

Federal Bureau of Prisons

Website = <http://www.bop.gov/>

Time Computation

The BOP is solely responsible for calculating federal terms of imprisonment. See United States v. Wilson, 503 U.S. 329 (1992). 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.”

Barber v. Thomas, 130 S. Ct. 2499 (2010) held that the calculation method used by the Bureau of Prisons to determine the amount of "good time" earned on federal criminal sentences is lawful.

[A] prisoner who is serving a term of imprisonment of more than 1 year other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. ...[C]redit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

The BOP's method, which the Court upheld, interprets "term of imprisonment" in the statute to mean entire imposed sentence" in some places, but "time actually served" when calculating good time. The BOP sets earned time aside at the end of each 365-day period. When the time remaining in a sentence minus earned time equals less than one year, the BOP applies a 54/365 ratio to prorate that last year and determine the prisoner's release date.

18 U.S.C. § 3624(b)(1)

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. So while the statute calls for an inmate to serve 85% of the sentence imposed, the BOP credits the amount of time actually served. So, the BOP makes the inmate serve approximately 87.5% of their time. For instance, on a 60 month sentence, the maximum good time credit is 235 days instead of 270 days and on a 120 month sentence, the maximum good time credit is 470 days not 540 days.

Your client must have (1) either a GED, High School diploma or better, or be working towards one, and (2) a sentence of one year and a day, to qualify for the maximum allowable good time. So 12 months equals 365 days served, 12 months and a day equals 312 days. (366 days - 54 days equals 312 days).

REMEMBER - *A client who does not have at least a GED is only eligible for a maximum of 42 days of Good Conduct Time per year.*

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 six to twelve 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
- Inmate cannot have a crime of violence.

Early release based on successful completion of RDAP

1. Pursuant to 18 U.S.C. § 227(d), an inmate who is sentenced for a non-violent offense, has a substance abuse problem and successfully completes a residential drug abuse treatment program, may qualify for an early release not to exceed twelve (12) months.
2. Inmates who are not eligible for early release.
(see 18 U.S.C. § 3621(e)(5)(B) and 28 C.F.R. § 550.55 (2000)):
 - a. INS/ICE detainees;
 - b. Inmates with prior felony or misdemeanor convictions for homicide, forcible rape, robbery, aggravated assault, arson, kidnapping or child sexual abuse offenses;
 - c. Inmates whose current offense has an element of physical force, carry, possession of a firearm, sexual abuse offenses;
 - d. Current offense that by its nature or conduct present a serious potential risk or physical force against the person or property of another;
 - e. Offenses for which a guideline enhancement was applied to the offense level for the use or threatened use of force or firearm.

*** In the Ninth Circuit be aware that the BOP complies with Arrington v. Daniels, 516 F. 3d 1106 (9th Cir. 2008) and they have a written response for inmates who are both in and out of circuit.

The BOP has actually changed their policy because of Arrington and every Circuit but the Ninth have held against the holding. See Bellreng v. Grondolsky, 2009 U.S. Dist. LEXIS 115844 (D NJ, Dec. 11, 2009); Fletcher v. Johns, 2011 U.S. Dist. LEXIS 80326 (D NC, July 22, 2011). The Ninth Circuit has reversed BOP decisions regarding some crimes of violence that would prevent early release (Abbott v. Federal Bureau of Prisons, 771 F. 3d 512 (9th Cir. 2014) as well as uphold BOP decisions (Peck v. Thomas, 697 F. 3d 767 (9th Cir. 2012)).

Concurrent verse Consecutive Time

18 U.S.C. 3585 governs the amount of jail time credited to a federally sentenced inmate. “Defendant **shall be** given credit toward the service of a term of imprisonment time he has spent in office detention prior to the date the sentence commences - - (1) **as a result of the offense for which the sentence was imposed... that has not been credited against another sentence.**” 18 U.S.C. § 3585(b). (Emphases added)

While the Attorney General through the Bureau of Prisons possesses the sole authority to make credit determinations pursuant to 18 U.S.C. § 3585(b) [United States v. Whaley 148 F. 3d 205 (2nd Cir. 1998)], circuit courts have held that district courts have concurrent authority to grant credit for time served in official detention. Based on the deletion of all references to ‘Attorney General’ in § 3585 manifested congressional intent to withdraw the Attorney General’s exclusive authority. See United States v. Beston, 936 F. 3d 361 (8th Cir. 1991) *rehearing denied* 1991 US App LEXIS 28427. With that said, the Bureau of Prisons would never know to give a client the complete credit he is due because they would never know about the previous jail time that the client served in state custody on the same matter.

