

**FEDERAL BUREAU OF PRISONS:
From Sentencing to Release
John L. Badalamenti
2014 FDSET Training**



United States Penitentiary – Atlanta, Georgia

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1

**BOP POPULATION FACTS
(Offenses)**

Drug Offenses	94,899	(48.5%)
Weapons, Explosives Arson	30,902	(15.8%)
Immigration	23,756	(12.1%)
Robbery	8,242	(4.2%)
Extortion, Fraud, Bribery	10,756	(5.5%)
Burglary & Property Offenses	7,356	(3.8%)
Homicide, Agg. Assault, Kidnapping	5,596	(2.9%)
Sex Offenses (but increasing!)	10,343	(5.5%)
Banking, Ins., Counterfeit	844	(0.4%)
Courts or Corrections	629	(0.3%)
Continuing Criminal Enterprise	509	(0.3%)
National Security	95	(0.1%)

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4

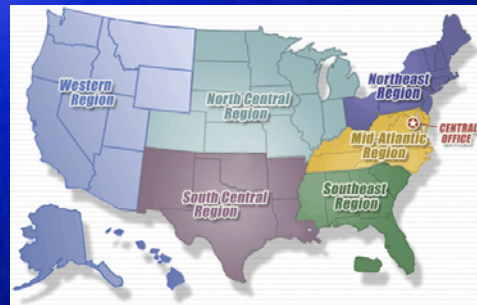
**BUREAU OF PRISONS
Background**

- Established in 1930 with 11 institutions.
- Today 110 institutions.
- Population Growth.
- Total Population:
 - 1980 – 24,363
 - 1990 – 65,526
 - 2000 – 133,921
 - April 2012 - 217,247
- Average Age - 39.

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2

**BOP REGIONS
Six of Them**



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5

**BOP
Inmate Population Facts**

Inmates By Race

White	128,382	(59.1%)
Black	81,292	(37.4%)
Native American	4,027	(1.9%)
Asian	3,546	(1.6%)

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3

MID-ATLANTIC REGION



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6

BOP POWER STRUCTURE

Director of the BOP
Assistant Directors
Regional Director
Warden
Associate Warden
Unit Manager
Case Manager
Correctional Counselor

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13

ADMINISTRATIVE REMEDY PROGRAM

Internal Mechanism for Inmate to File Grievance.

May Have Problem with:

- Medical
- Sentence Computation
- Security Classification
- Food
- Educational Placement
- Problems with Receiving or Sending Mail
- etc.

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16

THE PROGRAM STATEMENT (P.S.)

Found at: www.bop.gov/policy/index.jsp

- The “Bible” for BOP Employees
- Know It, and Refer BOP Employees To It.
- Where does it come from?
 - Statute → C.F.R. → Program Statement (Legal Dept.)

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14

ADMINISTRATIVE REMEDY PROGRAM

See 29 C.F.R. Part 542 – Administrative Remedy

3 LEVELS:

- ✓ Informal BP-8 “Cop Out” – To Unit Manager
- ✓ BP-9 – To Warden
- ✓ BP-10 – To Regional Director
- ✓ BP-11 – To National Director

See *Little v. Hopkins*, 638 F.2d 953, 953-54 (6th Cir. 1981)
(must exhaust administrative remedies before filing suit).

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17

IMPORTANT PROGRAM STATEMENTS TO KNOW:

- ❖ P.S. 5100.08 – Inmate Security Designation & Custody Classification**** (PSR Vital) 108 pages.
- ❖ P.S. 5330.10 – Residential Drug Abuse Program Manual
- ❖ P.S. 5270.07 – Inmate Discipline & Special Housing Units (SHU)
- ❖ P.S. 1330.13 – Administrative Remedy Program

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15

DESIGNATIONS & SENTENCE AND COMPUTATION CENTER (DSCC) Grand Prairie, Texas

- Centralized Inmate Systems Management Functions
- Sentence computations and initial scoring/designation
- All designation functions - Except Medical and Witsec (Witness Protection)
- Sentence Calculations.
- See *United States v. Wilson*, 503 U.S. 329 (1992) (holding that BOP is responsible for calculating federal terms of imprisonment).

