

# The Bureau of Prisons And Sentence Computations

Prisonology™

# Introduction

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# OIG Report on Untimely Releases

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- Department of Justice, OIG Report. May 2016 - Review of the Federal Bureau of Prisons' Untimely Releases of Inmates. <https://oig.justice.gov/reports/2016/e1603.pdf>
- Between 2009 – 2014, a total of 4,340 inmates released untimely of which 157 were staff errors.
  - *“DSCC staff members told us that experience computing sentences at the DSCC plays the most important part in being able to successfully communicate with external entities regarding jail credit.”*
  - Message from Michael Horowitz, Inspector General  
<https://www.youtube.com/watch?v=evoudFLlgaU>

# Program Review Division Report

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- Program Review Division, Central Office conducts program reviews to evaluate operations and identify deficiencies.

Program Reviews conducted on the DSCC;

- 2009 – Acceptable
- 2011 - Acceptable
- 2013 – Deficient

2013 PRD's report stated *“the initial sentence computations are not computed and audited with established time frames”* and *not all source documents “ supported the sentence computation.”*

# DSCC Reasons for Untimely Releases

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- ❑ Causes for Untimely Releases
  - ❑ Sentence Reductions
  - ❑ Ineffectual Terms (time served exceeds term imposed)
  - ❑ Delays in receiving and verifying documents
  - ❑ New information regarding Primary Jurisdiction and/or Prior Custody Credit
  - ❑ Staff Error

# Before DSCC ... and Today's DSCC

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- ❑ Limited Training of Staff
- ❑ Seasoned Staff Has Retired
- ❑ Most Staff Has Non-Law Enforcement Background
- ❑ Limited Policy Knowledge
- ❑ The Goal Is 100% Accuracy For Sentence Computation
  - ❑ Majority by First Time Review
  - ❑ Challenges through Administrative Remedies

# The Sentencing Court Determines ...

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- ❑ The length of the prison sentence -18 U.S.C. §3553
- ❑ How sentence runs in relation to other sentences, e.g., concurrent, consecutive, etc. -18 U.S.C. §3584(a)
- ❑ *Setser v. United States*, 566 U.S. 231 (2012): The Supreme Court held federal district courts have the discretion to order a federal sentence is to run consecutively to an anticipated state sentence that has not yet been imposed
- ❑ U.S.S.G. §5G1.3 Application Note 5: Exercise of judicial discretion under *Setser* is predicated on the court's consideration of the factors listed in §3553(a), including any applicable guidelines or policy statements issued by the Sentencing Commission

# Multiple Sentences

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- ◆ 18 U.S.C. §3584(a)  
Multiple terms of imprisonment imposed at the same time run concurrently unless ordered to run consecutively. Conversely, multiple terms of imprisonment imposed at different times run consecutively unless ordered to run concurrently.  
Note: §3584(a) does not apply to yet-to-be-imposed sentences. *Setser v. United States*, 566 U.S. 231, 234–35 (2012)
- ◆ 18 U.S.C. §3584(c)  
Multiple federal sentences are aggregated (when possible) and treated as one sentence for administrative purposes



# Intermittent Confinement

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- ◆ **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)) during the first year of the term.
- ◆ **U.S.S.G. §5C1.1** contemplates intermittent confinement as a substitute punishment in lieu of a term of imprisonment.
- ◆ **18 U.S.C. §3621(a)**: A sentenced defendant “shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior.”
- *White v. Pearlman, 42 F.2d 788, 789 (10th Cir. 1930). “A sentence of five years means a continuous sentence, unless interrupted by escape, violation of parole, or some fault of the prisoner, and he cannot be required to serve it in installments.”*

# Intermittent Confinement

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- ◆ **U.S.S.G. §5C1.1** Imposition of a Term of Imprisonment,
  - (c) If the applicable guideline range is in **Zone B** of the Sentencing Table, the minimum term may be satisfied by—
    - (1) a sentence of imprisonment; or
    - (2) a sentence of imprisonment that **includes** a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e), provided that at **least one month** is satisfied by imprisonment; or
    - (3) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, Community confinement, or home detention for imprisonment according to the schedule in subsection (e).