Circuit courts have held that under 18 U.S.C. 3585(b), **a defendant shall be given credit toward his term of imprisonment “for any time he has spent in official detention prior to the date the sentence commences.”** See United States v. Becak, 954 F. 2d 386 (6th Cir. 1992). Although a district court can not order that a federal sentence begin when a defendant was arrested by the state for the same conduct underlying the federal offense. The Ninth Circuit has recently affirmed the BOP’s denial of jail credit for a federal inmate who had previously served state time for a related charge. See United States v. Schleining, 9th Cir. No.: 10-35792, June 27, 2011)

Because the BOP determines jail credit, the district court may accomplish the same end by departing downward in it’s federal sentence. “The proper way to ensure that Gonzalez served a total of 156 months would have been for the court to increase the downward departure it granted him and sentence him to 129 months.” United States v. Gonzalez, 192 F. 3d 350 (2nd Cir. 1999). A District Court has the authority under U.S.S.G. § 5G1.3 (c) to adjust a federal sentence for time served on

a state sentence in a way that is binding on the BOP, whether it is called a ‘departure’, a ‘credit’ or an ‘adjustment.’ See Ruggiano v. Reish, 307 F. 3d 121 (3rd Cir. 2002).

In United States v. Pray, 373 F.3d 358 (3rd Cir. 2004), the defendant served 4 months in state time custody for a drug offense and was later convicted on related federal drug offense district court may depart downward on federal sentence to credit defendant with state time, which was completed (and therefore not “undischarged” in accordance with U.S.S.G. §5G1.3). Likewise, a district court could not “credit” defendant in his federal case with the time he had served in his state case, in accordance with §5G1.3, but could accomplish the same result with a departure. See United States v. Rosado, 254 F. Supp. 2d 316 (SDNY 2003) where defendant was convicted of distributing heroin, and where defendant had served 7 months in state custody on the conviction that was relevant conduct in the federal sentence, defendant was granted a 7 month downward departure to account of state time already served through a departure.

A district court in the Northern District of New York held that the BOP improperly denied good time credit for the period of the federal sentence served concurrently with the state sentence. [(See Hill v. Corwin (ND NY 9:10-cv-553, June 9, 2010)].

Facilities

The BOP consists of 122 institutions, 6 regional offices, a Central Office (headquarters), 2 staff training centers, and 26 community corrections offices as well as 14 privately operated facilities.

In 2010 there were 115 institutions.

On August 20, 2015, there were 206,860 total federal inmates. Compared to May 22, 2014, there were 217,180 inmates and March 3, 2011, when the BOP housed 210,039 inmates.

5 security levels

- Minimum** - Also called 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.
- Low** - Fenced facility. BOP programs and work (UNICOR) stressed. Dorm or cubical housing.
- Medium** - Significantly more secured than a Low. Monitored/controlled movement of inmates. Cell housing rather than dormitory.
- High** - Penitentiaries. Highly secured facility. 'Close control' of inmates movement and programming. Long term incarcerations.
- Admin** - Facilities that have 'special' missions, i.e. medical, transfers, treatment programs (STOP), dangerous/escape-prone inmates, security risks, i.e. death row or terrorists/gang members.

*** Keep in mind that there are no female medium facilities

Inmate Classification and BOP Designation

All designations and time computations now take place at the *Designation and Sentence Computation Center (DSCC)* in Grand Prairie, Texas. See Program Statement 5100.08.

Prisoners are classified by the BOP according to procedures set forth in Program Statement P5100.08. See U.S. Dep't of Justice, Bureau of Prisons, Program Statement P5100.08 (Sept. 2006). All biographical data for a particular prisoner is entered into the BOP SENTRY system. This results in a security score based on the individual's characteristics. This score determines the minimum security level permitted.

