U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

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SUBJECT: Sentence Computation Manual (CCA of 1984)

1. **PURPOSE AND SCOPE.** This Program Statement transmits the "Sentence Computation Manual" which establishes the policies and procedures for the computation of sentences imposed for violations of the United States Code under the statutes of the Comprehensive Crime Control Act of 1984 (CCCA).

On October 12, 1984, President Reagan signed the Comprehensive Crime Control Act of 1984 (CCCA) into law. Two major components of this law, the Sentencing Reform Act of 1984 (SRA) and the Insanity Reform Act of 1984, completely restructured the sentencing guidelines and policies of the United States Courts.

After the effective date of the SRA on November 1, 1987, a number of United States Court decisions found all or parts of the SRA unconstitutional. As a result, the SRA was implemented nationally in various ways.

On January 18, 1989, in **Mistretta v. U.S.**, the Supreme Court considered the constitutionality of the sentencing guidelines and ruled that the guidelines were constitutional. This Manual provides instructions for computing sentences imposed under the CCCA both before and after the **Mistretta** decision.

2. **DIRECTIVES AFFECTED**

a. **Directives Rescinded.** None.

b. **Directives Referenced.** None.

3. **STANDARDS REFERENCED**

a. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4094

b. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: 2-CO-1E-05

c. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-1E-03

d. American Correctional Association 3rd Edition Standards for Adult Boot Camp Programs: 1-ABC-1E-09

4. **MCC/MDC/FDC/FTC PROCEDURES.** Procedures in this Program Statement apply to Metropolitan Correctional Centers, Metropolitan Detention Centers, Federal Detention Centers and Federal Transportation Centers.

5. **DISTRIBUTION.** At a minimum, a copy of this Manual will be placed with the Regional Inmate Systems Manager, each Community Corrections Manager, the Inmate Systems Manager and all other staff having responsibility for sentence computation.

/s/
Kathleen Hawk Sawyer
Director

CHAPTER I--SENTENCING REFORM ACT OF 1984

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1. INTRODUCTION

The Sentencing Reform Act of 1984 (SRA) (Public Law 98-473, Chapter II of the Comprehensive Crime Control Act of 1984 (CCCA)) was enacted into law when then President Reagan signed the CCCA on October 12, 1984. The SRA was to become effective on November 1, 1986. As a result, however, of the Sentencing Reform Amendments Act of 1985 (Public Law 99-217, enacted on December 26, 1985), the effective date of the SRA was extended to November 1, 1987.

Since passage of the Sentencing Reform Amendments Act of 1985, the following acts have modified, amended, corrected or added to the SRA; the Anti-Drug Abuse Act of 1986 (Public Law 99-570, enacted on October 27, 1986); the Coast Guard Authorization Act of 1986 (Public Law 99-640 enacted on November 10, 1986); the Criminal Law and Procedure Technical Amendments Act of 1986 (Public Law 99-646, enacted on November 10, 1986); the Sentencing Act of 1987 (Public Law 100-182, enacted on December 7, 1987); the Criminal Fine Improvements Act of 1987 (Public Law 100-185, enacted on December 11, 1987); the Anti-Drug Abuse Act of 1988 (Public Law 100-690, enacted on November 18, 1988); and the Crime Control Act of 1990 (Public Law 101-647, enacted on November 29, 1990).

After the effective date of the SRA on November 1, 1987, a number of United States District and Appellate Court decisions found all or some parts of the SRA to be unconstitutional. As a result of those court decisions, the SRA was implemented nationwide in various ways. Because of the numerous different, and sometimes conflicting, court decisions, the Supreme Court considered the constitutionality of the sentencing guidelines in late 1988 and early 1989. On January 18, 1989, in Mistretta v. U.S., 109 S.Ct. 647, 488 U.S. 361, the Supreme Court ruled that the guidelines are constitutional.

For offenses that were committed on or after November 1, 1987 but prior to January 18, 1989, special instructions were issued by the Bureau of Prisons (BOP) for computation of those sentences affected by court decisions that found the SRA to be unconstitutional in some way.
Those instructions have been consolidated and are more fully explained in Chapter I, Part 5.

For an offense that occurred on or after November 1, 1987, that resulted in a sentence not affected by a court decision, an SRA sentence is implemented in accordance with the instructions contained in Chapter I, Part 3.

* An offense that began prior to, but not completed until on or after November 1, 1987, is subject to the SRA. (See Statement By President Ronald Reagan Upon Signing S. 1822 (Public Law 100-182, 101 Stat. 2135-2136, dated December 14, 1987).) The BOP treats conspiracy and escape offenses and absconding from bail/bond/Own Recognizance or an order to appear in court in the same manner. Additionally, the last act of misconduct in a single "specification" or "violation" that causes a term of supervised release or probation to be revoked shall also be treated in the same manner. (See para. 3.c. for definition of date of offense.) *

A sentence imposed for an offense that occurred prior to November 1, 1987 ("old law" sentence) cannot be aggregated with a sentence imposed for an offense that occurred on or after November 1, 1987 (SRA or "new law" sentence).

If a multi-count indictment contains an offense(s) that was completed before November 1, 1987, and an offense(s) that was completed on or after November 1, 1987, then those pre and post SRA counts shall be treated separately (not aggregated) and the sentences shall be computed in accordance with the sentencing laws in affect at the time of the completion of those offenses. If one or more of the counts in the indictment is consecutive, then the consecutive count shall be placed as a detainer until release from the preceding sentence occurs.

2. COMMITMENT TO THE CUSTODY OF THE BUREAU OF PRISONS

Under 18 USC § 3621, the BOP is required to provide the custody and to determine the place of imprisonment for all sentenced federal prisoners. (See the Program Statement on Security Designation and Custody Classification.)

Subsection (a) of Section 3621 states in part, "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, or until earlier released for satisfactory behavior pursuant to the provisions of section 3624."

Subsection (b) of Section 3621 states in part, "The Bureau of Prisons shall designate the place of the prisoner's imprisonment."

3. COMPUTATION OF SENTENCE

For an offense that occurred on or after November 1, 1987, that resulted in a sentence not affected by a court decision, an SRA sentence shall be implemented in accordance with the instructions contained in this part.

An offense that began prior to, but not completed until on or after November 1, 1987, is subject to the SRA. (See Statement By President Ronald Reagan Upon Signing S. 1822 (Public Law 100-182, 101 Stat. 2135-2136, dated December 14, 1987).) The BOP treats a conspiracy offense in the same manner.

A sentence imposed for an offense that occurred prior to November 1, 1987 ("old law" sentence) shall not be aggregated with a sentence imposed for an offense that occurred on or after November 1, 1987 (SRA or "new law" sentence).

If a multi-count indictment contains an offense(s) that was completed before November 1, 1987, and an offense (s) that was completed on or after November 1, 1987, then those pre- and post-SRA counts shall be treated separately (not aggregated) and the sentences shall be computed in accordance with the sentencing laws in affect at the time of the completion of those offenses. If one or more of the counts in the indictment is consecutive, then the consecutive count

shall be placed as a detainer until release from the preceding sentence occurs.

There are several different documents that may be reviewed to determine the date of the offense and they are the federal judgment and commitment (J&C), the indictment and the Presentence Investigation (PSI) report. If none of the documents contain the date of the offense, or if there is a conflict among the documents about the date of the offense, or if the inmate challenges the date of offense (See U.S. v. Bloom, 945 F.2d 14 (2d Cir., 1991)) as determined by ISM staff, then, in accordance with the procedures set forth in the Inmate Systems Management Manual, the court shall be contacted to ascertain the correct offense date. These procedures apply to any situation where it is necessary to obtain a correct date of offense for sentence monitoring purposes.

The Sentence Procedure Code (SPC) and narrative for a sentence imposed under the SRA is:

SPC = 0080 3559 SRA Sentence

A number of sections are activated when a sentence under the SRA is imposed and those sections are discussed in this manual.

Any Judgment and Commitment or other court order that requires a sentence to be computed in a manner not consistent with the instructions contained in this manual shall be referred to the appropriate Regional Inmate Systems Administrator.

a. Classification of Offenders and Terms of Imprisonment. The SRA contains two sections that pertain to the classification of offenses and the terms of imprisonment that can be imposed depending upon the offense classification. Those two sections are 18 U.S.C. § 3559 and 18 U.S.C. § 3581 and they are presently in conflict in a number of letter grade classifications. While this conflict presents no special offense classification or computation problem, the differences between the two sections need to be pointed out.

* 18 U.S.C. § 3559 states,

> **(a) Classification.-- An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is--**
>
> **(1) life imprisonment, or if the maximum penalty is death, as a Class A felony;**
>
> **(2) twenty-five years or more, as a Class B felony;**
>
> **(3) less than twenty-five years but ten or more years, as a Class C felony;**
>
> **(4) less than ten years but five or more years, as a Class D felony;**
>
> **(5) less than five years but more than one year, as a Class E felony;**
>
> **(6) one year or less but more than six months, as a Class A misdemeanor;**
>
> **(7) six months or less but more than thirty days, as a Class B misdemeanor;**
>
> **(8) thirty days or less but more than five days, as a Class C misdemeanor; or**

(9) five days or less, or if no imprisonment is authorized, as an infraction.

18 U.S.C. § 3559(c)(1) states further,

(1) MANDATORY LIFE IMPRISONMENT.-- Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if--

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of--

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

18 U.S.C. § 3581 establishes the classes of offenses and the authorized terms of imprisonment for each. Section 3581 states,

(a) In general.-- A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

(b) Authorized terms.-- The authorized terms of imprisonment are--

(1) for a class A felony, the duration of the defendant's life or any period of time;

(2) for a Class B felony, not more than twenty-five years;

(3) for a Class C felony, not more than twelve years;

(4) for a Class D felony, not more than six years;

(5) for a Class E felony, not more than three years;

(6) for a Class A misdemeanor, not more than one year;

(7) for a Class B misdemeanor, not more than six months;

(8) for a Class C misdemeanor, not more than thirty days; and

(9) for an infraction, not more than five days. *

The following comparison chart points up the penalty differences between Sections 3559 and 3581:

3559	**3581**
(1) Class A felony, life or death.	(1) Class A felony, life or any period of time.
(2) Class B felony, 25 years or more.	(2) Class B felony, not more than 25 years.
(3) Class C felony, less than 25 years but 10 or more years.	(3) Class C felony, not more than 12 years.
(4) Class D felony, less than 10 years but 5 or more years.	(4) Class D felony, not more than 6 years.
(5) Class E felony, less than 5 years but more than 1 year.	(5) Class E felony, not more than 3 years.
(6) Class A misdemeanor, 1 year or less but more than 6 months.	(6) Class A misdemeanor, not more than 1 year.
(7) Class B misdemeanor, 6 months or less but more than 30 days.	(7) Class B misdemeanor, not more than 6 months.
(8) Class C misdemeanor, 30 days or less but more than 5 days.	(8) Class C misdemeanor, not more than 30 days.
(9) Infraction, 5 days or less if no imprisonment authorized.	(9) Infraction, not more than 5 days.

As of the publication date of this manual, all sentence classifications continue to be determined by 18 USC § 3559 since those offenses that result from laws enacted since November 1, 1987, the effective date of the SRA, do not include a letter grade that identifies the offense classification under 18 USC § 3581. Penalties for the violation of laws enacted since the effective date of the SRA

are still being included in the same manner as the pre-SRA and; therefore, must be classified under the provisions of 18 U.S.C. § 3559.

If offenses begin to include a letter grade classification sometime in the future, then a Sentence Procedure Code for 18 U.S.C. § 3581 will be established at that time.

*

The court may, in addition to a term of imprisonment for a petty offense, include a period of probation as authorized under 18 U.S.C. § 3561(a)(3) which states in part,

> **(a) In general.--A defendant who has been found guilty of an offense may be sentenced to a term of probation unless--. . .**
>
> **(3) the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense that is not a petty offense.**

(Note: A term of supervised release may not be imposed for a petty offense (18 U.S.C. § 3583(b)(3).)