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18

Initial Designation Process (e-Designate System)

- Probation uploads J&C, SOR and PSR in e-Designate
- USMS sends USMS 129 form and its request for designation
- BOP designation team uses PSR, J&C and 129 form to complete Security Designation & Data Form
- BOP P.S. 5100.08

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19

Security Designation & Custody Classification Process

- **Starting Point for Designation:** The Criminal History Score -- derived from the U.S.S.G. Criminal History Points, as reflected in the final judgment and the SOR. (Importance of the PSR and SOR).

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22

Determining Security Level

- Classification tension between placing inmate in the most appropriate security level institution meeting his/her program needs **and** BOP's mission to protect society. It's a struggle.
- Initial security designation data is entered into BOP's SENTRY system **based upon information contained within the PSR.**
- BOP PS 5100.08, Ch. 4

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20

Other Information Used to Determine Security Level

- Detainers/Pending Charges (Try to resolve before sentencing.)
- Violence History
- Escape History
- Time Period to Release Date
- Education Level
- Offense Severity
- Drug/Alcohol Abuse

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SECURITY DESIGNATIONS 5 LEVELS

- Minimum (*E.g., Electronic Monitoring, House Arrest*)
- Prison Camp – “Club Fed”
- Low
- Medium (Correctional Institution)
- High (Penitentiary)
- Administrative (Medical, Witsec, etc.)

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21

Initial Designation Process

BOP's risk scoring assessment

- DSCC's scoring team uses medical/mental health calculator to identify care level ---**PSR!!!!**
- Via SENTRY, Designation Team sends request to Hotel Team (care level 1 or 2) or **Office of Medical Designations and Transportation – “OMBT”** (care level 3 or 4) for designation

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24

Initial Designation Process

- DSCC's "Hotel Team" designator makes decision and selects facility for initial designation.
- DSCC staff notify USMS via e-Designate of designation & sends designation packet to designated institution.
- Ordinarily done within 7 *working* days.

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25

Initial Designation Process

Inmate Care Level II

- Inmates are stable outpatients who require at least quarterly medical evaluations.
- Can be managed in chronic care clinics, including for mental health issues.
- Examples: medication-controlled diabetes, epilepsy, emphysema.

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28

Initial Designation Process

Inmate Care Levels I - IV

- Before any initial designation decision, DSCC staff first assesses a provisional care level (I to IV) for each inmate.
- BOP institutions also have a care level assignment reflecting the medical resources available at that facility.

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26

Initial Designation Process

Inmate Care Level III

- Inmates are fragile outpatients who require frequent clinical contacts to prevent hospitalization.
- May require some assistance with activities of daily living, but do not need daily nursing care.
- Examples: cancer in remission <1 year, advanced HIV disease, severe mental illness in remission on medication, severe congestive heart failure, end-stage liver disease.
- Designation is done by BOP's OMDT

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29

Initial Designation Process

Inmate Care Level I

- Inmates are generally healthy. May have limited medical needs that can be easily managed by clinician evaluations every 6 mos.
- Inmates are <70 years of age.
- *E.g.*: mild asthma, diet-controlled diabetes, stable HIV patients not requiring medications.

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27

Initial Designation Process

Inmate Care Level IV

- Functioning is severely impaired
- Requires 24-hour skilled nursing care/assistance
- Examples: cancer on active treatment, dialysis, quadriplegia, stroke or head injury patients, major surgical patients, acute psychiatric illness requiring inpatient treatment, high-risk pregnancy
- Designation is done by BOP's OMDT

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30

Initial Designation Process

DSCC's Role in Medical Designations

- When designation packet is complete, DSCC staff load data into SENTRY and **score inmate**.
- Staff determines if inmate scores as a Care Level III or IV. If so, send request to OMDT to designate facility.
- OMDT determines if medical facility is warranted.
- If so, OMDT designates and returns packet to DSCC staff to notify USMS and route designation packet to institution.
- If not, OMDT returns packet to DSCC staff to make designation to non-medical institution, notify USMS, and send packet.

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31

CALCULATION OF GOOD CONDUCT TIME CREDITS

- Interpretation of 18 U.S.C. § 3624(b)
 - **Issue:** Should 54 days GCT (Good Conduct Time) be based on the length of the sentence imposed or the actual time served? Do you get the time up front or as you go?
- **BOP Says-** awards up to 54 days of GCT at the end of each year the sentence is served. Get GCT as you go. Don't get GTC based on the length of the sentence imposed. SCOTUS Agreed with BOP.