The 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 such as a separation order. When an inmate is referred for a re-designation transfer, these same criteria are apply in making a decision for transfer to a new facility.

The placement authorized by the security score may be overridden, to the benefit or detriment of the individual prisoner, by variables known as Public Safety Factors or Management Variables. A custody level is also assigned to each inmate within any given security level institution.

SECURITY SCORING

The BOP uses the Presentence Investigation Report, the Judgment and Commitment Order including the Statement of Reasons, a United States Marshall report (USM 129) and any information available to the BOP from the Central Inmate Monitoring system (CIM).

The categories for the Security Designation scoring are:

(1) Voluntary Surrender?	No (0 points)	Yes (-3 points)
(2) Severity of Current Offense?	Lowest (0 points) Moderate (3 points) Greatest (7 points)	Low Moderate (1 point) High (5 points)
(3) Criminal History Score in PSR?	0-1 (0 points) 4-6 (4 points) 10-12 (8 points)	2-3 (2 points) 7-9 (6 points) 13+ (10 points)
(4) Documented History of Violence (minor/serious)?	None >15 years 10-15 years	(0 points/0 points) (1 point/2 points) (1point/4 points)

	5-10 years	(3 points/6 points)
	<5 years	(5 points/7 points)
(5) History of Escapes/Attempts? (minor/serious)?	None	(0 points/0 points)
	>15 years	(1 point/3 points)
	10-15 years	(1 point/3 points)
	5-10 years	(2 points/3 points)
	< 5 years	(3 points/3 points)
(6) Existing detainer?	None	(0 points)
	Lowest/Low Moderate	(1 point)
	Moderate	(3 points)
	High	(5 points)
	Greatest	(7 points)
(7) Age?	55 +	(0 points)
	36-54	(2 points)
	25-35	(4 points)
	< 25	(8 points)
(8) Education Level?	High School Graduate/GED	(0 points)
	Progress on GED	(1 point)
	No Degree/Not Progressing	(2 points)
(9) Drug/Alcohol Abuse?	None / >5 years	(0 points)
	<5 years	(1 point)

The total of points assigned in these categories is the security score used for purposes of designation.

Security Level	Custody Level	Men	Women
Minimum	Community/Out	0 - 11 points	0 - 15 points
Low	Out / In	12 - 15 points	16 - 30 points
Medium	Out / In	16 - 23 points	<i>no women's medium</i>
High	In and Max.	24 or more points	31 or more points

Practical Tips for each Category

1. The only way to reduce security points is to voluntarily surrender. If your client is close in points, argue to the Judge how significantly this can impact your client.

“This item allows for the subtraction of three points from the Security Point Total when the Judgment indicates the inmate was allowed to voluntarily surrender. For purposes of this item, *voluntary surrender means the inmate was not escorted by a law enforcement officer to either the U.S. Marshals Office or the place of confinement.* Additionally, this item applies only to post-sentencing voluntary surrender, and *does not include cases where the inmate surrendered to the U.S. Marshals on the same day as sentencing.* Voluntary Surrender Credit may only be applied to the initial term of confinement; it may not be applied to any subsequent Supervised Release, Mandatory Release or parole Violation return to custody.” P5100.08 chapter 4, page 6, September 12, 2006.
2. The severity of the offense values are based on the “Offense Severity Scale’ found in the BOP Policy Statement 5100.08. The points are assessed reflecting the most severe (documented) behavior regardless of the conviction. This information is taken from the PSR. Do your best to remove language regarding such behavior from the PSR if it is not properly documented.
3. The BOP takes the Criminal History Score from the Judgment first, then the PSR. If it is not listed in the Judgment or the PSR then the BOP may calculate this score on their own. It is imperative that you do not let the BOP designator score this on their own as they use the Criminal History section of the PSR as well as information from the LEIN, EPIC, CCH and other PSR’s. There is significant room for double counting and for scoring multiple convictions as multiple points.
4. Under History of Violence, the severity of the act of violence is assessed by the underlying conduct, not by the finding or conviction. Make sure you fight to remove any behavior that is not properly documented.
5. Escapes are graded as minor when they involve minimal security and no violence or threat of violence, ie. walking away from a halfway house or work program. All of the Circuits have found that a walkaway escape does not constitute a violent felony or a crime of violence. See *United States v. Ford*, 560 F. 3d 420 (6th Cir. 2009); *United States v. Hart*, 578 F. 3d 674 (7th Cir. 2009); *United States v. Jackson*, 594 F. 3d 1027 (8th Cir. 2010); and, *United States v. Lee*, 586 F. 3d 859 (11th Cir. 2009).