A petty offense is defined under 18 U.S.C. § 19 and states,

> **As defined in this title, the term "petty offense" means a Class B misdemeanor, a Class C misdemeanor, or an infraction, for which the maximum fine is no greater than the amount set forth for such an offense in section 3571(b)(6) or (7) in the case of an individual or section 3571(c)(6) or (7) in the case of an organization.**

The imprisonment terms that may be imposed for a petty offense under 18 U.S.C. § 3559(a) states in part,

> **(7) six months or less but more than thirty days, as a Class B misdemeanor,**

(8) thirty days or less but more than five days, as a Class C misdemeanor, or

(9) five days or less, or if no imprisonment is authorized, as an infraction.

18 U.S.C. § 3561 further reads in part,

(b) Authorized terms.--The authorized terms of probation are--. . .

(2) for a misdemeanor, not more than five years; and

(3) for an infraction, not more than one year.

Based on the definition of a petty offense in 18 U.S.C. § 19, the maximum term of imprisonment that may be imposed under 18 U.S.C. § 3559(a), subsections (7), (8) and (9), is six months and the maximum period of probation that may be imposed under 18 U.S.C. § 3561(b), subsections (2) and (3), is five years.

Any term of imprisonment imposed for a petty offense shall be treated in the same manner as any other sentence imposed under the SRA and shall be entered into SENTRY under the SPC of **0080 3559 SRA Sentence**. The period of probation imposed shall be entered into the SENTRY field provided for that purpose. The period of probation is, of course, under the jurisdiction of the sentencing court and the supervising U.S. Probation Office. The prisoner shall be referred to the supervising U.S. Probation Office for any questions about the manner in which the term of probation is to be served or implemented. A sentence imposed for probation revocation under 18 U.S.C. § 3565(a) states in part that the court may--

(2) revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of initial sentencing.

(Note: Subchapter A, of Chapter 227--Sentences, provides the **General Provisions** for the imposition of sentences under the SRA.)

Any term of imprisonment imposed for a petty offense as the result of probation revocation shall be treated in the same manner as any other sentence imposed for probation revocation under the SRA and shall be entered into SENTRY under the SPC of **0080 3559 SRA Sentence.** The probation revocation sentence shall be computed as beginning on the date that the probation is revoked, provided the prisoner is in exclusive federal custody based on the probation violator warrant. If there is one or more sentences in operation at the time the probation revocation sentence is imposed, then the provisions of 18 U.S.C. § 3584 (Multiple sentences of imprisonment) shall apply.

Any prior custody time awarded to, or time spent serving the originally imposed imprisonment term for the petty offense, shall not be carried over to the probation revocation sentence. If the court, however, imposes a probation revocation sentence that, when added to the original term of imprisonment, exceeds the maximum for the offense, then ISM Staff, following the procedures set forth in the Inmate Systems Management Manual, shall notify the appropriate U.S. Attorney of the apparent excessive sentence and request assistance in resolving the matter. *

Each judgment and commitment must be carefully monitored to assure that a sentence imposed under 18 U.S.C. §§ 3559 or 3581 is within the time range of the violated statute. Any discrepancy as to the length of the imposed sentence should be referred to the U.S. Attorney as outlined in the Inmate Systems Management Manual.

The sentence of imprisonment is added to the commencement (beginning) date of sentence to arrive at a full term date of sentence. The full term date can be affected by prior custody time credit and inoperative time as well as the imposition of concurrent or consecutive terms, all of which are covered in this Manual.

b. Commencement (Beginning Date) of Sentence. 18 U.S.C. § 3585(a) establishes the rule for commencement of sentence and states, "(a) Commencement of sentence.-- 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 at, the official detention facility at which the sentence is to be served." If the prisoner is serving no other federal sentence at the time the sentence is imposed, and is in exclusive federal custody (not under the jurisdiction of a federal writ of habeas corpus ad prosequendum) at the time of sentencing on the basis of the conviction for which the sentence is imposed, the sentence commences on the date of imposition, even if a state sentence is running along concurrently. If the prisoner is, however, serving another federal sentence at the time a new sentence is imposed, then 18 U.S.C. § 3584 (Multiple sentences of imprisonment) must be followed as discussed in paragraph e. of this chapter.

*

The Bureau of Prisons calculates any part of a day in custody serving sentence as a **full day** served on the sentence (See Chapter I, paragraph 3.d., third subparagraph) and any part of a day in official detention as a **full day** for prior custody time credit purposes (See Chapter I, paragraph 3.c.(1)). In those cases, however, when the court imposes a sentence for a term of hours, the exact number of hours imposed must be served, regardless of whether the sentence is for more or less than 24

hours and regardless of whether the number of hours imposed crosses one or more midnights. For example, if a sentence of six hours is imposed and that sentence commences at 11:00 PM, then the sentence would not terminate until 5:00 AM the next day.

A sentence that is imposed in the form of hours commences at the time it is imposed, provided the person is in exclusive federal custody. If another U.S. Code or D.C. Code sentence is in operation, then 18 U.S.C. § 3584 (See Chapter I, paragraph e.) would, of course, apply. If the person is ordered to voluntarily surrender, then the sentence would not commence until that person arrived at the designated facility to serve the sentence (See Chapter I, paragraph 3.b., third subparagraph). *

If the prisoner is released from physical custody pending appeal on the same day that the sentence is imposed, and no other sentence is involved, then the sentence shall be stayed (shall not begin to run) until the prisoner enters custody for service of that sentence. (See Rule 38 of the Federal Rules of Criminal Procedure.) If the prisoner is released pending appeal subsequent to the day of sentencing, then the sentence shall begin to run on the date of sentencing and shall become inoperative the day after the prisoner is physically released.

If the court authorizes a prisoner to voluntarily surrender, as described in the Program Statement on Unescorted Trips and Voluntary Surrenders, to the detention facility at which the sentence is to be served, then the sentence does not commence until the prisoner arrives at the designated facility. If the prisoner is retained in federal custody after sentencing for any days prior to departure for voluntary surrender to the designated facility, then that time, including the date of sentencing, shall be treated as presentence time credit.

A prisoner who is in non-federal custody at the time of sentencing may begin service of the federal sentence prior to arriving at the designated federal facility if the non-federal facility is designated in accordance with the Program Statement on Designation of State Institution for Service of Federal Sentence and 18 USC § 3621 (Imprisonment of a convicted person). This type of designation is ordinarily made only upon the recommendation of the sentencing court.

In no case can a federal sentence of imprisonment commence earlier than the date on which it is imposed.

c. Prior Custody Time Credit. The SRA includes a new statutory provision, 18 U.S.C. § 3585(b), that pertains to "credit for prior custody" and is controlling for making time credit determinations for sentences imposed under the SRA. Title
* 18 U.S.C. § 3568, repealed effective November 1, 1987, as implemented by the "Old Law" Sentence Computation Manual, remains the controlling statute for all sentences imposed for offenses that occurred on or after September 20, 1966 up to November 1, 1987.

*

Statutory Authority: Prior custody time credit is controlled by 18 U.S.C. § 3585(b), and states, **"A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences--**

> **(1) as a result of the offense for which the sentence was imposed; or**
>
> **(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;**

that has not been credited against another sentence."

Definitions:

* **Raw EFT:** The Raw EFT for both a federal and non-federal sentence is determined by adding the total length of the sentence to be served to the beginning date of the sentence resulting in a full term date of sentence (**Raw EFT**) that does not include any time credit, e.g., presentence or prior custody time or good time. (Inoperative time that may affect either the state or federal **Raw EFT** shall be referred to the RISA for assistance.)

Qualified non-federal presentence time: Time spent in non-federal presentence custody from the date of the federal offense, that does not overlap any other authorized prior custody time credits, to the date the first sentence begins to run, federal or non-federal, is **qualified non-federal presentence time.**

Date of offense:

(1) **The date of offense for a new conviction** (as shown on the judgement and commitment) is the date on which the criminal act takes place, or the date on which the ongoing * criminal activity ends, as charged in a single count. In a multiple count judgment and commitment, the earliest date of offense for the multiple counts shall be controlling for prior custody time credit determinations. Some examples follow:

(a) Bank robbery. The date of the bank robbery is the date of offense regardless of when the identity of the offender is discovered or when the arrest occurs.

(b) Bank fraud. Bank fraud may be a single criminal event, such as a bank robbery, or it may be a continuing type of offense that will span several days, months or years. In a continuing offense that involves more than one episode of bank fraud, as charged in one count, the date of offense is the date on which the criminal activity ends for that count.

(c) Conspiracy. A conspiracy is a continuing type of criminal activity that ends when the conspiracy discontinues or when an individual who is participating in a conspiracy terminates participation in the conspiracy.

(d) Escape. An escape is a continuing type of criminal offense that continues until the escapee is apprehended. The date of offense, therefore, for a person who escapes from service of a sentence, is the date on which the escapee is apprehended by federal agents for the escape or for another federal offense. Since the sentence from which the prisoner escaped resumes immediately upon federal apprehension, regardless of the reason, there will be no official detention time to award under 18 U.S.C. § 3585(b)(1). In the unlikely event that a person avoids detection as an escapee after arrest on another federal charge and is released from that charge without being taken into federal custody as an escapee, then the date of offense **will not** be the date on which that arrest occurred.

If an **escapee** is arrested by a **non-federal agency**, the **date of offense for any subsequent charge of escape will be the date on which the escapee is apprehended** for the non-
* federal offense, regardless of the date on which federal authorities learn that the escapee was in non-federal custody, provided the knowledge is acquired while the escapee is still in non-federal custody. Verification that federal authorities had * knowledge that the escapee was in non-federal custody can be substantiated if a U.S. Marshal filed a detainer or if the U.S. Marshal takes custody of the person immediately upon release from the non-federal agency.

Credit for time spent in non-federal official detention, for which the non-federal agency gave **no** time credit (18 U.S.C. § 3585(b)(2)) after the date of offense for the escape, shall be given only on the sentence imposed for the escape. Any escape sentence that results will be ordered to run consecutively to the sentence from which the escape occurred (§5G1.3(a), U.S. Sentencing Commission Guidelines Manual). If no federal sentence results from the escape, then any time credit that the state failed to award on its sentence shall not be * awarded towards the original federal sentence from which the * inmate escaped since the non-awarded state time would have occurred after the date that the federal sentence commenced. The federal sentence from which the escape occurs shall remain inoperative until the prisoner is returned to exclusive federal custody, unless the Regional Director designates the state institution as the place to continue service of the federal sentence.

A person who **escapes** from a sentence imposed prior to November 1, 1987 (an **"Old Law"** sentence) and who is apprehended on or after November 1, 1987, will be sentenced (if convicted for escape) under the **SRA** since the date of offense, for this continuing type of offense, will have occurred on or after November 1, 1987.

* (2) **The date of offense for a prisoner whose supervised release or probation has been revoked** shall be the date of the offense which led to the original sentence. Inmates shall be given prior custody time credits for time spent in

official detention regardless of whether such detention predated the conduct that led to the revocation. Any time spent in official detention prior to the beginning date of the original sentence that was not awarded to the original sentence or any other sentence shall be given to the revocation term. If a prisoner is released late ("past due") because of staff error, a court order or executive clemency and is later returned as a supervised release or probation violator, the late release time shall be awarded on the supervised release or probation violator term.

(3) **The date of offense for a person who commits the offense of Failure to Appear (also termed Bail Jumping), as a result of absconding**, and who is arrested by a federal agency, will be the date on which the absconder is apprehended, regardless of whether the apprehension was for absconding or for another federal offense. (In the unlikely event that a person avoids detection as an absconder after arrest on another federal charge and is released from that charge without being taken into federal custody as an absconder, then the date of offense will not be the date on which the arrest occurred.)

If a **Failure to Appear** absconder is arrested by a **non-federal agency**, the **date of offense will be the date on which the absconder is apprehended** for the non-federal offense, regardless of the date on which federal authorities learn that the absconder was in non-federal custody, provided the knowledge is gained while the absconder is still in non-federal custody.

Verification that federal authorities had knowledge that the absconder was in non-federal custody can be substantiated if a U.S. Marshal filed a detainer or if the U.S. Marshal takes custody of the person immediately upon release from the non-federal agency.

