



# *U.S. Sentencing Commission National Seminar Sentence Computations*

***Federal Bureau of Prisons  
Designation & Sentence Computation Center  
Grand Prairie, Texas***

***Jose A. Santana, Chief  
Paul Irby, Senior Counsel  
Craig Pickles, Section Chief***

# Objectives



- **Understanding how the BOP calculates sentences**
  - **Primary custodial jurisdiction**
  - **Prior custody credit**
  - **Untimely releases and over-served time**
  - **Good Conduct Time**
  - **Multiple sentences**
  - **Interaction of Federal and Non-Federal Sentences**
- **Understanding the interplay between the Sentencing Guidelines and the BOP's authority to award prior custody credit**
- **Sentence reductions under 18 U.S.C. § 3582(c)(1)(A)**

# Courts of Jurisdiction Concept



**Work load is distributed by Courts of Jurisdiction (COJs)**

**Each team is assigned certain COJs**

**For example, Bravo Team handles all cases for the U.S. District Courts in Maryland, Tennessee, West Virginia, and Eastern Texas, including probation/supervised release violators.**

**Bravo Team is comprised of:**

**1 - Operations Manager**

**6 - Classification & Computation Specialists (CCS)**

**6 - Classification & Computation Technician (CCT)**

**1 - Administrative Assistant (AA)**

# Sentencing Responsibilities



## Sentencing Court Determines:

- The length of the prison sentence - 18 U.S.C. § 3553
- How sentence runs in relation to other sentences, e.g., concurrent, consecutive, etc. - 18 U.S.C. § 3584(a)
  - *Setser v. United States*, 566 U.S. 231 (2012): The Supreme Court held federal district courts have the discretion to order a federal sentence is to run consecutively to an anticipated state sentence that has not yet been imposed
- U.S.S.G. §5G1.3 Application Note 5: Exercise of judicial discretion under *Setser* is predicated on the court's consideration of the factors listed in § 3553(a), including any applicable guidelines or policy statements issued by the Sentencing Commission

# Sentencing Responsibilities



## **By statute, the BOP calculates:**

- 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)

# Primary Custodial Jurisdiction



- *Ponzi v. Fessenden*, 258 U.S. 254, 262 (1922)

Established the decision of who exercises custodial jurisdiction over an individual charged with crimes against two sovereigns was a matter of comity between the two sovereigns

- ✦ *United States v. Pleau*, 680 F.3d 1, 6 (1<sup>st</sup> Cir. 2012)
- ✦ *In re Liberatore*, 574 F.2d 78, 89 (2<sup>d</sup> Cir. 1978)
- ✦ *Allen v. Nash*, 236 Fed.Appx. 779, 783 (3<sup>d</sup> Cir. 2007)
- ✦ *United States v. Jackson*, 327 F.3d 273, 302 (4<sup>th</sup> Cir. 2003)
- ✦ *Zerbst v. McPike*, 97 F.2d 253, 254 (5<sup>th</sup> Cir. 1938)
- ✦ *Chick v. Wingo*, 387 F.2d 330, 331 (6<sup>th</sup> Cir. 1967)
- ✦ *Jake v. Herschberger*, 173 F.3d 1059, 1065 (7<sup>th</sup> Cir. 1999)
- ✦ *United States v. Dowdle*, 217 F.3d 610, 611 (8<sup>th</sup> Cir. 2000)
- ✦ *Poland v. Stewart*, 117 F.3d 1094, 1096 (9<sup>th</sup> Cir. 1997)
- ✦ *Weekes v. Fleming*, 301 F.3d 1175, 1180 (10<sup>th</sup> Cir. 2002)

- Remains vested in the sovereign that first arrests a defendant until that sovereign relinquishes its priority
- Can be relinquished through operation of law (bail release, dismissal of charges, parole, sentence expiration) or mutual agreement

# Commencement of the Sentence



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

- ✦ “Logically, a federal sentence cannot begin to run any earlier than the date on which it was imposed.” *McCoy v. Stephens*, 2014 WL 4809946 at \*3 (W.D.Tenn. Sept. 26, 2014).
- ✦ “[A]fter a defendant is sentenced, it falls to BOP, not the district judge, to determine when a sentence is deemed to ‘commence.’” *United States v. Pineyro*, 112 F.3d 43, 45 (2d Cir. 1997)
- ✦ “[T]he BOP has the authority to determine when a sentence commences.” *Doan v. LaManna*, 27 Fed.Appx. 297, 299 (6<sup>th</sup> Cir. 2001).

