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).

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.

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)
The basic method is to figure out which authority (state or federal) is the primary custodian and then follow the statute at 18 U.S.C. § 3585.   As noted above, all federal sentence computations require two steps: (1) determine when the federal sentence begins under § 3585(a), and (2) determine whether presentence detention is awarded under § 3585(b).   The standards under § 3585(a) and § 3585 (b) are different.

Interaction of State and Federal Sentences - Examples

Example one:

January 2, 2000 State Arrest
January 4, 2000 State Bail
February 5, 2000 Federal arrest and bail
February 12, 2000 State rearrest of same charges, bail revoked
April 4, 2000   Inmate produced to U.S. Marshal via Federal writ of habeas corpus ad   pros
September 3, 2000   Federal sentence to 60 months, inmate returned to state
October 3, 2000 State sentence of 10 years

1 / 2/00	1/ 4/00	2/ 5/00	2/12/00		4/ 4/00	9/ 3/00	10/ 3/00
!	!	!	!		!	!	!

State Arrest   Bail   Fed arrest   State rearrest   Fed writ   Fed Sent.   State Sent.
                          & bail   & bail revoked

State is primary custodian - responsible for last arrest without relinquishment of jurisdiction.
State sentence is primary.   Federal sentence may be consecutive or concurrent to state term.
Usual rule - No prior custody credit on federal sentence for time credited towards state sentence.
Concurrent federal sentence may begin on date it is imposed (September 3, 2000), but not earlier.
Whether federal sentence is concurrent or consecutive is question for Federal Bureau of Prisons,
with input from the federal sentencing judge.

Example two:

January 2, 2000 State Arrest
January 4, 2000 State Bail
February 5, 2000 Federal arrest, no bail
February 12, 2000 State bail revoked
September 3, 2000   Federal sentence to 60 months
October 3, 2000 Inmate produced in state court via state writ, State sentence of 10 years

1 / 2/00	1/ 4/00	2/ 5/00	2/12/00	9/ 3/00	10/ 3/00
!	!	!	!	!	!

 State Arrest   Bail   Fed arrest   State bail revoked   Fed Sent.   State writ & Sent.

Federal is primary custodian - responsible for last arrest without relinquishment of jurisdiction.
State bail revocation has no impact.   Federal sentence is primary.   Federal sentence begins on
date it is imposed (September 3, 2000) .   Prior custody credit for time from February 5, 2000
federal arrest until September 2, 2000.   Whether state sentence is concurrent or consecutive is
question for state authorities.

Example three:

January 2, 2000 State Arrest
February 5, 2000 Federal indictment for related offense
April 4, 2000 State sentence of 10 years
August 5, 2001   Inmate produced to U.S. Marshal via Federal writ of habeas corpus ad   pros
September 3, 2001   Federal sentence of 60 months concurrent with state sentence, inmate
returned to state

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  1 / 2/00        2/ 5/00    4/ 4/00            8/ 5/01       9/ 3/01
   !_____!_____!_____!_____!_____
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    State Arrest   Fed Indict.   State Sent.   Fed writ   Fed Sent concurrent.

State is primary custodian - responsible for last arrest without relinquishment of jurisdiction.
State sentence is primary.   Federal sentence may be consecutive or concurrent to state term.
Usual rule - No prior custody credit on federal sentence for time credited towards state sentence.
Concurrent federal sentence may begin on date it is imposed (September 3, 2001).

Note: This could be a case for application of Sentencing Guideline 5G1.3(b):   Federal and state
offenses are related, and presumably the state offense conduct was considered in assessing the
guidelines.   The Bureau of Prisons will not award the inmate credit for time in detention from
January 2, 2000 to September 2, 2001 (20 months).   Note 2 to 5G1.3 suggests the federal sentence
may be adjusted for the period of time not credited by the Bureau of Prisons.   This would be an
adjustment towards guideline satisfaction.   Assuming a guideline range of 70-87 months and
assuming the court wanted a total sentence of 80 months, the court could adjust the sentence by 20
months, impose a sentence of 60 months, and not be a downward departure.
Judgment of Commitment order should reference 5G1.3 and note the adjustment for credit towards
guidelines.   After the term of sentence, the order can read : "I hereby adjusted the sentence under
5G1.3 by the 20 months in detention which would not be awarded by the Bureau of Prisons."

Bonus Queries: Assume state sentence in Example 3 expired on August 10, 2001.   Can federal
sentence run concurrently with the state sentence?   Can federal judge make the same adjustment?
How much prior custody credit is awarded on federal sentence?