If the person is subsequently convicted and sentenced for **Failure to Appear,** then the date of apprehension as an absconder will be the date of offense for the sentence imposed as a result of the **Failure to Appear** offense. Any time spent in non-federal official detention for which the non-federal agency gave **no** time credit after the date of the offense (18 U.S.C. § 3585(b)(2)) shall be given on the **Failure to Appear** sentence. Any time spent in federal official detention after the date of offense shall, of course, be given under the provisions of 18 U.S.C. § 3585(b)(1). *

The absconder date of offense has a special significance for a person admitted to **bail** prior to November 1, 1987 or for the person who failed to **appear** in court on a certain date prior to November 1, 1987. In those situations, if the absconder's date of offense, i.e., the date of offense for the **Failure to Appear** offense, is prior to November 1, 1987, then **"Old Law"** sentencing provisions will apply but if the absconder's date of offense is on or after November 1, 1987, then **SRA** sentencing provisions shall apply. This position is based on the rationale that **a Failure to Appear** offense is a continuing type of crime that, once begun, does not terminate or end until the

person (absconder) is apprehended. This offense, therefore, is treated in the same manner as a conspiracy offense.

Official detention. "Official detention" is defined, for purposes of this policy, as time spent under a federal detention order. This also includes time spent under a detention order when the court has recommended placement in a less secure environment or in a community based program as a condition of *presentence detention. In addition, on occasion it is necessary for the court to order placement in a less secure environment or in a community based program (including D.C. Department of Corrections' programs such as work release) because of overcrowding in the local place of detention. A person under these circumstances remains in "official detention", subject to the discretion of the Attorney General and the U.S. Marshals' * Service with respect to the place of detention. Those defendants placed in a program and/or residence as a condition of detention are subject to removal and return to a more secure environment at the discretion of the Attorney General and the U.S. Marshals' Service, and further, remain subject to prosecution for escape from detention for any unauthorized absence from the
* program/residence. (If there is any question as to whether such a defendant was in fact under the jurisdiction of the U.S. Marshals' Service, i.e., in the custody of the Attorney General, staff shall contact the appropriate U.S. Marshal for verification.) Such a defendant is not eligible for any credits while released from detention.

In Reno v. Koray, 115 S.Ct 2021 (1995), the U.S. Supreme Court held that time spent under restrictive conditions of release (including time spent in a community treatment center (CCC) or similar facility) was not official detention entitling an inmate to prior custody time credit under 18 U.S.C. § 3585(b). The court found that the interaction of the Bail Reform Act and 18 U.S.C. § 3585(b) supported the Bureau of Prisons' interpretation that a defendant is **either released** (with no credit for time under conditions of release) **or detained** (with credit for time in official detention).

Koray has also overruled Brown v. Rison, 895 F.2d 895 (9th Cir. 1990). As a result, the awarding of presentence time credit under 18 U.S.C. § 3568 for time spent under restrictive conditions shall also be discontinued. Brown is the Ninth Circuit case that required the Bureau of Prisons to give time credit to a sentence for time spent in a CCC or similar facility.

The Koray decision means, therefore, that time spent in residence in a CCC or similar facility as a result of the Pretrial Services Act of 1982 (18 U.S.C. § 3152-3154), or as a result of a condition of bond or release on own recognizance (18 U.S.C. § 3141-3143, former 3146), or as a condition of parole, probation or supervised release, is not creditable to the service of a subsequent sentence. In addition, a release condition that is "highly restrictive," and that includes "house arrest", "electronic monitoring" or "home confinement"; or such as requiring the defendant to report daily to the U.S. Marshal,

U.S. Probation Service, or other person; is not considered as time in official detention. **In short, under Koray, a defendant is not entitled to any time credit off the subsequent sentence, regardless of the severity or degree of restrictions, if such release was a condition of bond or release on own recognizance, or as a condition of parole, probation or supervised release.**

Any sentence computed for the first time before June 5, 1995, and that sentence reflects an award of prior custody time credits for time spent in a CCC or similar facility **shall** retain any credits applied, regardless of any sentence recomputation (e.g., for an addition or loss of prior custody time credits or modification of sentence, or as the result of a vacated sentence, including a sentence that was imposed after a retrial) that occurs on or after June 5, 1995.

Any sentence, computed for the first time on or after June 5, 1995, which reflects an award of prior custody time credits for time spent in a CCC or similar facility under conditions of release, that was not the result of a court order, shall be recomputed to void such credit.

If it is discovered during a sentence recomputation on or after June 5, 1995, that time was spent in a CCC or similar facility that should have been awarded as the result of a sentence computation performed prior to June 5, 1995, but was not awarded, such time **shall not** be given on the recomputation unless the court had ordered that such credit be given.

CCC or similar facility time that was awarded to a sentence that was calculated for the first time prior to June 5, 1995 because the inmate was committed to the Bureau of Prisons in error (e.g., premature release from non-federal custody or U.S. Marshals' failure to return an inmate to the proper non-federal jurisdiction after release on a writ) shall be canceled if the subsequent recomputation occurs on or after June 5, 1995, unless the court had ordered that such credit be given.

Any court order, regardless of when it was issued, that awards prior custody time credits for time spent in a CCC or similar facility, or for time spent under other forms of restrictive conditions of release, for a sentence computed for the first time on or after June 5, 1995, shall be referred to the RISA. The RISA and the Regional Counsel shall contact the Assistant U.S. Attorney who prosecuted the case and request that a Motion for Reconsideration or an appeal be filed based on the decision in Koray. The inmate shall retain the credit as long as the court order remains in effect.

The USM-129 will on occasion show that a defendant was in custody for one day. In such a case, staff may credit that one day without further verification.

If an inmate states that he was in prior custody for a day, or days, that was not shown on the USM-129, then staff shall attempt to verify the inmate's claim with the arresting agency even if the PSI substantiates the claim. These situations usually arise when a defendant is issued a summons to appear before the court in a criminal matter. After the hearing, if the

defendant returns to the community **without** being placed on bail or on "own personal recognizance," then that defendant is not entitled to that day in court as a day in "official detention" on a subsequent sentence even if required to report to the U.S. Marshals' Service for processing (fingerprinting, photographing, etc.). If the defendant is released on bail or on "own personal recognizance" then that day is treated as a day in official detention and shall be awarded as a day of prior custody time credit. *

Official detention does not include time spent in the custody of the U.S. Immigration and Naturalization Service (INS) under the provisions of 8 U.S.C. § 1252 pending a final determination of deportability. An inmate being held by INS pending a civil deportation determination is not being held in "official detention" pending criminal charges. (See Ramirez-Osorio v. INS, 745 F.2d 937, rehearing denied 751 F.2d 383 (5thCir. 1984); Shoaee v. INS, 704 F.2d 1079 (9th Cir. 1983); and Cabral-Avila v. INS, 589 F.2d 957 (9th Cir. 1978), cert. denied 440 U.S. 920, 99 S.Ct 1245, 59 L.Ed2d 472 (1979.)

A sentence imposed by a court for **"Time Served,"** means that all time spent in official detention (prior custody time), as a result of the offense for which sentence was imposed, is included in the "Time Served" sentence which the court imposed and cannot be awarded to any other sentence.

Time spent serving a **civil contempt** sentence prior to trial and/or sentencing **does not** constitute presentence time credit toward the sentence that is eventually imposed.

Time spent serving a **civil contempt** sentence **does not** constitute presentence time credit toward any criminal sentence that has been interrupted by, or that is running along concurrently with, or that is to be served consecutively to, the criminal sentence.

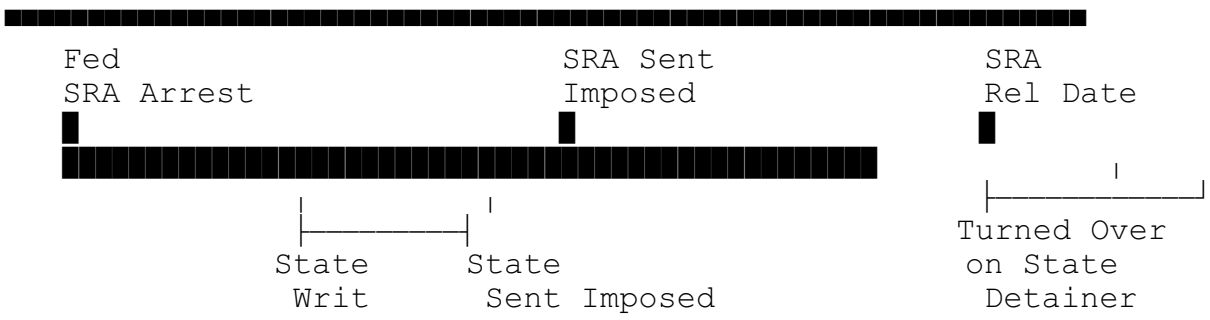
Official detention does not include any time in a release status even though the defendant is considered "in custody" for purposes of pursuing a habeas corpus petition with the court, as cited by the U.S. Supreme Court in Hensley v. Municipal Court, 411 U.S. 345 (1973) (see also Cochran v. U.S., 489 F.2d 691 (5th Cir. 1974); Villaume v. United States, 804 F.2d 498 (8th Cir. 1986) (per curiam), cert. denied, 481 U.S. 1022 (1987)).

(1) Any part of a day spent in official detention equals one day for credit purposes. Prior custody time credit shall be applied in the following manner for the following situations:

(a) Credit related to 18 U.S.C § 3585(b)(1).

1 Credit will be given for time spent in official detention as a direct result of the federal offense for which the federal sentence was imposed (and not as a result of a writ from another jurisdiction), provided it has not been credited against another sentence. (See Example: 1)

* Frequently, the date on which the person is arrested for the charge on which the subsequent sentence is imposed is earlier than the "date offense concluded" as shown on



In this example, the time spent in official detention is the direct result of the federal offense, and the state has merely borrowed the prisoner on writ and imposed sentence. All time spent in custody must be applied to the federal computation, regardless of any action taken by the state.

Example: 1

the judgment and commitment. There are a variety of reasons for this anomaly. Some courts have used the date of the indictment, others have used the date a conspiracy or fraud ends (even though the person was arrested for participation prior to that date),and on occasion the date was simply incorrect. If it can be verified that a person was in official detention on the charge for which the sentence was imposed prior to the "date offense concluded" as shown on the judgment and commitment, then such time shall be awarded regardless of the date of offense on the judgment and commitment order.

Credit shall **not** be given off a **Failure to Appear** sentence for time in official detention that occurred prior to the sentence that led to the **Failure to Appear** sentence because any such time would have occurred prior to the **Failure to Appear** date of offense. Time spent in official detention after

arrest for Failure to Appear shall, of course, be given off the Failure to Appear sentence. *

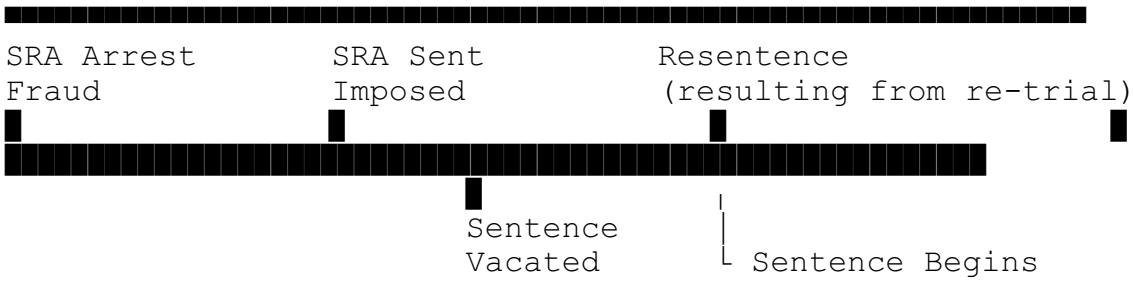
2 Credit will not be given for any portion of time spent serving another sentence regardless of whether the sentence is federal, state, or foreign. The following exceptions apply:

a Time spent serving another foreign or state sentence that is vacated may be creditable as prior custody time credit provided the sentence was not vacated merely for resentencing. Any such time which is credited must be time spent after the commission of the federal offense. If a vacated state or foreign sentence results in a re-trial and subsequent resentencing, any credit applied to that resentencing must be removed from the federal sentence computation, provided the inmate has not yet been released from that sentence.

b Time spent serving another federal, foreign or state sentence that is vacated merely for resentencing shall not have any effect on the SRA sentence computation until such time as the inmate is resentenced. If the resentencing results in a term which is less than the time the inmate has already served on the vacated sentence, the excess time not now credited to any other sentence shall be credited to the SRA term provided it was time spent after the commission of the federal offense.

