

FEDERAL BUREAU OF PRISONS ISSUES

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APRIL 2010

DESIGNATION AND SENTENCE COMPUTATION AUTHORITY CENTRALIZED

Most designation and transfer functions have been shifted to the Designation and Sentence Computation Center (DSCC) in Grand Prairie, Texas. Designation teams are grouped by judicial districts - Western District of Pennsylvania is under Team Echo. Correspondence can be sent via email to GRA-DSC/PolicyCorrespondence&AdminRemedies@bop.gov. Although you can call my office in the Northeast Region with questions - I will likely need to refer you to the DSCC for designation and transfer issues. In addition, responsibility for sentence computations has also been assumed by DSCC. Judicial recommendations concerning designation or programs are best placed on the Judgement and Commitment order.

Medical designation decisions are made in the Central Office, Office of Medical Designations and Transfers. The Bureau has adopted a level of medical care approach to assist in designating medical needy inmates to institutions where medical care is more readily available. Four care levels are used: care level 1 is the least in need of medical care, and level 4 is the most in need of care. Costs will be saved by minimizing extended medical trips. For example, FCI McKean, PA and FCI Ray Brook, NY will only house care level 1 inmates. The Bureau is also experiencing population pressures at the Federal Medical Centers. The level of care approach is designed to help in freeing bed space for inmates who require designation to a medical center.

To assist in overall bed space pressures, the Bureau has been entering into contracts with private correctional companies. These contract institutions house low security federal inmates who are either District of Columbia offenders or deportable aliens.

The Bureau has changed the title for contract community corrections centers (CCC). In recognition of their primary role in assisting inmates to reintegrate into the community, the centers are now called Residential Reentry Centers (RRC). Colloquially, the RRCs are also known as halfway houses.

DESIGNATION CONSIDERATIONS

There are five levels of federal institutions: minimum, low, medium, high, administrative (pretrial, medical). The factors considered in assessing security level include: offense severity, type of detainers, expected length of incarceration, criminal history, history of escape or violence, voluntary surrender. The Presentence Investigation Report is the key document and provides most of the factual basis. The criminal history category found by the Sentencing Court is used to score part of the Bureau classification. As a general rule, the Bureau tries to designate to an

appropriate security level within 500 miles of residence. In addition to security level, there are a host of other items considered in reaching a designation decision. These include judicial recommendations, medical concerns, mental health, atypical nature of offender (former law enforcement officer, high publicity, unusually vulnerable, cooperator), atypical nature of offense (terrorist, sex offender), separation needs, and deportable alien. Prior to sentencing, the district court can commit the defendant to the Bureau for a study to address medical conditions (18 U.S.C. § 3552) (not common). Inmates are not permitted to keep a copy of their own Presentence Report, but inmates are permitted access to the Report.

If the court makes findings regarding controverted matters contained in the Presentence Investigation Report that may affect the defendant's classification, the court should record these findings in the "Statement of Reasons" attachment to the Judgement and Commitment Order. See Fed. R. Crim. P. 32(c)(1),

Most Bureau of Prisons Program Statements may be found at www.bop.gov. Program Statement 5100.08, Security Designation and Custody Classification, may be found there. The public web site has considerable information about individual institutions (visiting, directions) and an Inmate Locator.

INMATE WORK ASSIGNMENTS

All sentenced federal inmates are required to work with the exception of those who, for security, educational, or medical reasons, are unable to do so. Most inmates are assigned to an institution job such as food service worker, orderly, plumber, painter, warehouse worker, or groundskeeper. These work assignments pay from 12 cents to 40 cents per hour.

Federal Prison Industries (UNICOR) is one of the Bureau's most important and cost effective correctional programs. UNICOR's goal is to employ and provide job skills training to the greatest practicable number of inmates confined within the Bureau. UNICOR employs approximately 21,000 inmates, representing approximately 18 percent of the sentenced, medically-eligible, federal inmate population, in over 100 factories. UNICOR work assignments pay inmates from 23 cents to \$1.15 per hour. Demand among the inmates for a UNICOR work assignment is high. UNICOR contributes significantly to the safety and security of federal correctional institution by keeping inmates constructively occupied. In addition to the job skills, inmates who participate in work programs and vocational training are less likely to engage in institutional misconduct, thereby enhancing the safety of staff and other inmates.