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34

Initial Designation Process

Upon Arrival at BOP Facility...

- After initial designation and provisional care level assignment by DSCC staff, BOP clinicians determine care level based on:
 - Treatment modalities;
 - Inmate functionality; and
 - Diagnostic categories (e.g., cancer, diabetes, etc.)
- Based on care level assessment, the institution may request a transfer of inmate from OMDT, if needed. (In other words, "we can't treat this inmate.")

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Concurrent Time for State Sentence?

- BOP gives no credit for pretrial incarceration credited toward another sentence under 18 U.S.C. § 3585(b). (Get Federal Sentencing done first, if possible.)
- To offset, request adjustment to sentence under § 5G1.3(c) or § 5K2.23 to make up the difference.
- If not under guidelines, ask for variance.

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35

• DSCC CONTACT INFORMATION:

- Designation and Sentence Computation Center (DSCC)
Phone: 972-352-4400
Fax: 972-352-4395
*E-mail address:
– GRA-DSCC:PolicyCorrespondence&AdminRemedies@bop.gov

• MAILING ADDRESS

- STAFF NAME
(Identify component: CESC, DSCC, or FAO)
Grand Prairie Office Complex
U.S. Armed Forces Reserve Complex
346 Marine Forces Drive
Grand Prairie, TX 75051

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33

SECURITY DESIGNATION FACTORS

Taken Primarily From PSR

- Age – 24 or younger major risk factor.
- Education – H.S. Diploma or GED? Must note in PSR!
- Drug Use? Want RDAP? Make sure to note drug use in PSR.
- Offense Severity
- Types of Detainers
- Length of Sentence (& Months to Release)
- Offense Conduct of Instant and Prior Offenses
- History of Escape or Violence
- Voluntary Surrender
- Judicial Recommendations
- Authority to Designate:
 - 18 U.S.C. § 3621
 - 28 C.F.R. Part 524.

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36

Serious Telephone Abuse Factor

- BOP has a new Public Safety Factor re phone abuse.
- If the BOP “has reasonable suspicion and/or documented intelligence supporting telephone abuse,” could disqualify inmate from lower security designations.
- And could reduce phone privileges.
- Advise clients to be smart on monitored calls.

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37

Severity of the Current Offense (cont.)

- What to do?
- If there are facts in PSR relating to the instant offense that did not support the (most severe) charged offense and are not relevant to support prima facie elements of the CONVICTED charge, OBJECT and ask the judge to exclude those facts from the PSR before it is forwarded from Probation to the BOP.

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40

PSR – Object, Object, Object at Sentencing

- P.S. 5100.08 -- (“Inmate Security Designation and Custody Classification”).
- Two major categories BOP Considers:
 1. Severity of the Current Offense
 2. History of Violence

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38

“History of Violence” Component

- More likely to get objection sustained.
- P.S. says that the “History of Violence” should only reflect “those acts for which there are documented findings of guilt.”
- BUT... P.S. goes on to say that “Severity of violence is determined by the offense behavior regardless of the conviction/finding” of the convicted past offense.

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41

Severity of the Current Offense

- The P.S. states for the BOP to score: “the most severe documented instant offense behavior regardless of the conviction of offense.”
- Example: “According to the PSR, the individual was involved in an Assault With Serious Injury (Greatest Security Level) but pled guilty to a Simply Assault (Moderate Security Level).” P.S. states to assign “points” on the “basis of the more severe documented behavior.”

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39

“History of Violence” Component (Cont.)

- What to do?
- OBJECT to any facts pertaining to the client’s prior uncharged, and/or previously acquitted conduct. Move to strike bad stuff.
- Show the district court the Program Statement and argue that facts, even if the court didn’t consider them for the purpose of deriving the sentence, will impact the client’s security level.

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42

Ask for help for Designations!

- Ask the AUSA or the agents to call over to the BOP to assist with designation.
- Ask the judge to make a recommendation as to facility and “why.”
- As, the judge to request BOP to write judge if BOP can’t comply with request.

