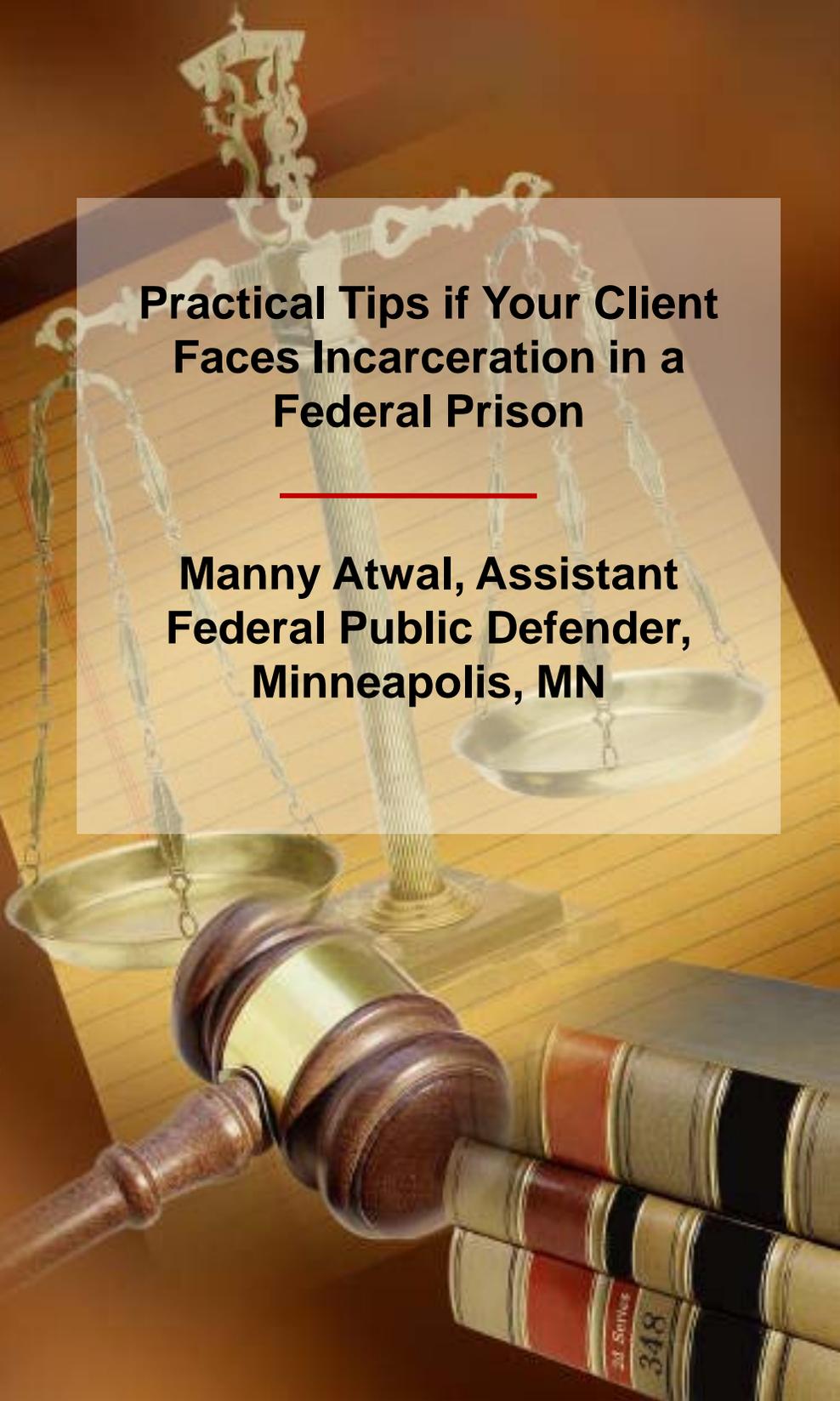


SENTENCING

ADVOCACY WORKSHOP

**Practical Tips if Your Client
Faces Incarceration in a
Federal Prison**

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Navigating the Bureau of Prison from Sentencing through Release

by

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PART I. THE BUREAU OF PRISONS

THE TERMINOLOGY

I. Prison Levels

There are five different security levels and four different medical levels within the Bureau of Prisons. All levels are considered in determining a client's designation. Within each level, there is a custody level. Each level is determined by the inmate's current conviction and past criminal history. A crime of violence will automatically enhance the inmate security level, as will a detainer.