EDUCATION AND RECREATION PROGRAMS

Education programs play an important role in providing inmates with opportunities to gain skills needed for successful reentry to the community, within a secure environment. Each federal institution maintains an Education Department responsible for providing inmates with

literacy classes and other related educational programs. Every institution provides both leisure and law library services.

By statute, 18 U.S.C. § 3624(f), each federal institution is required to have an education program for those federal prisoners who are not functionally literate. Non-English speaking inmates are required to participate in an English as a Second Language program until able to function in the English language at the eighth grade level. With few exceptions, inmates lacking either a high school diploma, or a General Educational Development credential (GED), are required to enroll in an adult literacy program for a minimum of 240 hours.

A variety of programs for self-improvement, including nutritional education, physical fitness, weight control, stress reduction, anger management, parenting skills, and interpersonal skills development are offered. College and vocational training courses are available at many institutions. Most institutions offer vocational training in a variety of fields, such as culinary arts, building trades, dental assistant, and dog training.

Recreation programs encourage inmates to make constructive use of leisure time and offer group and individual activities. Physical fitness and wellness programs are provided during non-working hours to promote positive lifestyle changes. Hobbycraft programs vary from institution to institution, including activities such as painting, leathercrafts, artwork, and ceramics. Completed projects are mailed home, as inmates are not permitted to retain completed projects in their possession.

SUBSTANCE ABUSE PROGRAMS

The Bureau has committed considerable resources and staff to the treatment of inmates with substance abuse problems, including abuse of drugs and alcohol. Each institution is staffed with one or more Psychologists, a Drug Abuse Program Coordinator, and a minimum of one Drug Abuse Treatment Specialist, to provide non-residential drug abuse treatment and drug abuse education to its inmates. Upon admission to a BOP facility, a staff psychologist reviews the inmate's case for any history of drug use. Drug education is available to all inmates, and a variety of programming is available.

The most intensive drug abuse program offered is the Residential Drug Abuse Treatment Program (RDAP). Inmates who successfully complete the RDAP program may be granted an early release of up to 12 months. For an inmate to be eligible for placement in the RDAP, psychology staff must find evidence the inmate had a substance abuse problem in the last 12 months in the community (prior to incarceration). RDAP is offered at 59 federal institutions.

Inmates are admitted into RDAP based on proximity to their release date, to ensure that every inmate who volunteers and is eligible for RDAP receives the full course of treatment prior to community release. Inmates in the residential program are housed together, to create a treatment community. Treatment is provided for a minimum of 500 hours, over a 9 to 12 month

period. Required RDAP components also include a transitional drug program, when the inmate is returned to general population, and six months participation in community-based drug treatment, when the inmate is released to a Residential Reentry Center (halfway house). An inmate must have at least 24 months remaining to be served on the sentence in order to complete all aspects of the RDAP. This means the inmate cannot be serving a sentence of less than 28 months. The Third Circuit has held the sentencing court cannot increase a sentence to have the inmate be eligible for the RDAP (or other rehabilitative programs). United States v. Manzella, 475 F.3d 152 (3d Cir. 2007).

RDAP and the non-residential drug abuse program are voluntary programs which the inmate can refuse. When the court recommends drug treatment, the drug education program is mandatory and the inmate cannot refuse to attend.

SEX OFFENDER PROGRAMS

The Bureau maintains two types of programs addressing the treatment and the management of inmates with a history of sex offenses. The focus of the Sex Offender Treatment Program (SOTP) is treatment; the focus of the Sex Offender Management Program (SOMP) is correctional management.

The SOTP is a voluntary program for inmates within 12 to 24 months of release. Inmates, meeting certain criteria, are referred to the SOTP where they will be provided with the tools needed to gain control of their sexual deviancy and develop methods which will help prevent relapse.

The SOMP is a mandatory program assignment for inmates who have been assessed a Public Safety Factor of sex offender, and who require additional correctional supervision. SOMP is comprised of four essential components: assessment, management, treatment and release planning. Based on individual evaluation, a Correctional Management Plan (CMP) is developed for each inmate. Inmates are held accountable for adherence to the CMP. Community release planning is a major part of the program. Prior to release from either the SOTP or the SOMP, staff prepare a comprehensive discharge packet for the United States Probation Officer, with specific recommendations regarding expected intensity of community supervision and monitoring.

