BASICS OF FEDERAL SENTENCE COMPUTATIONS

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The Federal Bureau of Prisons is responsible for federal sentencing computation decisions. The statute governing sentence computations is 18 U.S.C. § 3585, which provides:

§ 3585.   Calculation of a term of imprisonment.

(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 of sentence at, the official detention facility at which the sentence is to be served.

(b)   Credit for prior custody. - A defendant shall be given credit towards the sentence of a term of imprisonment for any time 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.

Unlike its predecessor, 18 U.S.C. § 3568 (which specified the Attorney General made sentencing computation decisions), § 3585 did not identify who was responsible for sentence computation decisions. Some circuits held that the Attorney General had the sole responsibility; others held that this responsibility was shared between the Attorney General and the Sentencing Court. In United States v. Wilson, 503 U.S. 329, 112 S.Ct. 1351 (1992), the Court resolved this conflict and held that Congress intended not to disturb the long standing practice that the authority for sentence computation was to remain with the Attorney General (delegated to the Bureau of Prisons).

Defense counsel often try to have the sentencing judge order credit be awarded towards the sentence. Under Wilson, the sentencing court has no jurisdiction to do so. Sentence credit issues (especially when there are multiple sentences) are complicated and best left to the Bureau of Prisons after all the facts are in. Nevertheless, many sentencing judges want some idea of how the Bureau awards credit even if the court has no jurisdiction to order credit be awarded.

COMPUTING A SENTENCE: TWO STEP PROCESS (MAYBE MORE)

All federal sentence computations require two basic steps: (1) determine when the federal sentence begins under § 3585(a), and (2) determine whether credit for presentence detention is awarded under § 3585(b). Other steps may be needed depending on the facts.

Step One: Find when the sentence begins

The underlying principle of § 3585(a) is that a federal sentence commences when the defendant is in custody for purpose of serving his or her federal sentence. The sentence can begin when imposed (if the defendant is detained), when the defendant voluntarily surrenders to serve the sentence, or when an existing sentence expires if the new sentence is ordered consecutive. The earliest date a federal sentence can begin is the date it is imposed.

Step two: Compute prior custody credit

Under § 3585(b), prior custody can be awarded for all time in detention prior to the date the sentence began. The most common credit provision is § 3585(b)(1): Credit is awarded for time in custody in relation to the offense for which the sentence was imposed. Section 3585(b) prohibits prior custody credit when awarded towards another sentence. Once the Bureau begins the federal sentence, there is no double credit prohibition under § 3585(a). Location of detention (federal, state or foreign) is not relevant in deciding whether prior custody credit will be awarded.

Possible Step three: Aggregate multiple sentences and apply Steps one and two

Under 18 U.S.C. § 3584(a), multiple terms of imprisonment imposed at the same time run concurrently unless ordered to run consecutively. Conversely, multiple terms of imprisonment imposed at different times run consecutively unless ordered to run concurrently. Multiple terms of imprisonment are aggregated (when possible) and treated as one sentence for administrative purposes under 18 U.S.C. § 3584(c). For consecutive sentences: add up terms and then award prior custody credit. For concurrent sentences: each term carries its own commencement date; combine with earliest commencement date and latest full term date; then award prior custody credit. This is the area which is hardest to explain to judges imposing new terms on a prisoner already serving a sentence and the area defense counsel typically request the judge to order something in violation of 18 U.S.C. § 3585. Equally difficult are part concurrent, part consecutive sentences and non-aggregable sentences. GCT criteria can cause incompatibility.

Possible Step three A: Check for Incompatibility

Maximum possible GCT under 18 U.S.C. § 3624(b) - 54 days for each year served.

SRA (Sentencing Reform Act) - effective November 1, 1987
Required satisfactory compliance with Bureau rules
Vested each year as earned

VCCLEA (Violent Crime Control & Law Enforcement Act) – eff. Sept. 13, 1994
Toughen GCT statute
Exemplary compliance with Bureau rules for inmates serving a term for a crime of violence
Did not vest if GED unsat

PLRA (Prison Litigation Reform Act) - effective April 26, 1996
Further tightening of GCT
Requires exemplary compliance with Bureau rules for all offenders
Vest only on release

State and Federal Sentencing Issues

Interaction of state sentences and federal sentences is very complicated and usually turns on the specific facts. The Bureau is available to provide its interpretation in complex cases. There is a detailed memo on Interaction of State and Federal Sentences, available at BOP Public Web Site. (www.bop.gov/news/publications.jsp)

Aggregation of Sentences - 18 U.S.C. § 4161 (Old Law); 18 U.S.C. § 3584 (C)

	OLD LAW	SRA	VCCLEA	PLRA
OLD LAW	YES	NO	NO	NO
SRA	NO	YES	MAYBE	NO
VCCLEA	NO	MAYBE	YES	NO
PLRA	NO	NO	NO	YES

Basic Axioms of Sentence Computation

1. Sentences cannot commence until imposed - the earliest date a sentence can commence is date of imposition.

2. No prior custody credit for any time spent on bail-type release.

3. Prior custody credit is awarded for any part of a day in official criminal detention.

4. No prior custody credit is awarded when it is credited towards another sentence (there are exceptions).

5. With multiple sentences, aggregate first, if possible, and then apply prior custody credit.