



HOW FEDERAL PRISONERS ARE PLACED

Shedding Light on the BOP's Inmate Classification and Designation Process

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The Federal Bureau of Prisons (Bureau or BOP) is the country's largest correctional system, maintaining custody of over 200,000 federal offenders. In 2014, when the federal prison population dipped for the first time in three decades, the Bureau processed over 73,000 designation requests for newly sentenced prisoners. Determinations as to where offenders will be housed are multifaceted and, in the authors' experience, not well understood by many federal criminal justice system stakeholders despite the very real implications they have for inmates and their loved ones. Along with practical suggestions and insight, this article offers an overview of the Bureau's Designation and Sentence Computation Center (DSCC); the stages in the designation process; objective and discretionary factors weighed in security scoring and placement; how medical and mental health issues are assessed and accounted for; and facilities' security levels.

An Effective Offender Classification System

The goal of an offender classification system is to place inmates in facilities that provide appropriate security

and safety while meeting inmates' programming, educational, and medical needs. Whereas courts can make nonbinding recommendations regarding facility placement and programming accommodation, Congress vested the Bureau with the authority to determine all federal inmate designations, that is, the institution at which an offender will serve any term of imprisonment.

The Bureau has utilized a classification system since shortly after its inception in 1930. As the number of federal correctional institutions began to grow beyond the original three, the prisons were assigned security levels to allow for more efficient and cost-effective operations. Correspondingly, the Bureau designated offenders to what, from its unique expertise, it deemed appropriate facilities.

Today, the BOP operates 122 facilities that are classified into five security levels: minimum, low, medium, high, and administrative. An institution's security level assignment is based on its level of staff supervision (inmate-to-staff ratio) and security measures, such as external patrols, towers, perimeter barriers, and internal security. In recent years, the

Bureau has tended to group facilities of different security levels in close proximity into what are known as Federal Correctional Complexes. The Bureau also contracts with private corrections companies to operate facilities capable of housing offenders (predominantly criminal aliens). Eleven percent of the Bureau population is housed in private facilities.

Relative to the designation process, two major events occurred in 2006. First, the BOP updated its *Inmate Security Designation and Custody Classification* program statement (Program Statement 5100.08 or the *Designation Manual*), which remains in effect and is discussed below. (See www.bop.gov/resources/policy_and_forms.jsp.) Second, to engender consistency and economies of scale, it created the DSCC in Grand Prairie, Texas, a centralized location where the vast majority of classification and designation decisions are made.

DSCC staff specialize in inmate classifications and sentence computations. They are organized into teams, with each team handling all matters from one or more courts of jurisdiction (COJs), including probation or supervised release violators. Organization by COJ allows for enhanced communications with stakeholders, such as courts, probation officers, and the US Marshals Service. Using a roster of inmates classified the prior day, a team of senior designation staff, Hotel Team, makes final determinations on all initial designations (and on transfer requests). Hotel Team personnel review the load data, including judicial recommendations, and current facility population data to determine an appropriate designation.

The Paper Trail

The designation process begins when the case documents—the judgment and commitment order, the presentence report (PSR), and the marshals request for designation (USMS 129)—are uploaded to eDesignate and electronically transmitted to the DSCC. An offender ordinarily will not be considered for initial designation until all of the case documents are issued and transmitted.

Once received, the appropriate DSCC team will review the case documents to ensure the federal government has

primary jurisdiction, which is typically held by the sovereign that first arrests an offender (assuming continuous confinement thereafter). This step is taken to identify if a state has primary jurisdiction of an offender who appeared in federal court via writ of habeas corpus *ad prosequendum*. If so, the BOP will not designate a place of federal confinement until the state sentence is completed or the state criminal process otherwise resolves (e.g., charges are dropped).

If the federal government properly has primary jurisdiction, DSCC staff classify the offender in accordance with Program Statement 5100.08. This is done largely by loading relevant information from the PSR into a computer application (Sentry), which in turn produces a classification score that permits assignment to a facility of corresponding security. Because of the critical role that the PSR plays in the designation process (and throughout an inmate's term of confinement), it is important that the information contained therein is as accurate and complete as possible.

The entire designation process is normally completed within seven working days from the date the DSCC receives all case documents. The process may take slightly longer when the defendant has serious medical issues, which necessitates review by the Bureau's Office of Medical Designations and Transportation (OMDT). Once an initial designation decision has been made, DSCC team staff notify the US Marshals Service via eDesignate of the designation location. To the extent the court has permitted a defendant to surrender voluntarily, the US Marshals Service or the US probation office (depending upon district) notifies the defendant of the designated facility to which he or she must report.

