

BOP Issues

2014

Presenters:

Todd A. Bussert
Attorney at Law, New Haven, CT

Alicia J. Vasquez
Assistant General Counsel
BOP Designation and Sentence Computation Center

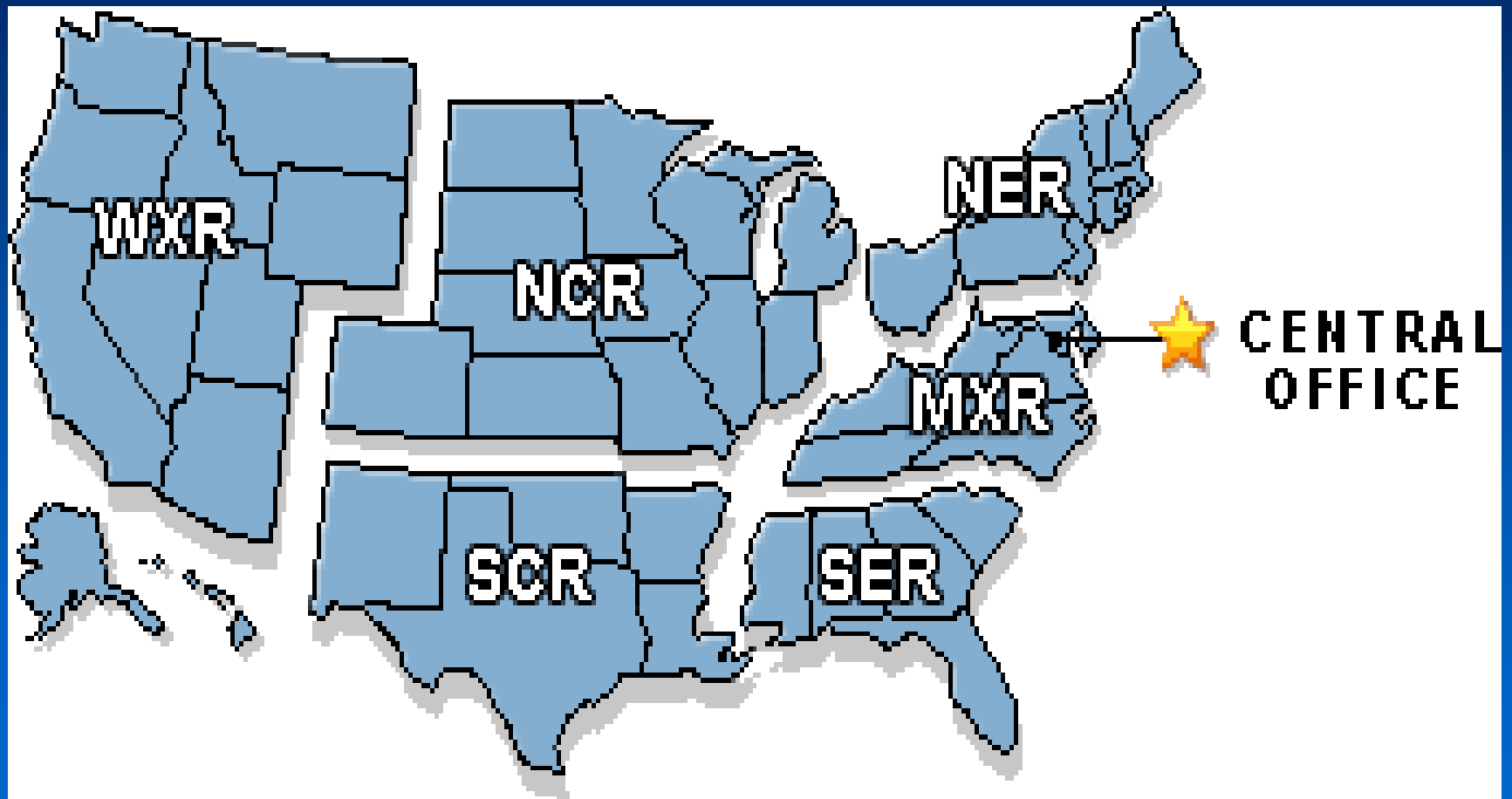
What We are Here to Learn

An Overview

- Designation & Classification Issues
- Sentence Computation Issues
- RDAP Early Release Eligibility