A. Security Levels

1. Minimum: Also known as Federal Prison Camps, dormitory housing, low staff-to-inmate ratio; inmates usually work in larger institutions or military bases; low risk of violence or escape.
2. Low: Dormitory or cubicle housing, strong work and program components.
3. Medium: Strengthened perimeters, cell-type housing, greater internal controls than low or minimum.
4. High: Highly-secured perimeters, multiple and single-occupant cell housing, close control of inmate movement.
5. Administrative: Institutions with special missions such as inmates with medical problems, extremely dangerous, violent or escape-prone inmates. Equipped to hold inmates in all security categories.

B. Custody Levels

1. Maximum: Most restrictive. Inmate is shackled when being moved; maximum supervision.
2. In: Average Inmate.
3. Out: Inmate is allowed outside the secured perimeter, low supervision.
4. Community: Inmate is allowed out to do public service, allowed furloughs without an escort.

PRISON DESIGNATION

All designation is made by staff at the Designation and Sentence Computation Center (DSCC) in Grand Prairie, Texas. Information from the presentence report, US Marshals and the Judgement is taken and entered into a computer database named SENTRY. A point score is given that is then matched to the appropriate institution.

I. DESIGNATION has two steps:

A. Determine the Security Level by:

1. Determining if there is a detainer;
2. Severity of current offense;
3. Release date;
4. Criminal History Score
5. History of escape or violence;
6. Pre-commitment status

B. Determine Public Safety Factors (PSF) by:

1. Circumstances surrounding current offense;
2. Circumstances surrounding inmate.

II. Public Safety Factors

- A. Disruptive Group: An inmate who is a validated member of a disruptive group identified by the Prison system shall be housed in a high-security level institution;
- B. Offenses with greatest severity offense: aircraft policy, arson, assault, car-jacking, an organizer in the crime, escape, espionage, explosives, homicide, robbery, sexual offenses, exporting sophisticated weaponry, threat to a government official;
- C. Deportable alien;
- D. Sentence of more than 10 years remaining to be served;
- E. Violent behavior;
- F. Serious Escape;
- G. Prison Disturbance;
- H. Juvenile Violence;

III. SENTRY Scoring

| Security Level | Male | Female |
|-----------------------|------------------|-----------------------|
| Minimum | 0-11 points | 0-15 points |
| Low | 12-15 points | 16-30 points |
| Medium | 16-23 points | *(no Medium security) |
| High | 24+ points | 31+ points |
| Administrative | all point totals | all point totals |

Scoring alone does not determine the security level institution that is appropriate for the inmate. Public Safety Factors or a Management variable could effect placement at either a higher or a lower level institution.

IV. Transfer Request

- A. An inmate may request a transfer to a different prison only after serving eighteen months at the current prison.

V. Security Designation Data

- A. DSCC includes the sentencing Judge's name, the recommended facility, recommended program, voluntary surrender, months to release (sentence, minus good time and jail credit), severity of the offense (0= lowest to 7= greatest), criminal history score, history of violence, history of escape, detainer, age, educational level, drug/alcohol abuse, public safety factors and general remarks.

VI: Sex offender

A conviction alone is not required for the application of this PSR. If the PSR or other documents show any sexual abuse type behavior, that alone will cause a higher designation or required programming.

- A. Examples of where the PSF can be counted without a conviction is:
 - 1. Engaging in sexual contact without permission, child pornography, prostitution,
 - 2. Attempts are the same as if sexual act occurred
 - 3. Behavior in past prisons, NCIC entries or other official documentation

PRESENTENCE REPORT

The Presentence Report (PSR) is used in determining many of the above Public Safety Factors and factors used in determining designation.

- I. Make the corrections to an inaccurate PSR
 - A. Social, medical and mental health history
 1. If the social history shows exaggerated violent behavior or sexual behavior, the inmate's security level may increase, even if this is not an element for the imprisonment conviction.
 2. Gang affiliation or juvenile activity can increase security level - motion court to remove "allegations" of such activity.
 3. Mental health history: Should be accurate, and not exaggerated. If the Unit Team in the prison determines that the inmate has severe mental health history, the inmate may be precluded from a minimum security facility or from participating in UNICOR or Residential Treatment (see Part II for additional information).
 4. Pre-existing Medical conditions should be documented to ensure proper treatment. Find medical records that the Probation Officer may not have included in the PSR.
 5. Careful with pre-sentence evaluations. Information used as mitigation at sentencing, may come back and bite your client. This information is used in deciding a civil-commitment under the Adam Walsh Act.