* 3 If an SRA term is vacated solely for the purposes of a resentencing, then the date the sentence begins will be the same as the original computation. Any time spent in the community as the result of an appeal bond shall be treated as **inoperative** time.

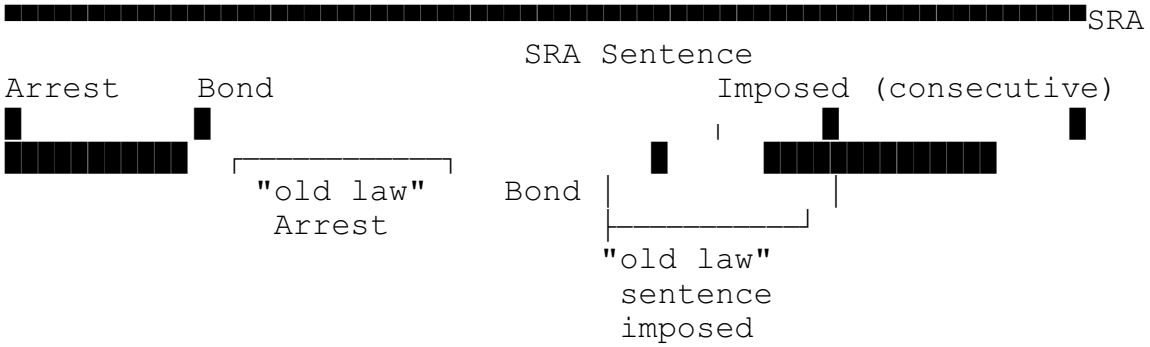
If a vacated sentence results in a re-trial and subsequent resentencing, the date the sentence will begin is based on the final judgement, and any previous creditable time shall be applied as prior custody time credits. Any time spent in the community as the result of an appeal bond **shall not** be credited (See Example: 2). *



In this example, all time spent prior to the date the new term began is credited as "prior custody credit".

Example: 2

4 Prior Custody Credits for consecutive sentences imposed on separate indictments, which include "old law" and SRA sentences, will be evaluated based on the merits relative to the individual sentences and their corresponding statutory provisions for credits. Any credit towards satisfaction of the "old law" sentence is explained in the "old law" Sentence Computation Manual (see Example: 3). *



Period from SRA arrest to first bond release must be credited on SRA sentence only. "Old law" presentence custody will be applied to the "old law" comp. SRA term begins on the date of release from the "old law" sentence.

Example: 3

* 5. As stated in Chapter I, paragraph 1, page 1 - 3, second and third paragraphs, "old law" and SRA sentences may not be aggregated. This non-aggregation of "old law" and SRA sentences creates an undesirable presentence (18 U.S.C. § 3568) and prior custody (18 U.S.C. § 3585(b)) time credit inequity between that group of prisoners who receive concurrent aggregated "old law" or concurrent aggregated SRA sentences and the group of prisoners who receive concurrent "old law" and SRA sentences that cannot be aggregated.

For example, if a prisoner receives two concurrent "old law" sentences or two concurrent SRA sentences, those sentences would be aggregated and the presentence or prior custody time would be combined and subtracted from the single aggregate EFT dates (and PE date in the case of an "old law" sentence aggregate). This practice allows the prisoner to receive the full benefit for all time spent in jail prior to sentencing. To the contrary, if a prisoner receives concurrent "old law" and SRA sentences (which cannot be aggregated), and, if the presentence or prior custody time credits due each are subtracted from the individual sentences, then, full credit for **all** time spent in jail will result in a period of **"dead time"**, i.e., a period of jail time for which no benefit is received on the sentence that is controlling for actual release from confinement purposes.

Stating this inequitable consequence another way, the **non-combination** of all jail time **causes** the credit for the jail time for one of the sentences to be **ineffectual** because the sentence that is controlling for release purposes will not receive the benefit of the jail time from the other sentence.

As a result, in order to assure that those prisoners who receive concurrent "old law" and SRA sentences, regardless of the order in which they are to be served, shall receive the same time credit benefit (presentence and prior custody time) that other prisoners receive when concurrent like sentences are aggregated, **the rule is established that presentence and prior custody time credits shall be combined and subtracted from the EFT of each sentence (and the PE date in the case of an "old law" sentence) to achieve the same result as if they had been aggregated.**

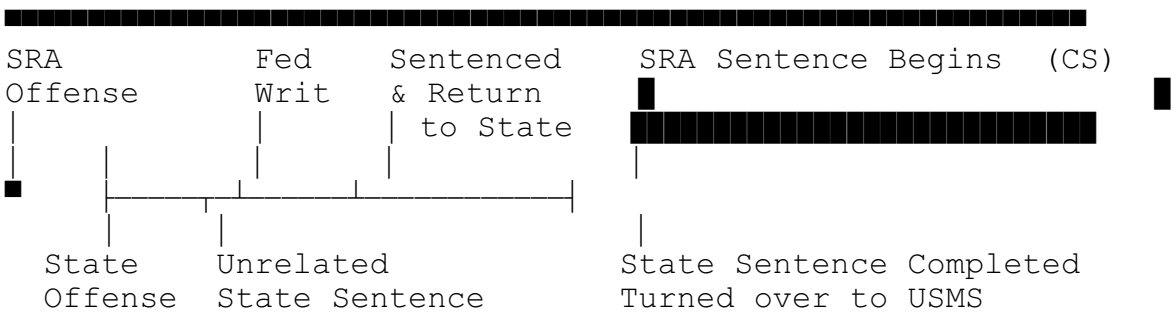
If a calculation of the first sentence to commence, utilizing the jail time credit applicable only to the first sentence, results in an SRD that is earlier than the DCB of the second sentence, then the rule will not apply since termination of the confinement portion of the first sentence will have occurred prior to the commencement (DCB) of the second sentence.

In the event that application of the combined presentence or prior custody time credit of a concurrent second sentence causes the SRD of the first sentence

to be earlier than the DCB of the second sentence, then the combined jail time credit shall continue to be applied in full to both sentences. Application of this rule is not intended to create a computation complication that would nullify the effect of the rule.

If the concurrent second sentence has an EFT that is less and an SRD that is later (after application of any jail time credit belonging to the second sentence only) than the first sentence to commence (after application of any jail time credit belonging to the first sentence only), then the rule shall not apply and each sentence shall remain the same as if the other sentence did not exist and shall be treated as "standing alone." *

6 Time spent in custody under a writ of habeas corpus from non-federal custody will not in and of itself be considered for the purpose of crediting presentence time. The primary reason for "writ" custody is not the federal charge. The federal court merely "borrows" the prisoner under the provisions of the writ for secondary custody. (See Example: 4).



In the above example, the time spent on writ is not creditable as the underlying basis for custody is the state offense and all time is credited to the state offense.

Example: 4

(b) Credit related to 18 U.S.C. § 3585(b)(2).

1 Prior Custody Credit will be given for time spent in official detention as the result of any federal, state or foreign arrest which is not related to, yet occurred on or after the date of the federal offense **(as shown on the judgment and commitment)** for which the SRA sentence was imposed; provided it has not been credited to another sentence. The language in this Section eliminates any need for a federal detainer to be on file or for bail to be set on the state or foreign charges as a prerequisite for applying such prior custody time credit toward the federal sentence. Relevant prerequisites are:

a The non-related official detention must have occurred on or after the date of the federal offense for which the SRA sentence was imposed.

b The non-related official detention must not have been granted on another sentence. If it was applied on a state or foreign sentence, then credit is not applicable to the SRA sentence.

* 2 Failure by the non-federal government to grant official detention credit (or the credit granted was of no benefit) on a non-federal sentence, can be determined if: *

a the non-federal charges were dismissed.

b non-federal probation was granted.

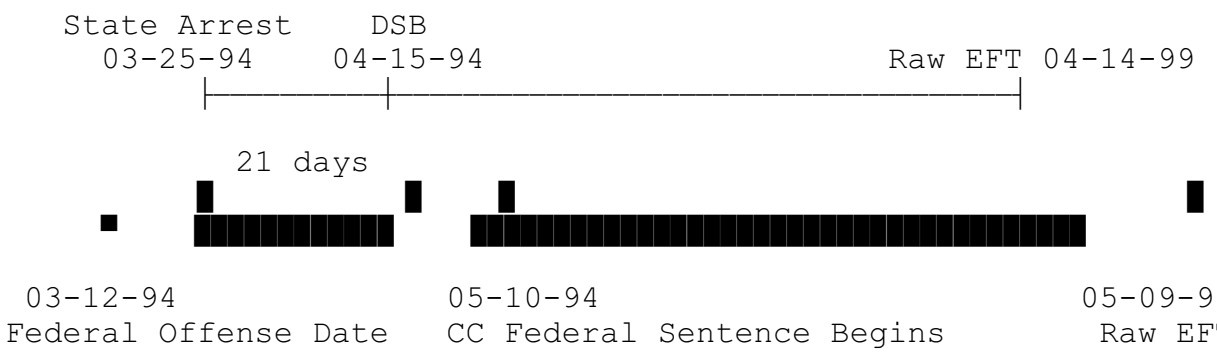
* c the federal and non-federal terms are concurrent and the Raw EFT of the non-federal term is equal to or less than Raw EFT of the federal sentence. Prior custody credits shall be given for any time spent in non-federal presentence custody that begins on or after the date of the federal offense up to the date that the first sentence begins to run, federal or non-federal. These time credits are known as **Willis** time credits (See **Willis v. U.S., 449 F2d 923 (CA 5, 1971)**. Credit shall not be given for any time spent in non-federal presentence custody prior to the date of the SRA offense. Further, if the release from the non-federal sentence occurs prior to the commencement of the federal sentence, then any non-federal presentence time awarded on the state sentence shall not be applied to the federal sentence. Any other existing prior

custody time credits shall be deducted from the federal EFT after application of the **Willis** time credits. The following examples are based on the Raw EFT of the non-federal sentence being equal to or less than the Raw EFT of the federal sentence:

Example No. 5

Date of Federal Offense = 03-12-1994
Date Arrested by State = **03-25-1994**
Date State Sentence Begins = **04-15-1994**
Date Concurrent Federal Sentence Begins = 05-10-1994

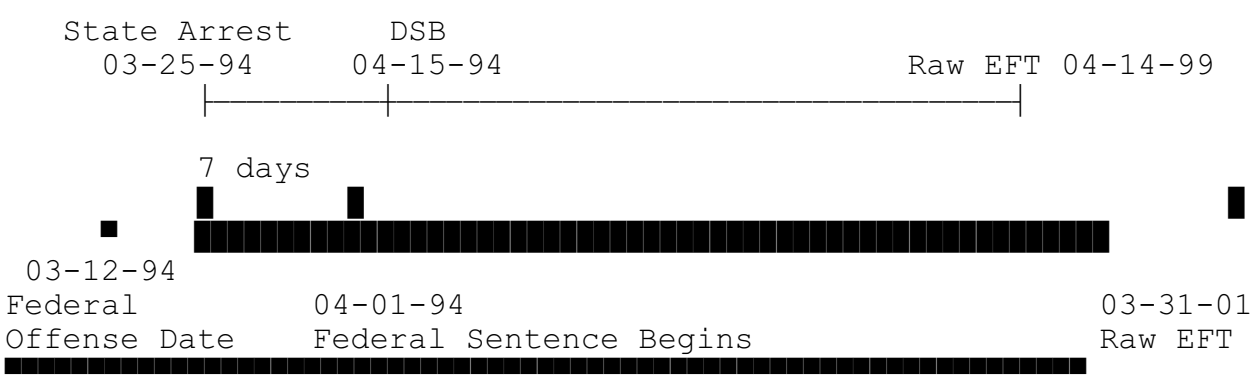
Time to award off the federal sentence is from **03-25-1994 through 04-14-1994** which equals **21** days.