# Prior Custody Credit



## Prior Custody Credit - Calculated by the Bureau

- 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
- “Because the offender has a right to certain jail-time credit under § 3585(b), and because the district court cannot determine the amount of the credit at sentencing, the Attorney General has no choice but to make the determination as an administrative matter when imprisoning the defendant.” *United States v. Wilson*, 503 U.S. 329, 335 (1992).
- “District courts lack the jurisdiction to compute prior-custody credit at sentencing.” *United States v. Wynder*, 659 Fed.Appx. 761, 763 (5<sup>th</sup> Cir. 2016)



# Prior Custody Credit



- Willis/Kayfez (“effectual benefit”) credit: exceptions to § 3585(b)’s no-dual-credit rule where the inmate receives credit for qualified state prior custody credit (fed. date of offense—date first sentence begins), so long as state and federal sentences run concurrently
  - ✦ Willis v. U.S., 438 F.2d 923 (5<sup>th</sup> Cir. 1971)
    - Federal Raw EFT is equal to or greater than state Raw EFT
  - ✦ Kayfez v. Gasele, 993 F.2d 1288 (7<sup>th</sup> Cir. 1993)
    - If, after applying qualified state prior custody credit, the state adjusted EFT is less than the federal Raw EFT, you credit time toward the federal sentence that makes the EFTs line up
- U.S.S.G. § 5G1.3 – sentence adjustments or departures for undischarged terms, based on relevant subsection
- U.S.S.G. § 5K2.23 – downward departures for discharged terms

# *Nunc Pro Tunc* Designations



- In *Barden v. Keohane*, 921 F.2d 476 (3d Cir. 1990), the Third Circuit Court of Appeals held that the Bureau must consider an inmate's request for concurrent service of his state and federal sentences.
- Applying 18 U.S.C. § 3621(b), the BOP may retroactively designate state correctional facility for service of federal sentence after considering five factors outlined by statute:
  - 1) facility's resources
  - 2) the inmate's offense
  - 3) the inmate
  - 4) sentencing court's rationale for sentence and recommendations
  - 5) U.S. Sentencing Commission policy statements

# Good Conduct Time



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, not imposed

“We remain convinced that the BOP’s approach reflects the most natural reading of the statutory language and the most consistent with its purpose.” *Barber v. Thomas*, 560 U.S. 474, 492 (2010)

# Multiple Sentences



- 18 U.S.C. § 3584(a)

Multiple terms of imprisonment imposed at the same time run concurrently unless ordered to run consecutively. Conversely, multiple terms of imprisonment imposed at different times run consecutively unless ordered to run concurrently.

- Note: § 3584(a) does not apply to yet-to-be-imposed sentences.  
*Setser v. United States*, 566 U.S. 231, 234–35 (2012)

- 18 U.S.C. § 3584(c)

Multiple federal sentences are aggregated (when possible) and treated as one sentence for administrative purposes

# Community Confinement



## 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.”

# Intermittent Confinement



Intermittent confinement – Congress authorized intermittent confinement only as a special condition of probation (18 U.S.C. § 3563(b)(10)) or supervised release (18 U.S.C. § 3583(d)) during the first year of the term.

- U.S.S.G. § 5C1.1 contemplates intermittent confinement as a substitute punishment in lieu of a term of imprisonment.
- 18 U.S.C. § 3621(a): A sentenced defendant “shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior.”
- “A sentence of five years means a continuous sentence, unless interrupted by escape, violation of parole, or some fault of the prisoner, and he cannot be required to serve it in installments.”  
*White v. Pearlman*, 42 F.2d 788, 789 (10<sup>th</sup> Cir. 1930).

# Adjusted Releases



- Causes for adjusted releases
  - Sentence reductions
  - Ineffectual terms (time served exceeds term imposed)
  - Delays in receiving and verifying documents
  - New information regarding primary custody and/or prior custody credit
  - Staff error

# Adjusted Releases



- U.S. Probation Office is notified using the BP-A623 – Late Release Notice for United States Probation Service, indicating the amount of over-served time.
- If the prisoner is returned with a **Supervised Release Violator (SRV) Term**, the Bureau of Prisons will apply the **over-served time** credit to the revocation sentence as required by 18 U.S.C. § 3585(b).