**RULE: EVEN IF IT IS JUST SLIGHTLY INACCURATE -
MAKE A STINK AND HAVE THE PSR
CORRECTED!!!!**

II. Detainer

- A. If the PSR shows that there are unresolved cases, extra points are added to the BOP score, and the severity level increases.
- B. Resolve detainer, if possible, before the final PSR is completed, or send documentation to the probation officer after sentencing showing the unresolved case has been resolved.
- C. ICE detainer will not result in extra points.

III. Substance Abuse

- A. Inmates with a history of substance abuse, may qualify for residential drug treatment.
- B. If the program is completed, the *nonviolent* inmate may qualify for a reduction of his or sentence, up to a year.
- C. To qualify for the program, or to qualify for any drug educational program, the Unit team will look at the PSR to verify the history.
- D. An inmate's self-report or a conviction such as a DUI, + drug test, drug conviction will be used to score a inmate - Any such indicators will result in one point.

RULE: DO NOT DOWNPLAY HISTORY OF SUBSTANCE ABUSE

IV. Civil-Commitment - Adam Walsh Act

The Bureau of Prisons will use information from the Presentence report & tests in deciding whether to certify someone for civil commitment. The tests include:

1. Static -99
2. Minnesota Sex Offender Screening Tool

3. Rapid Risk Assessment for Sexual Offense Recidivism

www.mass.gov/cpcs/mhp/SDPcontents.html#sdpcontentcs;

Any who is considered a sexually dangerous person can be committed. A person who has engaged in or attempted to engage in sexually violent conduct or child molestation and is sexually dangerous to others. 18 U.S.C. 4247(a)(5).

BOP expands this to include child exploitation - possession of child pornography.

V. Determining accuracy

- A. Review the PSR carefully with your client, keeping in mind the Public Safety Factors.
- B. If the PSR can not verify information, find ways to verify the information. Again, this can make a difference. If a non-citizen has worked in the U.S. for at least three years, they may qualify for a lower security facility. However, the BOP will not take the inmate's word alone, there needs to be some type of documentation the PSR relied on.

VI. Criminal History

- A. DSCC looks at the offense CONDUCT, not the conviction. For example: If an inmate was involved in a serious assault, but pled to disorderly conduct, point may be given on the basis for the more severe documented behavior.
- B. DSCC looks at the Statement of Reasons attached to the Judgement. For example: If an inmate pled to a drug conspiracy, but the court finds the inmate was only responsible

for 10 grams of methamphetamine versus 200 grams, the DSCC may lower the points.

C. The PSR is used to determine the BOP criminal history score

| PSR | BOP Points |
|------------|-------------------|
| 0-1 | 0 |
| 2-3 | 2 |
| 4-6 | 4 |
| 7-9 | 6 |
| 10-12 | 8 |
| 13+ | 10 |

VII. History of Violence

A. ANY assault, regardless of punishment is given a point. Minor History of violence is aggressive or intimidating behavior which is not likely to cause serious bodily harm or death. Serious history of assault is behavior that is likely to cause serious bodily harm or death (aggravated assault, domestic violence)

| Type of Assault | >15 years | 10 -15 years | 5 - 10 years | <5 years |
|------------------------|---------------------|---------------------|---------------------|--------------------|
| Minor | 1 | 1 | 3 | 5 |
| Serious | 2 | 4 | 6 | 7 |

B. Severity of the violence is determined by the offense behavior regardless of the offense conviction.

VIII. Age and Education Level

- A. Since September 12, 2006, age has become a factor in placement.

| Age | Points |
|---------------|---------------|
| 55 + | 0 |
| 36-54 | 2 |
| 25-35 | 4 |
| 24 or younger | 8 |

- B. Education: One point is given if the inmate is making progress in a GED program. Two points if there is no verified high school degree or GED.

SENTENCING JUDGE

It is always important to ask the Judge at the time of sentencing to make a recommendation as to programming and prison designation. It is important to ask the Judge to make a recommendation that will be taken seriously by the Bureau of Prison.

- I. BOP Policy 5100.7
- A. The BOP welcomes the Judge's recommendation. They will respond to the Judge's recommendation via a letter.
- B. The BOP will honor the recommendation if the security level is appropriate.

- C. BOP will consider type of offense, length of sentence, client's age, release residence, the need for medical treatment, judge's recommendation. See Policy 5100.08.

