in RDAP, she should submit a written request to her institution Drug Abuse Program Coordinator (DAPC). The DAPC will interview her to determine if she has a documented substance abuse disorder, and is otherwise qualified to participate in RDAP.

Question: If the DAPC finds my client is qualified to participate in RDAP, how does he find out if he is eligible for early release?

Answer: The DAPC will submit a BP-942 Form, Request for Offense Review, to the Designation and Sentence Computation Center (DSCC) Legal Department.

Question: What is the scope of the DSCC Legal Department's Review?

Answer: The DSCC Legal Department only reviews your client's current and prior convictions to determine if they preclude him from early release. Please note that even if the DSCC Legal Department concludes that these convictions do not preclude him from early release, he still may not be eligible for early release based on other reasons outlined in PS 5331.02, Early Release Procedures Under 18 U.S.C. §3621(e), such as the placement of a detainer, subsequent disciplinary infractions, etc.

Question: What does the DSCC Legal Department use to review my client's current conviction and offense conduct?

Answer: The DSCC Legal Department refers to PS 5162.05, Categorization of Offenses, and the regulations contained in PS 5331.02, Early Release Procedures Under 18 U.S.C. §3621(e) to review your client's current conviction and offense conduct.

Question: What does the DSCC Legal Department use to review my client's prior convictions?

Answer: The DSCC Legal Department refers to the regulations contained in PS 5331.02, Early Release Procedures Under 18 U.S.C. §3621(e) to review your client's prior conviction and offense conduct.

Question: How does my client learn the DSCC Legal Department's determination?

Answer: The DSCC Legal Department will return a completed review form to your client's DAPC. Institution staff will then meet with your client to discuss the determination made by the DSCC Legal Department.

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