Example No. 6

Date of Federal Offense = 03-12-1994
Date Arrested by State = **03-25-1994**
Date Federal Sentence Begins = **04-01-1994**
Date Concurrent State Sentence Begins = 04-15-1994

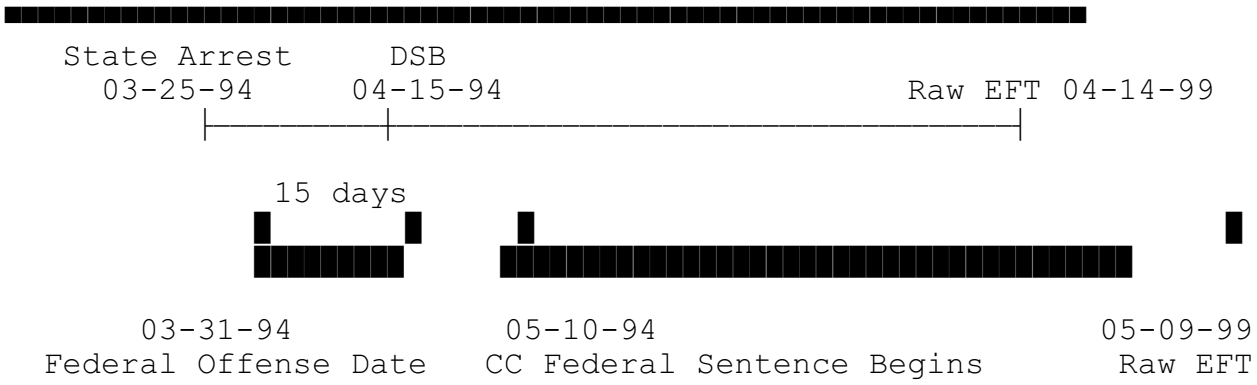
Time to award off the federal sentence is from **03-25-1994 through 03-31-1994** which equals **7** days.



Example No. 7

Date Arrested by State = 03-25-1994
Date of Federal Offense = **03-31-1994**
Date State Sentence Begins = **04-15-1994**
Date Concurrent Federal Sentence Begins = 05-10-1994

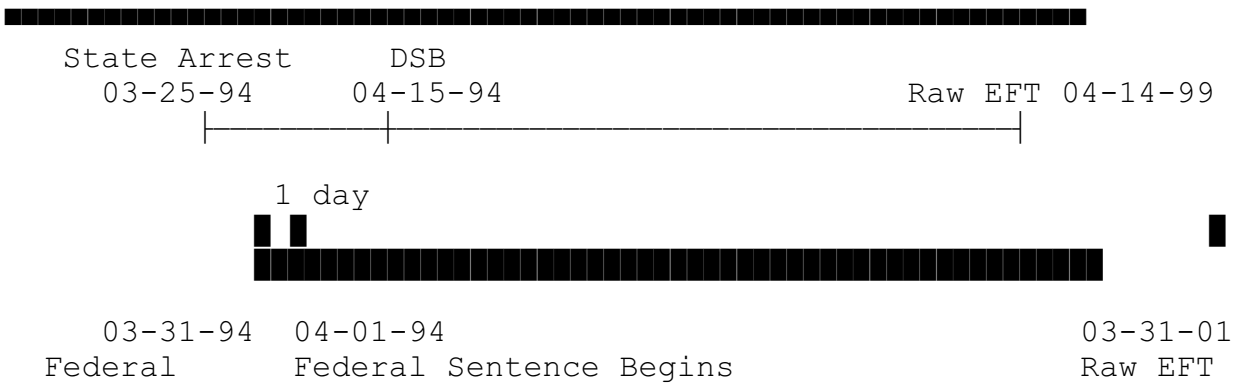
Time to award off the federal sentence is from **03-31-1994 through 04-14-1994** which equals **15** days.



Example No. 8

Date Arrested by State = 03-25-1994
Date of Federal Offense = **03-31-1994**
Date Federal Sentence Begins = **04-01-1994**
Date Concurrent State Sentence Begins = 04-15-1994

Time to award off the federal sentence is from **03-31-1994 through 03-31-1994** which equals **one** day.



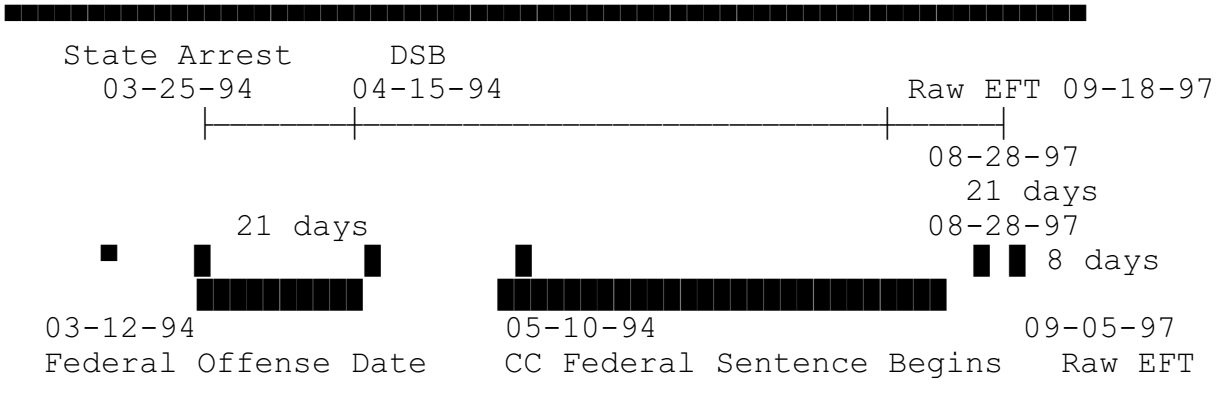
d If the **non-federal and federal sentences are concurrent**, the Raw EFT of the non-federal term is greater than the Raw EFT of the federal term, and if the non-federal Raw EFT, after application of **qualified** non-federal

presentence time, is reduced to a date that is earlier than the federal Raw EFT, then a **Kayfez** (See **Kayfez v. Gasele, 993 F.2d 1288 (7th Cir. 1993)** situation exists. In such a situation, the amount of **qualified** non-federal presentence time, i.e., the amount of time in non-federal presentence time after the date of the federal offense to the date that the non-federal or federal sentence commenced, whichever is earlier, shall be applied to the non-federal Raw EFT. The federal Raw EFT shall then be reduced to equal the reduced non-federal EFT. Any other existing prior custody time credits shall be deducted from the federal EFT after application of the **Kayfez** time credits. Following are some examples that demonstrate the process:

Example No. 9

Non-Federal Raw EFT	= 09-18-1997
Federal Raw EFT	= 09-05-1997
Date of Federal Offense	= 03-12-1994
Date Arrested by Non-Federal Agency	= **03-25-1994**
Date Non-federal Sentence Begins	= **04-15-1994**
Date Concurrent Federal Sentence Begins	= 05-10-1994

Qualified non-federal presentence time is from **03-25-1994 through 04-14-1994** which equals **21** days. The non-federal Raw EFT shall be reduced by the 21 days to August 28, 1997 and the federal Raw EFT shall be reduced to that date resulting in an award of **8** days of prior custody time credits.

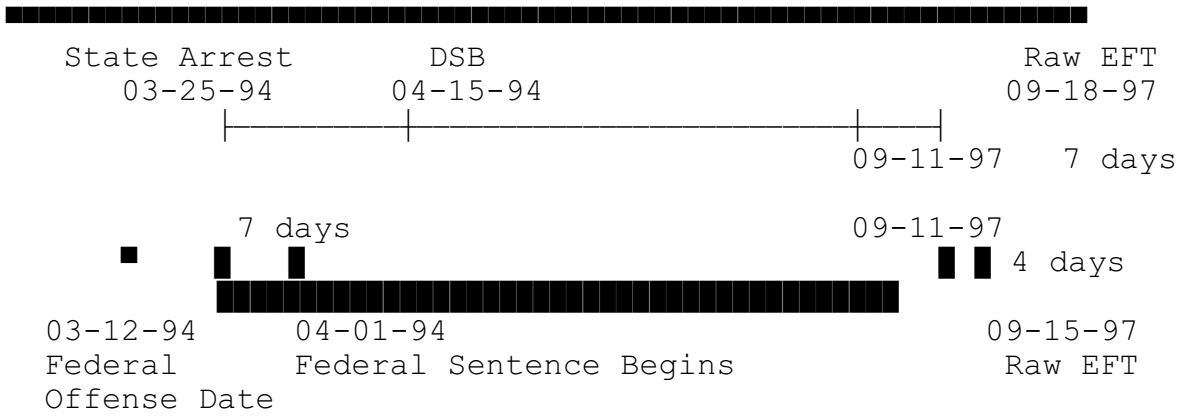


Example No. 10

Non-Federal Raw EFT = 09-18-1997
Federal Raw EFT = 09-15-1997

Date of Federal Offense = 03-12-1994
Date Arrested by Non-Federal Agency = **03-25-1994**
Date Federal Sentence Begins = **04-01-1994**
Date Concurrent Non-Fed Sentence Begins = 04-15-1994

Qualified non-federal presentence time is from **03-25-1994 through 03-31-1994** which equals **7** days. The non-federal Raw EFT shall be reduced by the 7 days to September 11, 1997 and the federal Raw EFT shall be reduced to that date resulting in an award of **4** days of prior custody time credits.

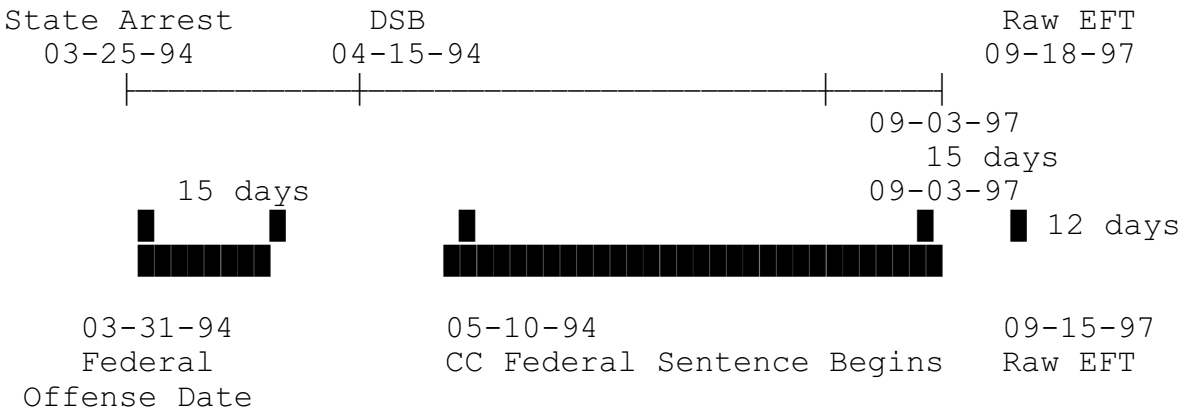


Example No. 11

Non-Federal Raw EFT = 09-18-1997
Federal Raw EFT = 09-15-1997

Date Arrested by Non-Federal Agency = 03-25-1994
Date of Federal Offense = **03-31-1994**
Date Non-Federal Sentence Begins = **04-15-1994**
Date Concurrent Federal Sentence Begins = 05-10-1994
Date Arrested by Non-Federal Agency = 03-25-1994
Date of Federal Offense = **03-31-1994**
Date Non-Federal Sentence Begins = **04-15-1994**
Date Concurrent Federal Sentence Begins = 05-10-1994

Qualified non-federal presentence time is from **03-31-1994 through 04-14-1994** which equals **15** days. The non-federal Raw EFT shall be reduced by the 15 days to September 3, 1997 and the federal Raw EFT shall be reduced to that date resulting in an award of **12** days of prior custody time credits.