Determining at What Security Level an Offender Will Be Housed

The *Designation Manual* factors in nine categories of information relative to “scoring out” an offender:

1. *Voluntary surrender to custody.* Where a court permits a defendant to voluntarily surrender to BOP custody for service of an initial term of confinement (not supervised release violation), three points are subtracted from the security point total.
2. *Severity of current offense.* Appendix A to Program Statement 5100.08 contains a scale of various offense behaviors, and the *Designation Manual* provides a corresponding point assignment for assessed severity. When evaluating offense severity, staff consider the most severe documented behavior, as set forth in the PSR, not necessarily the offense of conviction.

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3. *Criminal history score.* Points are assigned based on an offender's criminal history points, taken from the judgment's statement of reasons or, if not found there, from the PSR. Scoring does not factor in whether the court found a defendant's points over – or underrepresent criminal history.
4. *History of violence.* In assessing the violent nature of prior documented findings of guilt (convictions and supervised release violations), policy distinguishes between "serious" and "minor" incidents as well as time relative to when the case is being reviewed. This category does not factor in the instant offense and can change over time based on an offender's institutional adjustment (i.e., violence in the BOP can result in assignment of points).
5. *History of escape or attempts.* Acts for which there are documented findings of guilt, including absconding from community supervision or failing to appear for a criminal case, will be scored.
6. *Detainers.* Points are scored for detainers, including both those actually lodged and where law enforcement indicates a firm intent to lodge one. Immigration and Customs Enforcement detainers are not scored. Age. Given the correlation between age (youth) and negative institutional adjustment, points are assigned, with inmates under 24 years old receiving eight points and inmates over 55 receiving none.
7. *Education level.* Where the PSR verifies a high school degree or GED, no points are assigned. Where neither is verified, two points are assessed.
8. *Drug/alcohol abuse.* Where the PSR documents a defendant's drug or alcohol abuse within the past five years, one point is assessed. If there is no known abuse or abuse more than five years old, no points are added.

An inmate's security point total corresponds to a security level from which staff determine facility placement. However, security point total is not dispositive. The application of a public safety factor (PSF) or a management variable can impact the placement decision. The application of a PSF, which is not confined to evidence of convictions, is intended to address information suggesting a need for greater security precautions. Examples include sentence length, removable alien status, sex offender status, and threat to a government official. Management variables are grounded in the "professional judgment of bureau staff" and are used to effectuate an inmate's placement at a facility inconsistent with the inmate's scored security level. This most commonly occurs when an inmate poses either a greater or lesser security risk than his or her assigned security level denotes or to facilitate program participation (e.g., permit completion of residential drug treatment despite a drop in security level).

The Role of Judicial Recommendations

Although they are not binding, Congress has directed the BOP to account for judicial recommendations relative to placement and programming decisions. (18 U.S.C. § 3621(b).) The Bureau strives to follow all judicial recommendations where possible, recognizing that they "are carefully thought out and are important to" sentencing courts. (*Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 247 (3d Cir. 2005).) According to BOP data, the Bureau currently complies with 74 percent of recommendations, wholly or in part.

Recommendations are usually set forth in the judgment and commitment order's imprisonment section. (Note: The BOP does not receive sentencing transcripts in the ordinary course of business.) Courts may wish to frame recommendations in terms of the reasons underlying them. Thus, for example, rather than "The Court recommends placement at FCI [blank]," it is more helpful to provide "The Court recommends placement at FCI [blank] to facilitate regular family visitation" or "to permit participation in the [blank] vocational program" or "to permit employment within a UNICOR textile factory."

Despite best efforts, the Bureau may be unable to follow courts' recommendations due to conflict with policy or sound correctional management. Reasons for not meeting recommendations vary. For one, a recommendation may be for placement at an institution that is not commensurate with an offender's security level (e.g., to a low security prison where the offender qualifies for medium security) or at institution without capacity to accept additional inmates at the time of designation. There may also be security considerations, such as separatee issues (avoiding placement of an offender with a codefendant against whom he or she cooperated, or vice versa) or efforts to balance populations of known gang members through the system. Finally, a recommended program may not be offered at the institution recommended (e.g., over time, UNICOR operations may cease at one institution and be introduced at another institution).

In terms of program recommendations, courts can, but need not, recommend residential drug abuse program (RDAP) participation. At initial designation, Bureau staff review PSRs for indication that RDAP may be appropriate. In addition, staff make RDAP eligibility determinations once an inmate is in custody and applies, assessing whether the inmate suffered from a diagnosable disorder during the year prior to arrest. That said, where an inmate enters BOP custody with approximately three years or less remaining to serve, RDAP recommendations do help signal the potential need for treatment and encourage placement at institutions that offer the program.