Federal Bureau of Prisons

The Central Office & 6 Regions



DSCC Goals

- **Enhanced Communications**
- **Responsiveness to Stakeholders**
- **Consistency in the Application of Rules, Policies and Procedures**

DSCC Team Concept

- *The DSCC consists of 4 Sections, each having a Section Chief*

Section I - Sentence Computations

Section II - Classification, Designations & Transportation

Section III - Operations

Section IV - Policy Development, Training & Correspondence

- *The Sections are divided into 18 Teams*
 - An Operations Manager supervises each Team
 - Each Team has approximately 12 staff
- *17 Teams perform Classification & Sentence Computation functions*
- *1 Team completes Designation functions*
- *1 Team prepares and provides Staff Training*

Courts of Jurisdiction Concept

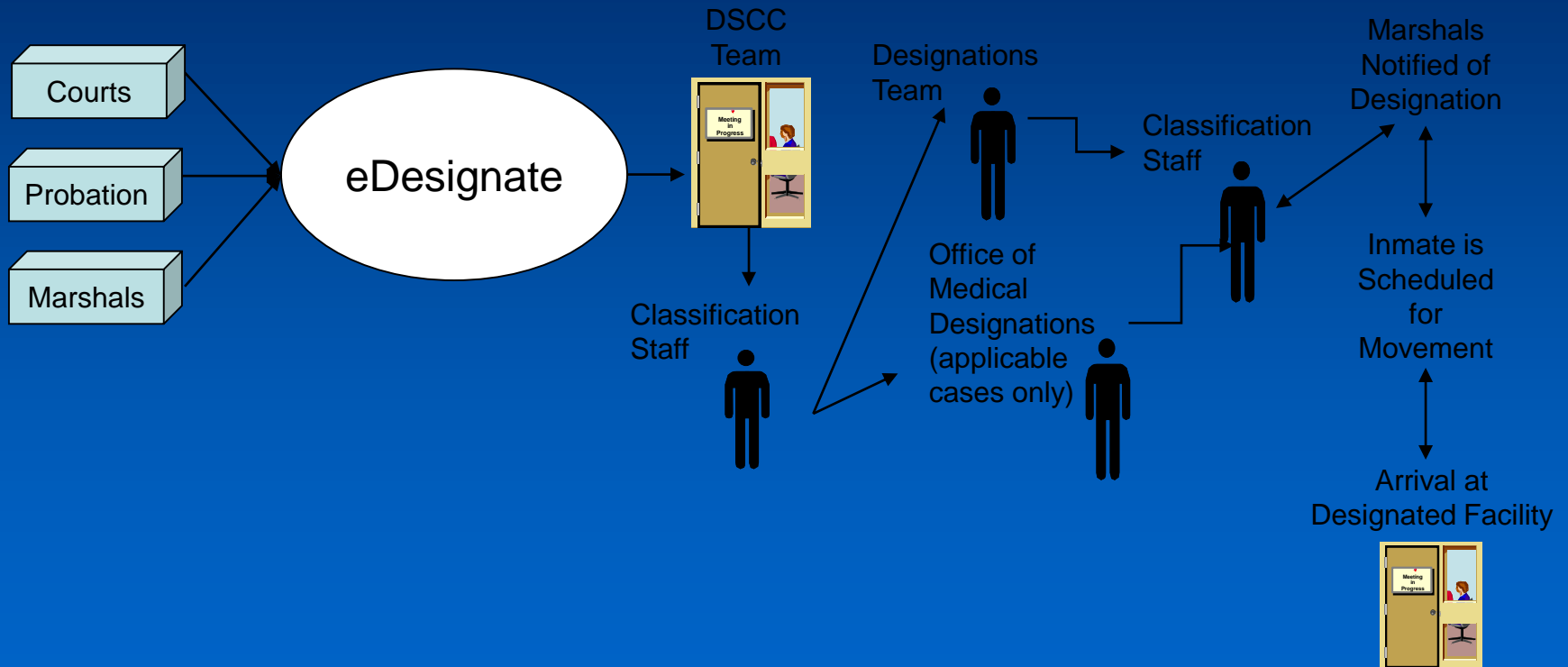
- **Work load is distributed by Courts of Jurisdiction (COJs)**
- **Each Team is assigned certain COJs.**
For example, Echo Team handles cases for the Eastern District of Pennsylvania, including probation/supervised release and parole violators.
- **The inmate's COJ is typically the Federal District Court which initially sentenced the inmate.**