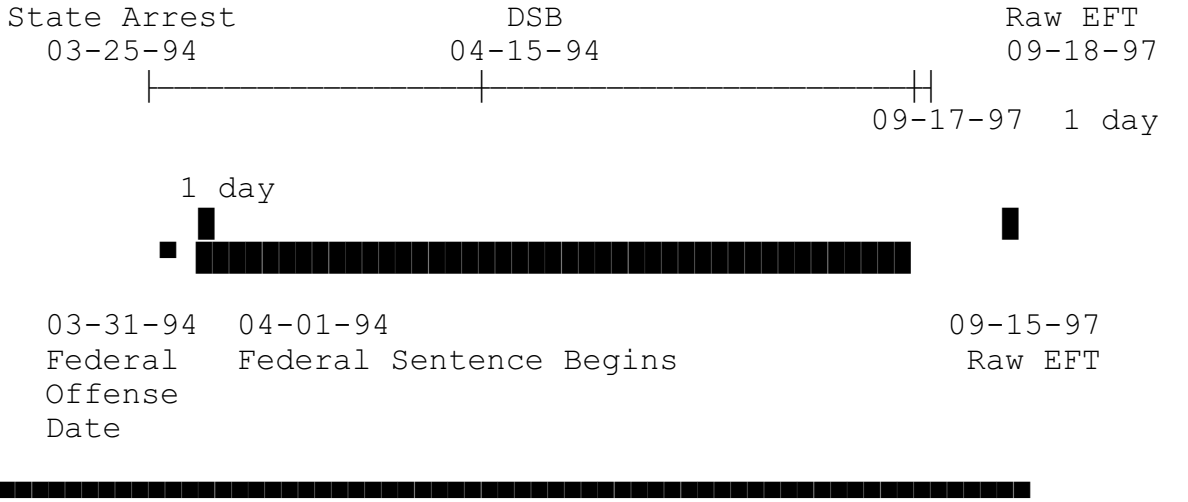


Example No. 12

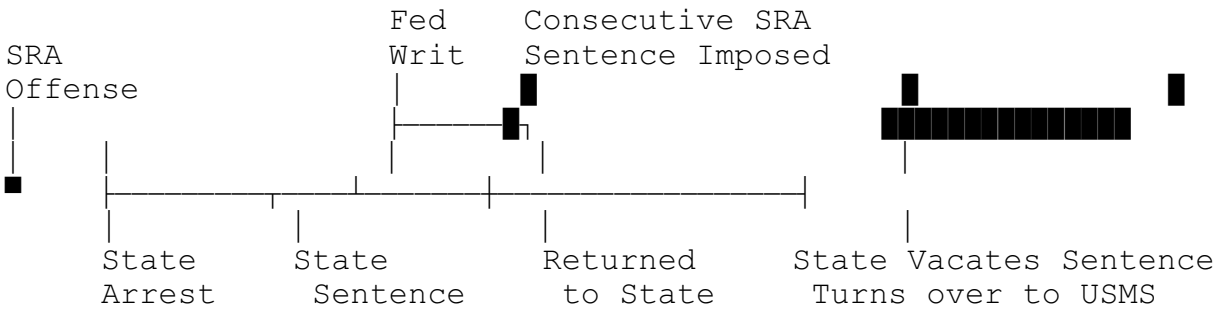
Non-Federal Raw EFT = 09-18-1997
Federal Raw EFT = 09-15-1997

Date Arrested by Non-Federal Agency = 03-25-1994
Date of Federal Offense = **03-31-1994**
Date Federal Sentence Begins = **04-01-1994**
Date Concurrent Non-Fed Sentence Begins = 04-15-1994

Qualified non-federal presentence time is from **03-31-1994 through 03-31-1994** which equals **1** day. The non-federal Raw EFT shall be reduced by the 1 day to September 17, 1997 and the federal Raw EFT shall remain the same since the reduced non-federal EFT is still greater than the federal Raw EFT resulting in no prior custody time credit off the federal sentence.



e The state sentence is vacated with further prosecution deferred, thereby effectively vacating the non-federal credit (See Example: 13).



While serving a state sentence, the state conviction is vacated. All time spent in state custody is credited to SRA term, which begins on the date received, in accordance with 18 USC § 3585(a).

Example: 13

f Ordinarily, if a state sentence is imposed, either before or after the time that the federal sentence commences, it is presumed that the state has awarded, or will award, presentence time off the state sentence for time spent in state custody in connection with the state offense and ISM staff need make no further inquiry about it unless the inmate claims that no state credit was, or will be, given. In such a case, ISM staff shall follow the instructions in subparagraphs c.(2), (a) and (c). *

(c) Credit related to a probation sentence under 18 U.S.C. § 3563(b)(11) or (12).

1 Time accrued prior to the beginning of the probation sentence shall not operate to reduce the time to serve in a Community Corrections Center or in custody of the Bureau of Prisons as a condition of probation.

2 Time spent in the intermittent custody of the Bureau of Prisons or in a Community Corrections Center as a condition of probation under subsection (11) or (12) is not creditable as prior custody time credit on a subsequent sentence received as a result of a revocation of the probation.
* Time spent serving a term of probation is not official detention as to a sentence of imprisonment.

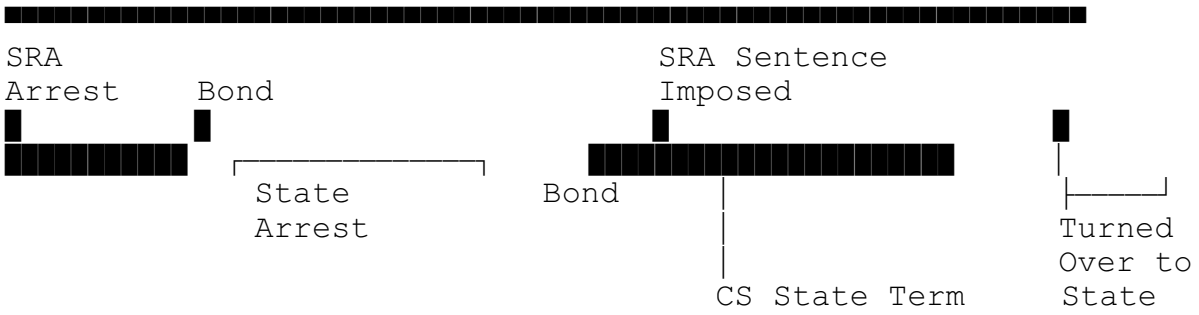
3 Prior custody time accrued after the date of offense for the original sentence (not awarded to any other sentence) that led to the probation sentence and any prior custody time accrued after arrest as an alleged probation violator, shall be applied to the subsequent sentence of

imprisonment imposed as a result of the probation revocation, pursuant to the guidelines previously discussed in this policy. The date of offense for the probation revocation term is the same as the date of offense for the original sentence that led to the probation sentence. *

(d) Credit previously awarded which must be withdrawn later.

In the event periods of state (or foreign) credit unrelated to the SRA offense are applied to an SRA sentence, and the state (or foreign country) later convicts and sentences the individual to a term of imprisonment, the credit given by the state will be withdrawn from the federal computation provided the time in question does not convert to "Willis" or "Kayfez" type of time credit as previously discussed. Should the state grant credit for time in federal custody, the time will not be withdrawn (provided it is directly related to the SRA Offense and not another federal charge)(see Example: 14).

Occasionally, while serving a criminal sentence, a prisoner will receive a civil contempt sentence which shall interrupt the service of that criminal sentence. Prior custody time credit is not accrued toward any other sentence during service of a civil contempt sentence even if the service of the civil contempt sentence is before trial and/or sentence on the



Initially, the period of state presentence custody would be applied, as it was not credited to another sentence; once a state consecutive term is imposed the state custody time is withdrawn. Exclusive federal prior custody time will **not** be withdrawn, regardless of the state computation.

Example: 14

criminal sentence to which it pertains. There are **two** civil contempt sections. **18 U.S.C. § 401** states,

> **A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as--**
>
> **(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;**
>
> **(2) Misbehavior of any of its officers in their official transactions;**
>
> **(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.**

A civil contempt sentence under **18 U.S.C. § 401** is under the sole jurisdiction of the court and has **no** time limit. The sentence will not terminate until the prisoner purges himself of the contempt or until the court orders the sentence terminated. **28 U.S.C. § 1826** states,

> **(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of--**
>
> **(1) the court proceeding, or**
> **(2) the term of the grand jury, including extensions,**
>
> **before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.**
>
> **(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but no later than thirty days from the filing of such appeal.**
>
> **(c) Whoever escapes or attempts to escape from the custody of any facility or from any place in which or to which he is confined pursuant to this section or section 4243 of title 18, or whoever**

rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to imprisonment for not more than three years, or a fine of not more than $10,000, or both.

A civil contempt sentence under **28 U.S.C. § 1826** may be ended in any one of **four** ways, the actual manner dependent upon which circumstance occurs first, and they are: **1)** The prisoner purges himself of contempt by cooperating with the court; **2)** the court proceedings terminate; **3)** the term imposed by the court (not to exceed 18 months) expires; and **4)** the term of the grand jury expires.

Unless the court orders otherwise, a civil contempt sentence shall **interrupt** the service of a criminal sentence for the duration of the civil contempt sentence. As a result, in the case of a civil contempt sentence that is ordered to commence on the date that it is imposed, the criminal sentence will become inoperative on the day after the civil contempt sentence begins and shall resume running on the day that the contempt sentence ends, providing that the prisoner is in federal custody for service of the criminal sentence.

If the civil contempt sentence is ordered to begin some date in the future, then the criminal sentence will become inoperative **on the day** that the contempt sentence begins and shall resume running on the day that the contempt sentence ends, providing that the prisoner is in federal custody for service of the criminal sentence.

If a civil contempt sentence is in effect when a criminal sentence is imposed, and the prisoner is available for service of the sentence, the just imposed criminal sentence runs concurrently with the civil contempt sentence **unless** the court specifically orders the criminal sentence to be served consecutively to preserve the intended effect of the civil contempt sentence.

(2) DOCUMENTATION. Prior custody credit will be given only with proper documentation indicating that the prisoner was in official detention within the application of paragraph 5. Proper documentation will consist of written documentation, for placement in the prisoner's Judgment and Commitment File, from any law enforcement agency (including probation officers). This
* includes verified phone, fax, or teletype messages, PSI, Rap Sheet, Booking Sheets, SENTRY, USM Form 129, etc.

(a) No credit shall be given based solely on documents or information received from a prisoner, a defense attorney, or other person or organization acting on the behalf of the inmate. Information from such sources shall be thoroughly investigated and verified before credit may be given. The verification effort will consist of one communication (with written documentation that contact was made, either in the form of a copy of the letter, fax, or teletype message, or by documenting the phone call) and one following communication if no response is received. If the follow-up communication produces no

response, the matter should be referred to the appropriate Regional Inmate Systems Administrator.

(b) Should the Judgment and Commitment order make a **recommendation** that a period of time credit be awarded to the sentence that is not authorized, the recommendation may be treated as surplusage and the credit will not be allowed. No letter need be written to the court that the time was not awarded. If the court, however, **orders** that a period of time be awarded that is not authorized, a letter must be sent to the appropriate U.S. Attorney requesting assistance in resolving the problem (Follow the instructions in the **Inmate Systems Manual** for communicating with the U.S. Attorney and the **Reno v. Koray** instructions beginning on page 1 - 14F, if applicable). Pending resolution of the problem, the sentence shall be computed as reflected on the Judgment and Commitment. *

(3) QUESTIONABLE SITUATIONS. Questions or problems that arise as to the applicability of any of the provisions of this policy shall be referred to the Regional Inmate Systems Administrator. Any resolution of a question or problem that may require a decision outside of, or contrary to, this policy or that may require a precedent setting decision, shall be referred to the Chief of Inmate Systems in the Central Office for review.

d. Inoperative Time. Once a sentence has begun to run, it may become "inoperative" (stop running) for a number of reasons, such as, escape, civil contempt, and release pending appeal. The reason a sentence becomes inoperative as a result of the aforementioned reasons is because the prisoner is no longer in official detention, i.e., the prisoner is not in the custody of the Attorney General or the Bureau of Prisons.

There is no statute that refers specifically to the term inoperative and there is no statute that states a sentence "stops running" when a prisoner causes himself to be removed from official detention. Under 18 USC § 3585, however, a prisoner must be in official detention before the sentence commences, or before the prisoner may receive presentence time credit that can be applied to the sentence. Therefore, the sentence cannot run, or must stop running, whenever the prisoner is not in official detention. The BOP has no authority to grant time credit toward the service of a sentence when a prisoner is not in official detention.

For example, a prisoner becomes an escapee upon departure from official detention (without official authorization or permission), and the sentence becomes inoperative beginning the next day and remains inoperative through the day before the prisoner is either recaptured or returns to official detention voluntarily. In other words, the prisoner receives a day of credit

for the date of escape and a day of credit for the date of return to official detention.

