

# **What Happens After Sentencing: A Minotaur's Guide to the Bureau of Prisons**



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## **☼ Disclaimer:**

**Opinions expressed in this presentation are those of the author and do not necessarily represent the opinions of the Federal Bureau of Prisons or the Department of Justice.**





# What Happens After Sentencing: A Minotaur's Guide to the Bureau of Prisons

- ✿ **The View from Mount Olympus** (BOP Overview)
  - ✿ **Navigating the Labyrinth** (Effectuating Sentences)
    - ✿ Sentence Computations
    - ✿ Inmate Classification
    - ✿ Designations
  - ✿ **Exiting the Labyrinth** (Inmate Release Procedures)
- 



# The View from Mount Olympus

- ✿ 122 correctional institutions
- ✿ 26 institutions designated for female offenders
- ✿ 161 Residential Re-entry Centers (RRCs, halfway houses)





# **Designation and Sentence Computation Center**

Inmate security level classification, designation, and sentence computation are centralized at the Designation and Sentence Computation Center (DSCC) located in Grand Prairie, Texas. The workload at the DSCC is distributed by Courts of Jurisdiction (COJs). There are sixteen teams at the DSCC who are assigned to classification and sentence computation, and each team is assigned certain COJs. One additional team at the DSCC (Hotel Team) is responsible for all initial designations.





# Navigating the Labyrinth

“This case requires navigation of the labyrinth found at the conjunction of the various statutory provisions and United States Sentencing Guidelines regarding concurrent versus consecutive state and federal sentences, credit for time spent in incarceration, commencement of sentence and the authority of courts versus the Bureau of Prisons regarding the correct computation of defendant’s sentence.”

United States v. Smith, 101 F.Supp.2d 332, 334 (W.D. Pa. 2000)



# BOP Receives Request for Designation from USMS



## U.S. Probation Office

- Loads study orders, Judgments (J&Cs), Presentence Investigation Reports (PSRs), and Statements of Reasons (SORs)
- Sends to USMS



## Marshals Service

- Loads USM-129
- Determines whether to request designation
- If so, forwards to DSCC team



## BOP's Designation & Sentence Computation Center

- Team assigned to COJ classifies inmate, forwards to designators, then notifies Marshals of designation



Inmate is transported or voluntarily surrenders to designated facility



# Primary Jurisdiction



Ponzi v. Fessenden, 258 U.S. 254, 260 (1922), established that the decision of who exercises custodial jurisdiction over an individual charged with crimes against two sovereigns was a matter of comity between the sovereigns.

“The chief rule which preserves our two systems of courts from actual conflict of jurisdiction is that the court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its purpose.”



# Primary Jurisdiction

- ❖ The sovereign which first arrested the offender has primary jurisdiction over the offender, unless that sovereign relinquishes it to another sovereign.
- ❖ The sovereign with primary jurisdiction has priority of jurisdiction for purposes of trial, sentencing, and incarceration. Thomas v. Brewer, 923 F.2d 1361, 1365 (9th Cir. 1991).
- ❖ The date of sentencing does not determine which sentence runs first.
- ❖ Elwell v. Fisher, 716 F.3d 477, 481 (8th Cir. 2013)  
“Pursuant to the doctrine of primary jurisdiction, service of a federal sentence generally commences when the United States takes primary jurisdiction and a prisoner is presented to serve his federal sentence, not when the United States merely takes physical custody of a prisoner who is subject to another sovereign’s primary jurisdiction.”

# Primary Jurisdiction

- ❁ The order in which sentences are served is governed by the doctrine of primary jurisdiction. If state and federal sentences are imposed on a defendant, then the general rule is that the sentence imposed by the sovereign with primary jurisdiction will be served first. The sovereign with primary jurisdiction cannot dictate whether the sentence of the other sovereign will run concurrently or consecutively.
- ❁ United States v. Cole, 416 F.3d 894, 897 (8th Cir. 2005)  
“Primary jurisdiction continues until the first sovereign relinquishes its priority in some way. Generally, a sovereign can only relinquish primary jurisdiction in one of four ways: 1) release on bail, 2) dismissal of charges, 3) release on parole, or 4) expiration of sentence.”