# Executive Clemency



- President Obama granted Executive Clemency to 1,713 inmates in BOP custody
- Sentence computations adjusted according to the Clemency Warrant
- RDAP and/or RRC placement required in some cases

# **Terms amended pursuant to *Johnson v. United States***



- **Processed as they are received at the DSCC**
- **Calculated according to the Court Order**
  - **As of 8/25/2017, there were 1,737 total inmates resentenced due to the Johnson decision; 1,404 of those have been released from BOP custody.**
- **Multiple Counts/Judgments**
- **Over-Served Time**

# Compassionate Release/RIS Authority



## 18 U.S.C. § 3582(c)(1)(A)

“[T]he court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment ... after considering the factors set forth in section 3553(a) to the extent they are applicable, if it finds that

- (i) extraordinary and compelling reasons warrant such a reduction; or

- (ii) the defendant is at least 70 years of age, has served at least 30 years in prison,” and the BOP Director has determined the defendant is not a danger to the safety or any other person or the community;

Additionally, the reduction must be consistent with applicable Sentencing Commission policy statements.

# RIS Consideration



## Eligible

- Old Law Inmates  
(18 U.S.C. § 4205(g))
- New Law Inmates  
(18 U.S.C. § 3582(c)(1)(A))
- D.C. Code Offenders  
(under D.C. Code)

## Not Eligible

- State Boarders
- Military prisoners have  
applicable military  
code provisions

# RIS Criteria: Medical



RIS requests may be granted to:

- inmates who have been diagnosed with a terminal, incurable disease whose life expectancy is eighteen (18) months or less.
- inmates who have an incurable, progressive illness or who have suffered a debilitating injury from which they will not recover.

# RIS Criteria: Non-medical



RIS requests may be granted to:

- elderly inmates meeting certain criteria regarding age, and length of time served, and in some cases, medical impairments relating to age;
- inmates who have experienced circumstances in which there has been the death or incapacitation of the family member caregiver of an inmate's child; and
- inmates who have experienced circumstances in which the spouse or registered partner of an inmate has become incapacitated.