Another example of return to physical custody would result if the prisoner, while in escape status, is arrested on a new federal charge. In such a case, the sentence from which the escape occurred would begin running on the date of the new arrest. This restarting of the escape sentence would, of course, nullify any presentence time credit toward a future sentence that results from the new arrest, provided that the new sentence and the escape sentence are aggregated.

If the escapee is arrested by state authorities for a state charge, then the federal sentence would not resume running until the prisoner was turned over to exclusive federal custody. Production of the prisoner in federal court on the basis of a federal writ of habeas corpus ad prosequendum from state custody does not constitute a return to federal custody for the purpose of restarting the sentence from which the prisoner escaped. (Also see the Program Statement on Escape From Extended Limits of Confinement.

Federal custody of the prisoner could be effected for an escapee in state custody by designating state custody as the place to serve the remainder of the sentence from which the prisoner had escaped. (See the Program Statement on Designation to State Institution for Service of Federal Sentence.)

Following are some rules regarding the application of inoperative time.

*

(1) Inoperative time is applied to the sentence **before** jail time is deducted. *

(2) Inoperative time is added to the full term date of the sentence that is running at the time the inoperative time occurs. If a subsequent concurrent sentence is imposed, then the inoperative time would have no effect on the full term date of the subsequent new concurrent sentence.

(3) The Anniversary Date, and thus the Vested Date, must always be adjusted as the result of inoperative time.

e. Multiple Sentences of Imprisonment. The statute that governs the manner in which multiple sentences of imprisonment may be imposed is 18 U.S.C. § 3584.

* (1) Subsection (a) of Section 3584 states,

> **(a) Imposition of concurrent or consecutive terms.--If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.**

The Bureau of Prisons interprets the phrase, **"an undischarged term of imprisonment,"** as applying to any lawfully imposed federal or state, local or foreign (non-federal) sentence or revocation of a conditional release term (probation, supervised release, parole, etc.). *

The legislative history for this subsection states that,

> **. . . if the court is silent as to whether terms of imprisonment <u>imposed at the same time</u>** (emphasis added) **are concurrent or consecutive, the terms run concurrently unless a statute requires that they be consecutive. If, on the other hand, multiple terms of imprisonment are <u>imposed at different times</u>** (emphasis added) **without the judge specifying whether they are to run**

concurrently or consecutively, they will run consecutively unless the statute specifies otherwise.

This subsection allows the court flexibility in sentencing when multiple terms of imprisonment are imposed and codifies the rules to follow if the court remains silent.

*

Sentences that are imposed as the result of a single trial on the counts within a single indictment are considered to have been imposed at the same time, regardless of whether they are imposed at different times on the same date or on a later date.

Sentences that are imposed on the same date, or on different dates, based on convictions arising out of different trials, are considered to have been imposed at different times even if the trials arose out of the same indictment.

The court's sentencing flexibility, in addition to applying to federal undischarged terms of imprisonment, also extends to those prisoners who have non-federal undischarged terms of imprisonment.

The court may, for a prisoner who is serving a non-federal undischarged term of imprisonment while "on loan" to the federal government under the jurisdiction of a federal writ of habeas corpus ad prosequendum, impose the federal sentence to run concurrently with, or consecutively to, the other undischarged term of imprisonment. Upon receipt of the judgment

and commitment from the U. S. Marshals' Service that orders the federal sentence to be served concurrently with the non-federal sentence, the RISA shall, in accordance with 18 U.S.C. § 3621(b), designate the non-federal facility as the place to serve the federal sentence and complete the other procedures required by the Program Statement on Designation of State Institution for Service of Federal Sentence, for executing this type of concurrent sentence.

On occasion, a federal court will order the federal sentence to run concurrently with or consecutively to a not yet imposed term of imprisonment. Case law supports a court's discretion to enter such an order and the federal sentence shall be enforced in the manner prescribed by the court. If the just imposed federal sentence is ordered to run concurrently with a non-existent term of imprisonment, then the RISA shall designate the non-federal place as the place to serve the federal sentence as of the date that the federal sentence was imposed. If the federal sentence is silent, or ordered to run consecutively to the non-existent term of imprisonment, then the federal sentence shall not be placed into operation until the U.S. Marshals' Service or the Bureau of Prisons gains exclusive custody of the prisoner.

Regardless of whether the court orders the federal sentence to be served consecutively to, or concurrently with, the non-federal non-existent or undischarged term of

imprisonment, the prisoner shall be returned to the non-federal jurisdiction until the prisoner is released (completes the undischarged term of imprisonment) from the non-federal term.

Federal courts sometime order a **portion** of the federal sentence to run concurrently with or consecutively to another federal sentence or a non-federal sentence. The Bureau of Prisons will attempt to accommodate a court's intent as fully as possible. Since the possible number of ways of imposing a **portion** of a sentence concurrently with or consecutively to another sentence are numerous, staff should refer such sentences to the RISA for assistance. *

(2) Subsection (c) of Section 3584 provides the rules for the treatment (calculation) of multiple sentences and states,

> **Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.**

* This statement means that SRA sentences, including a term of imprisonment that results from a revocation of supervised release or probation, shall be aggregated to form a single sentence for computation purposes. Those sentences that were imposed, however, on or after November 1, 1987 (the effective date of the SRA) but prior to the Supreme Court decision in Mistretta January 18, 1989 (during which some courts held that some or all of the SRA was unconstitutional, shall not be aggregated with valid SRA sentences. A sentence that is, or was, imposed for an offense that occurred prior to

November 1, 1987 ("Old Law" offense), shall not be aggregated with a valid or invalid SRA sentence. *

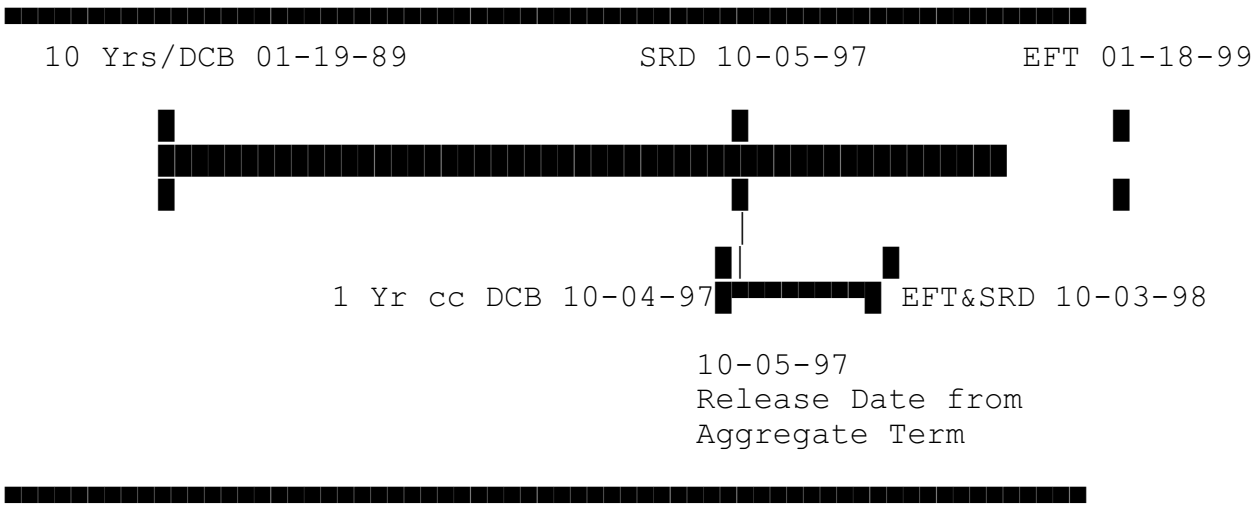
(3) If a multi-count indictment in a single judgment and commitment contains an offense(s) that was completed before November 1, 1987, and an offense(s) that was completed on or after November 1, 1987, then those pre and post SRA counts shall be treated separately (not aggregated) and the sentences shall be computed in accordance with the sentencing laws in effect at the time of the completion of those offenses. If a count is ordered to be served consecutively to a count with which it cannot be aggregated, then the consecutive count shall be held as a detainer until release from the preceding count occurs.

(4) The concurrent sentence aggregation requirement discussed in paragraph e.(2) of this Chapter, could create a set of circumstances that would allow a concurrent sentence to be served in a shorter period of time than if it were standing alone.

For example, a sentence of ten years that began on January 19, 1989 would expire with good conduct time (432 days) on October 5, 1997 and a concurrent one year sentence that begins on October 4, 1997 (the day before the release date on the ten year sentence) would, if standing alone, expire on October 3, 1998 (no GCT is earned on a sentence of one year, so both the release date and full term date occur on the same date).

You will note in this example that the concurrent one year sentence has a beginning date that is later

than the beginning date of the ten year sentence but the full term date and the release date for the one year sentence, if standing alone, would be less than the full term date of the ten year sentence. Because of the language of 18 U.S.C. § 3584(c) that requires that multiple terms of imprisonment be treated as a single, aggregate term, then the one year sentence would have the same date of release as the ten year sentence of October 5, 1997 as shown in the following diagram:



As a result of this interpretation of the statute, in the above example the prisoner would serve only two days on the one year sentence and gain a "windfall" of 363 days thereby avoiding serving the major portion of the one year sentence. This "problem" sentencing result will occur each time that a concurrent sentence has the following conditions:

a. The concurrent sentence has a beginning date that falls on, or is later than, the beginning date of the first sentence.

b. The concurrent sentence has a full term date that falls on, or is earlier than, the full term date of the first sentence.

c. The concurrent sentence has a release date that is later than the release date of the first sentence.

Subsection (c), while probably not contemplating the type of "windfall" situation described above is, nonetheless, clear and unequivocal about the treatment of concurrent terms (as well as consecutive terms) as a single term of imprisonment for administrative purposes.

The "windfall" situation is avoided in concurrent sentence situations when both the beginning date and full term date fall within those dates on the first sentence, providing the release date of the concurrent sentence is earlier than the release date of the first sentence.

Again, the "windfall" condition is avoided when the beginning date of the concurrent sentence (regardless of length - could be shorter or longer than the first sentence) falls on, or begins later than the first sentence, but the full term date of the concurrent sentence is longer than the first sentence. For example, a sentence of ten years (the first sentence) that began on January 19, 1989 has a full term date of January 18, 1999. A twelve year concurrent sentence imposed on March 12, 1990 has a full term date of March 11, 2002. The sentences are aggregated as required by 18 U.S.C. § 3584(c) and result in a beginning date of January 19, 1989 and a full term

date of March 11, 2002, for a total aggregate term of thirteen years, one month, and twenty-one days and a release date of July 1, 2000 (618 days) as shown below:

EFT Date of Concurrent Sentence	= 2002-03-11
EFT Date of First Sentence	= -1999-01-18
Overlap (3 Yrs, 1 Mo, 21 Dys)	= 3-01-21
Length of First Sentence (10 Yrs)	= + 10-00-00
Length of Aggregate (13 Yrs, 1 Mo, 21 Dys)	= 13-01-21

EFT Date of Aggregate	= 2002-03-11	= 23081
GCT on Aggregate (618 Dys)	=	- 618
SRD of Aggregate	**= 2000-07-01**	**= 22463**

* **e-1. Implementation of the Firearm Penalty Provision Under 18 U.S.C. § 924(c)(1), as Outlined in U.S. v. Gonzales.** Effective October 12, 1984, P.L. 98-473 amended **§ 924(c)(1)**, for firearm offenses committed on or after that date, to read in part,

> **"Notwithstanding any other provision of law, . . . nor shall the term of imprisonment imposed under this subsection run concurrently with <u>any other term of imprisonment</u>** [emphasis added] **including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried."**

The Bureau issued policy instructions that required the **924** count to be served **first** and the **non-924** count(s) **subsequent**, regardless of the order in which the counts were imposed in a single J&C order. The **Gonzales** decision, however, held that a court may apply a sentence containing both a **924** count and a **non-924** count, or counts, in a different way than Bureau policy had previously explained.

a. **<u>General 18 U.S.C. § 924(c)(1) Policy For New Law Sentences</u>**.

(**Note:** In the policy that follows, the use of the term **sentence** means a **new law federal** sentence, unless otherwise specified.)

