U.S. Department of Justice
Federal Bureau of Prisons

Change Notice

DIRECTIVE AFFECTED: 5880.30
CHANGE NOTICE NUMBER: 4
DATE: 9/8/99

1. **PURPOSE AND SCOPE.** This Change Notice incorporates revisions to the Sentence Computation Manual ("Old Law"- Pre-CCCA - 1984) and provides instruction on the manner in which to calculate Old Law sentences pursuant to **Title 18, U.S.C. § 924(c)(1)** in accordance with **United States vs. Gonzales, 117 S.Ct 1032, 137 L.Ed 132 (1997)** as it pertains to the application of the firearm penalty provisions. This change amends aggregation practices/procedures for **§ 924 (C)(1)** and non **§ 924(C)(1)** counts (referred to as **924/non-924** sentence below).

2. **SUMMARY OF CHANGES. Chapter VII, Pages 15 through 16F:** Incorporates new procedures to calculate **18 U.S.C § 924(c)(1)** sentences.

3. **TABLE OF CHANGES**

Remove	**Insert**
Table of Contents, Pages i and ii	Table of Contents, Pages i, ii and iii
Chapter VII, Pages 15 and 16	Chapter VII Pages 15 - 16F

4. **ACTION.** File this Change Notice in front of PS 5880.30, Sentence Computation Manual, ("Old Law" - Pre-CCCA-1984).

/s/
Kathleen Hawk Sawyer
Director

U.S. Department of Justice
Federal Bureau of Prisons

Change Notice

DIRECTIVE BEING CHANGED: 5880.30
CHANGE NOTICE NUMBER: CN-03
DATE: June 30, 1997

1. PURPOSE AND SCOPE. This Change Notice transmits revisions, updates and amendments to the "Old Law" **Sentence Computation Manual.**

2. SUMMARY OF CHANGES

a. **Table of Contents, Page iii.** Number "11." updated.

b. **Chapter IV, Pages 3 through 5.** ISM responsibilities and procedures for forfeiture, withholding and restoration of statutory good time added.

c. **Chapter VI, Page 1.** A minor wording addition was made to the **Qualified State Presentence Time** definition.

d. **Chapter VI, Page 2.** An incorrect reference to another paragraph was removed.

e. **Chapter VI, Page 3.** An explanation for determining one day of presentence time credit was added.

f. **Chapter VI, Pages 4 through 7.** The Reno v. Koray decision's impact on prior custody time credit awards was explained and implementation instructions were added.

g. **Chapter VI, Page 8.** Additional language as to what constitutes the filing of a federal detainer was explained.

h. **Chapter VI, Pages 10 through 12.** The instructions for determining **Kayfez v. Gasele** credits have been rewritten and examples have been provided.

i. **Chapter VII, Page 36.** Paragraph "11.'s" contents description has been enlarged.

j. **Chapter VII, Pages 36 through 36B.** Instructions for processing a Parole Commission issued summons and a warrant for alleged parole violation have been added.

k. **Chapter VII, Page 37.** The reparole rule for a special parole term and an initially non-parolable sentence is explained.

l. **Chapter XIII, Page 3.** The work supervisor's responsibility for recommending MGT is added.

m. **Chapter XIII, Page 4A.** Assignment and removal procedures for an IGT assignment and for disallowing IGT are added.
Disallowance instructions for CGT are added.

n. **Chapter XIII, Pages 5 through 5B.** SENTRY instructions and other general information for awarding EGT are added.

o. **Chapter XIII, Page 7.** Home confinement as an EGT assignment is added. Additional language for an EGT transfer review is added.

p. **Chapter XIII, Page 8.** EGT instructions for a temporarily transferred inmate are added.

q. **Chapter XVI, Page 2.** More information is provided for the processing of a vacated conviction or sentence as it pertains to a parole violator.

3. TABLE OF CHANGES

Remove	Insert
Table of Contents	
Page iii	Page iii (CN-03)
Chapter IV	
Page 3	Pages 3 through 5 (CN-03)
Chapter VI	
Pages 1 through 10 (CN-02)	Pages 1 through 12 (CN-03)
Chapter VII	
Pages 35 through 38	Pages 35 through 38 (CN-03)
Chapter XIII	
Pages 3 through 8	Pages 3 through 8C (CN-03)
Chapter XVI	
Pages 1 and 2	Pages 1 and 2 (CN-03)

4. ACTION. File this Change Notice in front of the Program Statement which accompanies the Sentence Computation Manual.

\s\
Kathleen M. Hawk
Director

U.S. Department of Justice
Federal Bureau of Prisons

Change Notice

DIRECTIVE BEING CHANGED: 5880.30
CHANGE NOTICE NUMBER: CN-02
DATE: July 18, 1994

1. PURPOSE AND SCOPE. This Change Notice includes simplified instructions for making presentence time credit determinations, adds definitions and incorporates the decisions of the U.S. Courts of Appeals.

2. DIRECTIVE RESCINDED

O.M. 269-93 Presentence Time Credit (U.S.C. § 3568) for Ninth Circuit Pre-Guideline ("Old Law") Sentences (11/16/93)

3. SUMMARY OF CHANGES

a. **Chapter VI, Page 1.** Paragraph 2., "Definitions," was expanded to include definitions for "Qualified State Presentence Time" and "Raw EFT."

b. **Chapter VI, page 4, para. 7.b.(5).** A reference to a statutory provision was changed to show the applicable new statute and reference was made to another paragraph in the manual.

c. **Chapter VI, pages 4 and 4A, para. 7.b.(6).** An amendment to this paragraph was made to cite an additional Ninth Circuit Court of Appeals case and the impact of the case on defendants released on probation. The amendment also adds appeal bond releases to the types of situations that may accrue additional prior custody time credits.

d. **Chapter VI, Pages 7, 8 and 9.** The instructions in paragraph (a) for making determinations as to the applicability of state presentence time credits for a federal sentence were simplified and consolidated. The instructions in paragraph (b) for determining whether the state gave credit for presentence time were expanded and an explanation concerning time credits to award under **Kayfez** was added.

e. **Chapter VII, pages 22, 22A, and 22B, para. 5.v..** A new paragraph has been added to reflect the manner in which U.S. Code and D.C. Code sentences must be aggregated for parole eligibility purposes to conform to a decision by the D.C. Circuit Court of Appeals.

f. **Chapter VII, Page 51, Step No. 3.** A one day calculation error was corrected.

g. **Chapter VII, Page 51, Step No. 4.** An explanation of the proper method for calculating a regular sentence followed by a consecutive PV term and an example to demonstrate the method of calculation was added.

h. **Chapter VII, pages 53 and 54, para. 13.c..** This section, pertaining to the point in time when an "Old Law" supervised release term commences, has been revised to reflect the agreement between the Administrative Office of the U. S. Courts and the United States Parole Commission about the commencement of the supervised release term.

4. TABLE OF CHANGES

Remove	Insert
Chapter VI	Chapter VI
Chapter VII, Pages 21-22	Chapter VII, Pages 21, 22, 22A, and 22B
Chapter VII, Pages 51-54	Chapter VII, Pages 51, 52, 52A, 53, and 54

5. ACTION. File this Change Notice in front of Program Statement 5880.30, the Old Law Sentence Computation Manual.

\s\
Kathleen M. Hawk
Director

U.S. Department of Justice
Federal Bureau of Prisons

Change Notice

DIRECTIVE BEING CHANGED: 5880.30
CHANGE NOTICE NUMBER: CN-01
DATE: March 10, 1994

1. PURPOSE AND SCOPE. To update procedures for vacated sentences which result in resentencing. This Change Notice does not initiate significant changes in policy or procedure, but rather is being issued because Program Statement 1330.04 was issued more than ten years ago.

2. SUMMARY OF CHANGES. This Change Notice updates and incorporates P.S. 1330.04, Sentence Computation Procedures, Sentences Vacated, Resentencing into P.S. 5880.30, Old Law Sentence Computation Manual. The change includes more definitive and broadened instructions for a sentence calculation that results from a vacated conviction or sentence.

3. DIRECTIVE RESCINDED

P.S. 1330.04 Computation Procedures for Sentences That Are Vacated But Result in a Re-Sentencing (10/23/73)

4. TABLE OF CHANGES

Remove	Insert
	Chapter XVI, Pages 1 and 2

5. ACTION. File this Change Notice in front of P.S. 5880.30, Sentence Computation Manual ("Old Law" - Pre-CCCA-1984).

\s\
Kathleen M. Hawk
Director

U.S. Department of Justice
Federal Bureau of Prisons

Program Statement

OPI: CPD/ISM
NUMBER: 5880.30
DATE: July 16, 1993
SUBJECT: Sentence Computation Manual ("Old Law"-Pre-CCCA-1984)

1. PURPOSE AND SCOPE. To transmit the revised "Old Law" Sentence Computation Manual for sentences of inmates for crimes which ocurred prior to the effective date of the Comprehensive Crime Control Act of 1984.

The "Old Law" Sentence Computation Manual, Program Statement 5880.20, was issued on September 25, 1972. Since then, the repeal and supercession of numerous sections of the United States Code have caused many of that Manual's sentence implementation instructions to become outdated and have added new sentencing provisions. Many Program Statements and Operation Memoranda have also been issued which change the way the Bureau of Prisons interprets and computes sentences. Also, court decisions since 1972 have caused the Bureau of Prisons to change the manner in which some sentences are implemented.

As a result of these changes, it is necessary to issue a revised Manual. This Manual provides staff with definitive sentence implementation and computation instructions. To the extent possible, all existing Program Statements and Operation Memoranda impacting "old law" sentencing have been updated and are included in this Manual to provide one source document which is the Bureau of Prisons' official sentence interpretation, implementation and computation policy.

2. DIRECTIVES AFFECTED

a. Directives Rescinded

P.S. 1330.8	Sentence Correction or Reduction, Rule 35 of the Federal Rules of Criminal Procedure (12/17/79)
P.S. 5050.9	Parole Commission Reorganization Act of 1976 (03/18/77)
P.S. 5050.34	Canal Zone Offenders, Parole Commission Jurisdiction (02/14/77)
P.S. 5880.17	Statutory Good Time Rate Applicable to Violator Terms (PV or MRV) (06/07/72)
P.S. 5880.18	Computing YCA Terms for Commitments of Less Than Six Years (10/09/73)

"Bold, Indented & in Quotes - USC Citation"
[Bracketed Bold - Rules]
Regular Type - Implementing Information

P.S. 5880.20	Sentence Computation Manual (09/05/72)
P.S. 5880.24	Jail Time Credit Under 18 U.S.C. § 3568 (09/05/79)
P.S. 5881.20	Good Time, Extra (08/02/89)
O.M. 309-92	Foreign Treaty Sentence Computations (12/03/92)

b. Directives Referenced

P.S. 5070.7	Study and Observation Report (05/12/92)
P.S. 5110.7	Military and Coast Guard Inmates (07/16/79)
P.S. 5140.11	Commitments, Civil Contempt of Court, (07/16/79)
P.S. 5140.20	Release of Inmates Prior to a Weekend or Legal Holiday (11/27/89)
P.S. 5140.24	Juvenile Delinquents, Juvenile Justice and Delinquency Prevention Act of 1974 (03/24/93)
P.S. 5550.4	Escape from Extended Limits of Confinement (07/13/89)
P.S. 5553.04	Escapes/Death Notification (09/10/91)

c. Rules cited in this Manual are contained in 28 CFR 2.11, 28 CFR 2.12, 28 CFR 2.29, 28 CFR 2.52, 28 CFR 523.1 thorugh 523.17 and 28 CFR 571.30.

3. STANDARDS REFERENCED.

a. American Correctional Association Foundation/Core Standards for Adult Correctional Institutions: C2-4059

b. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4094

c. American Correctional Association Foundation/Core Standards for Adult Local/Detention Facilities: None

d. American Correctional Association 3rd Edition Standards for Adult Local/Detention Facilities: 3-ALDF-1E-03

4. DISTRIBUTION. At least one copy of this Manual is to be placed with each Regional Inmate Systems Manager, Community Corrections Manager, Inmate Systems Manager, and any other staff having sentence computation responsibility.

\s\
Kathleen M. Hawk
Director

TABLE OF CONTENTS

I INTRODUCTION

Sentence computation is the mathematical method of determining the various components of a sentence to imprisonment, e.g., length of sentence; the date that the sentence begins to run (date computation begins (DCB)); statutory good time (SGT); extra good time (EGT); presentence time credit; inoperative time; parole eligibility (PE); the expiration full term (EFT) date; the statutory release date (SRD); the 180 day date; periods of supervision; and the special parole term (SPT) or supervised release (SR) period, if any, to follow.

There are many federal statutes that govern sentence computation and many court decisions (case law) which pertain to sentence computation. All the statutes and court decisions that provide the basis for the methods that have been devised to implement the Bureau of Prisons sentence computation policies and practices are included in this manual.

The instructions for computation of sentence contained in this manual pertain only to those offenses that occurred prior to November 1, 1987. The Insanity Defense Reform Act of 1984 (IDRA) (P.L. 98-473, Title II, Chapter IV, of the Comprehensive Crime Control Act of 1984 (CCCA)), however, **became effective on October 12, 1984 and pertains to all federal prisoners, regardless of the date of the offense. IDRA instructions** are contained **in the Sentence Computation Manual-CCCA**, Chapter II, and are, therefore, **not included in this manual.**

II USE OF EXPIRATION TABLE

The most valuable and necessary aid to sentence computation is the Expiration Table (see Appendix XIII EXPIRATION TABLES). Proper use of this table must be learned as a prerequisite to learning sentence computation. The Expiration Table numbers each day from January 1, 1951 (Number 4384) through December 31, 2060 (Number 44561) in exact numerical sequence. It should be noted that each page equals one year and consists of twelve columns of numbers (each column equals one month) representing January through December.

The Expiration Table is used to calculate future or past dates and time periods that include a number of days not easily added to, or subtracted from, a date. The table is also used to calculate the amount of time or number of days between dates. The examples below demonstrate the use of the Expiration Table.

> **Note**: In calculating periods of time, the words **from** and **through** include the date to which they refer; and the words **to** and **until** do not include the date to which they refer but the date before. (See Chapter VII, paragraph 4. for the Parole Commission's definition of these words.)

> **Note**: **All dates in computation examples are shown in years, months and days order instead of months, days and years** to provide a more uniform and systematic method of calculating periods of time. **Lengths of sentences are also shown in years, months and days.**

> **Example No. II - 1:** Add a 60 day time period to the date of 01-15-80 to determine the future date.

Date	=	80-01-15	=	14990
Time Period			= + 60	Days
Future Date	**=**	**80-03-15**	**=**	**15050**

> **Example No. II - 2:** Add a 120 day time period to the date of 01-15-80 to determine the future date.

Date	=	80-01-15	=	14990
Time Period			= + 120	Days
Future Date	**=**	**80-05-14**	**=**	**15110**

Example No. II - 3: Add a 387 day time period to the date of 01-15-80 to determine the future date.

Date	=	80-01-15	=	14990
Time Period			= + 387	Days
Future Date	**=**	**81-02-05**	**=**	**15377**

Example No. II - 4: Subtract a 75 day time period from the date of 12-15-80 to learn the date in the past.

Date	=	80-12-15	=	15325
Time Period			= - 75	Days
Past Date	**=**	**80-10-01**	**=**	**15250**

Example No. II - 5: Subtract a 252 day time period from a date of 12-15-80 to learn the date in the past.

Date	=	80-12-15	=	15325
Time Period			= - 252	Days
Past Date	**=**	**80-04-07**	**=**	**15073**

Example No. II - 6: Subtract a 480 day time period from a date of 12-15-80 to learn the date in the past.

Date	=	80-12-15	=	15325
Time Period			= - 480	Days
Past Date	**=**	**79-08-23**	**=**	**14845**

Example No. II - 7: Subtract the past date of 09-12-79 from the date of 12-15-80 to learn the time period in between.

Date	=	80-12-15	=	15325
Past Date	=	79-09-12	= -	14865
Time Period			**=**	**460 Days**

Example No. 11 - 8: Subtract the past date of 04-01-79 from the date of 12-15-80 to learn the time period in between.

Date	=	80-12-15	=	15325
Past Date	=	79-04-01	= -	14701
Time Period			**=**	**624 Days**

Example No. II - 9: Subtract the past date of 01-22-78 from the date of 12-15-80 to learn the time period in between.

Date	=	80-12-15	= 15325
Past Date	=	78-01-22	= -14267
Time Period			**= 1058 Days**

III CALCULATION OF TIME

1. Calculation arithmetic. The arithmetic used in calculating time periods or number of days is quite simple. Applying the arithmetic in the various computation situations, however, can be quite confusing. For instance, knowing whether to back up a day at the beginning or end of a computation, or knowing whether to back up at all, can make the difference in whether the final answer is correct.

2. Adding numbers. Probably the most important factor to remember in adding (calculating) numbers together for a total is that all the numbers are included in the final answer (e.g., 1 + 0 = 1; 1 + 1 = 2; 1 + 1 + 1 = 3; 7 + 3 = 10, etc.) but, when a date and a number are added together (e.g., 01-08-77 + 1 day = 01-09-77), the beginning (or first) date is not included in the final result.

a. Addition examples. The following examples demonstrate the additions discussed in paragraph 2. above:

Example No. III - 1:

1 Day	= 1
0 Day	= + 0
Total Inclusive Days	**= 1 Day**

1 Day	= 1
1 Day	= + 1
Total Inclusive Days	**= 2 Days**

1 Day	= 1
1 Day	= 1
1 Day	= + 1
Total Inclusive Days	**= 3 Days**

7 Days	= 7
3 Days	= + 3
Total Inclusive Days	**= 10 Days**

Date	= 77-01-08	= 13888
Number		= + 1 Day
Answer	**= 77-01-09**	**= 13889**

In the example on the preceding page, it can be seen that **the date** to which 1 day was added **is not included in the answer.** Since **the Bureau of Prisons gives 1 full day of time credit for even a partial day in custody** (see Chapter VII, paragraph 3.a.) then the above answer, if this example was a calculation of a 1 day sentence to imprisonment, would have to be backed up 1 day in order to include the date on which this computation began.

b. Backing up one day. The following example demonstrates a computation that is backed up 1 day **after** the calculation has been performed:

Example No. III - 2:

DCB	=	77-01-08	=	13888
Sentence			= +	1 Day
Tentative EFT	=	77-01-09	=	13889
Back Up to Include DCB			= -	1 Day
EFT	**=**	**77-01-08**	**=**	**13888**

c. Avoiding extra arithmetic step. In order to avoid the extra step of going through the additional arithmetic process to back up a computation by 1 day, the use of the **asterisk (*)** has been adopted to identify those situations where the computation has been backed up one day to include the **DCB** of that calculation in the final answer. The following examples do not show the extra arithmetic step that was eliminated by use of the **asterisk (*):**

Example No. III - 3:

DCB	=	77-01-08	=	13888
Sentence			= +	1 Day
Tentative EFT	=	77-01-09	=	13889
EFT	**=**	**77-01-08***		

Example No. III - 4:

DCB	=	77-01-08	=	13888
Sentence			= +	15 Days
Tentative EFT	=	77-01-23	=	13903
EFT	**=**	**77-01-22***		

d. Date from which to back up one day. In adding a day, or a number of days, to a beginning date of a computation, the **same answer** will always result regardless of whether the **DCB** or the **Tentative EFT** is backed up the 1 day to include the DCB in the calculation, **providing** that **years and months** are not involved. If years and or months are included in the calculation along with days, then the answer may not always be the same. As a result, the rule is established that the **Tentative EFT**, rather than the **DCB**, shall always be the date that is backed up 1 day in order to follow the same necessary rule that has been established, as discussed and shown below, for backing up 1 day when days are not involved in the computation.