Initial Designation Process

BOP Program Statement 5100.08

- eDesignate System is used in all 95 federal judicial districts and DC Superior Court.
- USPO uploads J&C, SOR and PSR in e-Designate
- USMS sends request to responsible DSCC Team (based on sentencing district) w/USMS 129
- Team needs PSI, J&C and Marshals 129 to complete Security Designation & Data Form

Process from Sentencing to Designation



Initial Designation Process

Who Has Primary Jurisdiction?

- Team determines whether the federal government has properly acquired primary jurisdiction.
- If the state has not properly relinquished jurisdiction, Team notifies the USMS so they do not accept the inmate into physical custody.
- If the inmate is properly in federal custody, Team will determine custody score.

Security Level Determination

PS 5100.08, Chapter 4

- Classification is necessary to place each inmate in the most appropriate security level institution that also meets his/her program needs and is consistent with the Bureau's mission to protect society.
- BOP facilities are classified into Minimum, Low, Medium, High, & Administrative facilities based upon the level of security and staff supervision the institution is able to provide.
- Initial security designation data is entered into Sentry based upon information contained within the PSR.

Security Designation & Custody Classification

- The Criminal History Score is derived from the US Sentencing Guidelines Criminal History Points, as reflected in the final judgment and the Statement of Reasons (SOR).
- If not found in either document, Bureau staff use the points assessed by the USPO in the PSR.

Other Information Used to Determine Security Level

Some Additional Criteria...

- Detainers/Pending Charges
- Pre-commitment Status (VS = minus 3 points)
- Violence History
- Escape History
- Months to Release
- Education Level
- Offense Severity
- Drug/Alcohol Abuse

Initial Designation Process

Score the Inmate

- Team uses medical/mental health calculator to identify care level
- Team loads the Security/Designation Data in SENTRY
- Team sends request to Hotel Team (care level 1 or 2) or Office of Medical Designations and Transportation (care level 3 or 4) for designation

Initial Designation Process

Designate the Inmate

- Hotel Team designator makes decision and selects facility for initial designation. Hotel Team notifies responsible scoring Team of the designation.
- DSCC staff notify USMS via e-Des of designation and send designation packet to designated institution.
- Time Frame – ordinarily *7 working* days. Current national average is 5.1 days (including weekends & holidays) over the past 12 months.

Initial Designation Process

Care Levels I - IV

- Before any initial designation decision is made, DSCC staff assess a provisional care level from I – IV for inmate.
- BOP institutions also have a care level assignment which reflects the medical resources available at that facility.

Initial Designation Process

Care Level I

- Inmates are generally healthy, but may have limited medical needs that can be easily managed by clinician evaluations every 6 mos.
- Inmates are less than 70 years of age.
- Examples: mild asthma, diet-controlled diabetes, stable HIV patients not requiring medications.

Initial Designation Process

Care Level II

- Inmates are stable outpatients who require at least quarterly clinician evaluations.
- Can be managed in chronic care clinics, including for mental health issues.
- Examples: medication-controlled diabetes, epilepsy, emphysema.