Escapes are serious if they occur from a higher security or have any violence or threat of violence.

6. If there is a pending charge, points are added under the Detainer category based on the documented behavior. No points are added for ICE detainees.
7. The age of the client is now a factor, weighting against younger inmates. If the inmates age is unknown, a default score of 4 will be given. If the client is near a birthday that would change the category, I ask for a continuance of the sentencing hearing.
8. The Education Level requires that the inmate's education level be verified. Provide documentation to the probation officer if necessary. Every jail has GED books, but for verification, you must have your client take (not necessarily pass) at least one of the exams.
9. Client's disclosure to the PSR writer should suffice for this variable.

Public Safety Factors (PSF)

1. Sentence Length (males only): Unless waived, a inmate with 10 years remaining on their sentence will be housed in a Low security institution. 20 years remaining will be housed in a Medium security facility and 30 years remaining in a High security facility.
2. Disruptive Group (males only): Any inmate who has been confirmed to be a member of a disruptive group (as identified by the BOP) shall be housed in a high security facility.
3. Greatest severity offenses (males only): Conviction for; aircraft piracy, arson, assault, car jacking, serious drug offenses, escape, espionage, explosives, homicide, robbery, sexual offenses, exporting 'sophisticated weaponry', threatening a governmental official.
4. Sex Offender: If the PSR or another 'official document' 'clearly indicates' behavior that is characterized as a sex offense, inmate can not receive a designation to a minimum security institution unless PSR is waived.
5. Threat to Government Official: Inmate can not receive a designation to a minimum security institution unless PSR is waived.
6. Deportable alien.
7. Violent behavior (females only): Inmate who has 2 prior convictions (or DHO actions for serious incidents of violence) within the last 5 years. Will be assigned to Carswell Admin Unit, unless waived.
8. Serious Escape: A female will be assigned to the Carswell Admin Unit. Males will receive at least a Medium security level designation.

9. Juvenile violence: Must be documented behavior (not necessarily involving a conviction.)
10. Serious Telephone Abuse: If a telephone was used to facilitate a crime (drug trafficking, threats, acts of violence), the inmate will be assigned at least a Low security level designation.
11. Prison disturbance: A male inmate will be housed in a High security facility. A female will be housed at the Carswell Admin Unit.

Waiver of Public Safety Factor

An inmate may receive up to three PSF's. PSF's maybe waived after review and approval of the DSCC Administrator. When a PSF is waived causing a placement outside the normal guideline range, the DSCC Administrator will then determine the most appropriate security level for the inmate.

Only the DSCC Administrator is authorized to waive a PSF. A request for the waiver of the PSF must be submitted to the DSCC on Form 409 (which can be found on the BOP website.)

BOP Terms and Acronyms

BOP =	Bureau of Prisons
CCC =	Community Correction Center
CCM =	Community Correction Management (the office which manages RRC's, CSC's and CCC's)
CIM =	Central Inmate Monitoring
CSC =	Community Sanction Center
DHO =	Disciplinary Hearing Officer
FCC =	Federal Correctional Complex
FCI =	Federal Correctional Institution
FMC =	Federal Medical Center
FPC =	Federal Prison Camp
LSCI =	Low Security Correctional Institution
MFCI =	Medium Federal Correctional Institution
MINT =	Mothers Infants Nurturing Together
PSF =	Public Safety Factor
PSR/PSI =	Presentence Investigation Report
RDAP =	Residential Drug Abuse Program
RRC =	Residential Reentry Center
SHU =	Special Housing Unit (pronounced like 'shoe') (typically disciplinary solitary confinement)
SMU=	Special Management Unit (pronounced like 'smooth') (strict visitation and communication policy)
SOTP =	Sex Offender Treatment Program
SOMP =	Sex Offender Management Program
UNICOR =	Prison Industry
USP =	United States Penitentiary