



NAVIGATING THE LABYRINTH:
SECURITY CLASSIFICATION,
DESIGNATION, AND
SENTENCE COMPUTATION

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DISCLAIMER

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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)



Designation Requests Received by BOP



USPO

U.S. Probation office uploads and enters J&C, PSR, & SOR, & VOR/PET into Capture for 94 Districts.



USMS

USMS adds USM-I29, detainers, and any other release documentation.



BOP

Designation packet received by BOP (DSCC) and uploaded to the electronic inmate central file (E-ICF).



Facility

Inmate is designated and committed to a BOP 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

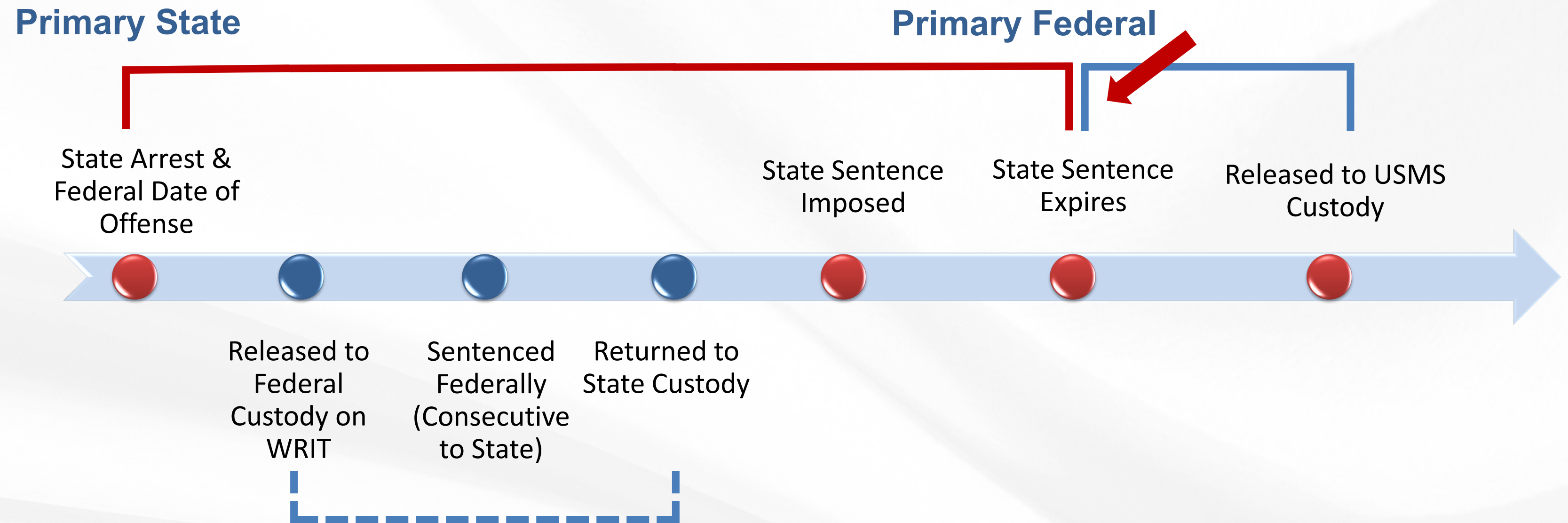
- The sovereign which first arrested the offender has primary jurisdiction over the offender, unless that sovereign relinquishes it to another sovereign.
- The sovereign with primary jurisdiction has priority of jurisdiction for purposes of trial, sentencing, and incarceration. *Thomas v. Brewer*, 923 F.2d 1361, 1365 (9th Cir. 1991).
- The date of sentencing does not determine which sentence runs first.
- *Easley v. Stepp*, 5 Fed. App'x 541, 543 (7th Cir. 2001)
“A prisoner detained under a writ of habeas corpus ad prosequendum remains in the primary custody of the ‘sending sovereign’ —here, the state—until that sovereign relinquishes jurisdiction over him.”

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.”



Common Example: Primary State released on Federal Writ



Commencement of a Sentence

18 U.S.C. § 3585(a)

A federal 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.”

United States v. Flores, 616 F.2d 840, 841 (5th Cir. 1980)

“[A] federal sentence cannot commence prior to the date it is pronounced, even if made concurrent with a sentence already being served.”

United States v. Tancil, 817 F. App'x 234, 237 (7th Cir. 2020)

“[A] district judge may not backdate a sentence.”