The following examples show that some computations can be backed up 1 day either **before** or **after** the calculation is complete and arrive at the same answer.

Example No. III - 5:

DCB = 77-01-07***** = 13887
Sentence = +26 Days
EFT = 77-02-02 = 13913
----------DCB
= 77-01-08 = 13888
Sentence = +26 Days
Tentative EFT = 77-02-03 = 13914
EFT = 77-02-02*

Example No. III - 6:

DCB = 77-02-07***** = 13918
Sentence = +30 Days
EFT = 77-03-09 = 13948
----------DCB
= 77-02-08 = 13919
Sentence = +30 Days
Tentative EFT = 77-03-10 = 13949
EFT = 77-03-09*

More examples follow to show the **backing up** 1 day practice and the use of the **asterisk (*):**

Example No. III - 7:

DCB = 77-01-08
Sentence = +01-01-02 1 Yr 1 Mo 2 Dys
Tentative EFT = 78-02-10
EFT = 78-02-09*

Example No. III - 8:

DCB = 77-01-08
Sentence = +02-02-03 2 Yrs 2 Mos 3 Dys
Tentative EFT = 79-03-11
EFT = 79-03-10*

e. The "after rule." "In the above examples, the computations have been backed up one day to include the beginning date of each computation **after** the calculation was complete. The computations could have been backed up the 1 day **before** the calculation and the same answers would have followed. There are occasions, however, when the answer would be **incorrect** if the computation was backed up the one day **before** the calculation rather than **after** the calculation. **As a result, the rule is established that all computations that are being performed to calculate a future date shall be backed up 1 day after (herein after called the "after rule") the computation rather than before (including those computations that are for days only).**

The following examples point up the differences in the future date that can occur by using the **before** and **after rule** methods.

Example No. III - 9:

In the first example, backing up the beginning date before the calculation begins, instead of after the calculation is complete, results in a two day difference that would allow the prisoner to serve two days less than a full month.

DCB = 78-02-28*
Sentence = +00-01-00 1 Month
EFT = 78-03-28
----------DCB
= 78-03-01
Sentence = +00-01-00 1 Month
Tentative EFT = 78-04-01
EFT = 78-03-31*

Example No. III - 10:

The next example demonstrates a problem that can occur when a **leap year** is involved. In this case, the **Tentative EFT** falls on March 1st in a leap year so that backing up 1 day **after** the calculation, in accordance with the **after rule** just established, places the final EFT on the date of February **29**. Backing up the computation **before** the calculation would place the EFT on February **28, 1 day less** than the prisoner would be required to serve in this situation.

DCB = 83-02-28*
Sentence = +01-00-00 Year
EFT = 84-02-28

DCB = 83-03-01
Sentence = +01-00-00 Year
Tentative EFT = 84-03-01
EFT = 84-02-29*

Example No. III - 11:

The next example demonstrates the difference in the final EFT using the **before** and **after rule** methods. In this case, the prisoner would serve **1 day longer** than necessary by backing up the computation 1 day **before** calculating it.

DCB = 78-03-31*
Sentence = +00-01-02 1 Month 2 Days
Unconverted Date = 78-04-33
Minus April 78 (30 Days) = -00-00-30 Days
EFT = 78-05-03

---DCB = 78-04-01
Sentence = +00-01-02 1 Month 2 Days
Tentative EFT = 78-05-03
EFT = 78-05-02*

Example No. III - 12:

The next example demonstrates, once again, the difference that can occur in the final answer using the **before** and **after rule** methods. In this case, the prisoner would serve **1 day less** than required by backing up the computation 1 day **before** calculating it.

DCB = 77-06-30*
Sentence = +01-01-03 1 Yr 1 Mo 3 Dys
Unconverted Date = 78-07-33
Minus July 78 (31 Days) = -00-00-31 Days
EFT = 78-08-02
----------DCB
= 77-07-01
Sentence = +01-01-03 1 Yr 1 Mo 3 Dys
Tentative EFT = 78-08-04
EFT = 78-08-03*

f. Exceptions to the "after rule." There are a number of **after rule** computation **exceptions** that produce an **incorrect** answer even when backing up 1 day **after** the calculation has been performed. These exceptions **always** occur when calculating sentences that include **months** (may also include years but not days). In such situations, **the computation is not backed up 1 day either before or after the calculation is complete.** The following situations identify the various combinations that can occur:

DCB is last day of **31** day month and the Tentative EFT falls on the last day of a 30, 29 or 28 day month.

DCB is on the **30th** day of any month and the Tentative EFT falls on the last day of a 29 or 28 day month.

DCB is on the **29th** day of any month and the Tentative EFT falls on the last day of a 28 day month.

The following examples demonstrate at least one of each situation that may arise:

Example No. III - 13:

The next three examples pertain to a DCB that falls on the **31st** day of the month and an EFT that falls on the last day of a month with **30 days or less.**

DCB = 80-01-31
Sentence = +00-03-00 3 Months
EFT = 80-04-30

DCB = 80-01-31
Sentence = +00-01-00 1 Month
EFT = 80-02-29 Leap Year

DCB = 80-01-31
Sentence = +01-01-00 1 Year, 1 Month
EFT = 81-02-28

Example No. III - 14:

The next two examples pertain to a DCB that falls on the **30th** day of the month and an EFT that falls on the last day of **February (including a leap year).**

DCB	=	79-11-30
Sentence	=	+00-03-00 3 Months
Unconverted EFT	=	79-14-30
EFT	**=**	**80-02-29 Leap Year**

DCB	=	78-11-30
Sentence	=	+01-03-00 3 Months
Unconverted EFT	=	78-14-30
EFT	**=**	**79-02-28**

Example No. III - 15:

The next example pertains to a DCB that falls on the **29th** day of the month and an EFT that falls on the last day of a **non-leap year February.**

DCB	=	79-01-29
Sentence	=	+00-01-00 1 Month
EFT	**=**	**79-02-28**

g. Use of Expiration Table. Keeping in mind the rule about backing up 1 day to include the DCB in the final computation as explained in paragraph e. of this chapter, the following examples demonstrate the use of the Expiration Table in hypothetical sentencing situations involving days only.

Example No. III - 16:

DCB	=	79-01-01	=	14611
Sentence			= +	180 Days
Tentative EFT	=	79-06-30	=	14791
EFT	**=**	**79-06-29***		

Example No. III - 17:

DCB (PV Warrant Executed)	=	79-01-01	=	14611
Time Remaining To Serve			= +	612 Days
Tentative EFT	=	80-09-04	=	15223
EFT	**=**	**80-09-03***		

h. Calculation of EFT date. Probably the most often performed sentence computation is the initial calculation of a sentence based on a newly received judgment and commitment. Following are some examples that demonstrate the calculation of sentences that

might be included in a judgment and commitment and that cannot be calculated by using the Expiration Table: (These examples will show only the calculation of EFT dates and, in some examples, the conversion of months, more than 12, to years and the conversion of excessive days to months.)

Example No. III - 18:

DCB	= 82-04-15
Sentence	= +05-00-00 5 Years
EFT	**= 87-04-14***

Example No. III - 19:

DCB	= 82-04-15
Sentence	= +03-03-00 3 Years 3 Months
EFT	**= 85-07-14***

Example No. III - 20:

DCB	= 82-04-15
Sentence	= +02-03-03 2 Yrs 3 Mos 3 Dys
Tentative EFT	= 84-07-18
EFT	**= 84-07-17***

Example No. III - 21:

DCB	= 82-04-15
Sentence	= +01-11-00 1 Year, 11 Months
Unconverted EFT	= 83-15-15
Minus 12 Months	= -00-12-00 12 Months
EFT	**= 84-03-14***

Example No. III - 22:

DCB	= 82-04-15
Sentence	= +01-00-20 1 Year 20 Days
Unconverted EFT	= 83-04-35
Minus April (30 Days)	= -00-00-30 30 Days
Tentative EFT	= 83-05-05
EFT	**= 83-05-04***

Example No. III - 23:

DCB	= 82-04-15
Sentence	= +02-12-27 2 Yrs 12 Mos 27 Dys
Unconverted EFT	= 84-16-42
Minus 12 Months	= -00-12-00 12 Months
Years Converted	= 85-04-42
Minus April (30 Days)	= -00-00-30 30 Days
Tentative EFT	= 85-05-12
EFT	**= 85-05-11***

i. Calculation of presentence and inoperative time days. Other calculations that must often times be made are to determine the number of days **presentence time** credit to award or the number of days **inoperative time** (escape time, appeal bond time, civil contempt time, etc.) to add to a sentence. The days involved can be determined by adding the number of days in each month together for a total or by using the Expiration Table which would involve subtracting (see paragraph 3. below) one date from another. Both the arrest and release dates (or the date before the a federal sentence begins to run) must be included in the calculation for presentence time. For inoperative time, the date after the escape occurs and the date just prior to return to federal custody must be included in the calculation.

Example No. III - 24:

Arrested on 01-03-80 and released on 03-05-80.

Arrested	= 80-01-03	=	Jan 80	= 29 Dys
			Feb	= 29 Dys
Released on Bond	= 80-03-05	=	Mar	= + 5 Dys
Presentence Time				**= 63 Dys**

Example No. III - 25:

Arrested	= 80-10-12	=	Oct 80	= 20 Dys
			Nov	= 30 Dys
Released on Bond	= 80-12-16	=	Dec	= 16 Dys
Re-Arrested	= 81-03-06	=	Mar 81	= 26 Dys
Re-Released on Bond	= 81-04-12	=	Apr	= 12 Dys
DCB	= 81-09-04	=	Sep	= +00 Dys
Presentence Time				**= 104 Dys**

Example No. III - 26:

Arrested on 05-04-81 and remained in continuous custody until sentenced on 07-09-81.

Arrested	=	81-05-04	=	May 81	= 28 Dys
				Jun	= 30 Dys
Date Before DCB	=	81-07-08	=	Jul	= +08 Dys
Presentence Time					**= 66 Dys**

Example No. III - 27:

Arrested on 10-07-80 and released on 11-02-80; re-arrested on 12-13-80 and re-released on 01-06-81.

Arrested	=	80-10-07	=	Oct 80	= 25 Dys
Released	=	80-11-02	=	Nov	= 2 Dys
Re-Arrested	=	80-12-13	=	Dec 80	= 19 Dys
Re-Released	=	81-01-06	=	Jan 81	= + 6 Dys
Presentence Time					**= 52 Dys**

Example No. III - 28:

In the next example, release from a federal sentence occurred on 01-03-80, effectively terminating the confinement portion of that sentence at that time, to a federal detainer for prosecution and custody was continuous until sentenced on 02-05-80. The presentence time credit in this case would begin on 01-03-80 (the day of release) and terminate on 02-04-80 (the day prior to beginning service on the new sentence).

Arrested	=	80-01-03	=	Jan 80	= 29 Dys
Date Prior to DCB	=	80-02-04	=	Feb	= + 4 Dys
Presentence Time					**= 33 Dys**

Example No. III - 29:

The next example demonstrates an inoperative time calculation based on an escape from a sentence on 12-09-80 and apprehension on 03-03-81. Since the date of escape and the date of apprehension are included in the sentence, then the inoperative time would begin on 12-10-80 and terminate on 03-02-81.

Date After Escape	=	80-12-10	=	Dec 80	= 22 Dys
			=	Jan 81	= 31 Dys
			=	Feb	= 28 Dys
Date Prior to Apprehension	=	81-03-02	=	Mar	= + 2 Dys
Inoperative Time					**= 83 Dys**

3. Subtraction calculation rules and examples. Example Nos. III - 24 through III - 29 demonstrated the calculation of presentence and inoperative time by adding together the number of days in each month to learn the total. The following examples demonstrate the use of **subtraction** by using the Expiration Table in various calculation situations. Remember, **1 full day of time credit is awarded for even a partial day in custody** (see Chapter VII, paragraph 3.a.). **The backing up 1 day rule for computations involving subtraction, unlike computations involving addition, is performed at the beginning of the calculation rather than at the end.** Calculating the time to be served on supervision is also demonstrated in the following examples, and is, of course, performed near the SRD.

Example No. III - 30:

Arrested on 03-12-80 (Note how this date has been backed up 1 day, to include it in the computation, as shown by the asterisk (*****).) and released on bond on 06-19-80.

Released on Bond	=	80-06-19	= 15146
Arrest	=	80-03-11*****	= -15046
Presentence Time			**100 Days**

Example No. III - 31:

Arrested on 04-19-80 and custody was continuous to the date of sentence of 08-24-80. Since credit for the date of sentence is included in the computation of the sentence, the date before of 08-23-80 is the last day of presentence time credit and is the date that is used in the calculation.

Date Before DCB	=	80-08-23	= 15211
Arrested	=	80-04-18*****	= -15084
Presentence Time			**= 127 Days**

Example No. III - 32:

Arrested on 10-12-80; released on Bond on 12-16-80; re-arrested on 03-06-81; released on Bond on 04-12-81; re-arrested and sentenced on 09-04-81.

Released on Bond	=	80-12-16	=	15326
Arrested	=	80-10-11*	=	-15260
Partial Presentence Time			**=**	**66 Dys**
Re-Released on Bond	=	81-04-12	=	15443
Re-Arrested	=	81-03-05*	=	-15405
Partial Presentence Time			**=**	**38 Dys**
Partial Presentence Time			=	66 Days
Partial Presentence Time			= +	38 Days
Total Presentence Time			**=**	**104 Days**

Example No. III - 33:

Date of escape occurred on 05-11-80 and the date of apprehension was 10-01-80. Since both the date of escape and the date of apprehension are included in the calculation of the sentence, then the inoperative time actually began on 05-12-80 (which must be backed up 1 day to include it in the computation) and continued through 09-30-80.

Last Inoperative Time Date	=	80-09-30	=	15249
Date After Escape	=	80-05-11*****	=	-15107
Inoperative Time			**=**	**142 Days**

Example No. III - 34:

Date of escape was 01-02-78 (inoperative time begins on 01-03-78) and the date of apprehension was 02-09-82 (last day of inoperative time was 02-08-82).

Last Inoperative Time Date	=	82-02-08	=	15745
Date After Escape	=	78-01-02*****	=	-14247
Inoperative Time			**=**	**1498 Days**

Example No. III - 35:

In this example, parole occurred on 01-09-80 and the EFT was 12-31-80. The first day of parole was, therefore, 01-10-80 since the date of 01-09-80 was included in the computation of the sentence. The parole continued through 12-31-80. In order to include the beginning date of parole (01-10-80) in the computation, it must be backed up 1 day to 01-09-80.

EFT	=	80-12-31	= 15341
Parole Date	=	80-01-09*****	= -14984
Supervision Time			**= 357 Days**

IV STATUTORY GOOD TIME

1. Statutory good time statute and explanation. Statutory good time (SGT) is a credit (day) that a prisoner may earn, based on good conduct, that is deducted from the sentence **(EFT)** as authorized under **18 USC § 4161** and states,

> **"Each prisoner convicted of an offense against the United States and confined in a penal or correctional institution for a definite term other than for life, whose record of conduct shows that he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence beginning with the day on which the sentence commences to run, as follows:**
>
> **Five days for each month, if the sentence is not less than six months and not more than one year.**
>
> **Six days for each month, if the sentence is more than one year and less than three years.**
>
> **Seven days for each month, if the sentence is not less than three years and less than five years.**
>
> **Eight days for each month, if the sentence is not less than five years and less than ten years.**
>
> **Ten days for each month, if the sentence is ten years or more."**

2. Statutory good time chart. The chart below also shows the authorized rates of SGT that may be awarded for good conduct:

0 to 6 Months	**=**	**0 Dys**
6 Months to 1 Year and 1 Day	**=**	**5 Dys Per Mo**
1 Year and 1 Day to 3 Years	**=**	**6 Dys Per Mo**
3 Years to 5 Years	**=**	**7 Dys Per Mo**
5 Years to 10 Years	**=**	**8 Dys Per Mo**
10 Years and More	**=**	**10 Dys Per Mo**

3. Statutory good time for often imposed sentences. The next chart shows the number of days **SGT** that can be earned for often imposed sentences:

180 Days (**never** equals 6 months)	=	0 Days
6 Months (5 Days Per Month)	=	30 Days
1 Year (5 Days Per Month)	=	60 Days
1 Year and 1 Day (6 Days Per Month)	=	72 Days
2 Years (6 Days Per Month)	=	144 Days
3 Years (7 Days Per Month)	=	252 Days
4 Years (7 Days Per Month)	=	336 Days
5 Years (8 Days Per Month)	=	480 Days
6 Years (8 Days Per Month)	=	576 Days
7 Years (8 Days Per Month)	=	672 Days
8 Years (8 Days Per Month)	=	768 Days
9 Years (8 Days Per Month)	=	864 Days
10 Years (10 Days Per Month)	=	1200 Days

4. Statutory good time formula and examples. The formula for determining SGT for a single month, or any number of months, is: **Month(s)** x **rate** = **Days SGT.**

The formula for determining SGT for a partial month is:
Days x **rate** ÷ **30** = **Days SGT for Partial Month (fractions are dropped).**

Example No. IV - 1:

The next example demonstrates the SGT calculation for a sentence of **4 years, 6 months and 10 days.** The SGT rate is **7 days** per month (see paragraph 2, this chapter) and the resulting total days SGT is subtracted from an EFT of 05-15-81 to arrive at an SRD.

Years	=	4 Years
Months in 1 Year	= x	12 Months
Months in 4 Years	=	48 Months
Odd Months	= +	6 Months
Total Months	=	54 Months
SGT Rate	= x	7 Days
Days SGT for 54 Months	**=**	**378 Days**

Days in Partial Month	=	10 Days
SGT Rate	= x	7 Days
Numerator	=	70
Denominator (Divided By)	=	30
Days SGT for Partial Month	**=**	**2 Days (Fraction Dropped)**

Days SGT for 54 Months	=	378 Days	
Days SGT for Partial Month	=	2 Days	
Total Days SGT	**=**	**380 Days**	
EFT	=	81-05-15	= 15476
SGT			= - 380 Days SGT
SRD	**=**	**80-04-30**	**= 15096**

Example No. IV - 2:

The next example demonstrates the SGT calculation for a sentence of **5 years, 4 months and 28 days.** The SGT rate is **8 days** per month (see paragraph 2, this chapter) and the resulting days SGT is subtracted from an EFT of 04-19-81.

Years	=	5 Years
Months in 1 Year	= x	12 Months
Months in 5 Years	=	60 Months
Odd Months	= +	4 Months
Total Months	=	64 Months
SGT Rate	= x	8 Days
Days SGT for 64 Months	**=**	**512 Days**
Days in Partial Month	=	28 Days
SGT Rate	= x	8 Days
Numerator	=	224
Denominator (Divided By)	=	30
Days SGT for Partial Month	**=**	**7 Days (Fraction Dropped)**
Days SGT for 64 Months	=	512 Days
Days SGT for Partial Month	= +	7 Days
Total Days SGT	**=**	**519 Days**
EFT	=	81-04-19 = 15450
SGT		= - 519 Days
SRD	**=**	**79-11-17 = 14931**

5. No statutory good time for civil contempt sentence. A prisoner is not entitled to SGT time credits while serving **only** a civil contempt sentence. (See Chapter V, paragraph 2.d. for more information.)