# Commencement of a Sentence

## ❁ 18 U.S.C. § 3585(a)

A federal inmate's sentence 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."

## ❁ Ziegler v. Sanders, No. 2:05CV00164 JWC, 2006 WL 2365719, at \*4 (E.D. Ark. August 14, 2006)

"Regardless of any overlapping custodial periods, a federal sentence cannot commence prior to the date it is pronounced."

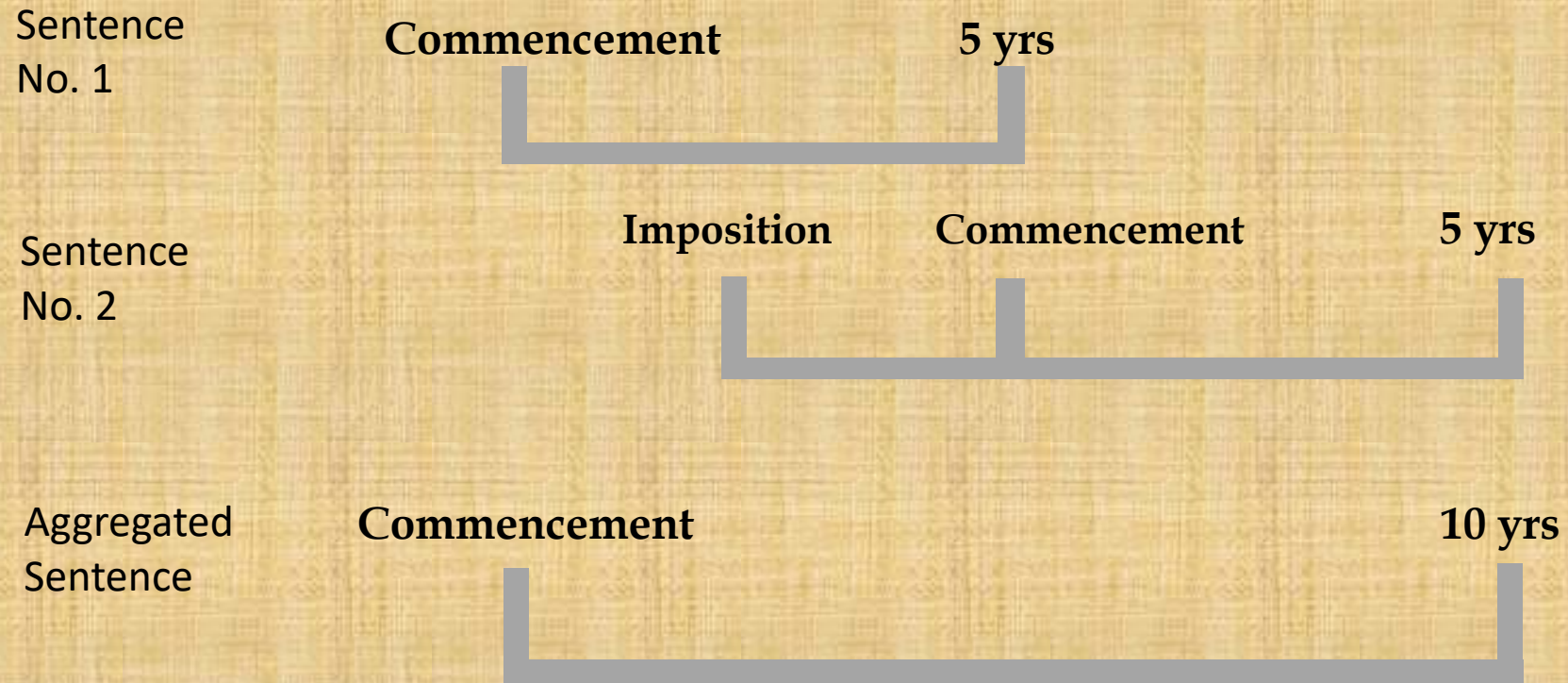
# Multiple Federal Sentences

## ❁ 18 U.S.C. § 3584

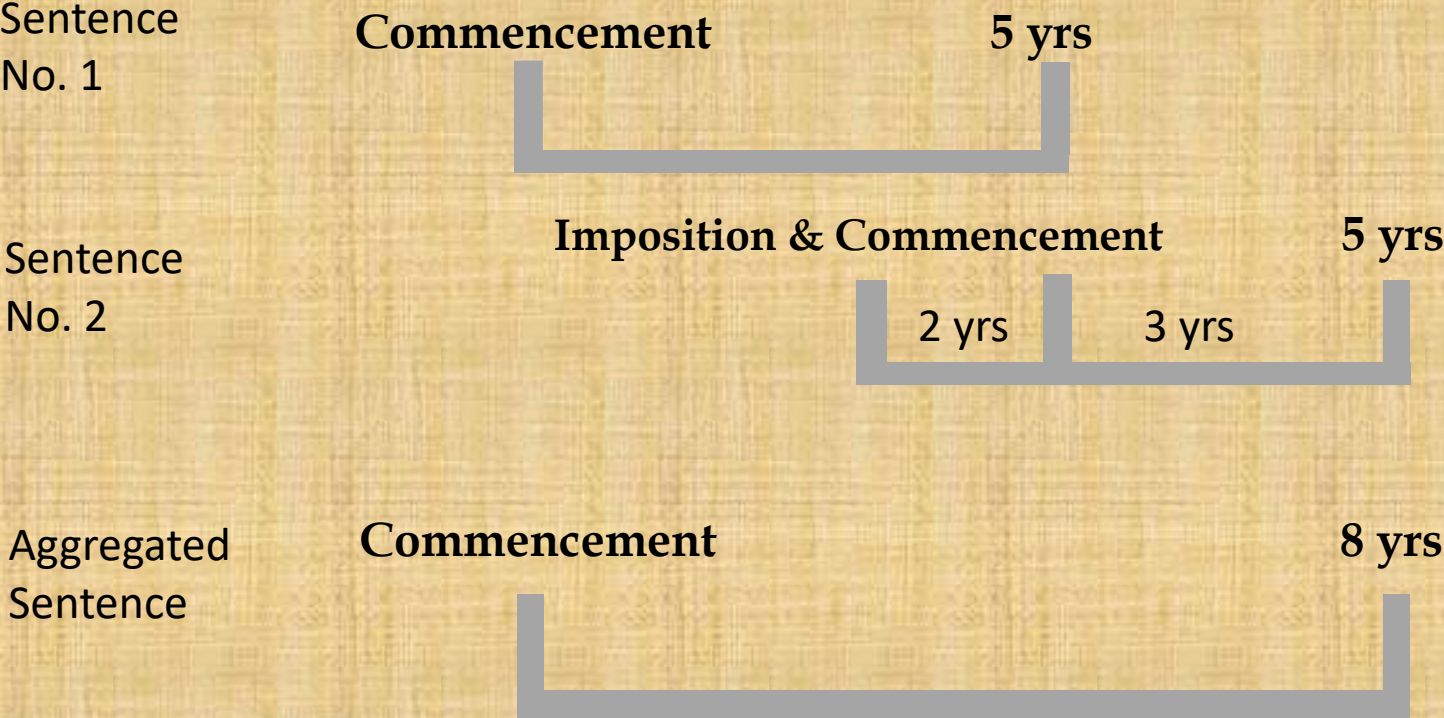
- ❁ Unless Judgment specifies sentences are to run concurrently, the default is consecutive when imposed on different dates
- ❁ Multiple terms of imprisonment are aggregated (when possible) and treated as one sentence for administrative purposes



