

Bureau of Prisons Issues

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 writtten 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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MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS

FROM:


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SUBJECT:

Revised Guidance for Residential Reentry Center
(RRC) Placements

This memorandum provides guidance to staff when making inmates' pre-release Residential Reentry Center (RRC) placement decisions. Assessment and decision-making practices are to focus on RRC placement as a mechanism to reduce recidivism. Recidivism reduction results in cost efficiencies, less victimization, and safer communities.

Our RRC resources are limited and must be focused on those inmates most likely to benefit from them in terms of anticipated recidivism reduction. In other words, our decisions are to be based on an assessment of the inmate's risk of recidivism and our expectation that RRC placement will reduce that risk. Our strategy is to focus on inmates who are at higher risk of recidivating and who have established a record of programming during incarceration, so that pre-release RRC placements will be as productive and successful as possible.

As Chief Executive Officers, you play a vital role in implementing the Bureau of Prisons' (Bureau) reentry strategy, including RRC utilization. This guidance will assist you in making RRC placement decisions.

GENERAL CONCEPTS - The following general concepts apply to all RRC placement assessments and decision-making:

Eligibility vs. Appropriateness - When making RRC placement determinations, it is critical that staff understand the difference between eligibility and appropriateness. All inmates are statutorily eligible for up to 12 months pre-release RRC

placement. Nevertheless, not all inmates are appropriate for RRC placement, and for those who are appropriate, the length of the RRC placement must be determined on an individual basis in accordance with this guidance.

Individual Assessments Required - Inmates must continue to be individually assessed for their appropriateness for and the length of pre-release RRC placements using the following five factors from 18 U.S.C. § 3621(b):

- (1) The resources of the facility contemplated;
- (2) The nature and circumstances of the offense;
- (3) The history and characteristics of the prisoner;
- (4) Any statement by the court that imposed the sentence:
 - (a) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
 - (b) recommending a type of penal or correctional facility as appropriate; and
- (5) Any pertinent policy statement issued by the U.S. Sentencing Commission.

These individual assessments occur as part of the inmate classification and program review process, with the unit manager holding decision-making responsibility at the unit level. Institution- or region-specific parameters for RRC placement decision-making are prohibited.

RRC Placements of More Than Six Months - Regional Director approval of RRC placements longer than six months is no longer required.

Residential Drug Abuse Program Graduates - Inmates who successfully complete the institution-based portion of the Residential Drug Abuse Program (RDAP) will continue to be assessed for pre-release RRC placements according to the guidance in the Psychology Treatment Programs policy.

Coordination Between Institution Staff and Community Corrections Management Staff - Community Corrections Management (CCM) staff must continue to review referral documents and other pertinent information for every RRC referral. If CCM staff question the appropriateness of the referral or the length of the requested placement, they must communicate these concerns to the referring institution. Differing recommendations will be resolved at the appropriate level within the regional management structure. Under no circumstances should CCM staff unilaterally deny RRC referrals or adjust placement dates, unless these determinations can be linked directly to a lack of RRC bedspace or fiscal resources.

Medical and Mental Health Concerns - When considering RRC placement for inmates with significant medical or mental health conditions, institution staff are strongly encouraged to coordinate release planning with CCM staff and Transitional Drug Abuse Treatment staff (for mental health concerns). If an inmate's condition precludes residential placement in an RRC, and if staff can make appropriate arrangements to secure the community-based medical and/or mental health services these inmates will need, direct placement on home detention should be considered.

Inmates Who Decline RRC Placement - If an institution recommends release through a community-based program and the inmate declines, institution staff should counsel the inmate as to the benefits of a structured reentry program. However, if the inmate continues to decline this opportunity, she/he may do so without being subject to disciplinary action.

Inmates Who are Inappropriate for RRC Placement - Inmates who, during incarceration, have refused programming or failed to engage in activities that prepare them for reentry may be inappropriate for RRC placement. Similarly, inmates with recent, serious, or chronic misconduct and those who have previously failed an RRC program may be inappropriate.

RRCs provide opportunities for inmates to acquire the support systems, e.g., residence, employment, follow-up treatment, they will need to live a crime-free life, but inmates must be ready to take advantage of these opportunities. If they have clearly demonstrated through their behavior that they are not ready, RRC programming is unlikely to result in behavioral change and would be a waste of the Bureau's resources, as well as place the public at undue risk.