* 6. ISM is responsible for the calculation of SGT and EGT and for maintaining a record of all good time forfeitures, restorations, withholdings, awards, and disallowances in order to determine the correct SRD if the prisoner is to be released by operation of good time rather than parole.

7. SGT may be forfeited in accordance with **18 U.S.C. § 4165** which states,

> **"If during the term of imprisonment a prisoner commits any offense or violates the rules of the institution, all or any part of his earned good time may be forfeited."**

The SGT available for forfeiture is limited to the amount earned up to the date of the offense or violation. This amount is determined by utilizing the SGT formula as demonstrated in paragraph 4. above and taking into consideration any previous forfeitures, withholdings and restorations. All or part of a prisoner's SGT may be forfeited depending upon the severity of the offense committed. See the Program Statement on **Discipline and Special Housing Units**.

8. SGT may be withheld for the month in which an offense or violation occurred. The amount which may be withheld is limited to the amount the inmate would receive for that particular month.

9. SGT which has been forfeited or withheld may be restored in accordance with **18 U.S.C. § 4166** which states,

> **"The Attorney General may restore any forfeited or lost good time or such portion thereof as he deems proper upon recommendation of the Director of the Bureau of Prisons."**

The Attorney General's authority is delegated to the Director, Bureau of Prisons, in **28 CFR 0.96(h)**. The Director has redelegated this authority to Wardens. Forfeited and withheld SGT is to be considered for restoration following the procedures of the Program Statement on **Discipline and Special Housing Units**.

10. The Statutory Good Time Action Notice, **BP-389**, is the supporting documentation for all SGT forfeitures, withholdings and restorations. This form is completed by the Discipline Hearing Officer (DHO) and is provided to ISM as notification of the action taken. An original **BP-389** must be placed in the J&C file to substantiate each action.

ISM is responsible for adjusting the SRD based on information contained on the **BP-389**. After SENTRY has been updated, a copy of the form will be forwarded to unit staff for inclusion in the central file.

If a sentence can be automatically calculated on SENTRY, the recording of SGT forfeitures, withholdings, and restorations will be accomplished by ISM staff through use of the SENTRY Statutory Good Time Status/Update transaction.

If a sentence cannot be automatically calculated on SENTRY, it will be necessary to maintain a Good Time Record, **BP-380**, to record adjustments resulting from SGT actions. The SRD will then be entered in SENTRY by using the Calc/Update Computation transaction so that the prisoner's name will appear on the appropriate release list. The manual Good Time Record will be filed on the right side of the J&C File.

11. When a sentence is calculated, the total possible amount of SGT for that sentence is deducted from the EFT date of the sentence. Thereafter, if SGT is forfeited, or if SGT is withheld or restored, the SRD of the sentence is adjusted accordingly. This adjustment is accomplished by use of the SENTRY Statutory Good Time Status/Update transaction or by manual calculation on the Good Time Record. Detailed instructions for performing the SENTRY transaction are contained in the **SENTRY Technical Reference Manual**. Instructions for the method used to manually calculate SGT are contained in this chapter.

12. When SGT is forfeited, the SENTRY Statutory Good Time Status Update transaction must be performed. The date of the infraction, as well as the date the DHO made the decision to forfeit the SGT, and the amount of SGT forfeited must be entered. The infraction date refers to the date the inmate committed the prohibited act.

When SGT is withheld for a particular month, the date of the infraction, as well as the date the DHO made the decision to withhold the SGT, and the amount of SGT withheld must be entered on the Statutory Good Time Status/Update transaction.

When SGT is restored, the date of the infraction for which the SGT was lost, as well as the date the DHO made the decision to restore the SGT, and the amount of SGT restored must be entered on the Statutory Good Time Status/Update transaction.

13. Any SGT adjustment must be audited. An updated copy of the good time data transaction must be placed in the J&C File. Any prior hard copies are to be destroyed. The person performing the SGT adjustment, and the person auditing the adjustment will so signify by signing and dating the source document used in the update. The source document will then be placed in the J&C File, with a copy to the central file. *

V INOPERATIVE TIME

1. Explanation and application of inoperative time. After a sentence has begun to run, it becomes "inoperative" if it stops running for any reason and remains inoperative until it resumes. This condition is known as **inoperative time.** Inoperative time is always applied to a sentence before presentence time credits are applied.

There is **no statute** that discusses inoperative time. **18 USC § 3568,** however, states that,

> **"The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed . . .**
>
> **If any such person shall be committed to jail or other place of detention to await transportation to the place at which his sentence is to be served, his sentence shall commence to run from the date on which he is received at such jail or other place of detention."**

Based on the language in **18 USC § 3568** that a person must be committed to an official place of detention before the sentence can commence, or before credit for time in custody prior to sentence can be awarded, then the Bureau of Prisons concludes that **no credit** for time served on the sentence, or for time in custody prior to sentencing, can be **authorized for non-custody time.** This conclusion is supported by the courts in a long line of cases pertaining to the issue.

2. Inoperative time reasons. The most frequent reasons that a sentence becomes inoperative are **escape, stay of execution for release pending appeal or to complete personal/business matters, voluntary surrender, civil contempt, probation revocation of a one count "split sentence" and release pending a parole revocation hearing.** In addition, under certain circumstances **(18 USC § 4210(c),** the Parole Commission may **extend the parole supervision period** of a person as a result of actions taken, or not taken, by such person, which is also known as inoperative (or absconder) time.

a. Escape. If a person departs federal custody after arrest without the permission of the Attorney General or order of the court, then such person will be placed in escape status and

the sentence then serving shall become inoperative. Escape inoperative time applies to sentences imposed under the Youth Corrections Act and the Narcotic Addict Rehabilitation Act the same as for regular criminal sentences.

(1) If the person was in a presentence condition at the time of escape, then presentence time credit will terminate with credit allowed for the day of escape. This condition, of course, is not an inoperative time situation if no federal sentence was in operation.

(2) If the prisoner was serving a sentence at the time of escape, then the sentence will become **inoperative** beginning the day after the escape and will remain in that status through the day before federal custody resumes. This same rule applies to prisoners who escape from the extended limits of confinement authorized under **18 USC § 4082** and **18 USC § 3624(c)** (home confinement). (**Note:** For offenses that occur prior to November 1, 1987 ("old law"), **18 USC § 4082**, as it existed prior to November 1, 1987, applies.)

(3) If the prisoner is serving the federal sentence in a non-federal facility under contract and escapes, then the federal sentence will automatically resume running if the prisoner is apprehended and returned to the custody of the non-federal facility as a result of the escape. Again, the sentence would become inoperative beginning the day after escape and would continue in that status through the day before return to custody.

(4) If a federal sentence is being served in **state custody concurrently** with a state sentence and the prisoner escapes, then the federal sentence will become inoperative beginning the day after escape. The federal sentence will not, however, automatically resume running upon apprehension by state authorities. The federal sentence will remain inoperative until the prisoner is either redesignated to state custody or until the prisoner is received in federal custody. (The federal sentence would not resume if the only basis for future federal custody is a federal writ of habeas corpus from state custody.)

(5) If a prisoner is responsible for causing his removal from federal custody, e.g., a community corrections facility, furlough, etc., by state officials as a result of new criminal activity, then that prisoner will be placed in escape status and the federal sentence will not resume until return to federal custody or unless the prisoner's present non-federal location is designated as the place to serve the federal sentence. (See the program statement on **Escape from Extended Limits of Confinement**.)

(a) If the non-federal charges (even if intentionally concealed by the prisoner) that caused removal from custody existed prior to the beginning date of the federal sentence and if those charges are dismissed, or the person is acquitted after trial, or the person was removed for investigation purposes, and the person is absent from the designated place of confinement beyond the date on which the absenteeism began, then any such absentee time spent in custody shall not be treated as inoperative, the escape status shall be cancelled and any records pertaining to escape for the reasons just discussed shall be expunged.

(b) If, after removal from federal custody by state officials, the prisoner fails to return to federal custody as soon as possible after the state incident is resolved, then regular escape procedures shall be put in effect and the sentence will become inoperative beginning the day after he was able to return to federal custody and shall continue through the day prior to the date that federal custody resumes.

b. Stay of execution for release pending appeal or for personal/business purposes. 18 USC § 3143 is the statute that sets forth the rules for release on appeal after a finding of guilty and after being sentenced to a term of imprisonment. **Rule 38(b)** of the **Rules of Criminal Procedure** provides the rule that prevents time credit on a sentence after release on appeal. Release pending appeal inoperative time applies to sentences imposed under the Youth Corrections Act and the Narcotic Addict Rehabilitation Act the same as for regular criminal sentences and states in part that,

> **"A sentence of imprisonment shall be stayed if an appeal is taken from the conviction or sentence and the defendant is released pending disposition of appeal..."**

(1) Ordinarily, release on appeal occurs on the same day as sentencing, thereby delaying the start of the sentence to some future date. In that situation, no inoperative time occurs since the sentence has been prevented from starting. The day of sentencing, however, will count as one day of presentence time credit if the prisoner was in fact in custody on the basis of the offense for which sentenced.

(2) If release on appeal occurs more than one day after sentencing, then the sentence will actually have begun to run and the subsequent period of time, beginning on the day after release on appeal, shall be treated as **inoperative time**.

On occasion, the court will grant a short stay of execution of sentence (usually not more than ten days) so that the prisoner will have an opportunity to **arrange or complete personal/business matters** prior to beginning service of the sentence.

c. Voluntary surrender. The courts will, on occasion, order a just sentenced person to voluntarily or self surrender to the designated institution of confinement even though there appears to be no statutory provision for the practice. The Bureau of Prisons does encourage the use of voluntary surrender in appropriate cases. (See the Program Statement on **Unescorted Transfers and Voluntary Surrenders** and **28 CFR 522, Subpart D--Voluntary Surrender Commitments and Transfers to Bureau of Prisons Facilities**.)

Ordinarily, the court will order voluntary surrender on the date that the sentence is imposed and the person is released on that date. In that case, one day of presentence time credit is authorized for the day of sentencing providing that the person was in federal custody for the offense for which sentenced. If, however, the person is in custody for more than one day after sentencing before the voluntary surrender order is entered, then the sentence will actually have begun to run and the subsequent period of time, beginning on the day after release, shall be treated as **inoperative time** up to the date that the person is again in federal custody.

d. Civil contempt. Occasionally, while serving a criminal sentence, a prisoner will receive a civil contempt sentence which shall interrupt the service of that criminal sentence. Presentence time credit is not accrued toward any other sentence during service of a civil contempt sentence even if the service of the civil contempt sentence is before trial and/or sentencing on the criminal sentence to which it pertains. (Also see Chapter V., paragraph 2.)

A civil contempt sentence affects a Narcotic Addict Rehabilitation Act sentence and a sentence under the provisions of the Youth Corrections Act the same as a criminal sentence. (See the Program Statement on **Civil Contempt of Court Commitments**.) There are **two** civil contempt sections.

18 USC § 401 states,

"A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as--

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

A civil contempt sentence under **18 USC § 401** is under the sole jurisdiction of the court and has **no** time limit. The sentence will not terminate until the prisoner purges himself of the contempt or until the court orders the sentence terminated.

28 USC § 1826 states,

"(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record, recording or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of--

(1) the court proceeding, or
(2) the term of the grand jury, including extensions,

before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

"(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but no later than thirty days from the filing of such appeal.

"(c) Whoever escapes or attempts to escape from the custody of any facility or from any place in which or to which he is confined pursuant to this section or section 4243 of title 18, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to imprisonment for not more than three years, or a fine of not more than $10,000, or both."

A civil contempt sentence under **28 USC § 1826** may be ended in any one of **four** ways, the actual manner dependent upon which circumstance occurs first, and they are: **1)** The prisoner purges himself of contempt by cooperating with the court; **2)** the court proceedings terminate; **3)** the term imposed by the court (not to exceed 18 months) expires; and **4)** the term of the grand jury expires.

(1) Unless the court orders otherwise, a civil contempt sentence shall **interrupt** the service of a criminal sentence for the duration of the civil contempt sentence. As a result, in the case of a civil contempt sentence that is ordered to commence on the date that it is imposed, the criminal sentence will become inoperative on the day after the civil contempt sentence begins and shall resume running on the day that the contempt sentence ends, providing that the prisoner is in federal custody for service of the criminal sentence.

(2) If the civil contempt sentence is ordered to begin some date in the future, then the criminal sentence will become inoperative **on the day** that the contempt sentence begins and shall resume running on the day that the contempt sentence ends, providing that the prisoner is in federal custody for service of the criminal sentence.

(3) If a civil contempt sentence is in effect when a criminal sentence is imposed, and the prisoner is available for service of the sentence, the just imposed criminal sentence runs concurrently with the civil contempt sentence **unless** the court specifically orders the criminal sentence to be served consecutively to preserve the intended effect of the civil contempt sentence.

e. One count "split sentence." Another type of inoperative time can occur after revocation of probation from a sentence imposed on **one count** under the **"split sentence"** provisions of **18 USC § 3651.**

(1) In the case of a split sentence, the inoperative time begins the day after release from the initial portion of the split sentence and resumes running on the date that probation is revoked, providing that the person is in federal custody. Any time spent in custody as an alleged probation violator shall be treated as presentence time credit.

(2) If another federal sentence is in operation during the time that the person is on probation from the split sentence the time on probation will still be counted as inoperative time for calculation purposes of the split sentence. In this situation, there would be no presentence time since another sentence was in operation.

(3) See Chapter IX for specific information pertaining to the application of inoperative time as the result of a probation violation of a "split sentence" with a subsequent commitment under any of the adult, Youth Corrections Act or Juvenile Justice and Delinquency Prevention Act of 1974 provisions.

f. Release pending parole revocation hearing. The Parole Commission may issue a summons to appear, or a warrant for the retaking of a parolee, and may then order release under the provisions of **18 USC § 4214(a)(1)(A)(ii) or (iii).** (Also see **28 CFR 2.48(e)(2)).** If the person is in custody for even a partial day, the parole violation term will have commenced running. In such a case, the parole violation term becomes inoperative the day after release and does not resume running until again in custody as an alleged violator. If the Parole Commission orders that credit be given for all "street time" at the revocation hearing, such credit cannot include any of the inoperative time.

g. Extended parole supervision period. Time spent in the community prior to being summoned, or prior to the execution of a warrant, is credited against the total sentence to be served **(18 USC § 4210(c)** unless the Parole Commission determines otherwise. (Also see **28 CFR 2.52(c)(1)and (2).)**

The time in the community under parole status that is not allowed toward service of the total sentence is often referred to as "inoperative time." Its effect on the EFT date of the sentence is the same as the other types of inoperative time. The application of this type of inoperative time (includes "absconder time") is explained in more detail in the chapters pertaining to the various sentence procedures. Absconder time applies to sentences imposed under the Youth Corrections Act and the Narcotic Addict Rehabilitation Act the same as for regular criminal sentences.

3. Juvenile Justice and Delinquency Prevention Act inoperative time. An important point about sentences imposed under the **Juvenile Justice and Delinquency Prevention Act (JJDPA) of 1974** is that inoperative time cannot increase the EFT and SRD dates beyond a juvenile's twenty-first birthday, unless the juvenile was age nineteen or over at the time of sentencing and the court **did not** impose a sentence to the juvenile's twenty-first birthday. The JJDPA of 1974 is fully discussed in Chapter XII.

4. Calculation of inoperative time examples. Calculation of inoperative time days is fully demonstrated in Chapter III, **Examples III - 29, 33 and 34.**

VI PRESENTENCE TIME CREDIT

1. Presentence time credit statute and explanation. Presentence time credit (often referred to as "jail time") is that period of time to which an individual is entitled pursuant to **18 U.S.C § 3568.** If inoperative time (Chapter V) occurs, then presentence time credits are applied to a sentence after the inoperative time has been applied. **18 U.S.C. § 3568** states in the first paragraph that,

> **"The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody** (emphasis added) **in connection with the offense or act for which sentence was imposed."**

2. "In Custody" defined. "In custody" is defined, for the purposes of this program statement, as **physical** incarceration in a jail-type institution or facility. It does not include time that may be considered custody for habeas corpus jurisdiction purposes as in Hensley v. Municipal Court, 411 U.S. 345 (1973). (Also see Cochran v. U.S., 489 F.2d 691 (5th Cir. 1974) and Villaume v. U.S., 804 F.2d 498 (8th Cir. 1986) (per curiam), cert. denied, 481 U.S. 1022 (1987).)

"In custody" also does not include time held by Immigration authorities solely for the purpose of a pending deportation hearing.

Qualified State Presentence Time. The time spent in state presentence custody after the lodging of a federal detainer and
* prior to the commencement of the federal or state sentences, whichever begins first, that does not overlap any federal *
presentence time, and for which no benefit was received as a result of the state and federal sentences running concurrently, is considered qualified state presentence time.

Raw EFT. The DCB plus the length of sentence to be served, **without** consideration for jail time, equals the **Raw EFT.**

3. No credit for civil contempt time. Time spent serving a **civil contempt** sentence prior to trial and/or sentencing **does not** constitute presentence time credit toward the sentence that is eventually imposed.

Time spent serving a **civil contempt** sentence **does not** constitute presentence time credit toward any criminal sentence that has been interrupted by, or that is running along concurrently with, or that is to be served consecutively to, the criminal sentence. (Also see Chapter V., paragraph 2.d.)

4. Presentence time credit prior to October 2, 1960. Prior to October 2, 1960 (effective date of P.L. 86-691), credit for time in custody before sentencing was left to the discretion of the sentencing court. The presumption was that the sentencing judge would take the amount of time spent in custody prior to sentencing into consideration at the time sentence was imposed.

5. First presentence time credit statute effective October 2, 1960. The first crediting statute, P.L. 86-691, an amendment to **18 U.S.C. § 3568**, granted credit on minimum-mandatory sentences. Minimum-mandatory type sentences were primarily imposed for convictions under the Narcotic Control Act of 1956.

Judicial decisions later extended presentence time credit for those sentenced to the maximum sentence for violation of any statute, on the presumption that the sentencing court did not take the amount of presentence time into consideration at the time of sentencing. This policy applied only to those **sentenced** after the effective date (October 2, 1960) of P.L. 86-691.

6. Presentence time credit coverage expanded effective September 20, 1966. The passage of the Bail Reform Act of 1966 (P.L. 89-465) further expanded the credit to be given under **18 U.S.C. § 3568** to all prisoners **sentenced** on and after the effective date of the Act (September 20, 1966). The language of the Act required that credit be awarded for all time "in custody in connection" with the federal offense. Case law confirmed the application of the Act to the Youth Corrections Act (YCA), the Federal Juvenile Delinquency Act (FJDA) (later revised to become known as the Juvenile Justice and Delinquency Prevention Act (JJDPA)), and Narcotic Addict Rehabilitation Act (NARA) sentences.