# Non-Exclusive Factors to Consider

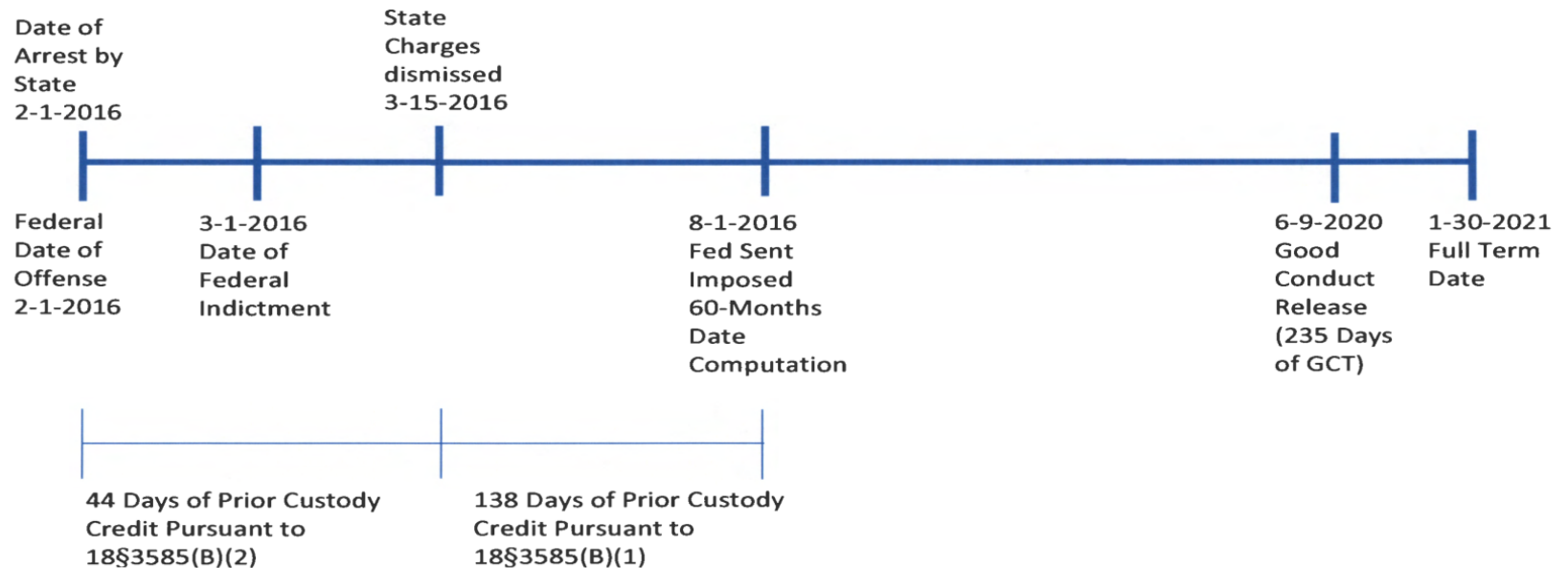


- Nature & circumstance of offense.
- Criminal history.
- Victims.
- Detainers.
- Supervised release violations.
- Institutional adjustment/Disciplinary infractions.
- Personal history (PSR).
- Length of sentence & amount of time served (proximity to RRC/home confinement/release date).
- Current age, age at time of offense, and sentencing.
- Inmate's release plans (medical, financial, employment).
- Would release pose risk to community? Likelihood of reoffending?

# Scenarios

## Scenario #1

Defendant is arrested on related state charges on February 1, 2016. He is indicted on the federal case on March 1, 2016, and a writ of Habeas Corpus ad Prosequendum is issued. State charges are dismissed on March 15, 2016. Defendant is sentenced to 60 months on August 1, 2016. (Defendant will be credited for all time served beginning on February 1, 2016)