# Aggregation of Consecutive Sentences



# Aggregation of Concurrent Sentences





# Jail Credit

## ☼ 18 U.S.C. § 3585(b)

Credit for time spent in “official detention”

- (1) as a result of the current offense; or
- (2) any other offense for which defendant was arrested after commission of current offense

***that has not been applied toward another sentence***

# Jail Credit

- ❁ “Official detention” = jail-like conditions  
Reno v. Koray, 515 U.S. 50 (1995): time spent in community treatment center while on restrictive conditions of bail was not “official detention”
- ❁ Any part of a day in custody is calculated as a full day of service on the sentence
- ❁ Official detention can include time spent in custody in foreign country



# Jail Credit

- ✿ United States v. Wilson, 503 U.S. 329, 333–34 (1992)  
U.S. Supreme Court explicitly rejected the argument that § 3585(b) authorizes a district court to award credit at sentencing and held that the Attorney General, through the BOP, “must continue to compute the credit under § 3585(b).”

# Jail Credit

- ✿ In re U.S. Bureau of Prisons, 918 F3d. 431, 439 (5th Cir. 2019):

“If the court determines that the BOP will not credit a defendant’s prior time served, the court can reduce the defendant’s sentence under § 5G1.3(b) or § 5K2.23 of the U.S. Sentencing Guidelines. But the district court must calculate the defendant’s final sentence itself; it cannot simply order the BOP to award credit.”

# 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)) for a violation of a previously imposed term of supervised release, during the first year of the term.
- ✿ A sentence of intermittent confinement is also inconsistent with 18 U.S.C. § 3621(a), which provides that “[a] person who has been sentenced to a term of imprisonment . . . shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed[.]”



# Home Confinement

- ❁ The Bureau is limited by statute in placing inmates on home confinement or detention.
  - ❁ 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.”
- ❁ First Step Act Exceptions
  - ❁ 5-year pilot program for certain elderly or terminally ill offenders
  - ❁ Earned Time Credits
- ❁ CARES Act Exception (through 05/10/2023)




# Inmate Classifications and Designations

## 18 U.S.C. § 3621(b)

“The Bureau of Prisons shall designate the place of the prisoner’s imprisonment, and shall, subject to **bed availability**, the prisoner’s **security designation**, the prisoner’s **programmatic needs**, the prisoner’s **mental and medical health needs**, any request made by the prisoner related to **faith-based needs**, **recommendations of the sentencing court**, and **other security concerns** of the Bureau of Prisons, place the prisoner in a facility as close as practicable to the prisoner’s primary residence, and to the extent practicable, in a facility within 500 driving miles of that residence.”

“Notwithstanding any other provision of law, a designation of a place of imprisonment under this subsection is not reviewable by any court.”



# Judicial Recommendations

- ✿ The BOP enters all judicial recommendations into our database and requires consideration at initial designation as well as any subsequent transfers
- ✿ Most common recommendations concern place of confinement and programming (e.g., job skill training)
- ✿ Prefer recommended facility characteristics rather than specific facility



# Judicial Recommendations

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total total term of:  
Eighteen (18) months to run consecutively to defendant's [REDACTED] state sentence in [REDACTED]. No further supervision ordered. Defendant to comply with any requests for DNA. The Court recommends the defendant wear a key around his neck as a daily reminder that he holds the key to his future.

# Judicial Recommendations

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 30 months.

[✓] The court makes the following recommendations to the Bureau of Prisons:

The defendant shall participate in the 500 hour drug program (RDAP). It is the view of the presiding Judge, based on the history and particular characteristics of the defendant, **in the vernacular of the Roman Catholic Church, it would be a Mortal Sin for the Federal Bureau of Prisons to fail to follow the Court's recommendation and not enroll the defendant in the 500 hour drug program (RDAP).**

# Judicial Recommendations

The Court strongly recommends that the defendant be incarcerated in a facility that may provide treatment for the defendant's diagnosed bipolar and attention-deficit disorders and the Court recommends that the defendant be placed in the Institution Residential Drug Abuse Treatment Program, if qualified.