- All counts in a single J&C shall be served in the order imposed by the court.
- Unless otherwise specified, reference to a **924/non-924** sentence, in a single J&C, means that the counts have been **aggregated** into a single sentence for that J&C, as required by **18 U.S.C. § 3584(c).**
- A **924/non-924** sentence that is ordered to run consecutively to an existing **federal** sentence shall be **added** to the existing **federal** sentence and calculated as an **aggregate**, provided there is nothing to prevent the aggregate, i.e., **old law** and **new law** sentence combination or **SRA/VCCLEA** and **PLRA** combination.
- A **924/non-924** sentence that is ordered to run consecutively to a **non-federal** or **old law** sentence, but cannot be aggregated with it, shall be calculated as beginning on the date of release from the **non-federal** or **old law** sentence.

- A sentence imposed after a **924/non-924** sentence may be imposed in any manner the court deems appropriate, i.e., concurrent or consecutive.

b. **Calculation of New Law Sentences Which Include An 18 U.S.C. § 924(c)(1) Count**

(**Note:** In the examples that follow, one day is added to the subtraction calculation, as if the term commenced on the **DCB.** Also, the **"**raw**"** Expiration Full Term (EFT) date is without application of jail credit.)

- If a **non-federal** or **old law** sentence exists at the time the **924/non-924** sentence is imposed, the **924** count shall be served consecutively to the existing **non-federal** or **old law** sentence. The **non-924** counts may be served concurrently with the existing **non-federal** or **old law** sentence, if so ordered by the court. Assuming that the **non-924** counts are ordered to run concurrent with the existing sentence, this non-aggregate calculation shall be performed as follows:

  1) Determine the **non-federal** or **old law** release date.
  2) Add the consecutive **924** term to the **non-federal** or **old law** release date to establish a "raw" **EFT** date.
  3) Subtract the total term of the **924/non-924** sentence from the just established "raw" **EFT** date to arrive at a **DCB.**
  4) Calculate the **924/non-924** sentence.

  If the **DCB** is on or after the date the **924/non-924** sentence was imposed, use the established **DCB** to calculate the **924/non-924** sentence. (See Example No. 1)

  Example No. 1: The **first** J&C is a 5-year **non-federal** or **old law** sentence imposed on 06-15-1988, with an SRD of 02-20-1992. The **second** J&C is an 84 month, **924/non-924** sentence, imposed on 06-18-1988, with the 24-month **non-924** count to run concurrently with the **first** sentence and the 60-month **924** count to run consecutively. The 60-month **924** count is added to the SRD (02-20-1992) of the **first** sentence, resulting in a "raw" **EFT** date of 02-19-1997. The 84-month sentence is then subtracted from the "raw" **EFT** date of 02-19-1997, causing a **DCB** of 02-20-1990 for the **second** sentence,

which is later than the date of imposition (06-18-1988). The **second** sentence of 84 months shall, therefore, commence on the **DCB** of 02-20-1990.

Calculation for Example No. 1:

Step 1:

First sentence

1988-06-15
+ 5
1993-06-14* (Raw EFT)
1992-02-20 (SRD)

Step 2:

Second sentence (c/s **924** count)

1992-02-20
+ 5
1997-02-19* (Raw EFT)

Step 3:

1997-02-19
- 7
1990-02-19
+ 1
1990-02-20 (**DCB** - later than 06-18-1988)

Step 4:

1990-02-20
+ 7
1997-02-19* (Raw EFT of **924/non-924** Sentence)

If the **DCB** is earlier than the date of imposition of the **924/non-924** sentence, calculate by using the date of imposition of the **924/non-924** sentence. (See Example No. 2)

Example No. 2: The **first** J&C is a 5-year **non-federal** or **old law** sentence imposed on 06-15-1988 with an SRD of 02-20-1992. The **second** J&C is an 84-month **924/non-924** sentence imposed on 12-15-1990, with the 24-month **non-924** count to run concurrently with the **first** sentence and the 60-month **924** count to run consecutively. The 60-month **924** count is added to the SRD (02-20-1992) of the **first** sentence, resulting in a "raw" **EFT** of 02-19-1997. The 84-month sentence is then subtracted from the "raw" **EFT** of 02-19-1997, causing a **DCB** of 02-20-1990 for the **second** sentence, which is earlier than the date of imposition (12-15-1990). The **second** sentence of 84 months shall, therefore, commence on the date of imposition of 12-15-1990.

Calculation for Example No. 2:

Step 1:

First sentence

1988-06-15
+ 5
1993-06-14* (Raw EFT)
1992-02-20 (SRD)

Step 2:

Second sentence (c/s **924** count)

1992-02-20
+ 5
1997-02-19* (Raw EFT)

Step 3:

1997-02-19
- 7
1990-02-19
+ 1
1990-02-20 (DCB - earlier than 12-15-1990)

Step 4:

1990-12-15
+ 7
1997-12-14* (Raw EFT of **924/non-924** Sentence)

- If a **new law** sentence exists at the time the **924/non-924** sentence is imposed and the **924** count is to be served consecutively to the other counts in that J&C and to the existing **new law** sentence, then the **non-924** count may be served concurrently with the existing sentence, if so ordered by the court.

  When the **non-924** count is concurrent, the aggregate calculation shall be performed as follows:

  1) Add the **924** term to the existing **new law** term, for a total aggregate term.
  2) Add the aggregate term to the **DCB** of the first sentence to establish a "raw" **EFT** date.
  3) Subtract the total term of the **924/non-924** sentence from the just established "raw" **EFT** date to arrive at a **DCB.**
  4) Calculate the aggregate sentence.

  If the **DCB** is on or after the date the **924/non-924** sentence was imposed, add the term of the **924** count to the term of the existing **new law** sentence for a total aggregate term. Calculate the aggregate sentence using the **DCB** of the **first** sentence. (See Example No. 3)

Example No. 3: The **first** J&C is a 60-month **new law** sentence imposed on 06-15-1988. The **second** J&C is an 84-month **924/non-924** sentence imposed on 06-18-1988, with the 24-month **non-924** count to run concurrently with the **first** sentence and the 60-month **924** count to run consecutively. The 60-month **924** count is added to the **first** sentence of 60 months, for a total term of 120 months, and, a "raw" **EFT** of 06-14-1998. The 84-month sentence is then subtracted from the aggregate "raw" **EFT** of 06-14-1998 causing a **DCB** of 06-15-1991, for the **second** sentence, which is later than the date of imposition (06-18-1988). The 120-month aggregate sentence shall, therefore, commence on the **DCB** of the **first** sentence, 06-15-1988.

Calculation for Example No. 3:

Step 1:		**Step 2:**	
First sentence:	60 months	1988-06-15	
924 term:	+ 60 months	+ 10	
Total term:	120 months	1998-06-14*	(Raw EFT)

Step 3:		**Step 4:**	
1998-06-14		1988-06-15	
- 7		+ 10	
1991-06-14		1998-06-14*	(Raw EFT of Aggregate
+ 1			Sentence)
1991-06-15	(**DCB** - later than 06-18-1988)		

If the **DCB** is earlier than the date of imposition of the **924/non-924** sentence, subtract the "raw" **EFT** of the **first** sentence from the "raw" **EFT** of the **second** sentence to determine the concurrent overlap. Add the concurrent overlap, with the term of the **first** sentence, to establish the total aggregate term. (See Example No. 4)

Example No. 4: The **first** J&C is a 60-month **new law** sentence imposed on 06-15-1988. The **second** J&C is an 84-month **924/non-924** sentence imposed on 02-15-1992, with the 24-month **non-924** count to run concurrently with the **first** sentence and the 60-month **924** count to run consecutively. The 60-month **924** count is added to

the **first** sentence of 60 months, for a total term of 120 months, and, a "raw" **EFT** of 06-14-1998. The 84-month sentence is then subtracted from the aggregate "raw" **EFT** of 06-14-1998 causing a **DCB** of 06-15-1991, for the **second** sentence, which is earlier than the date of imposition (02-15-1992).

The "raw" **EFT** of the **first** sentence is 06-14-1993. The "raw" **EFT** of the **non-924** term is 02-14-1994. By subtracting 06-14-1993 from 02-14-1994, the concurrent overlap is eight (8) months. Add the overlap of eight (8) months, the **first** sentence term of 60 months, and the **924** term of 60 months to establish the aggregate term of 128 months, to commence on the **DCB** of the **first** sentence (06-15-1988). (See Example No. 4)

Calculation for Example No. 4:

Step 1:

First sentence: 60 months
924 term: + 60 months
Total term: 120 months

Step 2:

1988-06-15
+ 10
1998-06-14* (Raw EFT)

Step 3:

1998-06-14
- 7
1991-06-14
+ 1
1991-06-15 (**DCB** - earlier than 02-15-1992)

Step 4:

1988-06-15
+ 5
1993-06-14* (Raw **EFT** of **First** Sentence)

Step 5:

1992-02-15
+ 7
1999-02-14* (Raw EFT of **Second** Sentence)

Step 6:

1999-02-14
- 1993-06-14
5y 8m

Step 7:

First sentence: 60 months
Concurrent Overlap: + 68 months (5 years 8 months)
Aggregate Term: 128 months (10 years 8 months)

6. INMATE REQUEST FOR **924/NON-924** SENTENCE COMPUTATION REVIEW. Any inmate may request a review of the sentence computation pursuant to an **Inmate Request to Staff Member (BP-148)** to learn if a pre-**Gonzales** computation may have been implemented contrary to **Gonzales**.

7. PROCEDURES FOR REVIEWING PRE-**GONZALES 924/NON-924** SENTENCES During any required audit of a sentence computation, e.g., initial audit, pre-release audits, disallowance-forfeiture-restoration of good time, etc., ISM staff shall review the existing computation to determine if a pre-**Gonzales** issue is present. Following are several situations that may be present that would require ISM action of some nature.

- The inmate is in primary federal custody, a **non-federal** or **federal** sentence is in existence, a **NL 924/non-924** sentence is imposed with the **non-924** count to run concurrent and the **924** count to run consecutive to the existing sentence. In some cases, ISM has calculated the entire sentence as running consecutively to the existing sentence.

  If the **924** count was ordered to run consecutively to the other counts in the J&C, ISM shall recalculate the sentence to show the **non-924** counts as running concurrently with the existing sentence and the **924** count as running consecutively.

- If ISM staff advised a court that a sentence was improper based on pre-**Gonzales** policy and the court entered an order to correct or modify the sentence based on that advice, then communication to the court through the appropriate U.S. Attorney must be initiated that puts the court on notice of the prior improper advice. The communication should include a request that the institution be advised of any action that the court may deem appropriate. ISM staff shall devise local procedures to follow up on every case brought to the attention of the court.

- If a situation arises that prevents the calculation of a **924/non-924** sentence, contact the Regional Inmate Systems Administrator (RISA) for assistance. *****

f. Release Authority and Release on Other Than a Weekend or Holiday. After a prisoner has been sentenced to a term of imprisonment, 18 USC § 3624(a) provides that such ". . . prisoner shall be released . . . on the date of the expiration of his term of imprisonment, less any time credited toward the service of his sentence . . ." for good conduct as authorized in "subsection (b)." This section is very important to the Bureau of Prisons since it both authorizes and requires that the prisoner be released at the end of the sentence (release date). (Certifying the judgment and commitment with a statement about GCT deductions the prisoner earned during confinement or with a statement that the prisoner was released on a certain date is not a requirement under the SRA. The certification requirement (See 18 USC § 4163. Discharge) for "old law" releases is still required.)

In addition, Subsection (a) further states, "If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday." The BOP's authority to utilize this section is discretionary and is not mandatory. For example, if a prisoner with a detainer on file has a release date that occurs on a weekend or holiday and the authority that placed the detainer is unable to take custody on any other day but the release date that falls on the weekend or holiday, then the early release provisions of this section should not be used.

When a prisoner is released on the last preceding weekday before a weekend or holiday, any term of supervised release shall begin on the day the inmate is actually released from custody. (See the Program Statement on Release Of Inmates Prior To A Weekend Or Legal Holiday and paragraph i. of this chapter for more information on supervised release.)

The Inmate Systems Manager is responsible for assuring that routine consideration is given to those prisoners that have release dates that occur on a weekend or holiday.

Community Corrections Managers are responsible for making weekend or holiday early release decisions for community corrections centers.