Along these same lines, courts need not recommend sex offender treatment or placement in one of the Bureau's nine sex offender management programs (SOMPs). Inmate participation in sex offender treatment

is wholly voluntary and limited to the final portion of an offender's sentence, that is, the last approximate three years depending on severity of need. Further, determinations as to which inmates will be housed at a SOMP are made by DSCC officials. It is often the case that certain sex offenders (e.g., an inmate convicted of possession of child pornography with no history of inappropriate contact with minors) will be housed in FCI general populations.

Where the Bureau cannot meet a recommendation, it will attempt to identify another suitable facility that will. The Bureau no longer writes courts explaining the reason(s) why a recommendation is not followed unless the court specifically requests such notification.

Accounting for Medical Needs

In addition to security level, BOP facilities are assigned a "medical care level" that reflects the medical resources available at the facility, including staffing, as well as local community resources.

- *Care Level 1:* Suitable for inmates younger than 70 years of age, who are generally healthy but may have limited medical needs that can be easily managed by clinician evaluations every six months.
- *Care Level 2:* Suitable for inmates who are stable outpatients but require at least quarterly clinician evaluations or are able to manage their needs in chronic care clinics (e.g., asthma, medication-controlled diabetes, epilepsy, or emphysema).
- *Care Level 3:* Suitable for fragile need inmates who require frequent clinical visits and may require some assistance with daily living but not daily nursing supervision (e.g., cancer in remission less than a year, advanced HIV, severe congestive heart failure, or end-stage liver disease).
- *Care Level 4:* Care Level 4 facilities, also referred to as medical referral centers (MRCs) or federal medical centers (FMCs), are for inmates who are severely impaired and may require daily nursing care, that is, those who would generally be hospitalized if in the community (e.g., active treatment for cancer, requiring dialysis, stroke or head injury patients, major surgical patients, or high-risk pregnancy).

Since the creation of the United States Medical Center for Federal Prisoners in Springfield, Missouri, in 1933, the Bureau has partnered with the United States Public Health Service (USPHS). Designation teams' input of data into Sentry includes medical information, and the system contains an algorithm that flags potential Care Level 3 and 4 placements for OMDT review and assessment. In this regard, a summary of the defendant's medical history and current condition, as well as a list of current medications and dosages, should be provided in the PSR to ensure the Bureau has the information needed to make an informed designation decision.

Stakeholders' Participation

As the foregoing hopefully reflects, much of what influences an offender's programming and placement occurs well before entering BOP custody. Central to the Bureau's management of inmates is the PSR, meaning that the value of its accuracy cannot be overstated. Relative to making informed decisions, material to the BOP is not only information contained in the PSR but also supporting documentation appended to the report. For instance, where a defendant suffers from serious medical issues, letters from primary physicians that summarize the course of care as well as pertinent treatment records can be transmitted by probation to the Bureau via eDesignate.

The US Attorney's Office has involvement on several levels. It provides the probation office information detailing a defendant's offense conduct. And, when questions arise about the Bureau's ability to care for a defendant's medical needs, the US Attorney's Office can contact the appropriate BOP regional counsel's office and request a preliminary review and opinion, including concerning where a defendant may be housed.

Given the nature of the attorney-client relationship, defense counsel plays perhaps the most critical role in ensuring that complete, accurate information is provided to the probation office for inclusion in the PSR. For instance, recognizing PSR writers' typical caseload demands, counsel can help convey medical information to the BOP, including prescribed medication regimen, by obtaining letters from treating physicians and providing documentation to probation in a manner that makes it easily transmittable (e.g., in PDF format). In this regard, defense counsel can provide a client's doctor a copy of the BOP's national formulary to determine whether the medication(s) the client is taking is on the formulary, and if not, whether there is an acceptable formulary substitute (and if not, why not). Also, because they lodge PSR objections on behalf of their clients and are the ones who most often request specific recommendations from sentencing courts, it is incumbent upon defense counsel to understand applicable BOP policy both in terms of explaining why information in a PSR that may not bear on the sentence to be imposed is relevant for BOP purposes and in terms of requesting judicial recommendations that the Bureau can follow.

Conclusion

Federal defendants understandably have an interest in knowing where they will serve whatever term of imprisonment the court may impose. The answer to that question is not an easy one given the myriad variables that affect an offender's placement within the Bureau of Prisons. However, it is hoped that with a better understanding of the process, stakeholders can provide information that will assist the Bureau in exercising its designation authority in a manner which satisfies offender needs and safety and security considerations. ■