Courts also expanded federal presentence time credit to include periods of custody wherein the primary custody was with a non-federal agency. Credit was held to be applicable on any subsequent federal term of confinement because of the effect the federal charges (through a warrant or detainer) had on the non-federal custody.

7. Application of presentence time credit. Any part of a day in custody equals one day for credit purposes. Presentence time credit shall be applied in the following manner for the following situations:

a. Sentences imposed prior to September 20, 1966. Presentence time credit shall be applied--1.) to those sentences in which the maximum penalty was imposed, 2.) if the penalty of imprisonment added to the number of days in presentence custody exceeds the maximum for the offense, or 3.) if the violation required the imposition of a minimum-mandatory penalty. *

(1) To determine if the maximum sentence was imposed, refer to the penalty provision of the offended statute in the appropriate Title of the United States Code. If the sentence imposed represents the aggregation of terms on more than one count, presentence time credit shall be applied to the applicable count prior to aggregating the terms.

(2) If a sentence is less than the maximum, but adding the sentence to the number of days presentence time exceeds the maximum for the offense, then presentence time credit shall be applicable for the number of days that caused the maximum for the offense to be exceeded.

(3) For a sentence imposed for an offense requiring imposition of a minimum-mandatory penalty, the sentence imposed does not have to be **the** minimum-mandatory term in order to qualify for presentence time credit. **Any** sentence imposed for a violation of **any** statute requiring a minimum-mandatory type penalty is entitled to presentence time credit.

b. Sentences imposed on and after September 20, 1966.

(1) Presentence time credit shall be given for time spent in the custody of the Attorney General (whether actual or constructive) as a direct result of the acts or offenses that led to the federal sentence. (See paragraph 7.c. for the criteria for constructive federal custody.)

* The USM-129 will on occasion show that a defendant was in custody for one day. In such a case, staff may credit that one day without further verification.

If an inmate states that he was in presentence custody for a day, or days, that is not shown on the USM-129, then staff shall attempt to verify the inmate's claim. These situations usually arise when a defendant is issued a summons to appear before the court in a criminal matter. After the hearing, if the defendant returns to the community **without** being placed on bail or on "own recognizance," then that defendant is not entitled to that day in court as a day "in custody" on a subsequent sentence even if required to report to the U.S. Marshals Service for processing (fingerprinting, photographing, etc.). If the defendant is released on bail or on "own recognizance" then that day is treated as a day "in custody" and shall be awarded as a day of presentence time credit. If the defendant, while on bond or own recognizance, is summoned to appear in court for U.S. Marshal processing or for some other court related purpose and is then continued on bond or on own recognizance, that day will not count as a day of jail time credit. *

(2) Presentence time credit shall not be given for any time spent serving another sentence, either federal or non-federal,

except that presentence time credit and time spent serving a sentence that is vacated shall be creditable toward another sentence if the later sentence is based on the same charges that led to the prior, vacated sentence.

When failure to make bail due to indigence is a moot point, e.g., when the defendant is in custody on unrelated non-bailable charges or is serving a sentence during the time period in question, and any bail would not cause the defendant to be released from custody, then applying presentence time would be giving double credit, i.e., credit for two separate and distinct sentences for the same period of time, contrary to the intent of **18 U.S.C. § 3568** to apply credit to sentences.

(3) Time spent under a federal writ of habeas corpus from non-federal custody will not, in itself, be considered for the purpose of awarding presentence time credit. The primary reason for custody in this case is not the federal charge. In this situation, it is considered that the prisoner was "borrowed" under the jurisdiction of the writ for the purposes of court appearance. (See Crawford v. Jackson, 589 F.2d 693 (D.C. Cir. 1978).) This is secondary custody.

* (4) Time spent in residence in a **community corrections center** (or a community based program located in a Metropolitan Correctional or Detention Center or jail) as a condition of bond (including appeal bond) or on own recognizance, or as a condition of a pre-trial services program, or as a condition of parole, probation or supervised release, is not creditable as presentence time since that is time released from custody and cannot be considered as time in custody within the meaning or intent of **18 U.S.C. § 3568**.

Because of Brown v. Rison, 895 F.2d 533 (9th Cir. 1990), and Grady v. Crabtree, 958 F.2d 874 (9th Cir. 1992), the Bureau of Prisons was required to award presentence/prior custody/jail time credits off "old law" and SRA sentences imposed in the **Ninth Circuit** for time spent in CCC's as a condition of bond (including appeal bond) or on own recognizance, or as a condition of a pre-trial services program, or as a condition of parole, probation or supervised release. In Koray v. Sizer, 21 3rd 558 (3rd Cir. 1994), the Bureau of Prisons was required to award presentence/prior custody/jail time credits off "old law" and SRA sentences for **Third Circuit** cases when the conditions of release amounted to "jail-type conditions," e.g., no work release or drug treatment. These exceptions to the Bureau's interpretation of **§ 3568** and the corresponding SRA **18 U.S.C. § 3585(b)** were overruled in the Supreme Court case of Reno v. Koray, as discussed below.

In Reno v. Koray, 115 S.Ct. 2021 (1995), the U.S. Supreme Court held that time spent under restrictive conditions of release was not official detention entitling an inmate to prior

custody time credit under **18 U.S.C. § 3585(b)**. (**18 U.S.C. § 3585(b)**, as enacted under the **Sentencing Reform Act of 1984**, effective on November 1, 1987, replaced the repealed **18 U.S.C. § 3568** for awarding presentence/jail time credit.) The court found that the interaction of the Bail Reform Act and **18 U.S.C. § 3585(b)** supported the Bureau of Prisons' interpretation that a defendant is **either released** (with no credit for time under conditions of release) **or detained** (with credit for time in official detention).

Koray has also overruled Brown v. Rison, 895 F.2d 895 (9th Cir. 1990). As a result, the awarding of presentence time credit under **§ 3568** for time spent under restrictive conditions shall also be discontinued. Brown is the Ninth Circuit case that required the Bureau of Prisons to give time credit to a sentence for time spent in a CCC or similar facility as a condition of release.

The Koray decision means, therefore, that time spent in residence in a CCC or similar facility as a condition of bond (including appeal bond) or on own recognizance, or as a condition of a pre-trial services program, or as a condition of parole, probation or supervised release, is not creditable to the service of a subsequent sentence. In addition, a release condition that is "highly restrictive," and that includes "house arrest", "electronic monitoring" or "home confinement"; or such as requiring the defendant to report daily to the U.S. Marshal, U.S. Probation Service, or other person; is not considered as time in custody under "old law" or as time spent in official detention under the SRA. **In short, under Koray, a defendant is not entitled to any time credit off the subsequent sentence, regardless of the severity or degree of restrictions, if such release was a condition of bond or release on own recognizance, or as a condition of parole, probation or supervised release.**

(5) As a result of Reno v. Koray, the following instructions must be implemented as they pertain to sentences that have been awarded, or that could have been awarded, CCC non-sentence time credit in the **Ninth** and **Third Circuits**.

(a) Any sentence computed for the first time before June 5, 1995, and that sentence reflects an award of presentence time credits for time spent in a CCC or similar facility **shall** retain any credits applied, regardless of any sentence recomputation (e.g., for an addition or loss of presentence time credits or modification of sentence, or as the result of a vacated sentence, including a sentence that was imposed after a retrial) that occurs on or after June 5, 1995.

(b) Any sentence, computed for the first time on or after June 5, 1995, which reflects an award of presentence time credits for time spent in a CCC or similar facility under conditions of release, that was not the result of a court order, shall be recomputed to void such credit.

(c) If it is discovered during a sentence recomputation on or after June 5, 1995, that time was spent in a CCC or similar facility that should have been awarded as the result of a sentence computation performed prior to June 5, 1995, but was not awarded, such time **shall not** be given on the recomputation unless the court had ordered that such credit be given.

(d) CCC or similar facility time that was awarded to a sentence that was calculated for the first time prior to June 5, 1995 because the inmate was committed to the Bureau of Prisons in error (e.g., premature release from non-federal custody or U.S. Marshals' failure to return an inmate to the proper non-federal jurisdiction after release on a writ) shall be canceled if the subsequent recomputation occurs on or after June 5, 1995, unless the court had ordered that such credit be given.

(e) An order by the court, regardless of the date of issuance, for a sentence computed for the first time on or after June 5, 1995, that requires an award of non-sentence CCC time credit, or an award for time spent under other forms of restrictive conditions of release, shall be referred to the RISA. The RISA and the Regional Counsel shall contact the Assistant United States Attorney who prosecuted the case and request that a Motion for Reconsideration or an appeal be filed based on the decision in Koray. The inmate shall retain the credit as long as the court order remains in effect.

(6) Most defendants who are arrested on federal charges are subsequently released on bond or own recognizance with an order to appear on a future date. A defendant who absconds and "fails to appear" on the date ordered may be prosecuted for **Failure to Appear**. The defendant is, of course, entitled to presentence time credit off the Failure to Appear sentence for any time spent "in custody" after arrest on the Failure to Appear charge. If the defendant is not prosecuted on the charges that led to the Failure to Appear offense, **no** time spent "in custody" on those charges shall be awarded on the Failure to Appear sentence. *

(7) If an appeal is taken and a **"stay of execution"** is granted on the sentencing date, and the person is released on that day, then that day shall count as presentence time credit, providing the individual was in federal custody for the offense for which sentenced. A "stay of execution" means that the start of the sentence is being delayed until some future date. If, however, the person is in custody for more than one day after sentencing before a "stay of execution" is ordered, then the sentence will actually have begun to run and the subsequent period of time, beginning on the day after release on appeal, shall be treated as **inoperative time** up to the date that the person is again in federal custody. (Also see Chapter V, paragraph 2.c.)

(8) If, at sentencing, the court orders a person released and to **voluntary surrender** at a future date, then one day of presentence time credit is authorized for the day of sentencing providing that the person was in federal custody for the offense for which sentenced. If, however, the person is in custody for more than one day after sentencing before the voluntary surrender order is entered, then the sentence will actually have begun to run and the subsequent period of time, beginning on the day after release, shall be treated as **inoperative time** up to the date that the person is again in federal custody. (Also see Chapter VI, paragraph 1.c.)

c. Constructive federal custody.

(1) For time in non-federal custody when the non-federal custody is based on charges that later resulted in a federal sentence.

(a) Credit shall be given for all time spent in non-federal or foreign custody when the underlying basis for custody in fact is a federal warrant. For example, if a federal warrant is issued and the defendant is arrested by county police or foreign officials on the basis of the federal warrant, credit shall be given from the date of arrest to the date of sentence for all days in custody. Inquiries or requests for foreign presentence time credit, along with copies of the judgment and commitment and copies of any documentation in the institution or in the possession of the prisoner, must be sent to the Chief of Inmate Systems Management for verification.

(b) If the federal defendant has been in presentence state or foreign custody on essentially the same charges as the federal charges, credit shall also be given even though a federal detainer may not have been on file during that time. Credit shall also be given for time spent in non-federal presentence custody when the non-federal and federal charges are similar enough to be considered the same criminal act or offense. This non-federal presentence custody is applicable when the factors of time, location, and the criminal acts are identical in both charges. Credit shall also be given for all time spent serving a state sentence (on the same charges as defined in this paragraph), which has its conviction vacated with no further prosecution to follow, in addition to any other non-federal presentence time.

The non-federal presentence time described above shall be awarded regardless of whether the state gives the same period of time. Following are some situation examples:

(i) If an individual is arrested by county police on a state charge of armed robbery, and that individual is later convicted in federal court of bank robbery, which was the same identical state charge or act of armed robbery, then presentence

time credit shall be awarded on the federal sentence for all time spent in custody from the date of arrest to a date no later than the date the first sentence (whether federal or non-federal) begins to run.

(ii) If an individual is arrested by state police on a state charge of auto theft, and the individual is later convicted of a Dyer Act violation involving theft of the same automobile, credit shall be given for all time spent in custody from the date of arrest to a date no later than the date the first sentence (whether federal or non-federal) begins to run.

(iii) If an individual is arrested by city police on a state charge of uttering a forged check and the individual is later convicted in federal court for mail theft, the check in question having been obtained from the mail, credit shall **not** be given. Uttering a forged check requires a separate criminal act from theft of the check, and, accordingly, the two charges do not involve the identical criminal act.

(iv) If an individual is arrested by county police on a state charge of armed robbery and the individual is later convicted in federal court for possession of an unregistered firearm, which was the same firearm used in the robbery, credit shall **not** be given since the acts committed were two separate and distinct offenses.

(v) If an individual is arrested by county police on a state charge of uttering a forged check and that individual is later convicted of conspiracy to defraud the federal government, the checks in question being U.S. Treasury checks used in the forgery, credit shall **not** be given. A conviction for conspiracy is sufficiently different from the substantive offense so that a federal conviction on the one does not preclude a state conviction on the other. (See U.S. v. Armedo-Sarmiento, 545 F.2d 785 (2d Cir. 1976), cert. denied, 430 U.S. 917 (1977).)

(2) For time in non-federal custody when the non-federal custody is based on charges that are unrelated to the federal charges that resulted in a federal sentence:

(a) Credit shall be given on any subsequent federal term of imprisonment (to include parole and mandatory release violator terms) when a **federal detainer** is lodged with the non-federal authority and the non-federal authority fails to give presentence time credit. **(No time credit is given for any of the time spent serving the state sentence.)**

A federal detainer shall be considered to have been filed on the **date of imposition** of a federal sentence even though the U.S. Marshal does not file the judgment and commitment as a formal detainer, or files a detainer on a later date than

imposition of the sentence. (See Emig v. Bell, 456 F.Supp 24 (DConn, 1978.) A warrant for alleged parole violation, issued by the Parole Commission, may be treated in the same manner after discussion with the RISA. This rule does not apply, however, if the inmate attempts to conceal his identity or the U.S. Marshals Service, through no fault of its own, does not learn of the inmate's custody status with the non-federal officials. *

Based on the Bureau of Prisons interpretation **18 U.S.C. § 3568** and court decisions, the following criteria have been established for making federal presentence time credit determinations for time spent in non-federal presentence custody.

(i) A federal detainer must have been lodged.

(ii) The non-federal authority did not give the non-federal presentence time.

(iii) The non-federal charge must have been bailable. Refusal by the non-federal authority to set bail for a bailable charge because the non-federal court does not consider the defendant to be a suitable risk shall be treated the same as a non-bailable charge. Refusal by the non-federal authority to set bail for a bailable charge because the defendant did not request bail shall be treated the same as a non-bailable charge.

(iv) Non-federal bail must have been set. There is a **presumption** of indigence if the inmate does not make the bail. (See **U.S. v. Gaines**, 449 F2d 143 (2nd Cir. 1971).) Refusal by the non-federal authority to set bail **solely** because of the federal detainer shall be treated the same as if bail had been set.

If the above criteria is met, then **credit shall be given** from the date on which the federal detainer was lodged up to a date that is no later than the **beginning date of the first sentence** (whether federal or non-federal) to commence.

(b) Failure to give **presentence** time credit by the non-federal authority may be assumed in any of the following events:

(i) The non-federal charges were dismissed.

(ii) Non-federal probation was granted.

(iii) The non-federal sentence was vacated with further prosecution deferred, thereby effectively canceling the non-federal authority's award of **presentence** time credit. **(No time credit is given for any of the time spent serving the vacated non-federal sentence.)**

(iv) The non-federal and federal sentences are running concurrently and the non-federal **Raw EFT** is equal to or

less than the federal **Raw EFT** resulting in no benefit to the non-federal state sentence from the state presentence time. (See **Willis v. U.S.**, 438 F.2d 923 (5th Cir. 1971).)

* (v) If the **non-federal and federal sentences are concurrent**, the Raw EFT of the non-federal term is greater than the Raw EFT of the federal term, and if the non-federal Raw EFT, after application of **qualified** non-federal presentence time, is reduced to a date that is earlier than the federal Raw EFT, then a **Kayfez** (See **Kayfez v. Gasele, 993 F.2d 1288 (7th Cir. 1993)** situation exists. In such a situation, the amount of **qualified** non-federal presentence time, i.e., the amount of time in non-federal presentence time after the date the federal detainer was filed (or date the federal sentence was imposed or the date on which the parole violator warrant was issued) to the date that the non-federal or federal sentence commenced, whichever is earlier, shall be applied to the non-federal Raw EFT. The federal Raw EFT shall then be reduced to equal the reduced non-federal EFT. Any other existing prior custody time credits shall be deducted from the federal EFT after application of the **Kayfez** time credits. Following are some examples that demonstrate the process:

Example No. 1

Non-Federal Raw EFT	= 09-18-1997
Federal Raw EFT	= 09-05-1997
Date Arrested by Non-Federal Agency	= 03-25-1994
Date Federal Detainer Filed	= **03-25-1994**
Date Non-federal Sentence Begins	= **04-15-1994**
Date Concurrent Federal Sentence Begins	= 05-10-1994

Qualified non-federal presentence time is from **03-25-1994 through 04-14-1994** which equals **21** days. The non-federal Raw EFT shall be reduced by the 21 days to August 28, 1997 and the federal Raw EFT shall be reduced to that date (**August 28, 1997**) resulting in an award of **8** days of presentence time credits.

Example No. 2

Non-Federal Raw EFT	= 09-18-1997
Federal Raw EFT	= 09-15-1997
Date Arrested by Non-Federal Agency	= 03-25-1994
Date Federal Detainer Filed	= **03-25-1994**
Date Federal Sentence Begins	= **04-01-1994**
Date Concurrent Non-Fed Sentence Begins	= 04-15-1994

Qualified non-federal presentence time is from **03-25-1994 through 03-31-1994** which equals **7** days. The non-federal Raw EFT shall be reduced by the 7 days to September 11, 1997 and the federal Raw EFT shall be reduced to that date (**September 11, 1997**) resulting in an award of **4** days of presentence time credits.

Example No. 3

Non-Federal Raw EFT	= 09-18-1997
Federal Raw EFT	= 09-15-1997
Date Arrested by Non-Federal Agency	= 03-25-1994
Date Federal Detainer Filed	= **03-31-1994**
Date Non-Federal Sentence Begins	= **04-15-1994**
Date Concurrent Federal Sentence Begins	= 05-10-1994

Qualified non-federal presentence time is from **03-31-1994 through 04-14-1994** which equals **15** days. The non-federal Raw EFT shall be reduced by the 15 days to September 3, 1997 and the federal Raw EFT shall be reduced to that date (**September 3, 1997**) resulting in an award of **12** days of presentence time credits.

Example No. 4

Non-Federal Raw EFT	= 09-18-1997
Federal Raw EFT	= 09-15-1997
Date Arrested by Non-Federal Agency	= 03-25-1994
Date Federal Detainer Filed	= **03-31-1994**
Date Federal Sentence Begins	= **04-01-1994**
Date Concurrent Non-Fed Sentence Begins	= 04-15-1994

Qualified non-federal presentence time is from **03-31-1994 through 03-31-1994** which equals **1** day. The non-federal Raw EFT shall be reduced by the 1 day to September 17, 1997 and the federal Raw EFT shall remain the same since the reduced non-federal EFT is still greater than the federal Raw EFT resulting in **no** pre-sentence time credit off the federal sentence. *

Ordinarily, if a sentence results from the non-federal charges, there will be a **presumption** that the prisoner **did** receive credit for presentence time, however, this presumption may be rebutted if the prisoner can verify that the non-federal authority did not credit the time.