# Intermittent Confinement

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- ◆ **U.S.S.G. §5C1.1** Imposition of a Term of Imprisonment,
  - (d) If the applicable guideline range is in **Zone C** of the Sentencing Table, the minimum term may be satisfied by—
    - (1) a sentence of imprisonment; or
    - (2) a sentence of imprisonment that **includes** a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e), provided that **at least one-half** of the minimum term is satisfied by imprisonment.

# Intermittent Confinement

## **P.S. 5880.28 j.** Sentence Computation Manual, One Count Detention and Community Confinement/Home Detention Sentence.

- (2) The Judgment and Commitment Order directs that the "defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 10 months – five months in a correctional facility and five months community confinement." Following the sentence, usually on another page, the statement appears that the five months of community confinement or home detention is to be served as a condition of supervised release.
- The sentence of imprisonment in this example shall be computed as five months. After service of the five months of imprisonment in a Bureau of Prisons or contract facility, the inmate shall be released and placed on supervised release in community confinement or on home detention for the remaining five months.

# Community Confinement

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## Residential Re-entry Centers (RRC)

- ◆ **18 U.S.C. §3621(b)**: “Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person.”
- ◆ **18 U.S.C. §3624(c)(1)**: “The Director of the Bureau shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.”

# Community Confinement

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- ◆ U.S.S.G. §5F1.1
- Community confinement may be imposed as a condition of probation or supervised release (18 U.S.C. §§3563(b)(11) and 3585(d))
  - ❖ Defines community confinement as residence in a:
    - Community treatment center,
    - Halfway house,
    - Restitution center,
    - Mental health facility,
    - Alcohol or drug rehab center, or
    - Other community facility; and
  - ❖ Participation in:
    - Gainful employment,
    - Employment search efforts,
    - Community service (per U.S.S.G. §5F1.3, recommended no more than 400 hours),
    - Vocational training,
    - Treatment,
    - Educational programs, or
    - Similar facility-approved programs during non-residential hours.

Community confinement recommended for no more than six months

# U.S. Sentence Guidelines, §5G1.3

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§5G1.3, Imposition of a Sentence to an Undischarged Term of Imprisonment or Anticipated State Term.

Must be Relevant Conduct **§1B1.3.**

- ◆ (b)(1), the court ***shall*** adjust the sentence for any period of imprisonment if the court determines that such period will not be credited by the BOP and
- ◆ (2) the sentence for the instant offense shall be imposed to run concurrently to the remainder of the undischarged term of imprisonment.
- ◆ (c), If a state term of imprisonment is anticipated to result from another offense of relevant conduct, the sentence shall be imposed to run concurrently to the anticipated term of imprisonment.