The Adam Walsh Act, enacted on July 27, 2006, has a number of important provisions, two of which directly effect the Bureau of Prisons: (1) expansion of the two types of sex offender programs and (2) a certification procedure to request the court to consider certain sex offenders for possible civil commitment. The Act added 18 U.S.C. § 3621(f) which requires the Bureau of Prisons to establish, in each of its six regions, a Sex Offender Management Program (SOMP) and a Sex Offender Treatment Program (SOTP). The Bureau presently has four SOMP's and one SOTP operational and is in the process of establishing additional SOTPs and SOMP's.

The Act also created 18 U.S.C. § 4248, which authorizes the Bureau to certify to federal district courts that certain inmates are “sexually dangerous persons” for whom civil commitment is required. Certification stays the release of the inmate and initiates district court proceedings pursuant to 18 U.S.C. § 4248(b),(c), and (d). The Act amended 18 U.S.C. § 4247 to define “sexually dangerous person” as “a person who has engaged or attempted to engage in sexually violent conduct or child molestation and who is sexually dangerous to others.” The Bureau has proposed regulations to implement these provisions (72 Fed. Reg. 43205-209 (Aug. 3, 2007)). Certifications are presented to the district court where the offender is incarcerated. When filed, the court will conduct a civil commitment hearing. The constitutionality of the civil commitment provision is before the Supreme Court (Comstock) with no decision as of April 20, 2010.

IMPLEMENTATION OF SECOND CHANCE ACT

The Second Chance Act of 2007 went into effect on April 9, 2008. The Act focused on effective return of prisoners to the community. The Act revised 18 U.S.C. § 3624(c) to provide 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 the prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such condition may include a community correctional facility.” The prior version of the statute had referenced “a reasonable part, not to exceed six months, of the last 10 per centum of the term to be served...” The Second Chance Act retains the 10% or six months, whichever is shorter, limit to the authority of the Bureau to place a prisoner in home detention. The most significant change in Bureau procedure is that inmates will be reviewed, to the extent possible, for community confinement when there are 17 to 19 months remaining to be served.

INMATE FINANCIAL RESPONSIBILITY PROGRAM

The Bureau of Prisons developed the Inmate Financial Responsibility Program (FRP) to foster in inmates the concept of being responsible for financial obligations. The regulations implementing the program are found at 28 C.F.R. §§ 545.10 and 545.11. Court ordered obligations are required to be paid in the following priority: (1) special assessments, (2) restitution, (3) fines and costs. The FRP is voluntary: the inmate must agree to have money sent to the court from his or her trust fund account. Bureau staff assess outside assets and commissary balances (from whatever source) is assessing appropriate suggested payments. Inmates are expected to participate in the FRP. The failure to show financial responsibility is considered by the Bureau in assessing classification to work assignments and housing assignments. An inmate with a court-ordered financial obligation is given preference for assignment to UNICOR, and such an assignment requires that 50% of the inmate’s earnings are applied to payment of that obligation.

The Third Circuit held the Sentencing Judge cannot delegate the court’s authority to set a payment schedule to the Bureau of Prisons. United States v. Corley, 500 F.3d. 210 (3d Cir.

2007), cert. granted, 129 S.Ct. 29 (2008)(cert. granted on different issue); United States v. Coates, 178 F.3d 681 (3d Cir. 1999). The problem in Corley was that the sentence had an open order to the defendant to participate in the FRP without a judicially set payment. Corley found this order impermissibly delegated to the Bureau of Prisons the court's obligation to set a payment schedule. If the Sentencing Judge wants the defendant to participate in the FRP, the Judge should order the payment of the fine and restitution due immediately. Conversely, if the Sentencing Judge wants the defendant not to participate in the FRP, the Judge should order payment of the fine and restitution due at a future time, i.e., time of commencement of supervised release. The Sentencing Court could also state in the order: "The defendant is encouraged (or recommended) to participate in the Bureau of Prisons Financial Responsibility Program to pay the financial obligations imposed in the judgment." Since the defendant is not ordered to be subject to the Bureau of Prisons FRP, the encouragement or recommendation should not be an impermissible delegation. The position of the Bureau is, if the court obligations are due immediately, the Bureau can independently assess the inmate's ability to pay under the FRP.