Professional judgment must be exercised, insofar as inmates with some misconduct, or some refusal to participate in programming, may still be appropriate for RRC placement. Staff must exercise their discretion in determining whether an inmate is ready to take advantage of the opportunities and expanded liberty that RRCs offer.

If staff decide not to refer an inmate for RRC placement, the inmate's release should be carefully coordinated with U.S. Probation or Court Services and Offender Supervision Agency (DC Code inmates).

Professional Judgment - RRC placement, in and of itself, is not a reward for good institutional behavior, nor is it an early release program or a substitute for the furlough program. RRC placement and length of placement decisions cannot be reduced solely to a classification score or any other type of arbitrary categorization. While staff assessment and analysis of tools such as the Custody Classification Form (BP-338) and the Inmate Skills Development (ISD) Plan are helpful in establishing broad-based groupings, staff must continue to exercise their professional judgment when making individual inmate RRC placement decisions and be prepared to justify those decisions.

LENGTH OF RRC PLACEMENT

General Guidelines

- **Prospective Application** - Inmates with previously established RRC transfer dates will not be reconsidered under this guidance.
- **90 Days Minimum Placement** - With the exception noted below under the heading of Lower-Risk Inmates, inmates should be considered for at least 90 days pre-release RRC placement whenever possible.
- **High-Risk Versus Low-Risk Inmates** - RRCs are most effective, in terms of recidivism reduction, for inmates at higher risk for recidivism. Consequently, appropriate higher-risk inmates should be considered for longer RRC placements than lower-risk inmates. The BP-338 measures some of the factors that predict risk. Ordinarily, the lower the BP-338 score, the lower the risk; conversely, the higher the score, the higher the risk. Therefore, low-, medium-, and high-security inmates tend to be higher risk than minimum-security inmates.

Similarly, the ISD tool identifies deficits that may contribute to recidivism. Inmates with a significant number of deficits may be at higher risk for recidivism than those with few or no deficits. When making RRC placement decisions, staff should ensure that the BP-338 and ISD Assessment have been accurately completed. While neither tool can be relied upon solely, they are helpful tools in assessing an inmate's risk level.

Lower-Risk Inmates

- **Consider Home Detention Option** - With the exception of RDAP graduates, institution staff will evaluate minimum-security inmates who have an approved release residence to determine if direct transfer from an institution to home detention is appropriate. If so, this determination will be noted in item 11 of the Institutional Referral for RRC Placement form, and the requested placement date (item 3.b.) will be the inmate's home detention eligibility date. These procedures are to be followed even if this results in a community-based placement of fewer than 90 days.
- If a minimum-security inmate is not appropriate for direct placement on home detention, staff will request an RRC placement of sufficient length to address the inmate's reentry needs.
- CCM staff are to ensure that procedures are in place for the direct placement of inmates on home detention, or after only a brief stay (14 days or less) in an RRC. At a minimum, CCM staff must monitor their minimum-security population weekly and follow up with RRC contractors to ascertain why eligible minimum-security inmates have not been referred for placement on home detention.

Higher-Risk Inmates - As previously stated, in terms of recidivism reduction, inmates at higher risk for recidivism stand to benefit most from RRC services. When considering the length of the RRC placement for higher-risk inmates, staff should consider the following:

- **History of Individual Change** - Assess whether the inmate's history of individual positive change during incarceration indicates an ability and willingness to take advantage of opportunities for positive reintegration to the community. Based on that history, staff must predict whether the inmate is likely to respond positively to the highly structured regimen of an RRC, and whether the inmate will avail her/himself of the available RRC opportunities.
- **History of Program Participation** - Assess the inmate's history of successful completion of, or participation in, available programming opportunities during incarceration, including programming which addresses the deficits identified through the ISD System. In particular, determine whether the inmate completed or made satisfactory progress toward completing a program shown to reduce recidivism, such

as any of the cognitive/behavioral treatment programs described in the Psychology Treatment Programs Program Statement, as well as academic and vocational training programs.

- **Inmate's Community Support Systems** - Assess the inmate's available community support systems, e.g., housing, employment, etc.
- **Length of RRC Placement** - Longer RRC placements should be considered for inmates whose following factors are high:
 - Risk for recidivism;
 - Demonstrated successful participation in or completion of programming opportunities; and
 - Need to establish community support systems.

Your assistance in implementing these procedures is appreciated. I look forward to working with you as we seek to effectively utilize the Bureau's limited RRC resources.