□

# U.S. Sentence Guidelines, §5K2.23

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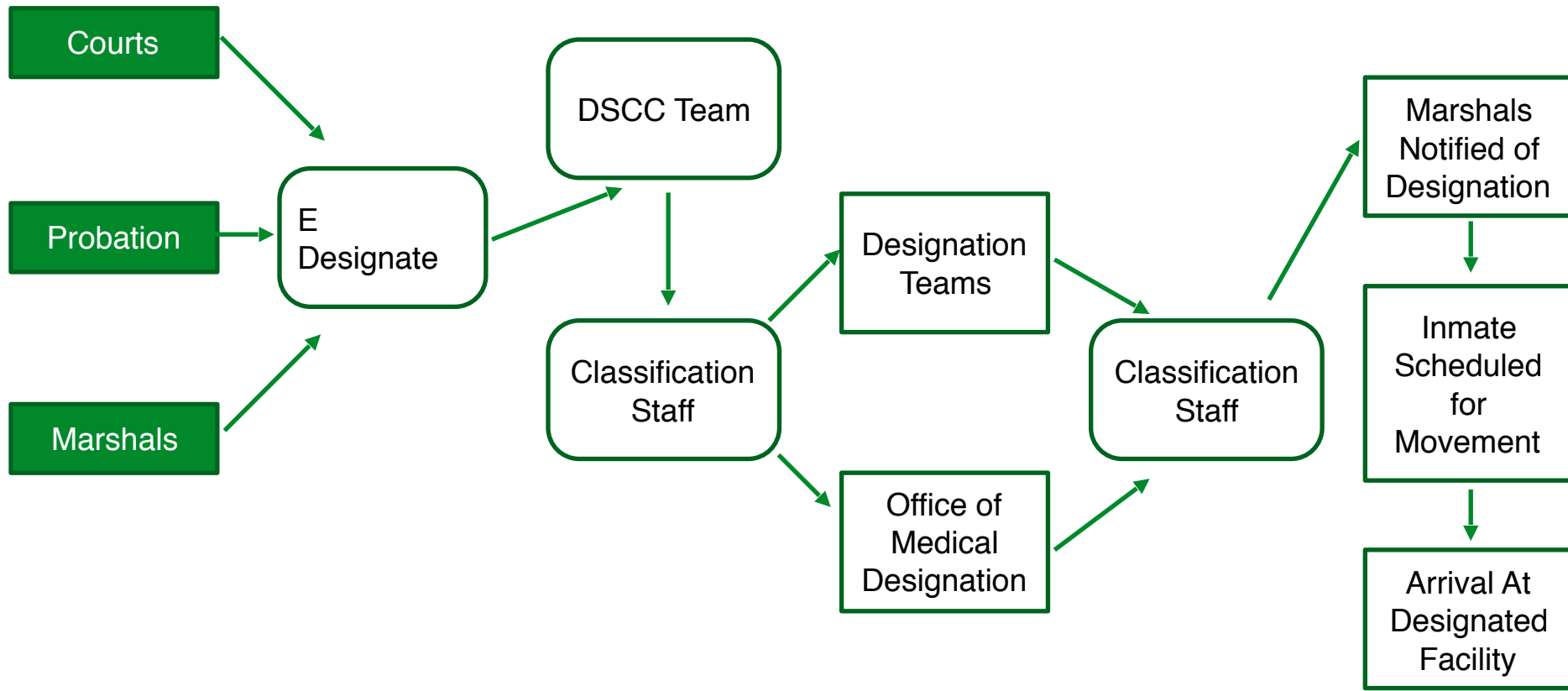
## §5K2.23, Discharged Terms of Imprisonment

- ◆ A downward departure may be appropriate if the defendant;
  - (1) completed serving a term of imprisonment;
  - (2) and that §5G1.3 would have provided an adjustment had the completed term of imprisonment been undischarged at the time of sentencing.
- Note: Adjustments under §5G1.3 and §5K2.23 are time periods only and Courts cannot order BOP for GCT adjustments. *See Lopez v. Terrell, 2<sup>nd</sup> Cir. Ct. Appeals, and Schleining v. Thomas, 9<sup>th</sup> Cir. Ct. of Appeals.*



# Designation and Sentence Computation Center - Grand Prairie

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# How The DSCC Distributes Work - COJ

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- ❑ Workload Distributed by **Courts of Jurisdiction** (COJs)
- ❑ Each Team Is Assigned Certain COJs
- ❑ Each Team Is Comprised Of:
  - ❑ Operations Manager
  - ❑ Classification and Computation Specialist (CCS)
  - ❑ Classification and Computation Technician (CCT)
  - ❑ Administrative Assistant

# DSCC Organizational Teams

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## Section I - Operations

Alpha

Bravo

Charlie

Delta

Echo

Foxtrot

India

Juliet

Kilo

## Section II - Classification, Designation and Transportation - Hotel Team

## Section III - Operations

Lima

November

Oscar

Papa

Quebec

Romeo

Sierra

Tango

## Section IV - Policy Development

## Section V - Legal Department

# The Bureau of Prisons Determines ...

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- ❑ Date of sentence commencement -18 U.S.C. §3585(a)
- ❑ Prior custody credit -18 U.S.C. §3585(b)
- ❑ Projected good conduct time -18 U.S.C. §3624(b)
- ❑ Projected release date -18 U.S.C. §3624(a)
- ❑ Security Classification