(3) For time spent in custody of the Surgeon General as a civil commitment under Title I of the Narcotic Addict Rehabilitation Act of 1976 (NARA) (P.L. 89-793), credit shall be given for all time in actual institutional confinement if the later criminal sentence is a result of the same act or offense that led to the civil commitment. This type of presentence time credit is a specific provision of NARA as codified under **28 U.S.C. § 2903(d).**

8. Presentence time credit calculation and mathematical effect. As noted above, any part of a day in custody equals one day for credit purposes. An important point to remember is that the day the sentence **begins** to run is **not** counted as a day of presentence time credit. (See **Chapter VII, Adult Sentences**, paragraph 8.a., b., c., d, and e., pages 73-74 for application of presentence time credits in aggregated, non-aggregated and de-aggregated sentence situations.)

a. Calculation. Presentence time credit is always calculated based on the **number** of days to be credited and is **never** converted to years or months such as is required for calculating the length of the term of imprisonment. There are, however, two different **methods** of calculating the number of presentence time credit days. **One** method merely counts the number of days to be credited, month to month, and the **second** method utilizes the Expiration Table. Numerous examples of both methods are shown in Chapter III, **Example Nos. III - 24** through **28** (counting days) and **Example Nos. 30** through **32** (use of Expiration Table).

b. Mathematical effect. Since presentence time credit has the **mathematical** effect of starting a sentence on the date of arrest, it has been determined that SGT is accumulated on presentence time at the rate applicable to the final sentence imposed. For instance, if an individual has accumulated 30 days of presentence time credit prior to sentencing and a 3 year sentence is imposed, 7 days SGT will be accumulated on the 30 days of presentence time. (See Chapter IV, paragraph 4., for the partial month SGT formula.) The 7 days SGT would, of course, be subject to forfeiture.

9. Authentication procedures. Credit will be given only with proper documentation, indicating that the prisoner was **in custody** within the meaning of this chapter. Documentation may consist of written documents, written and dated notes of verified phone conversations, and electronic or telegraphic messages that are received from any law enforcement agency (includes probation officers).

When there is cause to believe that credit may be due, arising from the prisoner or from other persons speaking or acting in his behalf, or from any inconsistencies in the manner in which the factual situation presents itself, an effort to obtain the documentation necessary to make a determination shall be made. Ordinarily, the effort to obtain the necessary documentation shall consist of one communication (with a copy of the written documentation that contact was made or by documenting the phone call) and one following communication if no response is received. (For additional information about corresponding with officials outside the Bureau of Prisons, see the Inmate Systems Management manual.)

If the communication efforts fail, then the matter shall be referred to the Regional Inmate Systems Administrator.

VII ADULT SENTENCES

1. Length of sentence computation results. Based on the length of sentence, the EFT date, the 180 day date, parole and mandatory parole eligibility dates, the SRD and the 6 month/10% date (if required) are calculated on the basis of the amount of SGT, EGT, presentence time credits, and inoperative time involved, if any, and the parole provision in effect.

2. Determination of length of sentence. The length of sentence is normally determined by reviewing the judgment and commitment which will show the sentence imposed. On many occasions, however, it is the computation specialist who must determine the actual length of sentence. On such occasions, it may be necessary to calculate the EFT date first, or to add two or more sentences together, to learn the total length. These situations usually occur after **1)** a warrant for an alleged **parole violator is executed** or a parolee is taken into custody after appearance on a Parole Commission issued summons; **2)** imposition of **concurrent sentences**; or **3)** imposition of **consecutive sentences.**

3. Calculating dates and computation rules. After the length of sentence and EFT date have been determined, the next step is to apply the proper number of days SGT, if any, to arrive at the SRD. Calculating the 180 day date (if necessary) is next, to be followed by calculating the 6 month/10% date and then both the PE date and mandatory PE date (if necessary).

a. Expires Full Term date. The EFT date, also known as the "full term date" of the sentence, is the maximum date of the sentence. This date is determined by adding the total length of sentence to the beginning date of sentence, minus presentence time credit (Chapter VI.), plus inoperative time (Chapter V.). (See Example Nos. III - 2 through III - 12.)

There is no statutory provision that provides a rule for calculating the EFT date (ending date or "full term date") of a sentence. The arithmetical logic used by the Bureau of Prisons for calculating the EFT is so fundamental that it simply does not lend itself to challenge or litigation. (**Note:** The Expiration Table is used for sentences imposed in **days** only. Sentences imposed in **years and/or months**, **plus any days**, are added directly to the DCB.)

The Bureau of Prisons follows the rule that a partial day (regardless of how long/short that partial day is) in either presentence custody or in service of a sentence equals one full day for sentence calculation purposes. (This rule also applies to the day on which an escape occurs and to the date on which return to federal custody occurs. Each day counts as one full day served on the sentence.) As a result, all the below examples have been **backed up one day at the end** of the calculation so as to include the initial day of sentencing.

Example No. VII - 1:

Sentenced on 01-19-81 to 172 days.

DCB	=	81-01-19	= 15360
Sentence			= + 172 Days
Tentative EFT	=	81-07-10	= 15532
EFT	**=**	**81-07-09***	

Example No. VII - 2:

Sentenced on 03-12-81 to 277 days.

DCB	=	81-03-12	= 15412
Sentence			= + 277 Days
Tentative EFT	=	81-12-14	= 15689
EFT	**=**	**81-12-13***	

Example No. VII - 3:

Sentenced on 06-23-81 to 5 months.

DCB	=	81-06-23
Sentence	= +	00-05-00 5 Months
EFT	**=**	**81-11-22***

Example No. VII - 4:

Sentenced on 11-19-81 to 8 months.

DCB	=	81-11-19
Sentence	= +	00-08-00 8 Months
Unconverted EFT	=	81-19-19
Tentative EFT	**=**	**82-07-18***

Example No. VII - 5:

Sentenced on 10-27-81 to 1 year.

DCB	=	81-10-27
Sentence	= +	01-00-00 1 Year
EFT	**=**	**82-10-26***

Example No. VII - 6:

Sentenced on 03-04-81 to 3 years.

DCB	=	81-03-04
Sentence	= +	03-00-00 3 Years
EFT	**=**	**84-03-03***

Example No. VII - 7:

Sentenced on 03-12-81 to 5 years and 11 months.

DCB	= 81-03-12
Sentence	= +05-11-00 5 Years 11 Months
Unconverted EFT	= 86-14-12
EFT	**= 87-02-11***

Example No. VII - 8:

Sentenced on 06-23-81 to 6 years and 10 months.

DCB	= 81-06-23
Sentence	= +06-10-00 6 Years 10 Months
Unconverted EFT	= 87-16-23
EFT	**= 88-04-22***

Example No. VII - 9:

Sentenced on 05-12-81 to 4 years, 3 months and 10 days.

DCB	= 81-05-12
Sentence	= +04-03-10 4 Yrs 3 Mos 10 Dys
EFT	**= 85-08-21***

Example No. VII - 10:

Sentenced on 09-12-81 to 6 years, 9 months and 28 days.

DCB	= 81-09-12
Sentence	= +06-09-28 6 Yrs 9 Mos 28 Dys
Unconverted EFT	= 87-18-40
Step No. 1 of Conversion	= 88-06-40
Step No. 2 of Conversion	= 88-07-10
EFT	**= 88-07-09***

As fully discussed in Chapter III, paragraph 2.f., and as demonstrated in Example Nos. III - 13 through 15, there are a number of computation **exceptions** that produce an **incorrect** answer even when backing up the calculation 1 day. In such situations, **the computation is not backed up 1 day either before or after the calculation is complete.**

b. Statutory Release Date. 18 USC § 4163 provides that a person **". . . shall be released at the expiration of his term of sentence less the time deducted for good conduct."** The good conduct time to which the statute refers is SGT (see Chapter IV) and EGT (see Chapter XIII). The generic phrase of **"statutory release date" (SRD)** was given to the different kinds of release

under this section to easily identify those persons released from service of a sentence by operation of some or no SGT and/or EGT and not by parole. There are **three** kinds of **SRD** releases and they are:

(1) Mandatory Release (**MR**). Under the provisions of **18 USC § 4164**, any person who attains an SRD, based on any combination of good time (SGT and/or EGT), that equals **more than 180 days**, shall be **mandatorily** released **as if on parole**. Such person is under parole supervision **up to** 180 days before the EFT date.

(2) Expiration of Sentence Full Term (**Exp.FT**). Any person who accumulates **no** good time (SGT and/or EGT) is released **unconditionally** from confinement with **no supervision to follow.**

(3) Expiration of Sentence Good Time (**Exp.GT**). Any person who accumulates **180 days or less** of any combination of good time (SGT and/or EGT) is released **unconditionally** from confinement with **no supervision to follow.**

c. Weekend/holiday release. Under **18 USC § 4163 (P.L. 87-665),** for a release that falls on a Saturday, Sunday, or legal holiday, the Bureau of Prisons has **discretionary** authority to release the person on the preceding work day, providing such release date was achieved under the provisions of **18 USC § 4163** (see the program statement on **Release of an Inmate Prior to a Weekend or Legal Holiday** and **28 CFR 571.30**), which states in part,

> **"Except as hereinafter provided a prisoner shall be released at the expiration of his term of sentence** [emphasis added] **less the time deducted for good conduct . . . If such release date falls upon a Saturday, a Sunday, or a Monday which is a legal holiday at the place of confinement, the prisoner may be released at the discretion** [emphasis added] **of the warden or keeper on the preceding Friday. If such release date falls on a holiday which falls other than on a Saturday, Sunday or Monday, the prisoner may be released at the discretion** [emphasis added] **of the warden or keeper on the day preceding the holiday."**

The number of days used under **18 USC § 4163** to effect release on a work day instead of a weekend/holiday may not be added to the number of days remaining to be served to release a prisoner **". . . as if released on parole . . ."** (**18 USC § 4164**) who would otherwise have been released by expiration of sentence. In addition, the number of days used to effect a weekend/holiday early release **may not** be used to **increase** a period of supervision for a release under **18 USC § 4164.** For example, if the number of days remaining to be served for an **MR** that falls on a Sunday is **500 days** and the actual release on **MR** is moved back to Friday, then the number of days remaining to be served would **not** be increased by two days and would remain at **500 days.**

"Legal holidays" include the **ten** regular federal holidays enacted by the Congress and any other day that is declared a holiday by Presidential Executive Order. For the District of Columbia **only**, the Presidential **Inauguration Day**, which occurs every fourth (odd) year on **January 20th**, is a legal holiday. If January 20th falls on a Saturday or Sunday, the preceding Friday or the subsequent Monday **are not** considered holidays.

Those days that can, in advance, be declared as a partial or full non-work day, as the result of weather or other emergency or critical conditions, by the Office of Personnel Management or any other government official or military commander, **are not legal holidays.**

The provisions of **18 USC § 4163** pertaining to weekend/holiday release do not carry over to **releases by the Parole Commission.** The Parole Commission has, however, authorized the Bureau of Prisons to follow the same weekend/holiday release procedures as authorized by **18 USC § 4163** as contained in **28 CFR 2.29(c)** which states,

> **[(c) When an effective date of parole falls on a Saturday, Sunday, or legal holiday, the Warden of the appropriate institution shall be authorized to release the prisoner on the first working day preceding such date.]**

The number of days used to change the effective date of a parole, that falls on a weekend/holiday, to an earlier regular work day **shall**, unlike an early release under **18 USC § 4163, be a part of the number of days** remaining to be served. For example, if the number of days remaining to be served for a parole that falls on a Sunday is **500 days** and the actual release on parole is moved back to Friday, then the number of days remaining to be served would be increased by two days to **502 days.**

The provisions of **28 CFR 2.29(c) cannot** be applied if the preceding work day is **earlier** than the date on which the person is **actually** eligible for parole **(28 CFR 2.12(c)).**

d. 180 day date. Under **18 USC § 4164**, as noted in paragraph 3.b.(1) of this chapter, any person who is released with **more than 180 days** of any combination of SGT and/or EGT shall be released by MR, **as if on parole.** As a result, the **180 day date** is calculated so that staff can easily identify those persons who will be released by MR, i.e., with parole supervision to follow. For example, a person who earns **144 days SGT** plus **37 days EGT** for a total of **181 days good time**, will be released by **MR**, as if on parole, with **one day of supervision to follow release** from the confinement portion of the sentence. (**18 USC § 4164** does not apply to a special parole violator term or NARA sentence or violator term. See Chapter VII, paragraph 12.d. and Chapter X, paragraph 7.f.)

4. Dangerous special offender--Increased sentence under 18 USC § 3575. **18 USC § 3575** provides in part,

> **"If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a special dangerous offender, the court shall sentence the defendant to imprisonment for an appropriate term not to exceed twenty-five years and not disproportionate in severity to the maximum term otherwise authorized by law for such felony. Otherwise it shall sentence the defendant in accordance with the law prescribing penalties for such felony."**

A sentence imposed under **§ 3575** is eligible, or not eligible, for parole depending on whether the offended section is eligible for parole.

5. Parole eligibility and ineligibility. For all sentences imposed on/or after, **May 14, 1976,** the **Parole Commission and Reorganization Act of 1976 (PCRA)** (P.L. 94-233), as codified under **18 USC § 4201-4218,** provides the statutory provisions for parole that a court must follow when imposing a sentence to a term of imprisonment. In addition to the PCRA, however, **there are several offense statutes that require certain types of parole eligibility, or ineligibility, that are not optional and that become effective upon conviction and sentencing.**

Note: For Parole Commission purposes, in reference to periods of time, the words **from, to, until** and **through** include the date to which they refer. (See Chapter II, second paragraph, first "Note", for the Bureau of Prisons' definition of those words.)

a. Parole eligibility under 18 USC § 4205(a): This section states,

> **"Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law."**

This wording means that a sentence of more than one year, up to and including thirty years, will become eligible for parole after one-third of the sentence has been served. Sentences of more than thirty years, including life sentences, will become eligible for parole after ten years.

The following rules apply when calculating one-third of a sentence (**not to exceed the ten year cap**) by dividing the length of the parolable sentence involved by 3: **1)** A left over month equals 30 days; **2)** days left over are dropped; and **3)** an

exception to number "1)" for a sentence of 1 year and 1 day is that the 1 day is not dropped (parole eligibility occurs after 4 months and 1 day).

Example No. VII - 11:

For sentences that **are** evenly divisible by 3, 1/3 of the sentence is easily calculated:

3 Years ÷ 3	= 1 Yr
3 Years 3 Months ÷ 3	= 1 Yr 1 Mo
3 Years 3 Months 3 Days ÷ 3	= 1 Yr 1 Mo 1 Dy
6 Years 12 Months 24 Days ÷ 3	= 2 Yrs 4 Mos 8 Dys

Example No. VII - 12:

For sentences **not** evenly divisible by 3, more than one step is required to calculate the 1/3 period.

3 Years 7 Months	**= 43 Months**
43 Months ÷ 3	= 14 Mos-1 Mo Over
1 Month Over	= 30 Days
30 Days ÷ 3	= 10 Days
1/3 (14 Months 10 Days)	**= 1 Yr 2 Mos 10 Dys**
5 Years 9 Months 13 Days	**= 69 Months 13 Days**
69 Months ÷ 3	= 23 Months
13 Days ÷ 3	= 4 Days
1/3 (23 Months 4 Days)	**= 1 Yr 11 Mos 4 Dys**
4 Years 4 Months 3 Days	**= 52 Months 3 Days**
52 Months ÷ 3	= 17 Mos-1 Mo Over
1 Month Over	= 30 Days
30 Days + 3 Days	= 33 Days
33 Days ÷ 3	= 11 Days
1/3 (17 Months 11 Days)	**= 1 Yr 5 Mos 11 Dys**
7 Years 4 Months 17 Days	**= 88 Months 17 Days**
88 Months ÷ 3	= 29 Mos-1 Mo Over
1 Month Left Over	= 30 Days
30 Days + 17 Days	= 47 Days
47 Days ÷ 3	= 15 Days
1/3 (29 Months 15 Days)	**= 2 Yrs 5 Mo 15 Dys**

Inoperative time and **presentence time**, as described in **Chapters V and VI**, and in **subparagraphs 6.h. and i. of this chapter**, affect the PE date and it should be adjusted in accordance with the number of days involved. **(Inoperative time is <u>always</u> applied to the date that it affects prior to the application of presentence time credit.)** Examples follow:

Example No. VII - 13:

Sentenced on 05-04-80 to 3 years and 7 months with no inoperative time or presentence time.

DCB	= 80-05-04		
1/3 of 3 Yrs 7 Mos	= +01-02-10		1 Yr 2 Mos 10 Dys
PE Date	**= 81-07-13***		

Example No. VII - 14:

Sentenced on 12-15-81 to 3 years, 7 months and 14 days with 12 days inoperative time and 19 days presentence time.

DCB	= 81-12-15		
1/3 of 3 Yrs 7 Mos 14 Days	= +01-02-14		1 Yr 2 Mos 14 Dys
Unconverted PE Date	= 82-14-29		
Original PE Date	= 83-02-28*	= 16130	
Inoperative Time		= + 12	12 Days
Tentative PE Date	= 83-03-12	= 16142	
Presentence Time		= - 19	19 Days
Final PE Date	**= 83-02-21**	**= 16123**	

Example No. VII - 15:

Sentenced on 12-30-81 to 5 years, 9 months and 13 days with 185 days inoperative and 13 days presentence time.

DCB	= 81-12-30		
1/3 of 5 Yrs 9 Mos 13 Days	= +01-11-04		1 Yr 11 Mos 4 Dys
Unconverted PE Date	= 82-23-33*		
Step No. 1 of Conversion	= 83-11-33		
Original PE Date	= 83-12-03	= 16408	
Inoperative Time		= + 185	185 Days
Tentative PE Date	= 84-06-05	= 16593	
Presentence Time		= - 13	13 Days
Final PE Date	**= 84-05-23**	**= 16580**	

Example No. VII - 16:

Sentenced on 11-30-81 to 4 years, 4 months and 3 days with no inoperative and 1 day presentence time.

DCB	= 81-11-30		
1/3 of 4 Yrs 4 Mos 3 Days	= +01-05-11		
Unconverted PE Date	= 82-16-40*		
Step No. 1 of Conversion	= 83-04-40		
Original PE Date	= 83-05-10	= 16201	
Presentence Time		= - 1	Day
Final PE Date	**= 83-05-09**	**= 16200**	

Example No. VII - 17:

Sentenced on 02-29-80 to 7 years, 4 months and 17 days with 296 days inoperative and 481 days presentence time.

DCB	= 80-02-29		
1/3 of 7 Yrs 4 Mos 17 Days	= +02-01-15	2 Yrs 1 Mo 15 Dys	
Unconverted PE Date	= 82-03-43*		
Original PE Date	= 82-04-12	= 15808	
Inoperative Time		= + 296	296 Days
Tentative PE Date	= 83-02-02	= 16104	
Presentence Time		= - 481	481 Days
Final PE Date	**= 81-10-09**	**= 15623**	

(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)

b. Parole eligibility under 18 USC § 4205(b)(1): This section states in part,

> **"Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence** [emphasis added] **imposed by the court..."**

This statutory language means that the court may establish a period of parole ineligibility, for any sentence imposed that exceeds one year, by imposing a minimum term that does not exceed one-third of the maximum, providing that the one-third does not exceed the **ten year cap** set by **18 USC § 4205(a)** as discussed above, and provided the offense does not require a different result. (As of the issuance date of this manual, the **Eighth, Ninth, Tenth and Eleventh United States Courts of Appeal** have held that a minimum term imposed pursuant to **18 USC § 4205(b)(1)** may **exceed** the **ten year cap,** provided that the minimum term imposed does not exceed one-third of the maximum term. See Appendix VII, United States Courts of Appeal for the U.S. District Courts, in each circuit.)