JUDICIAL RECOMMENDATIONS

The Bureau considers recommendations from sentencing judges and follows over 70% of judicial recommendations. The Bureau receives judicial recommendation in about half the cases. Instead of recommending a specific institution, it is more helpful for the court to recommend the purpose; i.e., close to family, receiving drug treatment, etc. When only a specific institution is noted, bed space or separation concerns may prohibit placement to that specific institution. Knowing the underlying purpose affords the Bureau more flexibility. As a general rule, the Bureau attempts to designate an inmate within 500 miles of his or her residence. There are situations which can cause the designation to be outside the usual 500 mile radius, e.g., former law enforcement officer, high publicity, vulnerable or cooperating inmate, lack of bed space. Unless the Court requests a reply from the Bureau, Bureau practice is not to send a response to the court even if the recommendation cannot be followed.

Recommendations in sentence calculation are more complicated. A judicial recommendation (or order) for credit for time served is unnecessary: the Bureau is required to grant such credit when appropriate under 18 U.S.C. § 3585(b). When there are multiple sentences already imposed or expected to be imposed, options will turn on the specific facts. It would be best to contact Regional Counsel's office to discuss the specific situation.

SENTENCING ISSUES EFFECTING THE BUREAU OF PRISONS

WHAT THE SENTENCING COURT CANNOT ORDER (LEGALLY):

The Sentencing Court has jurisdiction and authority to order many things concerning a federal sentence. The following is a list of what the court cannot order (at least legally):

Place of incarceration - 18 U.S.C. § 3621

Earlier Commencement of federal sentence - 18 U.S.C. § 3585(a)

Credit towards sentence for presentence custody - 18 U.S.C. § 3585(b)

Referral into RRC or home detention - 18 U.S.C. §§ 3621(b), 3622, 3624(c)

Temporary release on furlough - 18 U.S.C. § 3622

Participation in a specific program - 18 U.S.C. § 4042

Participation in Residential Drug Abuse Program - 18 U.S.C. § 3621(e)

The Sentencing Court can recommend any of the above and the Bureau will consider unless the recommendation violates a statute. The Sentencing Court has jurisdiction to order participation in specific programs or placement in community custody **as a special condition** of either probation or supervised release.

SPLIT SENTENCES UNDER U.S.S.G. § 5C1.1

Proper wording for split sentences imposed under U.S.S.G. § 5C1.1 is a recurring problem. Community confinement (RRC placement or home detention) may be substituted for imprisonment but the community confinement portion must be ordered **as a special condition** of supervised release or probation. The most common split sentence situation is in Zone C cases. Section 5C1.1 permits the sentencing court to substitute community confinement for imprisonment of up to one half of the minimum term under the guidelines. The key is 5C1.1 requires the community confinement segment (either RRC or home detention) to be imposed as a **special condition** of supervised release or probation. If there is no special condition, the Bureau will treat a reference to community confinement as a recommendation.

Example: Defendant is facing a sentencing guideline range of 10-16 months and the court wishes to impose a 10 month sentence, but also to substitute one half in community confinement under 5C1.1. The court can impose a sentence of 5 months imprisonment to the Federal Bureau of Prisons and a supervised release term of appropriate length. If the custodial part of the sentence is only 5 months, the court must order a **special condition** of supervised release to require the defendant to spend 5 months of supervised release in community confinement (either RRC or home detention as selected by the court).

Suggested wording on Judgement and Commitment order: "The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of five months. In addition, under 5C1.1, the defendant is required, as a condition of supervised release, to spend the first five months in a Community Corrections Center [or home detention]."

NOTE: There needs to be a corresponding **special condition** of supervised release requiring community confinement in the Conditions section of the Judgement and Commitment order.

FEDERAL BUREAU OF PRISONS

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DESIGNATION AND SENTENCE COMPUTATION CENTER (DSCC)

**Send correspondence on designations to:
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