# Primary Custody

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- ◆ *Ponzi v. Fessenden*, 258 U.S. 254, 262 (1922)
  - Established the decision of who exercises custodial jurisdiction over an individual charged with crimes against two sovereigns was a matter of comity between the two sovereigns
    - United States v. Pleau*, 680 F.3d 1, 6 (1st Cir. 2012)
    - In re Liberatore*, 574 F.2d 78, 89 (2d Cir. 1978)
    - Allen v. Nash*, 236 Fed.Appx. 779, 783 (3d Cir. 2007)
    - United States v. Jackson*, 327 F.3d 273, 302 (4th Cir. 2003)
    - Zerbstv. McPike*, 97 F.2d 253, 254 (5th Cir. 1938)
    - Chick v. Wingo*, 387 F.2d 330, 331 (6th Cir. 1967)
    - Jake v. Herschberger*, 173 F.3d 1059, 1065 (7th Cir. 1999)
    - United States v. Dowdle*, 217 F.3d 610, 611 (8th Cir. 2000)
    - Poland v. Stewart*, 117 F.3d 1094, 1096 (9th Cir. 1997)
    - Weekes v. Fleming*, 301 F.3d 1175, 1180 (10th Cir. 2002)
  - Remains vested in the jurisdiction that first arrests a defendant until that jurisdiction relinquishes its priority.
  - Can be relinquished through operation of law (bail release, dismissal of charges, parole, sentence expiration) or mutual agreement.

# Commencement of the Sentence

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- ◆ **18 U.S.C. §3585(a) -A sentence commences when a defendant is received into custody at (or awaiting transport to) “facility at which sentence is to be served.”**
  - “Logically, a federal sentence cannot begin to run any earlier than the date on which it was imposed.” *McCoy v. Stephens*, 2014 WL 4809946 at \*3 (W.D.Tenn. Sept. 26, 2014).
  - “[A]fter a defendant is sentenced, it falls to BOP, not the district judge, to determine when a sentence is deemed to ‘commence.’” *United States v. Pineyro*, 112 F.3d 43, 45 (2d Cir. 1997)
  - “[T]he BOP has the authority to determine when a sentence commences.” *Doan v. LaManna*, 27 Fed.Appx. 297, 299 (6thCir. 2001).

# *Nunc Pro Tunc* Decisions

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- ❑ In *Barden v. Keohane*, 921 F.2d 476 (3d Cir. 1990), the Third Circuit Court of Appeals held that the Bureau must consider an inmate's request for concurrent service of his state and federal sentences.
- ❑ Applying 18 U.S.C. §3621(b), the BOP may retroactively designate state correctional facility for service of federal sentence after considering five factors outlined by statute:
  - 1) facility's resources
  - 2) the inmate's offense
  - 3) the inmate
  - 4) sentencing court's rationale for sentence and recommendations
  - 5) U.S. Sentencing Commission policy statements

# *Nunc Pro Tunc* Decisions

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- PS 5160.05, DESIGNATION OF STATE INSTITUTION FOR SERVICE OF FEDERAL SENTENCE,
- A designation effecting concurrent service of State and Federal is made when it is consistent with the goals of the criminal justice system and the Federal sentencing Court's intent.
- Barden eligibility for *Nunc Pro Tunc* designation is that the State sentence be imposed after the Federal sentence.



# Prior Custody Credit Calculated by BOP

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- ◆ **18 U.S.C. §3585(b): Credit given for time in “official detention”**
  - (b)(1) as a result of the current offense; or**
  - (b)(2) any other offense for which defendant was arrested AFTER commission of current offense;****which has not been credited towards another sentence.**
- *United States v. Wilson, 503 U.S. 329, 335 (1992). “Because the offender has a right to certain jail-time credit under §3585(b), and because the district court cannot determine the amount of the credit at sentencing, the Attorney General has no choice but to make the determination as an administrative matter when imprisoning the defendant.”*
- *United States v. Wynder, 659 Fed.Appx. 761, 763 (5th Cir. 2016) “District courts lack the jurisdiction to compute prior-custody credit at sentencing.”*

# Prior Custody Credit Calculated by BOP

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## □ WILLIS AND/OR KAYFEZ CREDITS

- Federal and State Sentences run Concurrently

*Willis v. U.S.*, 438 F. 2d 923 (5th Cir. 1971) credits, the Federal Raw Full Term Date must Exceed the State Raw Full Term Date.

- *Willis* credit to be applied is all time spent in State custody from the date of offense (SRA) or, from the date the Federal detainer was lodged (Old Law) minus any Federal presentence time credits that overlap the State presentence time credits, through the day before the first sentence began to run.
- *Kayfez v. U.S.*, 993 F2d 1288 (7th Cir. 1993) credits, the Federal Raw Full Term Date must Exceed the State Effective Full Term Date. *Kayfez* credit is the amount of days between the State Effective Full Term Date and Federal Raw Full Term Date.
- Subtract State qualified pre-sentence time from the State Raw Full Term Date. If the State Effective Full Term date is reduced to an earlier date than the Federal Raw Effective Full Term Date, *Kayfez* credit will be given..