For example, if the court imposes a sentence of 9 years and wants a period of two years of parole ineligibility instead of the three years that would be applicable under **18 USC § 4205(a),** then the court would impose a sentence of "two to nine years." The PE date would be set at two years from the DCB as affected by any inoperative time that might have occurred prior to the eligibility date and by any presentence time.

Because of the **ten year cap** rule, a sentence of "eleven to forty years," for example, would be inappropriate because the minimum term exceeds ten years.

Minimum terms imposed under **18 USC § 4205(b)(1)** may not be aggregated to exceed one-third of the total sentence or the **ten year cap.** For example, a sentence of "three to fifteen years" consecutive to a sentence of "ten to forty years" cannot be aggregated to produce a period of parole ineligibility of thirteen years. The period of parole ineligibility in this case would have to be set at ten years so as not to exceed the **ten year cap** rule.

Inoperative time and **presentence time**, as described in **Chapters V and VI**, and in **subparagraphs 6.h. and i. of this chapter**, affect the minimum PE date and it should be adjusted in accordance with the number of days involved. **(Inoperative time is always applied to the date that it affects prior to the application of presentence time credit.)**

Following are some examples of PE calculations based on minimum terms:

Example No. VII - 18:

Sentenced on 11-30-81 to 3 years to 9 years with no inoperative or presentence time.

DCB	= 81-11-30	
Minimum Term	= +03-00-00	3 Years
PE Date	**= 84-11-29***	

Example No. VII - 19:

Sentenced on 06-15-81 to 2 years to 10 years with 5 days inoperative time, that occurred prior to 06-14-83, and no presentence time.

DCB	= 81-06-15		
Minimum Term	= +02-00-00	2 Years	
Original PE Date	= 83-06-14*	= 16236	
Inoperative Time		= + 5	5 Days
Final PE Date	**= 83-06-19**	**= 16241**	

Example No. VII - 20:

Sentenced on 07-11-81 to 8 to 29 years with no inoperative time and 25 days presentence time.

DCB	= 81-07-11		
Minimum Term	= +08-00-00	8 Years	
Original PE Date	= 89-07-10*	= 18454	
Presentence Time		= - 25	25 Days
Final PE Date	**= 89-06-15**	**= 18429**	

Example No. VII - 21:

Sentenced on 07-11-81 to 10 to 60 years with 50 days inoperative time that occurred after 04-01-91 and 100 days presentence time.

DCB	=	81-07-11		
Minimum Term	= +	10-00-00	10 Years	
Original PE Date	=	91-07-10*	=	19184
Presentence Time			= -	100 100 Days
Final PE Date	**=**	**91-04-01**	**=**	**19084**

Example No. VII - 22:

Sentenced on 07-11-81 to 10 to 60 years with 50 days inoperative time that occurred prior to 04-01-91 and 100 days presentence time.

DCB	=	81-07-11		
Minimum Term	= +	10-00-00	10 Years	
Original PE Date	=	91-07-10*	=	19184
Inoperative Time			= +	50 Days
Tentative PE Date	=	91-08-29	=	19234
Presentence Time			= -	100 Days
Final PE Date	**=**	**91-05-21**	**=**	**19134**

(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)

c. Parole eligibility under 18 USC § 4205(b)(2): This section states in part,

> **"Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year . . . (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine."**

When the court uses this section, the person is eligible for parole immediately and, as stated in **18 USC § 4205(b)(2)** in this subparagraph, **". . . may be released on parole at such time as the Commission may determine."** While the statutory authority does exist to parole immediately, from a practical standpoint it is unlikely that the Parole Commission would ever grant an immediate parole because of the rules established by the Parole Commission in **28 CFR § 2.11 and 2.12 (see subparagraphs k, m and n in this chapter)** which require that the person submit an application for parole and because of the time that the Parole Commission has, after the beginning date of the sentence, to conduct an initial hearing (Also see **18 USC 4208(a).**).

Beyond those two rules, the Parole Commission also applies the **paroling policy guidelines in 28 CFR § 2.20** to establish a presumptive or effective date of parole. No examples of **18 USC § 4205(b)(2)** parole eligibility are necessary since actual eligibility is immediate and since the **SENTRY** sentence procedure code for this parole provision automatically enters **COMMISSION'S DISCRETION** into the parole eligibility field.

(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)

d. Parole eligibility under 18 USC § 4205(f): The Parole Commission has authority to parole, unless otherwise prohibited, for sentences in excess of one year. The court may, however, for a sentence of six months through one year, release an offender as if on parole under the provisions of **18 USC § 4205(f)** which states,

> **"(f) Any prisoner sentenced to a term or terms of not less than six months but not more than one year shall be released at the expiration of such sentence less good time deductions provided by law, unless the court which imposed sentence, shall, at the time of sentencing, provide for the prisoner's release as if on parole <u>after service of one-third</u>** [emphasis added] **of such term or terms notwithstanding the provisions of section 4164."**

The Bureau of Prisons interprets this section to mean that a prisoner may **not** waive a parole date set by a court. The SRD need not be computed for a sentence when a court provides for release "as if on parole" (hereinafter called **court designated parole**). A sentence that includes a **court designated parole** shall not be aggregated with any other sentence or with another court designated parole sentence.

Presentence time **will** be used to reduce a **court designated parole** that is based on **one-third** of the sentence.

Presentence time **shall not** be used to reduce a **specific calendar date** for parole set by the court, nor will it be used if the language is clear from the judgment and commitment that the court took the presentence time into account.

No parole date shall be established that is earlier than one-third of the sentence.

The **Weekend/Holiday** provision of **18 USC § 4163** may **not** be used to make any parole date earlier than is established under **18 USC § 4205(f),** even if that date is greater than one-third of the sentence.

This section applies to any offense that is eligible for parole.

(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)

e. Parole eligibility under 18 USC § 4206(d). This subsection states that,

> **"(d) Any prisoner, serving a sentence of <u>five years or longer</u>** [emphasis added]**, who is not earlier released under this section or any other applicable provision of law, shall be released on parole after having served two-thirds of each consecutive term or terms, or after serving thirty years of each consecutive term or terms of more than forty-five years including any life term, whichever is earlier: Provided, however, That the Parole Commission shall not release such prisoner if it determines that he has seriously or frequently violated institution rules and regulations or that there is a reasonable probability that he will commit any Federal, State or local crime."**

(1) The two-thirds or thirty year provision, referred to as **Mandatory Parole** by the Parole Commission (see **28 CFR § 2.53**), **applies to Adult, Youth Correction Act, Narcotic Addict Rehabilitation Act, and Juvenile Justice and Delinquency Prevention Act sentences of**, as noted above, **five years or longer, including parole violator terms and special parole violator terms that have five years or longer remaining to be served after revocation.** The two-thirds or thirty year provision also **applies to D.C. Code offenders who are sentenced under the Youth Correction Act or the Narcotic Addict Rehabilitation Act.**

(2) A sentence that is **less** than five years and a parole violator term or a special parole violator term that has **less** than five years imprisonment remaining to be served, and that is part of an aggregate that is five years or longer, shall have a two-thirds/thirty year date established.

(3) The **mathematical formula** for calculating a **two-thirds date** is: **Two-thirds <u>Times</u> Sentence Length <u>Equals</u> Two-thirds Date** (e.g., 2/3 x 9 years = 6 years). Another way of stating the formula is: Two Times Sentence Length Divided By Three Equals Two-thirds Date (e.g., 2 x 9 years = 18 years ÷ 3 = 6 years). A month left over will be converted to 30 days. If two months are left over (the maximum possible), those two months will be converted to 60 days. If any day or days are left over (two is the maximum possible), those days shall be dropped.

(4) The **mathematical formula** for calculating a **thirty year date** is, of course, simple addition and is accomplished by **adding thirty years to the DCB and then backing up one day** (e.g., 30 years + 08-12-1982 = 08-11-2012*). Remember, any sentence that is forty-five years or longer (including a life sentence) will be eligible for parole under this section (**18 USC § 4206(d)**) after serving thirty years.

(5) **Prior custody time credits** shall reduce the two-thirds/thirty year date accordingly and **inoperative time**, where appropriate, shall extend the date.

(6) **Appendices III and IV** contains numerous parole eligible calculation and determination rules for establishing **a two-thirds/thirty year date** when more than two sentences are involved. Providing rules for sentence combinations involving three or more sentences would require literally hundreds of instructions. Therefore, any ⅔ date that presents difficulties or problems shall be referred to the Regional Inmate Systems Administrator for assistance.

(7) Following are some calculation examples.

Example No. VII - 23:

Sentence is 9 Years.

9 Y x 12 M = 108 M
108 M x 2 = 216 M ÷ 3 = 72 M
72 M ÷ 12 = **6 Y**

Two-Thirds of Sentence = 6 Years

Example No. VII - 24:

Sentence is 5 Years.

5 Y x 12 M = 60 M
60 M x 2 = 120 M ÷ 3 = 40 M
40 M ÷ 12 M = **3 Y 4 M**

Two-Thirds of Sentence = 3 Years & 4 Months

Example No. VII - 25:

Sentence is 44 Years, 8 Months and 11 Days.

44 Y x 12 M = 528 M + 8 M = 536 M
536 M x 2 = 1072 M ÷ 3 = **357 M & 1 M Rm.**
357 M ÷ 12 = **29 Y 9 M**

1 M R x 30 D = 30 D

11 D x 2 = 22 D + 30 D = 52 D
52 D ÷ 3 = **17 D** & 1 D Remainder (Dropped)

Two Thirds of Sentence = 29 Yrs 9 Mo and 17 Dys

f. Parole eligibility under 18 USC § 924(a)(1) and (2). **Effective** with sentences imposed on or after **December 16, 1968, P.L. 90-618** provided that a person sentenced for a violation of **18 U.S.C. § 924(a) ". . . shall become eligible for parole as the Board of Parole shall determine."** For a person who is eligible for parole under this subsection, the Parole Commission follows the same rules as established for a person sentenced under the provisions of **18 U.S.C. § 4205(b)(2)** (former **18 U.S.C. 4208(a)(2)**) (see this chapter, subparagraph 6.r.).

(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)

g. Order of service of sentence and the parole and no parole provisions of 18 U.S.C. § 924(c)(1). Any person sentenced under the provisions of **18 U.S.C. § 924(c)(1) (P.L. 90-618)** after the effective date of **December 16, 1968** was **eligible for parole** under **18 U.S.C. § 4202, 4208(a)(1) and (a)(2)** and the sentence imposed could be served in any order (concurrent or consecutive) with another sentence as determined by the court that imposed the sentence.

* With the enactment of **P.L. 91-644,** effective on **January 2, 1971,** a new provision was added to **18 U.S.C. 924(c)(1)** that stated that for a second or subsequent conviction under this subsection the term of imprisonment **was not** to **". . . run concurrently with any term of imprisonment imposed for the commission of such felony" (18 U.S.C. § 924(a) and (b)). This provision did not apply to any offense committed prior to January 2, 1971.**

- On **May 14, 1976,** the Parole Commission and Reorganization Act, **P.L. 94-233,** became effective for all sentences imposed on and after that date, including sentences imposed under **18 U.S.C. § 924(c)(1).** The new parole provisions were **18 U.S.C. § 4205(a), (b)(1), (b)(2) and (f).**

- **P.L. 98-473,** effective with offenses committed on or after **October 12, 1984,** amended **18 U.S.C. § 924(c)(1)** to **eliminate parole eligibility (18 U.S.C. § 4205 and 4206(d)), probation or a suspended sentence.** In addition, **18 U.S.C. § 924(c)(1)** stated in part,

  "Notwithstanding any other provision of law, . . . nor shall the term of imprisonment imposed under this subsection run concurrently with <u>any other term of</u>

imprisonment [emphasis added] **including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried."**

- The Bureau issued policy instructions that required the **924** count to be served **first** regardless of the order in which that count was imposed, in relationship to one or more **non-924** counts in a **single** J&C. On March 3, 1997, the U.S. Supreme Court, in **United States V. Gonzales, 117 S.CT 1032, 137 L.Ed. 132 (1997)** held that a court may apply a sentence containing both a **924** count and a **non-924** count, or counts, in a different way than the Bureau prescribed.

- Unless otherwise specified, a reference to a **924/non-924** sentence in a single J&C means that the **924** and **non-924** count, or counts, have been aggregated into a single sentence for that J&C.

- The **924 count** in a single J&C is to be served in the order as imposed by the court, i.e., the **924 count** may be served consecutively to (after) all other counts in the J&C or before all other counts. If there is more than one **non-924 count**, those counts may be served in any sequence the court specifies in relation to one another (either concurrently or consecutively). All counts in the J&C are to be aggregated as outlined elsewhere in this Manual.

- In a single J&C, a **non-924 count** may be imposed first, the **924 count** second (consecutively), and additional **non-924 count(s)** third (consecutive). Such a sentence would be a proper sentence as it would conform to the literal wording of the statute that the **924 count** not run concurrently with any other term of imprisonment (including any existing **non-federal** or **federal** sentence).

- Regardless of the order of the counts in a **924/non-924** sentence, a **924/non-924** sentence that is ordered to run consecutively to an existing federal sentence is to be added to the existing federal sentence for a total aggregate term, if there is nothing to prevent the aggregate, and calculate accordingly.

- If the **924 count** is **first** and the **non-924 count(s)** are consecutive in a single J&C and the court was silent as to the relationship with an existing federal sentence, the **924/non-924** sentence are to be added to the existing federal sentence for a total aggregate, if there is nothing to prevent the aggregation, and calculated accordingly.

- If a **non-federal** or **New Law** (NL), which encompasses the Sentencing Reform Act (SRA), Violent Crime Control Law Enforcement Act (VCCLEA), and the Prisoner Litigation Reform Act(PLRA) sentences, sentence exists at the time the Old Law (OL) **924/non-924** sentence is imposed and the **OL 924** count is to be served consecutively to the other counts in that J&C and to the existing **non-federal** or **NL** sentence, the **OL non-924 count(s)** may be served concurrently with the existing **non-federal** or **NL** sentence.

  The **OL 924/non 924** calculation is to be performed once the final **non-federal** or **NL** release date becomes known. If the Regional Director has no objection to the court recommendation that certain **OL non-924** counts run concurrently with the non-federal sentence, then the consecutive **OL 924** count is to be calculated as commencing on the **non-federal** or **NL** release date to determine the **OL 924/non-924** sentence expiration full term (**EFT**) date (unaffected by jail credit). The **OL 924/non-924** sentence is to be subtracted from the just established **EFT** to determine a date computation begins (**DCB**) for the **OL 924/non-924** sentence. If that **DCB** is on or later than the date of imposition of the **OL 924/non-924** sentence, calculate the **OL 924/non-924** sentence as commencing on that **DCB.** An example follows:

  EXAMPLE NO. 1: The **first** J&C was a 60 month **non-federal** or **NL** sentence imposed on 06-15-1988 with an **SRD** of 10-22-92. The **second** J&C was a 7 year **OL 924/non-924** sentence imposed on 06-18-1988 with the 2 year **OL non-924** count 1 to run concurrently with the **first** sentence and the 5 year **OL 924** count 2 to run consecutively. The 5 year **OL 924** count 2 is added to the first sentence SRD (10-22-92) resulting in an **EFT** of 10-21-1997. The 7 year **OL** sentence was subtracted from its **EFT** of 10-21-1997 causing a **DCB** of 10-22-1990 for the **OL** sentence which is later than the date of

imposition (06-18-1988) of the **OL** sentence, resulting in no sentencing conflict. The **OL** sentence of 7 years is to commence on the **DCB** of 10-22-1990.

If the **DCB is earlier** than the date of imposition of the **OL 924/non-924** sentence, producing a conflict with **OL 18 U.S.C. § 3568,** which does not permit a sentence to begin earlier than its date of imposition, then the **DCB** is to be adjusted to reflect the date of imposition of the **OL 924/non 924** sentence and calculated accordingly. An example follows:

EXAMPLE NO. 2: The **first J&C** was a 60 month **non-federal** or **NL** sentence imposed on 06-15-1988 with an **SRD** of 10-22-1992. The **second J&C** was a 7 year **OL 924/non-924** sentence imposed on 12-15-1990 with the 2 year **OL non-924** count 1 to run concurrently with the first sentence and the 5 year **OL 924 count 2** to run consecutively. The 5 year **OL 924 count 2** is added to the first sentence **SRD** (10-22-1992) resulting in an **EFT** of 10-21-1997. The 7 year **OL sentence** was subtracted from the 5 year **OL 924 EFT** of 10-21-1997 causing a **DCB** of 10-22-1990 for the **OL** sentence which is earlier than the date of imposition (12-15-1990) of the **OL** sentence. As a result, to conform with **OL § 3568,** the **OL** sentence is to be calculated as commencing on its date of imposition of 12-15-1990 which complies with the J&C to the extent statutorily possible.

A nunc pro tunc designation request is to be made to the appropriate RISA for the part of the sentence that is running concurrently with the non-federal sentence.

If the court orders the **OL 924/non-924** sentence to run consecutively to the existing **non-federal** or **NL** sentence, the **OL 924/non 924** sentence is to be calculated as beginning on the date of release from the **non-federal** of **NL** sentence.

If there is an existing **non-federal** or **NL** sentence when the **OL 924/non-924** sentence is imposed, and the **OL 924 count** is first and the **OL non-924** counts are consecutive in the J&C, then the **OL 924/non 924** sentence is to be served consecutively to the existing **non-federal** or **NL** sentence beginning on the date of release from the **non-federal** or **NL** sentence.

◆ If an **OL** sentence exists when an **OL 924/non-924** sentence is imposed and the **OL 924** count is to be served consecutively to the other counts in that J&C and to the existing **OL** sentence, the **OL non-924** counts, however, may be served concurrently with the existing **OL** sentence and must be calculated as follows:

The consecutive **924 count** is to be added to the existing **OL** sentence to learn the new aggregate term. The new aggregate term is to be added to the **DCB** of the existing **OL** sentence to learn the aggregate **EFT.** Subtract the **OL 924/non-924** sentence from the just learned aggregate **EFT** to learn the **DCB** of the **OL 924/non-924** sentence. If that **DCB** is on or later than the date of imposition of the **OL 924/non 924** sentence, then calculate the sentence based on the aggregate beginning on the **DCB** of the existing **OL** sentence. An example follows:

EXAMPLE NO. 3: The **first J&C** was a 5 year **OL** sentence imposed on 06-15-1988. The **second J&C** was a 7 year **OL 924/non-924** sentence imposed on 06-18-1988 with the 2 year **OL non-924 count 1** to run concurrently with the first sentence and the 5 year **OL 924 count 2** is added to the first 5 year **OL** sentence for a total 10 year sentence and a **EFT** of 06-14-1998. The 7 year **OL 924/non-924** sentence was subtracted from the aggregate **EFT** of 06-14-1998 causing a **DCB** of 06-15-1991 for the **OL 924/non-924** sentence which is later than the date of imposition (06-18-1988) of the **OL 924/non-924** sentence, resulting in no sentencing conflict. As a result, the 10 year aggregate sentence is to be calculated as commencing on the **DCB** of the first sentence.