Initial Designation Process

Care Level III

- Inmates are fragile outpatients who require frequent clinical contacts to prevent hospitalization.
- May require some assistance with activities of daily living, but do not need daily nursing care.
- Examples: cancer in remission less than 1 year, advanced HIV disease, severe mental illness in remission on medication, severe congestive heart failure, end-stage liver disease.
- Designation is done by BOP's OMDT

Initial Designation Process

Care Level IV

- Functioning is severely impaired
- Requires 24-hour skilled nursing care or nursing assistance
- Examples: cancer on active treatment, dialysis, quadriplegia, stroke or head injury patients, major surgical patients, acute psychiatric illness requiring inpatient treatment, high-risk pregnancy
- Designation is done by BOP's OMDT

Medical Centers (Care Level 4)

- **FMC Butner, North Carolina**
- **FMC Carswell, Texas**
- **FMC Devens, Massachusetts**
- **FMC Lexington, Kentucky**
- **FMC Rochester, Minnesota**
- **MCFP Springfield, Missouri**

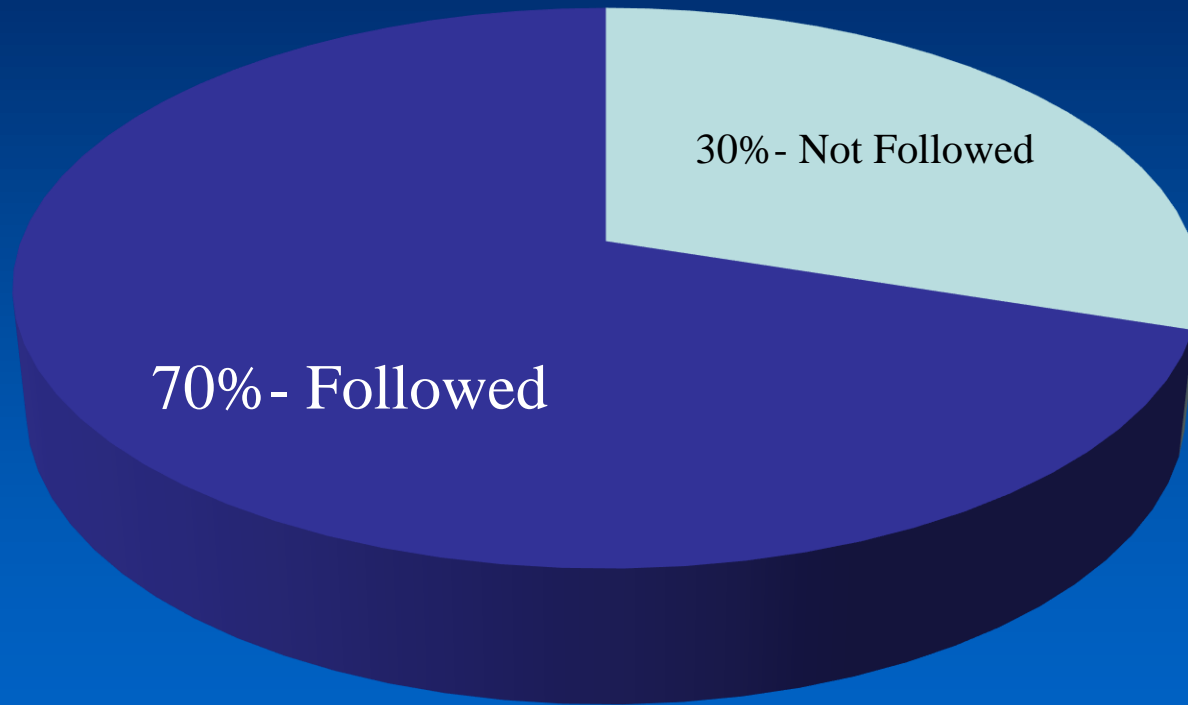
Initial Designation Process

Upon Arrival at BOP Facility...

- After initial designation and provisional care level assignment by DSCC staff, BOP clinicians determine care level based on:
 - ▶ Treatment modalities;
 - ▶ Inmate functionality; and
 - ▶ Diagnostic categories (e.g., cancer, diabetes, etc.)
- Based on care level assessment, the institution may request a transfer from OMDT, if needed.