# Good Conduct Time

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- ◆ 18 U.S.C. §3624(b)
  - ❑ 54 days of GCT may be earned for each full year **served, not imposed** on a sentence in excess of one year, with the GCT being prorated for the last partial year.
  - ❑ No GCT can be earned on, or awarded to, a sentence of one year or less, or a LIFE sentence.

*Barber v. Thomas, 560 U.S. 474, 492 (2010)*

*“We remain convinced that the BOP’s approach reflects the most natural reading of the statutory language and the most consistent with its purpose.”*

# Good Conduct Time (GED Requirement)

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- ◆ 28 CFR §523.20(c). For inmates serving a sentence for an offense committed on or after April 26, 1996 (PLRA), the Bureau will award,
  - (1) GED SAT, 54 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has earned or is making satisfactory progress toward earning a GED credential or high school diploma; or
  - (2) GED UNSAT, 42 days credit for each year served (prorated when the time served by the inmate for the sentence during the year is less than a full year) if the inmate has not earned or is not making satisfactory progress toward earning a GED credential or high school diploma.

# Good Conduct Time (GED Requirement)

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## Exemption

- ◆ 28 CFR §523.20(d), An alien who is subject to a final order of removal, deportation, or exclusion is eligible for, but is not required to, participate in a literacy program, or to be making satisfactory progress toward earning a General Educational Development (GED) credential, to be eligible for a yearly award of good conduct time.

# Good Conduct Time (GED Requirement)

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PS5884.03, Good Conduct Time Under the Prison Litigation Reform Act (PLRA), March 31, 2006

- An inmate alien subject to a final order of removal, deportation, or exclusion will earn GCT at the annual rate of 54 days (prorated for a partial year at the end of the sentence).
- After completion of the deportation hearing, the Case Manager or designee will enter the Case Management Activity (CMA) assignment into SENTRY and forward a copy of the order to ISM staff for inclusion in the Judgment and Commitment (J&C) file.
- ISM staff must recalculate the sentence computation. SENTRY will automatically change the annual GCT rate from 42 days to 54 days.

# BOP Sentence Computations

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- Source Documents used to compute sentences.
  - Judgment and Commitment Order(s)
  - Pre Sentence Report(s)
  - USM-129, U.S. Marshall Custody Form
  - NCIC/Rap Sheet
  - BOP Expiration Tables (if needed)

# BOP Sentence Computation

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Example of a manual sentence computation as per PS5880.28, Sentence Computation Manual.

## Sentence Information

Offense Date: 03-28-2003

Date of Arrest: 03-28-2003

Date Sentenced: 08-24-2005, 60 Months Imprisonment, 3 Years S.R.

## Prior Custody Time Credit

Date Computation Begins = 2005-08-24 = 24343

Date of Arrest = 2003-03-28 = -23463

**880 Days**

**Total 880 Days Jail Credit**

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# BOP Sentence Computation

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## EFFECTIVE FULL TERM DATE CALCULATION

Date Computation Begins = 2005-08-24  
Tentative EFT Date = 2010-08-23\* = 26168  
Prior Custody Time = = -880 Days  
Final EFT Date = **2008-03-26** = **25288**

## GOOD TIME ANNIVERSARY DATE CALCULATION

Date Computation Begins = 2005-08-24  
Anniversary Year = + 01-00-00  
Unaff. First Anniv. Date = 2006-08-24 = 24708  
Prior Custody Time = = -880 Days  
First Anniversary Date = **2004-03-27** = **23828**

# BOP Sentence Computation

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## GOOD CONDUCT TIME CALCULATION