If the **DCB** is earlier than the date of imposition of the **OL 924/non-924** sentence, then add the **OL 924/non-924** sentence to its date of imposition to learn the **EFT.**

Subtract the **DCB** of the existing **OL** sentence from the **OL 924/non-924** sentence **EFT** and the result will be the total aggregate for the existing **OL** and **OL 924/non-924** sentences. An example follows:

Example No. 4: The first J&C was a 5 year **OL** sentence imposed on 06-15-1988. The second J&C was a 7 year **OL 924/non-924** sentence imposed on 12-20-1991 with the 2 year **OL non-924 count 1** to run concurrently with the first sentence and the 5 year **OL 924** count to run consecutively. The 5 year **OL 924** count 2 is added to the first 5 year **OL** sentence for a total 10 year sentence and an **EFT** of 06-14-1998. The 7 year **OL 924/non-924** sentence was subtracted from the aggregate 10 year **EFT** of 06-14-1998 causing a **DCB** of 06-15-1991 for the **OL 924/non-924** sentence which is earlier than the date of imposition (12-20-1991) of the **OL 924/non-924** sentence.

As a result, to conform with **OL § 3568,** which will not allow a sentence to commence prior to its date of imposition, the 7 year **OL 924/non-924** sentence is to be calculated as commencing on its date of imposition of 12-20-1991 to learn its **EFT.** That calculation results in an **EFT** for the **OL** 7 year **924/non-924** sentence of 12-19-1998. To establish the total aggregate for the first and second sentences, subtract the **DCB** of the first sentence which will result in a total aggregate sentence for the two sentences of 10 years, 6 months, and 5 days. Calculate the aggregate sentence of 10 years, 6 months, and 5 days as commencing on the **DCB** (06-15-1988) of the first sentence. This calculation complies with the second J&C to the extent statutorily possible.

- Because of Bureau's policy prior to "**Gonzales**", sentences that contained a § **924(c)** count may have been incorrectly applied. As a result, any inmate may request a review of the sentence computation pursuant to an Inmate Request to Staff Member **(BP-S148)** to learn if a pre-Gonzalez computation may have been implemented contrary to **Gonzales.**

- During any required audit of a sentence computation, e.g., transfer audit, pre-release audit, disallowance-forfeiture-restoration of good time, etc., ISM staff must review the existing computation to determine if a pre-**Gonzales** issue is present. Following are some situations that may be present that would require ISM action of some nature:

- The inmate is in **primary** federal custody, a **non-federal** or **federal** sentence is in existence, a silent **OL 924/non-924** sentence is imposed, and ISM has calculated the entire sentence as running consecutively to the existing sentence.

- If the **924** count only was ordered to run consecutively to the other counts in the J&C, ISM staff are to recalculate the sentence to show the **non-924** counts as running concurrently with the existing sentence and the **924** count as running consecutively and notify the court through the appropriate U.S. Attorney of the action taken. (**Note**: No sentence can commence earlier than the date of imposition.)

- If ISM staff advised a court that a sentence was improper based on pre-Gonzalez policy and the court entered an order correcting or modifying the sentence based on that advice, communication to the court, through the U.S. Attorney, must be initiated that will put the court on notice of the prior improper advice. The communication should include a request that the institution be advised of any action that the court may deem appropriate. ISM staff are to make one follow-up after 30 days if a response has not been received.

- If a **924 count** is included in a sentence computation and the sentence has been calculated as imposed, ISM staff will not change the order of the sentence unless instructed by the court. When questionable situations arise, contact the RISA or Central Office Operations staff for further direction.

- When parolable and non-parolable sentences are aggregated, and the parolable sentence is in operation first, a manual Form 20, Good Time Form, will be maintained to ensure that, if parole is granted, the parole date is prior to the MR date of the parolable sentence. If the parole date is after the MR Date, the U.S. Parole Commission will be contacted to remove the parole date. *****

h. Order of service of sentence and the no parole provision of 18 U.S.C. § 929(a). This section was added to Chapter 44 of Title 18 U.S.C. by **P.L. 98-473**, effective **October 12, 1984**, and provided that any sentence under this subsection would not be eligible for parole **(18 U.S.C. § 4205 and 4206(d))** and that the

court could not suspend the sentence or place the person on probation. This section stated also that the term of imprisonment **may not ". . . run concurrently with any other terms of imprisonment including that imposed for the felony in which the armor-piercing ammunition was used or carried."**

(1) The legislative history on which this section is based states that an **18 U.S.C. § 929(a)** sentence **". . . cannot be served concurrently with any other sentence, including a sentence for**

the underlying crime of violence or for a conviction under section 924(c) . . . Thus, a person who robbed a bank with a handgun loaded with armor-piercing ammunition, if charged with and convicted of a violation of 18 U.S.C. 924 and 929 . . ." would first have to serve the **924(c)** and **929(a)** sentence, without parole eligibility, before the bank robbery sentence could begin to run. In other words, the **924(c)(1)** sentence would be first, the **929(a)** sentence would be second (consecutive), and the bank robbery sentence would be last (consecutive). If there is another sentence (count) (or sentences--counts) in the same judgment and commitment, then that sentence would also be consecutive to the **18 USC § 924(c) and 929(a)** sentences but could be served concurrently with, or consecutively to, the bank robbery sentence, depending upon the manner in which the court imposed the other sentence unless there is a specific sentencing provision that sets forth the order in which the other sentence is to be served.

(2) In those cases in which a federal sentence is being served at the time the **18 USC § 929(a)** sentence is imposed, then the **18 USC 929(a)** sentence (as well as a **18 USC § 924(c)** sentence) shall be made consecutive to that existing sentence. For example, if a person is serving a five year mail theft sentence at the time a five year **18 USC § 924(c)** sentence, a fifteen year **18 USC § 929(a)** sentence, and a fifteen year bank robbery sentence are imposed, the **18 USC § 924(c), 929(a),** and bank robbery sentences would be served consecutively to the mail theft sentence, resulting in a total sentence of forty years.

(3) Any sentence imposed after an **18 USC § 929(a)** sentence, for any person who is in federal custody, shall begin to run on the date such sentence is imposed, unless the court specifies that it is to be served in some other manner, or unless there is a specific sentencing provision that sets forth the order in which it is to be served.

(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)

i. Minimum mandatory sentence and no parole provisions of 18 USC, Appendix II, § 1202(a). (P.L. 90-351 repealed 18 USC, Appendix II, Sections 1201 through 1203, for offenses that occur on and after November 15, 1986--See Chapter 44, 18 USC, Firearms, for consolidated firearms offenses.)

This section states in part,

> **"(a) Any person . . . who receives, possesses, or transports in commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years** [emphasis added], **or both."**

(1) **P.L. 98-473, effective** for any offense that occurs on or after **October 12, 1984,** added the following to this section ,

> **"In the case of a person who receives, possesses, or transports in commerce or affecting commerce any firearm and who has three previous convictions by any court referred to in paragraph (1) of this subsection for robbery or burglary, or both,such person shall be fined not more than $25,000 and imprisoned not less than fifteen years** [emphasis added], **and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary period to, such person with respect to the conviction under this subsection, and such person shall not be eligible for parole with respect to the sentence imposed under this subsection."**

As a result of this provision, any person who has **three prior convictions (felonies)** by any court (a court of the United States or of a state or any political subdivision thereof), must be sentenced to at least fifteen years, may not receive a suspended sentence or probation and **shall not be eligible for parole (18 USC § 4205 and 4206(d))** with respect to any sentence imposed under this subsection.

(2) If a term of fifteen years or more is imposed for a violation of **18 USC, Appendix II, § 1202(a),** the prisoner will be considered **not eligible** for parole. If a term of two years or less (but not one year or less) is imposed, the prisoner shall be considered **eligible** for parole. If the judgment and commitment is inconsistent with these guidelines (e.g., imposes a fifteen year sentence but speaks of parole eligibility; imposes any sentence between two years and fifteen years) or is otherwise ambiguous, the Inmate Systems Manager shall refer the matter to the Regional Inmate Systems Manager. If necessary, the Regional Inmate Systems Manager should consult with the Regional Counsel to determine a course of action.

(3) It should be noted that a person should not be treated as **not eligible** for parole merely because he in fact has three felony convictions for robbery or burglary. There must be a **showing**, in addition, to the effect that the person's prior convictions were brought to the attention of the sentencing court by the U. S. Attorney who charged the person under the **"repeat offender"** portion of **18 USC, Appendix II, § 1202(a).** This information will sometimes be clear on the judgment and commitment and will sometimes only be clarified after consultation with the Regional Inmate Systems Manager.

(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)

j. Parole eligibility under 26 USC § 5871. Effective with **sentences** imposed on or after **December 16, 1968, P.L. 90-618** provided that a person sentenced under **26 USC § 5871 ". . . shall become eligible for parole as the Board of Parole may determine."** For a person who is eligible for parole under this subsection, the Parole Commission follows the same rules as established for a person sentenced under the provisions of **18 USC § 4205(b)(2)** (see this chapter, subparagraph 4.c.).

P.L. 98-473, Title II, Section 235(a)(1)(B)(ii)(IV), effective with **offenses** committed on or after **October 12, 1984**, amended **26 USC § 5871** to eliminate the language, **"and shall become eligible for parole as the Board of Parole shall determine."** This means that the Parole Commission can no longer **"automatically"** establish a parole eligibility date that is earlier than the date that would be established under the provisions of **18 USC § 4205(a)** (one-third of the sentence not to exceed ten years). In fact, if the judgment and commitment is silent for an offense that occurred after October 12, 1984, then parole eligibility will be computed based on **18 USC § 4205(a).** The court, however, may impose a sentence under **18 USC § 4205(b)(1), 4205(b)(2) or (f)** (see this chapter, subparagraphs 4.b., c. and d.).

On November 10, 1986, **P.L. 99-646, Section 35(2)(D),** amended **P.L. 98-473, Title II, Section 235(a)(1)(B)(ii)** to eliminate subsection **(IV)** by substituting another subsection that had no relationship to subsection **(IV)**. This amendment has caused some confusion by giving rise to the belief by some prisoners that the elimination of subsection **(IV)** rescinded the cancellation of the subsection thereby restoring the **"and shall become eligible for parole as the Board of Parole shall determine"** language. The Ninth Circuit United States Court of Appeals in **Dallis** v. **Martin**, 929 F.2d 587 (10th Cir. 1991) considered this issue and concluded that **P.L. 99-646** did not repeal **Section 235** to the extent that it caused the reinstatement of the **"and shall become eligible for parole as the Board of Parole shall determine"** language to **26 USC § 5871.** As a result, the Bureau of Prisons has adopted the **Dallis** decision on a nationwide basis.

(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)

k. Ten year cap. Parole ineligibility periods will **not** be added together ("stacked") to exceed ten years (hereinafter called the **ten year cap**) in either concurrent or consecutive sentencing situations, regardless of the parole provisions involved. **The maximum that any person must serve prior to becoming eligible for parole for any combination of parolable sentences is ten years**, regardless of the length of the sentences involved, including concurrent or consecutive life sentences. This rule is a long standing position that has been taken by the Bureau of Prisons, and concurred in by the Parole Commission, based on the interpretation of 18 USC § 4205(a).

There is an exception to the **ten year cap** rule as the result of court decisions in at least two circuit courts of appeal. Those courts have held that the **ten year cap** rule does not apply to sentences imposed under the provisions of **18 USC § 4205(b)(1)** which is the section that allows the court to impose a minimum term (period of parole ineligibility) that does not exceed one-third of the sentence for any one count. As a result, each time a judgment and commitment is received that includes an **18 USC § 4205(b)(1)** minimum term greater than ten years shall be referred to the appropriate Regional Inmate Systems Administrator (with a copy to the central office ISM department, attention Chief of Operations) for a determination as to what procedure to follow.

l. Effect of parole from one sentence to another parolable sentence. If the Parole Commission paroles from one paro lable sentence to another parolable sentence after they have been aggregated, then all time served on the sentence from which paroled shall count toward reducing the PE date on the remaining parolable sentence or sentences, including concurrent or consecutive life sentences.

m. Parole eligibility for aggregated parolable and non-parolable sentences. If a computation includes a non-parolable offense and a parolable offense, the person may **not**, of course, be paroled during the confinement portion of the sentence (calculated as if standing alone) for the non-parolable offense. PE for the parolable portion of the sentence, however, may not exceed the **ten year cap**. Time spent serving a non-parolable sentence **will not** count toward reducing the period of parole ineligibility of the parolable sentence.

(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)

n. Effect of presentence time credit on parole eligibility. Presentence time credit **shall be used** to reduce a PE date.

o. Effect of inoperative time on parole eligibility. Inoperative time **shall be applied** to a PE date provided that the inoperative time occurs prior to the PE date that existed prior to the inoperative time. If the inoperative time occurs after the PE date , then the inoperative time shall have no effect on that PE date. If a concurrent sentence is imposed after a period of inoperative time on a preceding sentence, then the calculation can become complex. (See **Example Nos. IV - 28 through 34.**)

p. Application for parole. Parole Commission **rules** pertaining to **application for parole** are contained in **28 CFR § 2.11(a) through (e)**, which states in part,

> **"[(a) A federal prisoner (including a committed youth offender or prisoner sentenced under the Narcotic Addict Rehabilitation Act) desiring to apply for parole shall execute an application form as prescribed by the**

Commission. Such forms shall be available at each federal institution and shall be provided to each prisoner who is eligible for an initial parole hearing pursuant to § 2.12. Prisoners committed under the Federal Juvenile Justice Delinquency Act shall be considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.]"

q. Waiver of parole consideration. Under the provisions of **28 CFR § 2.11(b) and (c),**

"[(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 60 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who declines either to apply for or waive parole consideration is deemed to have waived parole consideration.]"

r. Initial hearing notice. Under the provisions of 28 CFR § 2.11(e),

"[(e) At least sixty days prior to the initial hearing (and prior to any hearing conducted pursuant to § 2.14), the prisoner shall be provided with written notice of the time and place of the hearing and of his right to review the documents to be considered by the Commission, as provided by § 2.55. A prisoner may waive such notice, except that if such notice is not waived, the case shall be continued to the time of the next regularly scheduled proceeding of the Commission at the institution in which the prisoner is confined.]"

s. Initial hearing. Providing the person makes application for parole, the **initial hearing,** under **28 CFR § 2.12(a) and (b)** states,

"[(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a Federal institution or as soon thereafter as practicable; except that in the case of a prisoner with a minimum term of parole ineligibility of ten years or more, the initial hearing will be conducted six months prior to the completion of such a minimum term, or as soon thereafter as practicable.

(b) Following initial hearing, the Commission shall (1) set a presumptive release date (either by parole or by mandatory release) within fifteen years of the hearing; (2) set an effective date of parole; or (3) continue the prisoner to a fifteen year reconsideration hearing] . . ."

t. Parole from imprisonment. Because of the language in the statutes that requires a period of parole ineligibility be served before parole may be granted, the Bureau of Prisons has always enforced those statutes by requiring that each prisoner fully serve the entire period of parole ineligibility before an actual release on parole. This strict interpretation of those statutes is supported by the Parole Commission in **28 CFR § 2.12(c)** which states in part that,

"[. . . a prisoner may not be paroled earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law.]"

u. Sentence computation and parole of U. S. Citizen Canal Zone offenders. A **U.S. Citizen** who is convicted of a Canal Zone offense and who is transferred to the United States under the provisions of **18 U.S.C. § 5003**, based on an agreement between the United States and the Canal Zone, is eligible for parole consideration by the Parole Commission. (See the Program Statement on **Jurisdiction of the Parole Commission to Consider the Parole of Canal Zone Offenders**.)

A copy of the judgment and commitment and a copy of a sentence computation record will accompany each person. The computation will be accepted as accurate, **including the parole eligibility date**, unless an obvious discrepancy appears or unless the person challenges any part of the computation. In either case, Canal Zone officials must be contacted to resolve the problem. Any correction made to the computation must be made, or approved, by Canal Zone officials.

The U.S. Citizen Canal Zone offender may make application for parole the same as any other U. S. Code offender as described in this chapter, subparagraphs 4.p., q., i., s. and t.

* **v. Parole eligibility dates for aggregated D.C. Code and U.S Code sentences.** Whenever a combination of **D.C. Code** and **U.S. Code** sentences are imposed that can be aggregated for parole purposes, a special rule, based on the statutes and the court decision in **Chatman-Bey v. Meese, 797 F2d 987 (D.C. Cir. 1986)**, has been developed for determining a single parole eligibility date for the aggregate. **The rule is that the period of parole ineligibility for a U.S. Code sentence may never be used to increase the total**

period of parole ineligibility beyond ten years for an aggregate of U.S. Code and D.C. Code sentences.

Chatman-Bey v. Meese states in part,

> **". . . we reject the interpretation of the interaction of 18 U.S.C. § 4205(a), and D.C. Code §§ 24-203(a),-204(a) tendered by the government; instead, we read the relevant legislative prescriptions to give full effect to the sentence aggregation approach indicated by 18 U.S.C. § 4205(a), while at the same time obligating prisoners to serve at least the minimum term or terms imposed under the D.C. Code. Thus, the FBP should follow a uniform, full aggregation approach in calculating parole eligibility for persons incarcerated in federal penitentiaries. Whether consecutive sentences are imposed solely under the U.S. Code, or under the federal Code and the D.C. Code, all should be added together to arrive at a single aggregate sentence. But because the D.C. Code 'otherwise provides,' the ten year cap** [emphasis added] **indicated in 18 U.S.C. § 4205(a) would not be dispositive when a D.C. Code sentence is implicated. Rather, the prisoner would remain ineligible for parole until he completed service of time equivalent to the minimum D.C. Code sentence or sentences.**
>
> **For example, a prisoner serving a U.S. Code sentence of five years, and two consecutive D.C. Code sentences of 10 to 30 years, would become eligible for parole after 20 years--not 21 2/3 years--after service of the sentences commenced."**

Following are some examples that demonstrate the rule.

(1) A 4205(a) sentence of 70 years is imposed consecutive to a D.C. Code sentence of 8 to 24 years for a total sentence of 94 years. **Parole eligibility is set at 10 years--8 years** from the D.C. Code sentence plus **2 years** from the 4205(a) sentence, even though parole ineligibility for the 4205(a) sentence, standing alone, is 10 years.

(2) A 4205(b)(1) sentence of 10 to 40 years is imposed consecutive to a D.C. Code sentence of 8 to 24 years for a total sentence of 64 years. **Parole eligibility is set at 10 years--eight years** from the D.C. Code sentence plus **two years** from the 4205(b)(1) sentence, even though the minimum parole ineligibility period for the 4205(b)(1) sentence is 10 years.

(3) A 4205(a) sentence of 9 years is imposed consecutive to a D.C. Code sentence of 3 to 9 years for a total sentence of 18 years. **Parole eligibility is set at six years--**

three year minimum term from the D.C. Code sentence plus **three years** of the nine year 4205(a) sentence.

