

# **Federal Bureau of Prisons**

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# Two Questions

- - How much time am I going to do?
- - Where am I going to do my time?

# Time Computation

The BOP is solely responsible for calculating federal imprisonment time.

see United States v. Wilson,  
503 U.S. 329 (1992).

# Time Computation

Title 18 U.S.C. § 3585(a) dictates that “[a] sentence to a term of imprisonment commences **on the date the defendant is received in custody** awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.”

**GET THE DATE ON THE J + C**

# Time Computation

- Good conduct time is credited at 54 days per year, pro rated, pursuant to PS 5884.03. In reality, the BOP gives your client **47 days** per year after the first year's credit.
- This calculation has been upheld by the US Supreme Court.
- Barber v. Thomas, 130 S. Ct. 2499 (2010)

# Time Computation

For Instance

- On a 60 month sentence, the maximum good time credit is 235 days instead of 270 days
- On a 120 month sentence, the maximum good time credit is 470 days not 540 days.

But it could be less...

# Time Computation

An inmate who does not have a least a GED is only eligible for a **maximum of 42 days** of Good Conduct Time per year.

# Time Computation

- Your client must have a sentence of one year and a day to qualify for good time.
- 12 months equals 365 days served.
- 12 months and a day equals 312 days.



# Residential Drug Abuse Treatment Program (RDAP)

- A 500 hour program where inmates are placed in a class that lives together, separated from the general prison population
  - takes 8 to 12 months to complete
- Inmate must have
  - (1) verifiable drug abuse problem
  - (2) No 'serious' mental health issues
  - (3) within 36 months of release
  - (4) agree to participate (sign agreement)
  - (5) appropriate security level

# Residential Drug & Alcohol Program

- To qualify for the RDAP program the inmate must have a drug or alcohol problem within the last year (as verified in the PSR)
- Even then, if the inmate has had any drug or alcohol treatment or counseling, it may preclude them from entry into the program.
- In-patient counseling, post-conviction and prior to sentencing is used to exclude the inmate from the program.

# Residential Drug & Alcohol Program

- **The LIE** - Legal Instrument Examiner
- Deducts time served and statutory good time to see if the inmate has enough time to complete the program.
- So a client who gets a 24 month sentence and has 6 months in jail at the time of sentencing most likely will not get the RDAP program because their time is too short to complete the program.

# Some Inmates Ineligible for Early Release Under RDAP

- INS/ICE detainees;
- Inmates with prior felony or misdemeanor convictions for homicide, forcible rape, robbery, aggravated assault or child sexual abuse offenses;
- Inmates whose current offense has an element of physical force, firearm, sexual abuse offenses;

# **Some Inmates Ineligible for Early Release Under RDAP**

- Current offense that by it's nature or conduct presents a serious potential risk or physical force against the person or property of another;
- Offenses for which a guideline enhancement was applied to the offense level for the use or threatened use of force or firearm.

# **Early release is based on successful completion of RDAP**

In the Ninth Circuit be aware that the BOP complies with Arrington v. Daniels, 516 F. 3d 1106 (9th Cir. 2008) and have a written response for inmates.

# Concurrent versus Consecutive Time

- The Bureau of Prisons would never know to give a client complete credit they are due because they would never know about previous days of jail time that the client served in state, local or tribal custody on the same matter, if it is not clearly spelled out in the PSR.

# Documents Needed for Designation

- **USM 129** - US Marshal form - Gives separations, aliases, gang affiliations.
- **Judgment & Commitment** - Gives length of sentence and supervised release, must state concurrent or consecutive sentence (if silent the BOP will treat as consecutive) gives recommendations as to programming and/or facility.
- **PSR -- MOST IMPORTANT** for BOP



# Presentence Report

- Three versions
  - draft - original
  - revised - attorney revisions – **JUDGE GETS**
  - amended - court revisions after sentencing
- Most judges will not amend a PSR unless it effects the guideline calculation. This is contrary to both the law and policy as the PSR goes into the matrix for determination of classification, eligibility for programs (employment, RDAP, education), medical treatment, release plans as well as visitation eligibility.

# PSR – Attorneys Be Aware

- Be aware of medical issues that effect client's ability to function in prison. (must now have documentation - provide it to PSR writer to be included in report)
- Be aware of any 'escapes' or FTA = could be scored as Crime of Violence
- Be aware of crimes of violence that did not result in convictions

# PSR – Attorneys Be Aware

- Be aware of any references to homosexuality
- Be aware of any gang references as well as tattoos listed - confirm with client
- Be aware that juvenile history (crimes, sexual behavior, educational reports, mental health evaluations) will be used to increase security levels

# **PSR – Attorneys Be Aware**

If client speaks Spanish, RDAP is in offered in the Spanish language at FCI Miami and FPC Montgomery.

But -- an ICE detainer will prevent participation.