Multiple Sentences of Imprisonment

18 U.S.C. § 3584

- Unless Judgment specifies sentences are to run concurrently, the default is consecutive when imposed on different dates.

18 U.S.C. § 3584(a)

- Multiple terms of imprisonment are aggregated (when possible) and treated as one sentence for administrative purposes. 18 U.S.C. § 3584(c).



Jail Credit

18 U.S.C. § 3585(b)

Credit for time spent in “official detention”

(1) as a result of the current offense; or

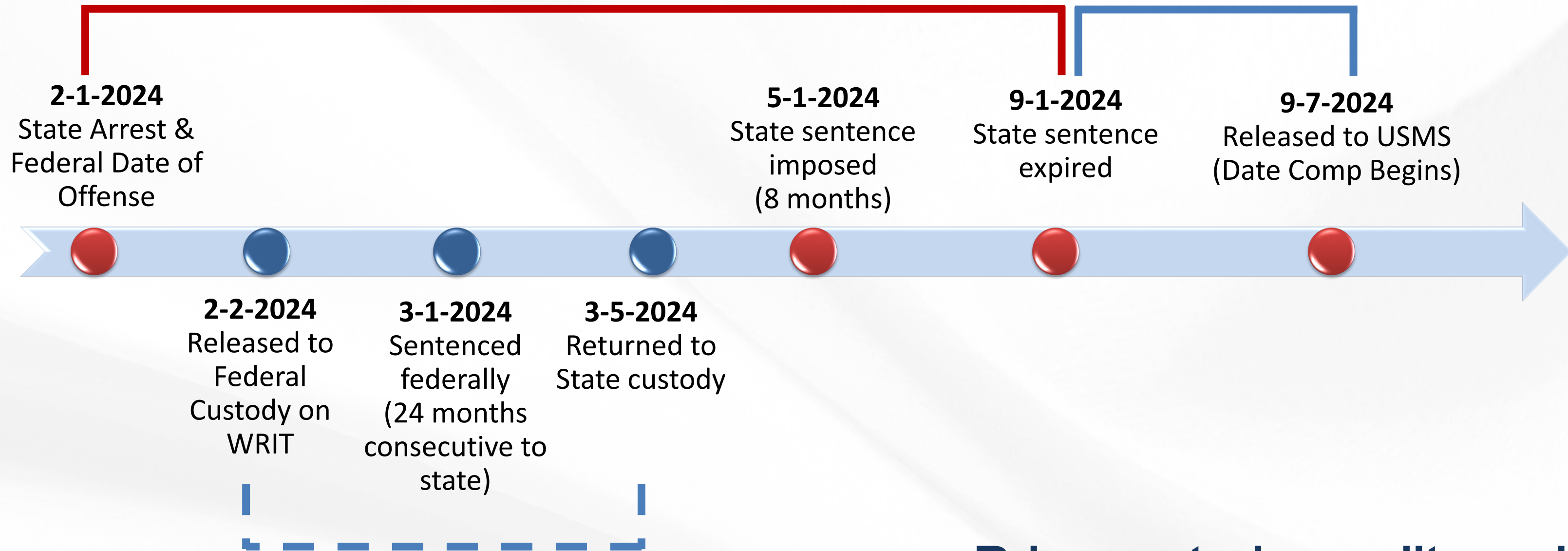
(2) any other offense for which defendant was arrested after commission of current offense

that has not been applied toward another sentence



PRIOR CUSTODY CREDIT

Common WHCAP Scenario



**Prior custody credit would be:
09 - 02 - 2024 to 09 - 06 - 2024**

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).”



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[.]”

Offender 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.”





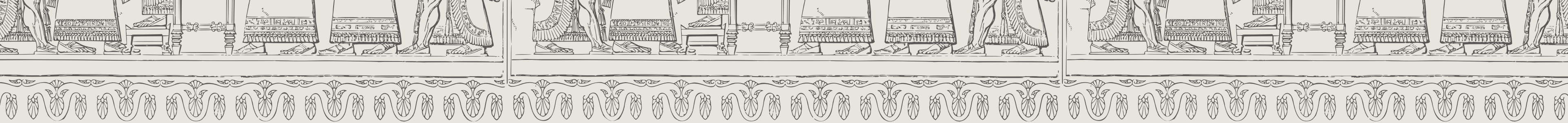
Medical/Mental Health Concerns

- If the PSR provides information regarding a defendant's medical/mental health needs, then that information will be reviewed at the initial designation. However, this information is not considered “verified” because it usually comes from the defendant.
 - However, medical records can always be attached to the PSR, when necessary, to assist in the review process. Those records will be forwarded to the designated facility.
 - Any additional records can be sent to bop-hsd-medicaldesignations@bop.gov.
 - The DSCC will establish a preliminary care level based upon the medical/mental health information provided prior to the defendant's designation, however, a final care level is not established until medical staff can conduct a “hands on” evaluation of the defendant at the initially designated institution.
- 

