

visited on 12/18/2012



U. S. Department of Justice
Federal Bureau of Prisons

LEGAL RESOURCE GUIDE

TO THE

FEDERAL BUREAU OF PRISONS

2008

Revised 11/25/08

earlier than its date of imposition, or some other date, are viewed by the BOP as contrary to statute, and notice will be given to the Court.

4. Credit for Prior Custody (“Jail Time”)

Title 18 U.S.C. § 3585(b) dictates the method of calculating credit for prior custody of defendants whose offense was committed on or after November 1, 1987. Sentence credit is awarded for any time spent in official detention prior to the date a term of imprisonment commences, provided it was served as a result of the offense for which the sentence was imposed, or as a result of any offense (state or federal) for which the defendant was arrested after committing the offense for which the federal sentence was imposed. Additionally, the time must not have been credited against any other sentence. Slightly different rules apply for defendants whose date of offense is prior to November 1, 1987. See 18 U.S.C. § 3568 (repealed).

After a defendant is sentenced, the BOP is responsible for determining what period(s) of prior custody may be credited toward the federal term of imprisonment. See *United States v. Wilson*, 503 U.S. 329 (1992). Periods spent on pretrial release, no matter how restrictive, cannot be awarded as prior custody credit to U.S. Code offenders. See *Reno v. Koray*, 515 U.S. 50 (1995). D.C. Code felony offenders, however, may be entitled to such credit. See Program Statement 5880.32, District of Columbia Sentence Computation Manual. Consequently, J&Cs must be carefully drafted to avoid requiring prior custody credit awards in circumstances which are contrary to statute. In those infrequent instances in which a sentence being imposed is “adjusted,” for a period of time already served, the court should note on the J&C the amount of time by which the sentence is being adjusted, the undischarged term of imprisonment for which the adjustment is being given, and that the sentence imposed is a sentence reduction pursuant to U.S.S.G. § 5G1.3(b), for a period of imprisonment that will not be credited by the BOP. See U.S.S.G. § 5G1.3, Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment, App. Note 2(C), Imposition of Sentence. Otherwise, it may appear that prior custody credit is being awarded contrary to 18 U.S.C. § 3585(b).

5. Credit for Satisfactory Behavior (“Good Conduct Time”)

Title 18 U.S.C. § 3624(b) provides Good Conduct Time (GCT) credit for U.S. Code felony offenders whose offense was committed on or after November 1, 1987, and D.C. Code felony offenders whose offense was committed on or after August 5, 2000. Under that provision, inmates serving sentences greater than one year, but less than life, may receive up to 54 days sentence credit per year served. Inmates sanctioned for violating prison disciplinary rules may lose all or part of these credits. See Program Statement 5270.07, Inmate Discipline and Special Housing Units.

In light of the specific sentence credit applications involved, sentencing courts must be very specific in wording the J&C. Defendants sentenced to a “one year” term of imprisonment will actually serve one year, without the benefit of any GCT credit. Defendants sentenced to “a year and a day” term of imprisonment, however, can receive credit for satisfactory behavior and thus can actually serve less than one year. **The DSCC should be consulted to provide assistance in wording the J&C, to effect the Court’s intention in accordance with applicable statutes and BOP policy.**

For inmates whose offense was committed on or after November 1, 1987, § 3624(b) allows 54 days of credit "at the end of each year of the prisoner's term of imprisonment." This does not mean that inmates serve only 311 days for every year of imprisonment imposed. Rather, inmates serve 365 out of 419 days ($365 + 54 = 419$) of the sentence. For example, consider the case of an inmate sentenced to a three-year term of imprisonment on January 1, 1992. On January 1, 1993, the inmate receives 54 days good conduct time, leaving 676 days remaining in his or her sentence (2 years minus 54 days). On January 1, 1994, the inmate receives another 54 days of GCT, leaving 257 days remaining in his or her sentence (1 year minus 108 days). The inmate will not earn another 54 days of GCT against his or her sentence after January 1, 1994, as he or she does not have 365 days remaining to serve. Instead, the final award of GCT will be prorated for the final 257 days, resulting in an award of 33 days. The total deduction against the sentence in this case is 141 days ($54+54+33$), not 162 ($54+54+54$).

Sentence credit for satisfactory behavior by U.S. Code offenders whose offense was committed prior to November 1, 1987, is governed by Title 18 U.S.C. §§ 4161- 4166 (repealed). Until 1987, such defendants were eligible to accrue both Statutory Good Time (§ 4161) and Extra Good Time (§ 4162). Statutory Good Time may be forfeited in whole or in part if the prisoner violates institution rules or commits any offense. See 18 U.S.C. § 4165.

6. Fines and Costs of Confinement

Pursuant to U.S.S.G. § 5E1.2, the court shall impose a fine in all cases, unless the defendant lacks the necessary financial resources to make payments. For offenses committed on or after November 1, 1987, the court cannot require that any fine imposed be paid as a precondition for release from imprisonment. This is a change from prior law, which permitted the court to order the defendant to remain in prison until the fine is paid, unless and until a determination was made that the defendant was indigent or otherwise unable to pay the fine. See Program Statement 5882.03, Fines and Costs for Old Law Inmates. The Court Security Improvement Act of 2007, Pub. L. 110-177, amended Title 18 U.S.C. § 3624(e) by striking the provision that prohibited releasing an inmate to supervised release unless the inmate agreed to adhere to an installment schedule to pay for any court-ordered fine imposed for the current offense. The statute requires only that the BOP notify the inmate upon release of the releasee's requirement to adhere to the court-ordered payment schedule.

The Application Notes to the Sentencing Guidelines refer the court to the BOP and the Administrative Office of the U.S. Courts for assistance in determining an appropriate fine. Should the court wish, the BOP will furnish the court with the average cost of confinement at all facilities. The average cost across all facilities is used, as an inmate may be held in several different facilities during a single term of imprisonment. For prisoners for whom the court did not assess a fine to cover the costs of incarceration, and for whom the court did not waive the fine due to indigence, the BOP is authorized to collect a fee equal to the cost of one year of imprisonment, or a prorated amount, if the defendant is sentenced to a shorter term. See 18 U.S.C. § 4001 (note) and Program Statement 5380.06, Cost of Incarceration Fee (COIF). The yearly average cost of incarceration for a federal inmate in Fiscal Year 2006 was \$24,440.