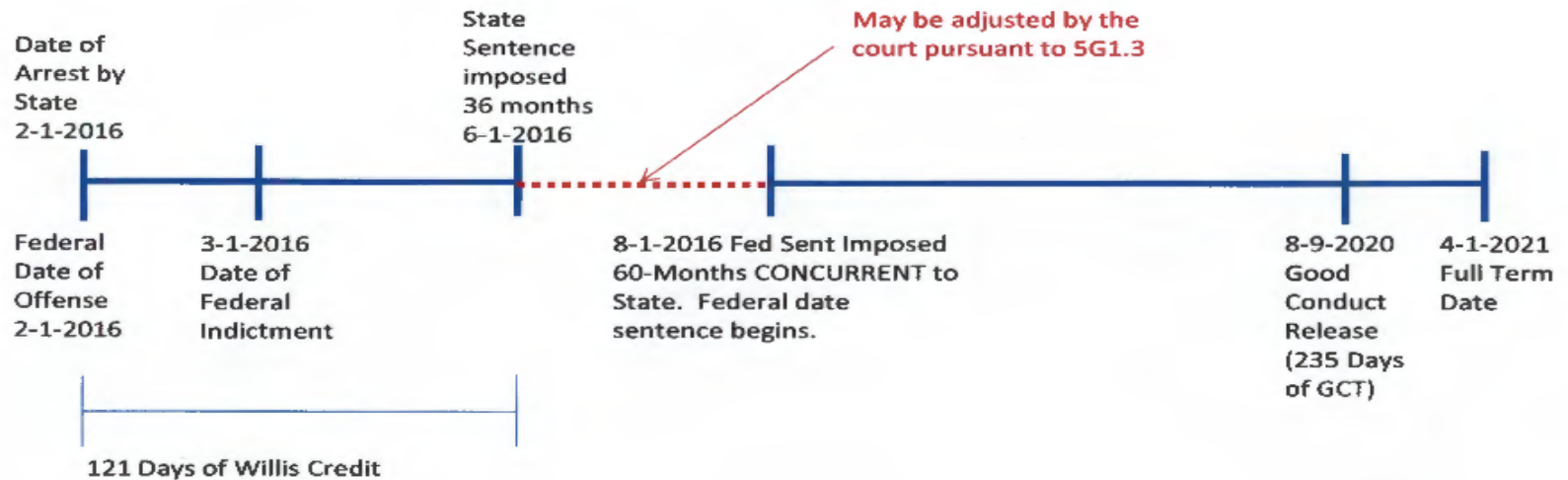
Total Prior Custody Credit = 182 days



# Scenarios

## Scenario #2

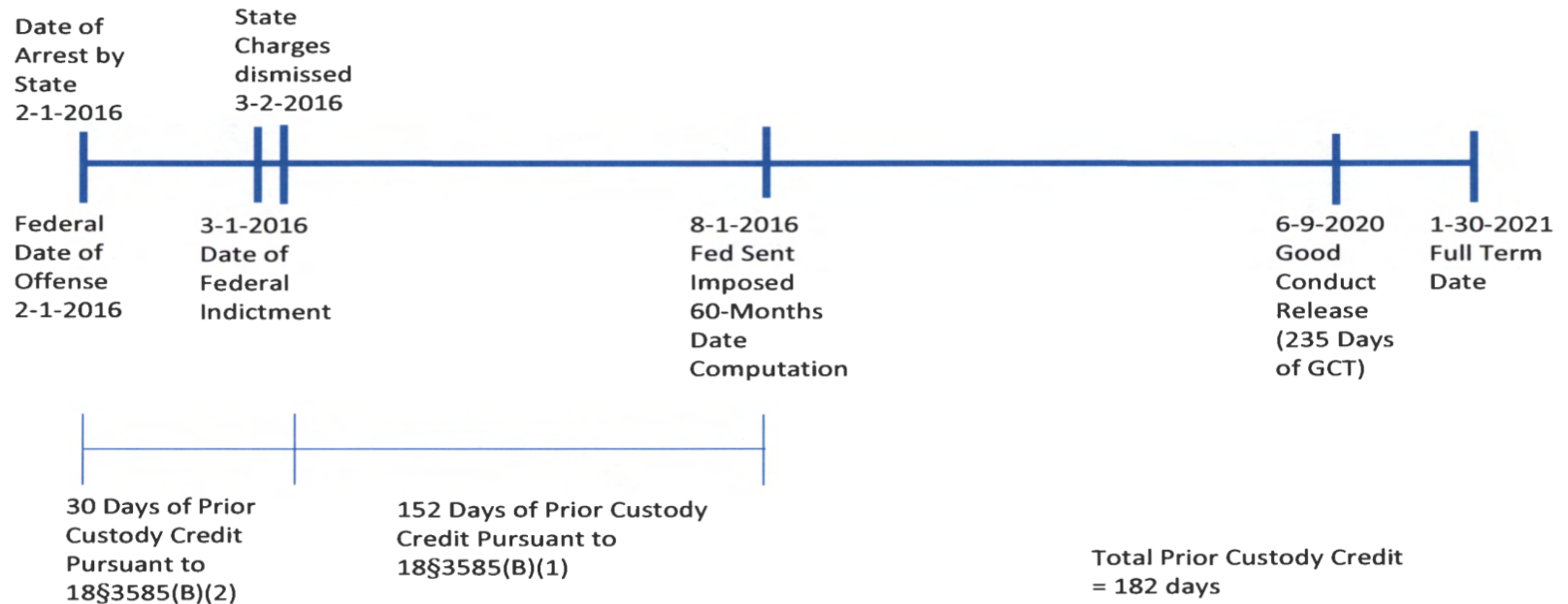
Defendant is arrested on related state charges on February 1, 2016. He is indicted on the federal case on March 1, 2016, and a writ of Habeas Corpus ad Prosequendum is issued. Defendant is convicted of state charge and sentenced to 36 months on June 1, 2016. On August 1, 2016, defendant is sentenced to 60 months on federal case to run concurrently with the underlying state offense. (BOP cannot credit defendant for time served in service of the state sentence from the date the state sentence began up to sentencing on federal case. The cases will begin to run cc following federal sentencing. For defendant to receive credit for time spent in service of the state sentence beginning June 1, 2016, the court could adjust the sentence pursuant USSG §5G1.3(b)). In this case, prior custody credit from February 1, 2016 to May 31, 2016, will be applied to the state sentence and would not be authorized for the federal sentence pursuant to Title 18 U.S.C. § 3585(B). However, since the state and federal sentences are running concurrently and the federal Raw Expires Full Term (REFT) is later than the state REFT, the Qualified Non-Federal Pre-Sentence Time (February 1, 2016 to May 31, 2016) would be applied to the federal sentence pursuant to Bureau of Prisons Program Statement 5880.28 – Sentence Computation Manual. These time credits are known as **Willis** time credits. (See **Willis v. U.S.**, 449 F2d 923 (CA 5, 1971)).