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



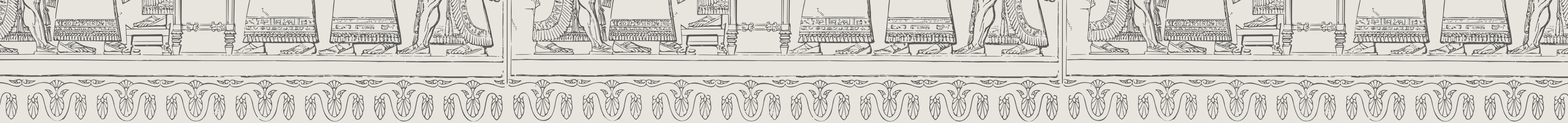
Problematic Judicial Recommendations

IMPRISONMENT

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

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.





Problematic Judicial Recommendations

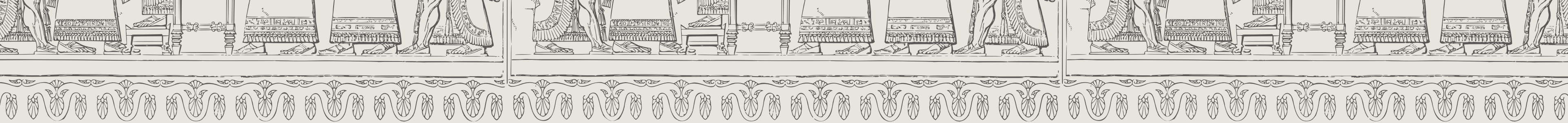
IMPRISONMENT

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).**





Helpful 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.
- 



Following the Thread Out: Offender Release Procedures

Good Conduct Time

18 U.S.C. § 3624(b)

For offenders 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 or for unsatisfactory progress toward GED

GCT should not be confused with First Step Act Programming Credits

Residential Drug Abuse Treatment Program

- RDAP is a voluntary 500-hour program for offenders with diagnosed substance use disorder. Upon successful completion of the RDAP, the offender may be eligible for up to a year off their sentence. Eligibility for *admission* to RDAP is different than eligibility for the *early release incentive* under 18 U.S.C. § 326I(e).
- Admission based on proximity to release date. Generally, an offender 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.



First Step Act Programming Credits

- An offender who successfully completes evidence-based recidivism reduction programming or productive activities may **earn** programming credits to be applied toward time in prerelease custody or supervised release – 18 U.S.C. § 3632(d)(4)
- A list of available FSA programs is available on the BOP website at www.bop.gov/inmates/fsa/programs.jsp.
- List of precluding offenses – 18 U.S.C. § 3632(d)(4)(D)
- There is a distinction between the ability to **earn** programming credits and the ability to **apply** programming credits.
- Among the factors that impact an inmate's ability to **apply** credit is the requirement at 18 U.S.C. § 3624(g) that an inmate must be at a minimum or low risk of recidivating (PATTERN).



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 offender to home confinement. However, the sentencing court can reduce the sentence and then order home confinement as a condition of supervised release.



Medical Records – Attorney requests

Overview

Records

Exemptions & Exclusions

FAQs

Privacy

Request Information

Pending Requests

What Is FOIA?

The Freedom of Information Act was enacted in 1966 to provide any person with access to Federal agency records and information. It applies only to Federal agencies, not to records held by Congress, the courts, or by state or local government agencies (each state has its own public access laws that should be consulted for access to state and local records). See the [U.S. Department of Justice FOIA page](#) for more information on the Freedom of Information Act.

Guidance on Attorneys Requesting Their Client's Medical Records

During the COVID-19 pandemic, the BOP FOIA office implemented an expedited process to permit attorneys representing individuals detained pretrial and/or sentenced individuals for purposes of CARES Act/Compassionate Release matters to request medical records by submitting a request via its publicly available email (bop-ogc-efoia-s@bop.gov).