The Court makes the following recommendations to the Bureau of Prisons:

Designation recommendation to a facility within the State of Florida.

- ☒ The court makes the following recommendations to the Bureau of Prisons:  
The Court recommends the defendant be placed in the 500 Hour Bureau of Prison Comprehensive Drug Treatment Program.  
The Court recommends the defendant be assigned to an institution outside the Northeast Region for safety reasons.



# Exiting the Labyrinth: Inmate Release Procedures

- ✿ Good Conduct Time
- ✿ Residential Drug Abuse Treatment Program (RDAP)
- ✿ First Step Act Time Credits
- ✿ Reduction in Sentence/Compassionate Release  
Motions

# Good Conduct Time

## ☼ 18 U.S.C. § 3624(b)

- ☼ For inmates serving a sentence longer than one year but less than life, they will earn up to 54 days per year of the sentence imposed
- ☼ Ex:10-year sentence = up to 540 days of GCT
- ☼ Loss of GCT as disciplinary sanction / unsatisfactory progress toward GED
- ☼ GCT should not be confused with First Step Act Time Credits

# Residential Drug Abuse Treatment Program

- ❁ RDAP is a voluntary 500-hour (approx. 9 to 12 months) program for inmates with diagnosed substance use disorder. Upon successful completion of the RDAP, the inmate may be eligible for up to a year off their sentence.
- ❁ Admission based on proximity to release date. Generally, an inmate must have 24 months remaining to serve in order to complete all three phases of the program.
- ❁ Tapia v. United States, 564 U.S. 319 (2011) — Sentencing Reform Act prohibits a court from lengthening a sentence for rehabilitation programming, such as RDAP.



# Residential Drug Abuse Treatment Program

- ✿ Eligibility for admission to RDAP is different than eligibility for early release under 18 U.S.C. § 3621(e).
- ✿ 18 U.S.C. § 3621(e) early release
  - ✿ Inmates cannot have a prior 3621(e) release
  - ✿ Inmates convicted of nonviolent offenses (current and prior)
  - ✿ Able to complete all three components of RDAP

# First Step Act Time Credits

- ✿ An inmate who successfully completes evidence-based recidivism reduction programming or productive activities can **earn** time credits to be applied toward time in prerelease custody or supervised release – 18 U.S.C. § 3632(d)(4)
- ✿ Must be minimum or low risk of recidivating (PATTERN) to **apply** credits – 18 U.S.C. § 3624(g)
- ✿ List of precluding offenses – Sec. 3632(d)(4)(D)
- ✿ Final rule published on January 19, 2022 – 87 FR 2705
- ✿ There is a distinction between the ability to **earn** time credits and the ability to **apply** time credits.

# Compassionate Release Motions

## ☼ 18 U.S.C. § 3582(c)(1)(A)

☼ First Step Act amended 18 U.S.C. § 3582(c)(1)(A) to authorize inmates to directly request a compassionate release from the sentencing court upon the earlier of:

- ☼ inmate exhausting administrative appeals of the request's denial; or
- ☼ 30 days from the receipt of the request by the applicable Warden

☼ Pre-First Step Act (December 2018), motions could only be filed by the Director of the BOP.



# Compassionate Release Motions

✿ A convicted defendant is not entitled to seek compassionate release prior to their incarceration.

✿ United States v. Fower, 30 F.4th 823, 827 (9th Cir. 2022): “All this compels the conclusion that when considering the text of the current iteration of the compassionate relief statute and the statute's history, a convicted defendant must be incarcerated before he may seek such relief.”

✿ Statute does **not** authorize the sentencing court to release an inmate to home confinement. However, the sentencing court can reduce the sentence and then order home confinement as a condition of supervised release.

# Contact Information

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# Questions and Comments