# Scenarios

## Scenario #3

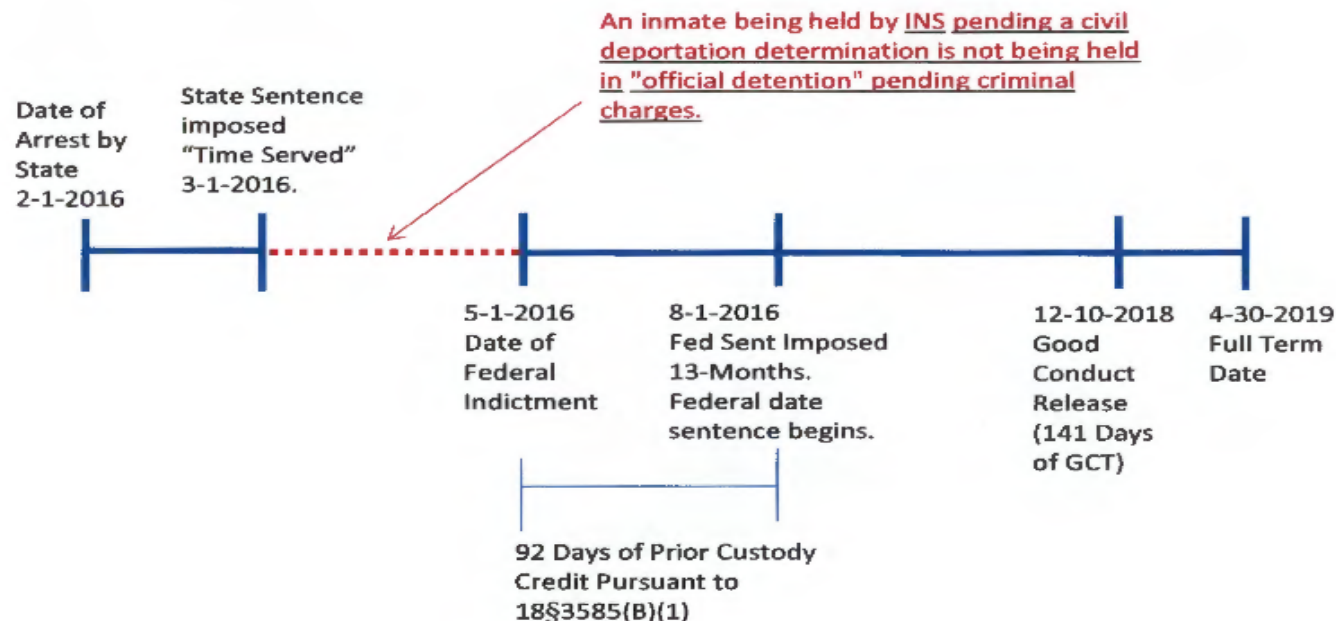
Defendant is arrested on unrelated state charges on February 1, 2016. He is indicted on the federal case on March 1, 2016, and a writ of Habeas Corpus ad Prosequendum is issued. On March 2, 2016, state charges are dismissed and the defendant is released to United States Marshals hold. Defendant is sentenced to 60 months on August 1, 2016. (Defendant will receive credit toward his federal sentence for all time in official detention beginning February 1, 2016.



# Scenarios

## Scenario #4

Defendant, unauthorized alien, is arrested on unrelated state charges on February 1, 2016. On March 1, 2016, defendant is sentenced to time served, but remains in custody on an Immigration and Customs Enforcement detainer. On May 1, 2016, defendant is charged in federal case and defendant is transferred to the custody of the United States Marshals Service. On August 1, 2016, defendant is sentenced to 13 months. In making the determination of whether an inmate was held pending civil deportation proceedings or criminal prosecution, the BOP utilizes the earliest date contained in the source documents on which the individual was charged criminally. (BOP will not credit for time on ICE hold)



# Questions?