Judicial Recommendations

BOP Will Follow if Within Policy & No Security Concerns



Sentencing Issues

○ Sentencing Court Determines:

- ▶ The length of the prison sentence;
- How sentence runs in relation to other sentences, e.g., concurrent, consecutive, etc.: 18 U.S.C. § 3584(a) & Setser v. United States, --- U.S.---, 132 S.Ct. 1463 (2012)

○ Bureau Determines:

- Date of sentence commencement - 18 U.S.C. § 3585(a)
- Prior custody credit - 18 U.S.C. § 3585(b)
- Projected good conduct time - 18 U.S.C. § 3624(b)
- Projected release date - 18 U.S.C. § 3624(a)
- Place of incarceration - 18 U.S.C. § 3621(b)

Sentence Computations- Basics

1. When does the Sentence Commence?

18 U.S.C. § 3585(a) - *when defendant is received into custody at (or awaiting transport to) “facility at which sentence is to be served.”*

2. Prior Custody Credit - Calculated by the Bureau

United States v. Wilson, 503 U.S. 329, 112 S.Ct. 1351 (1992))

18 U.S.C. § 3585(b): *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*

Sentence Computation

Good Conduct Time (GCT)

- 18 U.S.C. § 3624(b)
- Available only for sentences longer than 1 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 one-year and a day sentence

Administrative Remedy Program

- 28 CFR 542.10 provides an Administrative Remedy Program for inmates to seek review of an issue related to any aspect of his/her own confinement.
- It is a multi-level review process which begins with an attempt at informal resolution of the issue. If that does not resolve the concern, the inmate seeks review by the Warden, then if not satisfied, review by the Regional Director. Finally, he/she may seek review by the General Counsel.

Administrative Remedy Program

- Applies to inmates in BOP institutions, in RRCs, and to former inmates regarding issues that arose during their confinement.
- Issues addressed could be (for example):
 - ▶ sentence calculation
 - ▶ food/dining hall
 - ▶ access to religious services
 - ▶ housing unit assignments
 - ▶ visiting list concerns
 - ▶ designations & transfers
 - ▶ disciplinary hearing officer challenges, etc.

Administrative Remedy Program

Additional Info:

- For additional information, see **Program Statement 1330.16**, found at www.bop.gov, under “Policies.”
- Another great resource online at bop.gov:
Legal Resource Guide to the Federal Bureau of Prisons

RDAP Eligibility

Documented Substance Abuse Disorder

- In order to be eligible to participate in the Residential Drug Abuse Treatment Program (RDAP), inmates must have a documented substance abuse disorder as defined by DSM.
- This documentation can be found in the PSR, medical records that predate the inmate's current time in custody, etc.

RDAP Eligibility for Early Release

18 U.S.C. § 3621(e)(2)(B)

- Non-violent inmates who successfully complete the RDAP may, at the discretion of the Director, be eligible for up to a one-year early release.

Inmates with disqualifying convictions but documented substance abuse disorders may still participate in the program, but will not receive an early release benefit.

Don't confuse early release eligibility with eligibility to receive treatment.

RDAP Eligibility for Early Release

Review of Current and Prior Criminal History

- Reviews of all inmates entering program are conducted by DSCC Legal Staff.
 - ▶ Current offenses reviewed under 28 C.F.R. § 550.55(b)(5) and (b)(6) and PS 5162.05.
 - ▶ Prior offenses reviewed under 28 C.F.R. § 550.55(b)(4) and (b)(6).
 - ▶ D.C. Offenders reviewed under 28 C.F.R. § 550.55(a)(1)(ii).
- Inmates are notified of the early release determination.
- Inmates may appeal determinations through the Administrative Remedy Program.

Miscellaneous Issues:

○ *Residential Reentry Centers (RRC)*

- **18 U.S.C. § 3621(b):** *“Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person.”*
- **18 U.S.C. § 3624(c)(1):** *“The Director of the Bureau shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.”*

○ *Home Confinement (HC) - 18 U.S.C. § 3624(c)(2)*

- *“The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.”*

Miscellaneous Issues:

- SOMP locations
- Compassionate Release
- Clemency Effort
- Retroactivity on Drug Sentences
- UNICOR participation

BOP RESOURCES

- **Website: www.bop.gov**
 - All BOP Program Statements
 - Legal Resource Guide
 - Numbers & Addresses for BOP offices, etc.
 - Use website to find institution & regional office phone numbers
- **Designation & Specific Questions:**
 - ▶ Operations Manager for the Appropriate Team: (972) 352-4400