Final Full Term Date	=	2008-03-26	=	25288
1 <sup>st</sup> Year Anv. 03-27-2004	=		=	<u>- 54</u> Days
Tentative SRD (54 GCT)	=	2008-02-01	=	25234
2 <sup>nd</sup> Year Anv. 03-27-2005	=		=	<u>- 54</u> Days
Tentative SRD (108 GCT)	=	2007-12-09	=	25180
3 <sup>rd</sup> Year Anv. 03-27-2006	=		=	<u>- 54</u> Days
Tentative SRD (162 GCT)	=	2007-10-16	=	25126
4 <sup>th</sup> Year Anv. 03-27-2007	=		=	<u>- 54</u> Days
Tentative SRD (216 GCT)	=	2007-08-23	=	25072
Last Anniversary Date	=	2007-03-26*	=	<u>-24922</u> Days
<b>Partial Year Remaining</b>	=		=	<b>150 Days</b>

# BOP Sentence Computation

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## PARTIAL YEAR GOOD CONDUCT TIME CALCULATION

BOP GCT Formula for Partial Year:  $54 \div 365 = 0.1479 = .148$

150 days x .148 = **22.0**

150 - 22 = 128 x .148 = 18.944 + 128 = 146.944

150 - 21 = 129 x .148 = 19.092 + 129 = 148.092

150 - 20 = 130 x .148 = 19.240 + 130 = 149.24

150 - 19 = 131 x .148 = 19.388 + 131 = 150.38 \*Drop fraction\*

Tentative SRD (216 GCT) = 2007-08-23 = 25072

Prorated GCT for Partial Year = 19 (GCT Days)

**Projected Release Date = 2007-08-04 = 25053**

216 + 19 = **235** Days of Good Conduct Time

# BOP Sentence Computation

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## SUPERVISED RELEASE CALCULATION

Release Date = 2007-08-04  
Supervised Release Term = + 03-00-00 Years  
**Supervised Release Expires = 2010-08-03\***

## SUMMARY

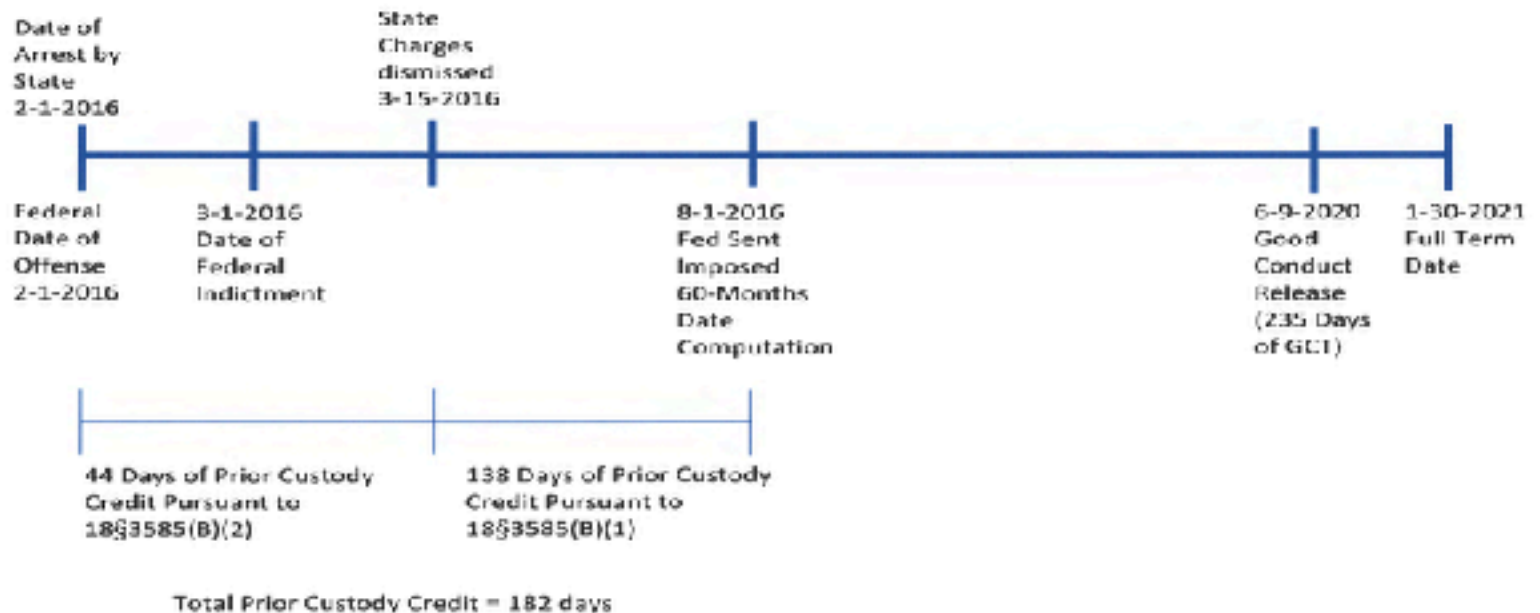
Total Sentence = 60 Months Imprisonment, 3 Years S.R.  
Prior Custody Time = 880 Days  
EFT Date = 03-26-2008  
GCT Days = 235 Days  
Release Date = 08-04-2007  
S.R. Expires = 08-03-2010