II. Self Surrender

- A. A self surrender date earns the inmate a three-point reduction from an inmates security level.
- B. Even if the statute requires mandatory detention, have an argument ready at the Rule 11 hearing and again at sentencing.

III. Programming

- A. Important for a Judge to recommend treatment if your client wants it. These individuals are given priority over inmates without a recommendation

IV Good Conduct Time

- A. A sentence of one year means a defendant will serve one year. If a client is sentence to one year and a day, he will receive up to 54-days of good time.

RECEIVING CUSTODY CREDIT TOWARD A FEDERAL SENTENCE

I. Title 18 U.S.C. 3585(b):

Credit is given for any time spent in official detention prior to the date a term of imprisonment commences IF:

1. Detention was served as a result of the offense for which the sentence was imposed, or
2. As a result of any offense for which the defendant was arrested after committing the offense for which the federal sentence was imposed

The time must not have been credited against any other sentence.

B. State Custody Credit

1. If credit has been applied toward a state sentence, it cannot be applied to a federal sentence.
 - I. It does not matter if the conduct was related.
 - ii. It does not matter that the state and federal judges ordered the sentences to run concurrent.
2. See BOP policy 5880.28.

C. Tribal Custody Credit

1. No Federal Custody Credit

D. Juvenile custody time inside a juvenile facility

1. The Juvenile is not generally given credit for time inside a juvenile facility.

E. Sentencing Argument: Make argument to the Judge that because the BOP will not be giving the credit, that the judge should cut this time from the top of the sentence, and 18 U.S.C. 3553(e), allows this variance from the guidelines to make the sentence reasonable.

EDUCATIONAL PROGRAMS

The BOP offers inmates educational programs. All institutions offer literacy classes, English as a second language, parenting classes, wellness education, adult continuing education and library services.

I. General

A. GED Certificate

1. If inmate does not have a GED or a high school diploma, the inmate must complete 240 hours in the literacy program or obtain GED.
2. If inmate does not complete at least 120 days of educational programs, they may lose 13 days of good time.

B. Non-English speaking Inmates

1. Mandatory to take English as Second Language, unless there is a deportation detainer.

C. Vocational training and post-secondary education are available to inmates who have a GED or high school diploma.

EMPLOYMENT

Inmates are required to work if they are medically able to work. Inmates are enrolled into the Work Programs or UNICOR.

I. Work Programs

- A. Types of Assignments: Food service, warehouse, inmate orderly, painter, groundskeeper
- B. Wages: 12 to 40 cents an hours.

II. UNICOR

- A. Definition: UNICOR is the trade name for Federal Prison Industries (FPI). It is a government corporation that was established by Congress in 1934. UNICOR employs and provides job skills to inmates. The workers produce market-priced quality goods and services for sale to the Federal Government.
- B. Types of assignments: Marketable job skills while working in factory operations, metals, furniture, electronics, textiles, and graphic arts.
- C. Wages: 23 cents to \$1.14 an hour. 50% of their earnings goes to satisfy financial obligations and the remaining goes to prison commissary.
- D. Requirements: GED or a high school diploma. Inmates sign up for UNICOR and are placed on waiting list. There is a interview process. Priority is given to a prior UNICOR worker (transferred from a different prison), then to an inmate with a financial responsibility over \$2500, and finally Priority is given based on seniority.

SEX-OFFENDER TREATMENT PROGRAM - SOTP

A. Definition

SOTP: Sex-Offender Treatment Program. BOP says the program is designed to help sexual offenders manage their sexual deviance in order to reduce sexual recidivism.

-Voluntary Program

B. Four Components

1. Pre-treatment and orientation: Introduces program, series of orientation sessions, benefits of treatment, expectations of the staff
2. Assessment: Questionnaires, psychological tests, polygraph exam. Based on these tests, a comprehensive treatment plan is developed. First 60 days important - Can be booted out of the program
3. Treatment: therapy, psychotherapy, educational programs, discussion groups, medication. Individual goals, plus:
 1. Admission of guilt/remorse
 2. Complete acceptance of responsibility for sexual crimes
 3. Identification and recognition of deviant sexual arousal and offense pattern(s)
 4. Control and management of deviant sexual arousal
 5. Improvement in social skills
 6. Acquisition of relapse prevention skills
4. Release planning: Continued programming, employment, probation - Details released to probation officer & mental health professions

- C. Inmate must sign acknowledgement of rules and expectations; Informed consent and statement of limited confidentiality.
 - 1. Mental health professions are required to report an incident of child abuse, present or past ---- may lead to additional charges.