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43

JUDICIAL RECOMMENDATIONS

- BOP does NOT “provide individual written responses to district sentencing court judges in cases where we are unable to comply with” the judicial recommendation. (34% judicial recommendations not followed – so, ask judge).
- **What to do?**
 - Ask district court to place language in the J&C Order.
 - **BOP recommends** that it is more helpful for judge to state “why” a particular institution is being recommended, rather than just stating the recommended BOP Facility (*i.e.*, RDAP, close to family, etc.).

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46

WHAT CAN'T THE JUDGE ORDER?

- Designation is an **Executive Function**.
- Judicial Recommendations are Considered.
- What the District Court Can't Mandate the BOP Do:
 - Place of Incarceration
 - 18 U.S.C. § 3612
 - Earlier Commencement of Federal Sentence
 - 18 U.S.C. § 3585(a)
 - Credit Toward Sentence For Presentence Custody
 - 18 U.S.C. § 3585(b)
 - Referral into Home Detention
 - 18 U.S.C. §§ 3622, 3624(c)
 - Temporary Release on Furlough
 - 18 U.S.C. § 3622
 - Participation in a Specific BOP Program
 - 18 U.S.C. § 4042
 - Participation in Residential Drug Abuse Program
 - 18 U.S.C. § 3621(e).

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44

RESIDENTIAL DRUG ABUSE PROGRAM (RDAP)

- Most Popular BOP Program
- Reference Substance/Alcohol Abuse Issue in PSR. Must be documented substance abuse disorder as defined by DSM.
- 4-5 Hours Per Day, 5 Days a Week, for 9 Months
- All Institutions Offer Drug Education Programs BUT...
- Only SELECTED Institutions Offer the 500 hour RDAP, which may result in a sentence reduction of up to 12 months.
- Total of 50 Institutions Offer the Program

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47

Tapia v. United States, 131 S. Ct. 2382 (2011)

- Object to a district court’s lengthening of D’s sentence to accommodate under RDAP under *Tapia*.

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45

RDAP Eligibility (at least 24-month sentence)

Review of Offense Conduct and Prior Criminal History
(...in the PSR)

- DSCC’s Legal Staff does the reviews.
 - Current offenses reviewed under 28 C.F.R. § 550.55(b)(5) and (b)(6) and PS 5162.05.
 - Prior offenses reviewed under 28 C.F.R. § 550.55(b)(4) and (b)(6).
- May appeal determinations through the Administrative Remedy Program.

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48

EDUCATIONAL PROGRAMS

- **Required to Earn a GED.**
 - ❑ See *Violent Crime Control and Law Enforcement Act (Pub. L. 103-322) (Sept., 1994)*.
 - ❑ See *Prison Litigation Reform Act of 1995 (Pub. L. 104-134)*.
 - ❑ See *18 U.S.C. § 3624(f) (mandates an education program for federal prisoners who are not functionally literate)*.
- **If no GED or High School Diploma, inmate is ineligible for higher pay at UNICOR job.**

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49

FURLOUGHS

- **What are they?**
 - ❑ Defined by BOP as a “temporary authorization for an appropriate inmate to be in the community.”
 - ❑ 18 U.S.C. § 4082 (giving BOP authority to grant them).
- **Very Rarely Granted By BOP.**
- **Exceptional Circumstances Include:**
 1. Visit a Critically-Ill Member of Immediate Family
 2. Attend Funeral of Immediate Family Member
 3. Receive Medical Treatment
 4. Participate in Religious or Work-Related Functions (very rare– UNICOR)

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52

EDUCATIONAL PROGRAMS

- **Non-English Speaking Inmates are required to participate in ESL until they show English proficiency.**
- **Parenting Programs Available at Most Facilities.**
- **Vocational Training.**

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50

Q&A?

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53

COMMUNITY CONFINEMENT PLACEMENT

- On February 14, 2005, new BOP regulations implemented which limit the amount of time inmates spend in CCCs to the last 10% of their sentence.
- See *Community Confinement, 70 Fed. Reg. 1659-01, (Jan. 10, 2005)*.
- Inmate Must Pay a “Subsistence Charge” of 25% of Their Income to Defray Costs of Community Correctional Confinement.

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51

Credits

- Terry Collins, BOP
- Alicia Vasquez, BOP
- Todd Bushert

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54