# Detainers

- A detainer will increase client's security level
  - except for ICE detainers
- Try to resolve any pending charges as a detainer may also prevent client from the RDAP program as well as halfway house placement.

# **Federal Bureau of Prisons Institutions**

## **Facilities**

- The BOP consists of 121 institutions, 6 regional offices, a Central Office (headquarters), 2 staff training centers, and 26 community corrections offices.
- As of January 29, 2015, the BOP housed 210,436 inmates throughout their system.

# Security Levels

- **Minimum –**

**This is where your client wants to be**

- Known as Federal Prison Camps
- Usually near a larger institution or military base
- Low staff to inmate ratios
- Inmates typically work at the larger institution or military base
- Very low risk of assault or escape.

# Security Levels

- **Low –**

- Fenced facility.
- BOP programs and work (UNICOR) stressed.



# Security Levels

- **Medium -**

- Significantly more secured than a Low
- Monitored/controlled movement of inmates
- Cell housing rather than dormitory.

# Security Levels

- **High** –

- Penitentiaries
- Highly secured facility
- ‘Close control’ of inmates movement and programming
- Long term incarcerations.

# Security Levels

- **Admin –**

Facilities that have 'special' missions, i.e. medical, transfers, treatment programs (STOP/SOMP), SMOOTH dangerous/escape-prone inmates, security risks, i.e. death row or terrorists/gang members.

# Inmate Security Designation and Custody Classification Policy

## MEN

- Minimum: 0 - 11 points
- Low: 12 - 15 points
- Medium: 16 - 23 points
- High: 24 or more points

## WOMEN

- Minimum: 0 - 15 points
- Low: 16 - 30 points
- [no Medium]
- High 31 or more points

# William O'Hannity

- 24 year old high school drop out.
- Detained throughout the proceedings.
- Convicted of Threatening the President.
- 2010 conviction for DUI – probation (1 point)
- 2012 conviction for indecent exposure
  - 1 year jail w/ 300 days deferred (2 points)

# Security Scoring

## 1 Voluntary Surrender

no (0 points)

yes (-3 points)

## 2 Severity of Current Offense

Lowest (0 points)

Low Moderate (1point)

Moderate (3 points)

High (5 points)

Greatest (7 points)

# Security Scoring

## 3 Criminal History Score (PSR)

- |                    |                  |
|--------------------|------------------|
| – 0-1 (0 points)   | 2-3 (2 points)   |
| – 4-6 (4 points)   | 7-9 (4 points)   |
| – 10-12 (6 points) | 13 + (10 points) |

## 4 Documented History of Violence

(minor / serious)	None	(0 / 0 points)
	> 15 years	(1 / 2 points)
	10 – 15 years	(1 / 4 points)
	5 – 10 years	(3 / 6 points)
	< 5 years	(5 / 7 points)

# Security Scoring

## 5 History of Escapes / Attempts

(minor / serious)

None (0 points)

> 15 years (1 / 3 points)

10 – 15 years (1 / 3 points)

5 – 10 years (2 / 3 points)

< 5 years (3 / 3 points)

## 6 Existing detainer

None

(0 points)

Lowest/ Low Moderate (1 point)

Moderate (3 points)

High (5 points)

Greatest (7 points)



# Security Scoring

7 Age	55 years +	(0 points)
	36 – 54 years	(2 points)
	25 – 35 years	(4 points)
	< 25 years	(8 points)
8 Education	H.S. Grad/GED	(0 points)
	working on GED	(1 point)
	no degree, no work	(2 points)
9 Drug / Alcohol Abuse	None / > 5 years	(0 points)
	< 5 years	(1 point)

# Designation

- Bureau attempts to designate inmates to facilities commensurate with their security and program needs within a 500-mile radius of their release residence
- If an inmate is placed at an institution that is more than 500 miles from their release residence, generally, it is due to specific security, programming, or population concerns.
- When an inmate is referred for a re-designation transfer, these same criteria are applied in making a decision for transfer to a new facility.

# **Inmates are designated or re-designated based on:**

- The level of security and staff supervision the inmate requires
- The level of security and staff supervision the institution provides
- The medical classification care level of the inmate and the care level of the institution

# **Inmates are designated or re-designated based on:**

- The inmate's program needs (e.g., treatment, educational/vocational training, individual and/or group counseling, medical/mental health treatment), and
- Various administrative factors (e.g., institution bed space capacity; release residence; judicial recommendations; separation needs; and security measures needed to ensure protection of victims, witnesses, and the general public).

# **Inmates are designated or re-designated based on:**

- Any **request for transfer** must originate with an inmate's institution Unit Team at his or her current facility
- The DSCC evaluates referrals submitted by institution staff and makes decisions based on the information provided by the institution
- Inmates are encouraged to work closely with members of their institution Unit Team to determine if transfer to a facility closer to their release residence may be possible