SEX OFFENDER MANAGEMENT PROGRAM - SOMP

- A. Program is not voluntary. Refusal to participate will result in lost employment, no halfway house time. Mail monitored more closely. Requires questionnaires, interviews and polygraph.
- B. Each Region has Program and usually begins the last three years of the sentence.

DRUG PROGRAMMING

Some type of drug abuse education is provided at all prison. The programs are run though the Psychology Services Department.

- I. Drug Abuse Education Course: 40 Hours
 - A. Mandatory Participation if:
 - 1. In there is a evidence in the PSR about drug or alcohol abuse;
 - 2. Alcohol or drug use was the reason for a supervised release violation; or
 - 3. Sentencing Judge recommended programming.
 - B. May voluntarily participate if evidence of prior drug abuse

- II. Non-Residential Drug Abuse Treatment Program
 - A. Definition: Provided at all prisons; usually consists of individual and/or group counseling and self-help programming.
 - B. Eligibility:
 - 1. Inmate must have verifiable documented drug abuse problem;
 - 2. No serious mental impairment;
 - 3. Sign an agreement acknowledging his/her program responsibility.
 - C. Placement:
 - 1. Voluntary participation, submit a request to Unit team.
 - 2. Voluntary withdrawal from program.

III. Residential Drug Abuse Treatment Program

A. Definition: Provided at selected prisons, last a minimum 500 hours over a six to twelve-month period; inmates are housed in a unit separate from the general prison population.

B. Eligibility

1. Verifiable documented drug abuse problem;
2. NO serious mental health impairment;
3. Sign an agreement
4. Must be within thirty-six months of release;
5. Appropriate security level (an inmate may be predesignated).

C . Early Release

1. Pursuant to 18 U.S.C. 227 (d), an inmate who is sentenced for a non-violent offense, has a substance abuse problem, and successfully completes a residential drug abuse treatment program, may qualify for early release *not to exceed* 12 months.
2. Inmates not eligible for early release are: .
 - I. INS detainees
 - ii. inmates with prior felony or misdemeanor convictions for homicide, forcible rape, robbery, aggravated assault, or child sexual abuse offenses;
 - iii. Inmates whose current offense has an element of physical force, carrying, possession or use of a firearm, sexual abuse offenses.

SEX OFFENDER REGISTRATION

1. The requirements of the Sex Offender Registration and Notification Act apply to all sex offenders, regardless of the date of conviction.
2. Registration must be completed prior to completion of imprisonment.
3. BOP must:
 1. Inform the offender of and explain his or her duty under the sex offender registration
 2. Require the offender to read and sign acknowledgment
 3. Ensure that the sex offender is registered

PART III: INMATE RELEASE

The BOP focuses on release programming the last 18 month prior to release. Inmates participate in The Release Preparation Program and Inmate Transition Branch. Eligibility for an inmate's release to a halfway house or to community confinement is determined by a case by case analysis. If an inmate has not been paying toward his or her financial responsibility or has a detainer, will generally not be released to a halfway house. An inmate will be released to a halfway house if they six months or less left to serve on their sentence or 10% of their sentence, whichever is less.

- I. The Release Preparation Program
 - A. Program includes classes on resume writing, job search, and job retention. Presentations by Community-based organizations show how they can help ex-inmates find jobs and training opportunities after release.

II. Inmate Transition Branch

- A. Program provides additional pre-release employment assistance. Some institutions hold mock job fairs for inmates to have an opportunity to practice job interview skills and to expose community recruiters to the skills available among releasing inmates.

III Community Confinement

- A. An inmate is still in Federal custody while at a community confinement institution. The staff may allow the inmate to leave to seek employment, counseling, work or recreation. Staff monitors movement by approving work locations and making random phone contacts and visits.
- B. Inmates are ordinarily required to be employed 40 hours a week within 15 days after arriving at the CC.
- C. Inmates are required to pay a substance fee to help defray the cost of their confinement. Usually, the inmate is required to pay 25% of their gross income.
- D. Inmates are required to find a stable housing prior to their release. The staff will verify the proposed address and forwards the information to the supervising probation officer.
- E. Medical
 - 1. Inmate is responsible for their own medical expenses while residing at a CC.
 - 2. BOP will provide a 30-day supply of medication to cover the first 30 days of an inmate's stay.

IV: IMPORTANT BOP RESOURCES

- A. Website: www.bop.gov

- B. Policy Statements: P5100.08: Inmate Security and Designation
Chapters One - Seven