BOP has now expanded that program. Accordingly, if an attorney submits a signed consent form from their client along with a request for their client's medical record to bop-ogc-efoia-s@bop.gov, the request will ordinarily be processed within three business days of receipt. Please note, however, the client's written authorization to provide the medical records to an attorney must be either (1) notarized or (2) sworn under penalty of perjury. A DOJ-Form 361 may be used to satisfy the authorization requirements. The form may be accessed at [DOJ-361 Form](#) ([bop.gov](https://www.bop.gov)).

If the attorney does not have a signed consent form from his or her client, the attorney may request medical records for a current adult in custody (AIC) by including the following information about the AIC in an email to bop-ogc-efoia-s@bop.gov:

1. Full name;
2. Current address;
3. Date of birth; and,
4. Place of birth.

In addition, the attorney must provide either a DOJ-361 Form completed and signed by the attorney or a statement either notarized or sworn under penalty of perjury on behalf of the AIC attesting that:

1. The attorney represents the AIC; and,
2. The medical records are necessary to adequately represent his/her client.



Attorney Resources

 An official website of the United States government. [Here's how you know](#) ▼



Federal Bureau of Prisons

[A-Z Topics](#) • [Site Map](#) • [FOIA](#)

Search [bop.gov](#)



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[Careers](#)

[Business](#)

[Resources](#)

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Attorney Resources

Publications, Policies, Forms, and other resources for Attorneys

Publications

- [Inmate access to litigation documents in electronic format \(e-Discovery\)](#)
- [Legal Resource Guide to the Federal Bureau of Prisons](#)
- [Federal Bureau of Prisons Pretrial Detention Legal Access Handbook](#)
[View the handbook translated in other languages](#) ▼

Other Resources

- [Guidance on Attorneys Requesting Their Client's Medical Records](#)
- [Notice to Legal Visitors: Rules of Conduct regarding the Use of Computer Laptops, Tablets and External Memory Devices](#)

Policies

- [Correspondence \(PS 5265.14\)](#)
- [Inmate Legal Activities \(PS 1315.07\)](#)
- [Pretrial Inmates \(PS 7331.05\)](#)
- [Visiting Regulations \(PS 5267.09\)](#)

Forms

- [Application to Enter Institution as Representative](#)
- [Criminal History Check](#)
- [Notification to Visitor](#)
- [Visiting Attorney Statement](#)



Getting other information

- Start with BOP website
 - General information, program statements, medical protocol, inmate locator.
 - BOP website for each institution has an email linked for the Executive Assistant. This person is usually the PIO for the institution.
- Not likely to receive information from front lobby officer outside of being transferred to counselor, etc.
- Have reg number handy
- Please keep in mind with call screening that front lobby officer will not be able to discuss anyone who is not on that institution's roster.



Visiting and Phone Calls

- Start with the Correctional Counselor

Unit Team

- *Unit Manager: oversees the unit*
- *Case Manager: release issues, victim witness, detainers, RRC, FSA*
- *Counselor: access issues, phone calls, copies, etc.*
- Please keep in mind unit team is busy.
 - May be away from the phone
 - Regular Augmentations
 - Staffing



Other logistics

- Phone calls are much easier to accommodate than visits.
 - *If you must visit – be prepared for morning slot (mainline meal, inmate count at 4:00 pm)*
 - *Be aware of last minute issues that may prevent a visit*
 - *Lockdown*
 - *Institution emergency that required staffing resources*
 - *Shakedowns, drug introductions, etc.*
- Legal mail: only utilize legal mail system to send legal mail
 - Not newspapers, magazines, photos, etc.
 - Do not let your inmate client use you as a conduit for non-legal mail.



Depositions, hearings, etc

- Schedule considerations: meal times, counts, etc.
- BOP cannot provide a court reporter. You will need to make arrangements for a court reporter. We will still need name, contact info, and NCIC. Keep in mind reporter may need to arrive early to allow for equipment screening.
- BOP cannot compel an inmate to participate in a deposition, etc.
- VTC can be arranged (and is preferred).
- State Matters requiring in-person appearance are different! See BOP PS 5875.13, Transfer of Inmate to State Agents for Production on State Writs.



Questions?

- We want to be helpful and work with you!
- Try not to assume bad faith (i.e. that delays are intentional)
- Get in touch with legal before you get too frustrated. Or the USAO who can get in touch with us on your behalf.
- Federal Regs and BOP policy prohibit disclosure of non-public information. You may be sent to FOIA.
- Get what you can directly from your clients. i.e. progress reports, FSA paperwork





CONTACT INFO:

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