# Example

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## Scenario #1

Defendant is arrested on related state charges on February 1, 2016. He is indicted on the federal case on March 1, 2016, and a writ of Habeas Corpus ad Prosequendum is issued. State charges are dismissed on March 15, 2016. Defendant is sentenced to 60 months on August 1, 2016. [Defendant will be credited for all time served beginning on February 1, 2016]

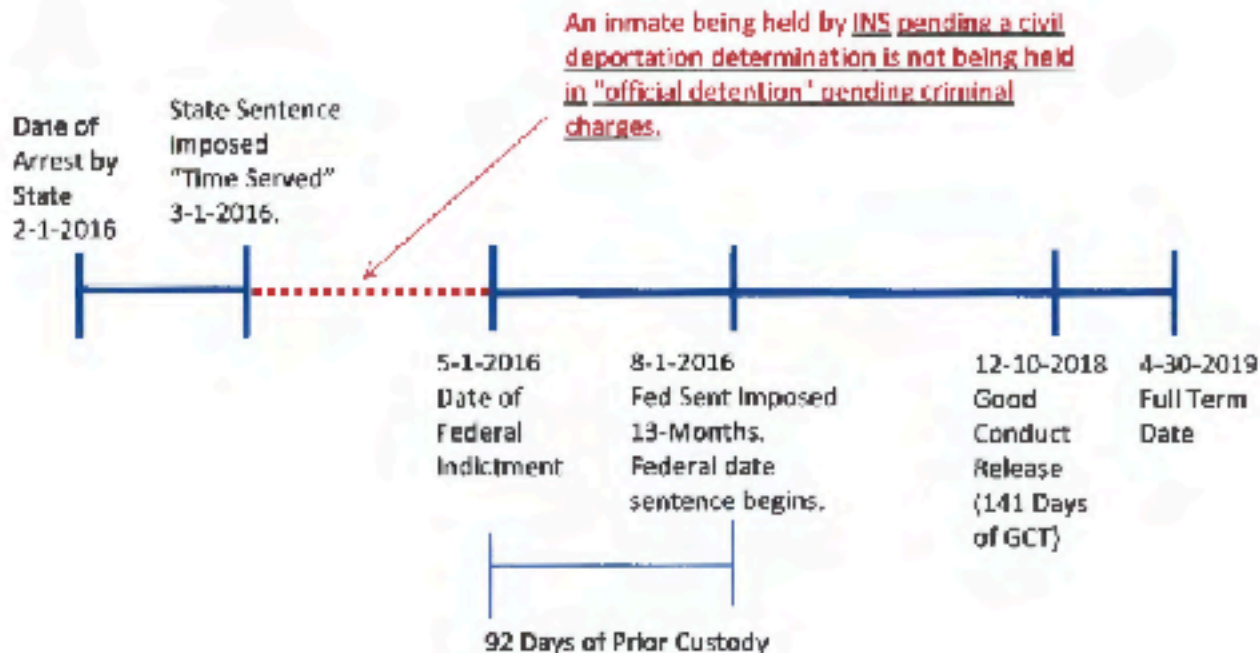


# Example

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## Scenario #4

Defendant, unauthorized alien, is arrested on unrelated state charges on February 1, 2016. On March 1, 2016, defendant is sentenced to time served, but remains in custody on an Immigration and Customs Enforcement detainer. On May 1, 2016, defendant is charged in federal case and defendant is transferred to the custody of the United States Marshals Service. On August 1, 2016, defendant is sentenced to 13 months. In making the determination of whether an inmate was held pending civil deportation proceedings or criminal prosecution, the BOP utilizes the earliest date contained in the source documents on which the individual was charged criminally. [BOP will not credit for time on ICE hold]



# Questions

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