(4) A 4205(a) sentence of 18 years is imposed consecutive to a D.C. Code sentence of 15 to 45 years for a total sentence of 63 years. **Parole eligibility is set at 15 years** based on the D.C. Code minimum term of 15 years. Therefore, because the 15 year minimum exceeds the U.S. Code **ten year cap**, none of the six years of parole ineligibility (1/3 of 18) for the 4205(a) sentence may be added to the parole eligible date that is established at 15 years.

(5) A 4205(b)(1) sentence of six months to 11 years is imposed consecutive to a D.C. Code sentence of one to nine years for a total sentence of 20 years. **Parole eligibility is set at 1½ years--one year** minimum term from the D.C. Code sentence plus the **six month** minimum term from the 4205(b)(1) sentence.

(6) A D.C. Code sentence of eight to 24 years is imposed consecutive to a 4205(a) sentence of 70 years for a total sentence of 94 years. **Parole eligibility is set at 10 years--two years** from the 4205(a) sentence, even though the period of parole ineligibility for the 4205(a) sentence is 10 years, plus **eight years** from the D.C. Code sentence.

(7) A D.C. Code sentence of eight to 24 years is imposed consecutive to a 4205(b)(1) sentence of 10 to 40 years for a total sentence of 64 years. **Parole eligibility is set at 10 years--eight years** from the D.C. Code sentence plus **two years** from the 4205(b)(1) sentence, even though the minimum parole ineligibility period for the 4205(b)(1) sentence is 10 years.

(8) A D.C. Code sentence of three to nine years is imposed consecutive to a 4205(a) sentence of nine years for a total sentence of 18 years. **Parole eligibility is set at six years--three years** of the nine year 4205(a) sentence plus the **three year** minimum term from the D.C. Code sentence.

(9) A D.C. Code sentence of 15 to 45 years is imposed consecutive to a 4205(a) sentence of 18 years for a total sentence of 63 years. **Parole eligibility is set at 15 years** based on the D.C. Code minimum term of 15 years. Therefore, because the 15 year minimum exceeds the U.S. Code **ten year cap**, none of the six years of parole ineligibility (1/3 of 18) for the 4205(a) sentence is added to the parole eligible date that is established at 15 years. *****

6. Controlled substances. Substantial changes to the drug and marihuana laws occurred with the enactment of the **Narcotic Control Act of 1956** (**P.L. 728, 84th Congress, effective for offenses occurring on and after July 19, 1956 up to May 1, 1971**) (See Appendix IX).

Following the **Narcotic Control Act of 1956** are the:

Drug Abuse Prevention and Control Act of 1970 (**P.L. 91-513, effective for offenses occurring on and after May 1, 1971**) (See Appendix X.)

Psychotropic Substances Act of 1978 (**P.L. 95-633, effective for offenses occurring on and after November 10, 1978**) (See Appendix XI.)

Infant Formula Act of 1980 (**P.L. 96-359, effective for offenses occurring on and after September 26, 1980**) (See Appendix XI.)

Anti-Drug Abuse Act of 1986 (**P.L. 99-570, effective for offenses occurring on and after October 27, 1986**) (See Appendix XI.)

Controlled Substances Penalties Amendments Act of 1984 (**P.L. 98-473, effective for offenses occurring on and after November 1, 1987**) (See Appendix XII.)

Coast Guard Authorization Act of 1986 (**P.L. 99-640, effective for offenses occurring on and after November 10, 1986**) (See Appendix XII.)

Criminal Law Procedure Technical Amendments Act of 1986 (**P.L. 99-646, effective for offenses occurring on and after November 10, 1986**) (See Appendix XII.)

Sentencing Act of 1987 (**P.L. 100-182, effective for offenses occurring on and after January 6, 1987**) (See Appendix XII.)

Anti-Drug Abuse Act of 1988 (**P.L. 100-690, effective for offenses occurring on and after November 18, 1988**) (See Appendix XII.)

Crime Control Act of 1990 (**P.L. 101-647, effective for offenses occurring on and after November 29, 1990**) (See Appendix XII.)

You will note that an Appendix number follows each public law cite. Four Appendices have been established that provide information about the length of sentence (including minimum and maximum sentencing provisions) and fine amounts that may be assessed and whether or not parole, probation or a suspended sentence is authorized for the offense. Also included in the Appendices are the minimum mandatory special parole terms and supervised release terms that must be imposed for certain offenses. (See paragraph 12. for complete information and instructions about special parole and supervised release terms.)

It is especially important that the proper parole and non-parolable provisions are correctly applied based on the date of the offense and the offense for which convicted. The Appendices, if used properly, provide the information necessary to make those determinations. **(See Appendices III and IV for parole eligible calculation and determination rules when more than one sentence is involved.)**

The **Controlled Substances Penalties Amendments Act of 1984 (P.L. 98-473)**, effective October 12, 1984 (**Appendix XII**), increased the penalties for the more serious large scale narcotic offenses but failed to include special parole terms thereby eliminating those terms as part of the sentencing scheme. Effective October 27, 1986, the **Anti-Drug Abuse Act of 1986 (ADAA) (P.L. 99-570)** (**Appendix XI**) increased the penalties for most controlled substance offenses and added supervised release terms in place of the special parole terms that had been eliminated. As a result, a "gap" was created between **October 12, 1984** and **October 27, 1986** during which **no** special parole or supervised release term could be imposed for the more serious narcotic offenses.

Unfortunately, enactment of the ADAA of 1986 did not end the "gap" problem. Some defendants who were sentenced after October 27, 1986 claimed that a period of supervised release, although authorized by the ADAA of 1986, could not be imposed since the Sentencing Reform Act of 1984 did not become effective until November 1, 1987. The defendants claimed, therefore, that a supervised release term could not be imposed until November 1, 1987. Some courts agreed with that reasoning and some did not. As a result, the issue elevated to the Supreme Court in the case of **Gozlon-Peretz v. U.S., 498 US 395, 112 Led 2d 919, 111 Sct 840** (1991). The Supreme Court **did hold** in **Gozlon-Peretz** ". . . that for offenses committed in the interim period between October 27, 1986, and November 1, 1987, supervised release applies for all drug offenses in the categories specified by . . ." the ADAA of 1986.

7. Computation of single sentence. All of the elements and procedures necessary to compute a sentence have been discussed in the preceding explanations and instructions of the statutes that govern the calculation of a sentence. Following are sentence computation examples, with parole under the provisions of 18 USC § 4205(a), where the length of sentence is known: **(Note: The actual calculation of number of days inoperative time** (Chapter III, paragraph 2.i. and Chapter V, paragraph 4.) **and presentence time credit days** (Chapter III, paragraph 2.i. and Chapter VI, paragraph 8.a. and b.) **and parole ineligibility time periods** (Chapter VII, paragraph 4.a. and e.), **as well as SGT days** (Chapter IV, paragraph 4.) **will not be shown below since they have been fully discussed and demonstrated in the chapters just mentioned:)**

Example No. VII - 26:

Arrested on 12-24-79 and remains in continuous custody until sentenced on 03-03-80 to 180 days. (No SGT is awarded since the sentence is less than 6 months. Therefore, no 180 day is established since the total good time (EGT) cannot exceed 180 days. Not eligible for parole since the sentence is not more than 1 year and not eligible for a two-thirds/thirty year date since the sentence is less than 5 years.)

DCB	=	80-03-03	=	15038
Sentence			= +	180 180 Days
Tentative EFT	=	80-08-30	=	15218
Original EFT	=	80-08-29*	=	15217
Presentence Time			= -	70 70 Days
Final EFT	**=**	**80-06-20**	**=**	**15147**
SRD	**=**	**80-06-20**		

Example No. VII - 27:

Arrested on 05-05-79; released on bond on 06-06-79; re-arrested on 07-08-79; sentenced on 09-05-79 to 9 months; released pending appeal on 09-09-79; returned to custody on 10-10-79). (No 180 day is established since the total good time (SGT and EGT) cannot exceed 180 days. Not eligible for parole since the sentence is not more than 1 year and not eligible for a two-thirds/thirty year date since the sentence is less than 5 years.)

DCB	=	79-09-05		
Sentence	= +	00-09-00 9 Months		
Unconverted EFT	=	79-18-05		
Original EFT	=	80-06-04*	=	15131
Inoperative Time			= +	30 30 Days
Tentative EFT	=	80-07-04	=	15161
Presentence Time			= -	92 92 Days
Final EFT	**=**	**80-04-03**	**=**	**15069**
SGT			= -	45 45 Days
SRD	**=**	**80-02-18**	**=**	**15024**

Example No. VII - 28:

Arrested on 06-06-78; released on bond on 10-14-78; re-arrested and sentenced on 02-14-79 to 2 years and 6 months; released pending appeal on 04-07-79; returned to custody on 07-28-79. (Not eligible for a two-thirds/thirty year date since the sentence is less than 5 years.)

DCB	=	79-02-14		
Sentence	= +	02-06-00	2 Years 6 Months	
Original EFT	=	81-08-13*	=	15566
Inoperative Time			= +	111 111 Days
Tentative EFT	=	81-12-02	=	15677
Presentence Time			= -	131 131 Days
Final EFT	**=**	**81-07-24**	**=**	**15546**
SGT			= -	180 180 Days
SRD	**=**	**81-01-25**	**=**	**15366**

Final EFT	=	81-07-24	=	15546
Less 180 Days			= -	180 180 Days
180 Day Date	**=**	**81-01-25**	**=**	**15366**

DCB	=	79-02-14		
1/3 of 2 Yrs 6 Mos	= +	00-10-00	10 Months	
Original PE Date	=	79-12-13*	=	14957
Inoperative Time			= +	111 111 Days
New PE Date	=	80-04-02	=	15068
Presentence Time			= -	131 131 Days
Final PE Date	**=**	**79-11-23**	**=**	**14937**

Example No. VII - 29:

Arrested on 08-12-78; released on bond on 08-14-78; re-arrested 10-12-78; sentenced on 10-13-78 to 4 years and 1 month. (Not eligible for a two-thirds/thirty year date since the sentence is less than 5 years.)

DCB	=	78-10-13		
Sentence	= +	04-01-00	4 Years 1 Month	
Original EFT	=	82-11-12*	=	16022
Presentence Time			= -	4 4 Days
Final EFT	**=**	**82-11-08**	**=**	**16018**
SGT			= -	343 343 Days
SRD	**=**	**81-11-30**	**=**	**15675**

Final EFT	=	82-11-08	=	16018
Less 180 Days			= -	180 180 Days
180 Day Date	**=**	**82-05-12**	**=**	**15838**

DCB	=	78-10-13		
1/3 of 4 Yrs 1 Mo	= +	01-04-10	1 Yr 4 Mos 10 Dys	
Unconverted PE Date	=	79-14-22*		
Original PE Date	=	80-02-22	=	15028
Presentence Time			= -	4 4 Days
Final PE Date	**=**	**80-02-18**	**=**	**15024**

Example No. VII - 30:

Sentenced on 09-16-80 upon release from state custody to 6 years and 5 months; escaped on 12-29-80; apprehended on 01-15-82.

DCB	= 80-09-16		
Sentence	= +06-05-00	6 Years 5 Months	
Unconverted EFT	= 86-14-15*		
Original EFT	= 87-02-15	= 17578	
Inoperative Time		= + 381	381 Days
Final EFT	**= 88-03-02**	**= 17959**	
SGT		= - 616	616 Days
SRD	**= 86-06-25**	**= 17343**	

Final EFT	= 88-03-02	= 17959	
Less 180 Days		= - 180	180 Days
180 Day Date	**= 87-09-04**	**= 17779**	

DCB	= 80-09-16		
1/3 of 6 Yrs 5 Mos	= +02-01-20	2 Yrs 1 Mo 20 Dys	
Unconverted PE Date	= 82-10-36		
Original PE Date	= 82-11-04*	= 16014	
Inoperative Time		= + 381	381 Days
Final PE Date	**= 83-11-20**	**= 16395**	

DCB	= 80-09-16		
2/3 of 6 Yrs 5 Mos	= +04-03-10	4 Yrs 3 Mo 10 Dys	
Original 2/3 Date	= 84-12-25*	= 16796	
Inoperative Time		= + 381	381 Days
Final 2/3 Date	**= 86-01-10**	**= 17177**	

Example No. VII - 31:

Arrested on 11-12-78; released on bond on 02-12-79; re-arrested 03-01-79; sentenced on 03-25-79 to 11 years and 7 months; granted "Stay of Execution" of sentence from 03-25-79 to 04-03-79; returned to custody on 04-03-79; released pending appeal on 08-04-79; returned to custody on 06-01-80.

DCB	= 79-04-03		
Sentence	= +11-07-00	11 Years 7 Months	
Original EFT	= 90-11-02*	= 18934	
Inoperative Time		= + 301	Days
Tentative EFT	= 91-08-30	= 19235	
Presentence Time		= - 118	Days
Final EFT	**= 91-05-04**	**= 19117**	
SGT		= - 1390	Days
SRD	**= 87-07-14**	**= 17727**	

Final EFT	=	91-05-04	=	19117
Less 180 Days			= - 180	180 Days
180 Day Date	**=**	**90-11-05**	**=**	**18937**
DCB	=	79-04-03		
1/3 of 11 Yrs 7 Mos	= +	03-10-10		3 Yrs 10 Mo 10 Dys
Unconverted PE Date	=	82-14-13		
Original PE Date	=	83-02-12*	=	16114
Inoperative Time			= + 301	301 Days
Tentative PE Date	=	83-12-10	=	16415
Presentence Time			= - 118	118 Days
Final PE Date	**=**	**83-08-14**	**=**	**16297**
DCB	=	79-04-03		
2/3 of 11 Yrs 7 Mos	= +	07-08-20		7 Yrs 8 Mos 20 Dys
Original 2/3 Date	=	86-12-22*	=	17523
Inoperative Time			= + 301	301 Days
Tentative 2/3 Date	=	87-10-19	=	17824
Presentence Time			= - 118	118 Days
Final 2/3 Date	**=**	**87-06-23**	**=**	**17706**

8. Consecutive and concurrent sentences. The Bureau of Prisons computes consecutive and concurrent sentences in accordance with the provisions of **18 USC § 4161 and 3568 as described below.**

a. Consecutive sentences. As to **consecutive** sentences, **18 USC § 4161** provides in part,

> **"When two or more consecutive sentences are to be served, the aggregate of the several sentences shall be the basis upon which the deduction shall be computed."**

Based on **18 USC § 4161, consecutive** adult sentences, regardless of the type of parole, or non-parole, eligibility involved, are combined (aggregated) into a single sentence for sentence computation purposes.

b. Concurrent sentences. Although no statute exists that mentions the term **"concurrent,"** a **court may order** that a sentence be served concurrently with an existing sentence or violator term, providing that the offense does not require some other result. If the court remains silent as to the manner in which a sentence is to be served in relation to an existing sentence, then, both the Bureau of Prisons and the courts follow the rule that sentences imposed at the same, or at a later time, run (operate) concurrently if the court is silent as to the manner in which the sentences are to be served, provided that the person is in exclusive federal custody (not under the jurisdiction of a federal writ of habeas corpus from state custody) at the time of sentencing and provided that the offense does not require some other result. This position is supported by language in **18 USC § 3568** which states in part,

"The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence."

"If any such person shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, his sentence shall commence to run from the date on which he is received at such jail or other place of detention."

Therefore, a person who is sentenced by a court to a concurrent sentence, or in the case of a "silent" sentence, begins to serve that sentence immediately, if such person is in exclusive custody and the offense does not require some other result, because such person will be covered by the provisions of **18 USC § 3568.**

9. Aggregated sentence. An **aggregated sentence** is **defined** as two or more sentences or violator terms that have been combined resulting in a common SRD, an EFT and common PE date. Adult sentences under the provisions of **18 USC § 4205(a), (b)(1) and (b)(2)**) **may** be aggregated. An adult sentence imposed under **18 USC § 4205(f)** may **not** be aggregated with any other adult sentence or with another sentence under **§ 4205(f). No** adult sentence may be aggregated with a **JJDPA, YCA**, or **NARA** sentence or the original portion of a **single count "split sentence."**

The following definitions and rules pertain to the following sentence situations:

a. Aggregated consecutive sentence: One or more sentences or violator terms added to one or more sentences or violator terms to form a single sentence. Presentence time credit applicable to each sentence shall be totaled and subtracted from the EFT date and PE date. Inoperative time will always affect a consecutive aggregated sentence the same as if it was a single sentence.

b. Aggregated concurrent sentence: A concurrent sentence or violator term that is running along with another sentence or violator term, and that has an EFT date which is longer, are combined to form a single sentence. Presentence time credit applicable to each shall be totaled and subtracted from the EFT date and PE date that result from the aggregation. Inoperative time that occurs **before** a concurrent sentence or violator term begins to run, will have no affect on the EFT date or PE date of the concurrent sentence or EFT of the violator term.

The total length of the aggregate will be determined by adding the length of the first sentence or violator term to the overlap of the concurrent sentence or violator term. The overlap is determined by finding the difference (exact number of days) between the EFT date (unaffected by presentence time credit) of

the concurrent sentence or violator term and the EFT date of the concurrent sentence or violator term. The overlap is then added to the length of the first sentence or violator term for a total sentence for the aggregate.

c. Aggregated absorbed concurrent sentence: Any concurrent sentence or violator term that is totally absorbed by another sentence or violator term, before taking presentence time into consideration for each sentence, is considered to have been aggregated. Presentence time credit applicable to each shall be totaled and subtracted from the EFT for the aggregate.

d. Non-aggregated sentences: A concurrent sentence or violator term having an EFT date that is less and an SRD that is longer than the first sentence or violator term, **cannot** be aggregated and must be computed separately, maintaining their individual PE dates, EFT dates and SRD's, as though the other sentence did not exist. The presentence time credit and SGT (determined at the rate based on the length of each sentence) applicable to each shall be applied only to the sentence to which it pertains.

Whenever a detainer is on file for a violator term that is to be executed on the release date (based on an application of SGT and/or EGT) of another adult sentence, then a trial computation must be made to determine whether the sentences can be aggregated if the EFT of the violator term is greater than the EFT of the sentence just finished. If the aggregation results in a release date (based on the new SGT total and any EGT earned during the service of the sentence from which released) that is earlier than the release date from the sentence just completed, then the violator term cannot be aggregated with the other sentence and must stand alone for computation purposes.

e. De-aggregated sentence: On occasion the Parole Commission will parole from one sentence to another sentence (e.g., parole from a parolable to a parolable or non-parolable sentence) causing the sentences to become **"de-aggregated."** For the remaining sentence, it shall be computed as if the other sentence had not existed, i.e., the SGT rate shall be based on the total length of the remaining sentence and **not** on the length of the aggregate prior to parole. Presentence time credit belonging to the sentence from which paroled that was used to calculate the original aggregated sentence shall not be carried over to the remaining sentence. **EGT** earned on the aggregate **will not** carry over but the **seniority** accrued on the aggregate **shall** carry over to the remaining sentence. All time served on the sentence from which paroled shall count toward reducing the PE date on the remaining parolable sentence or sentences, including concurrent or consecutive life sentences.

10. Computation of multiple sentences. An "aggregated consecutive sentence" (see this chapter, paragraph 8.a.) is, of course, obvious and the method of calculation is immediately known. In concurrent sentence situations, however, sometimes the EFT and SRD for each sentence must be computed separately to determine if there is an "aggregated concurrent sentence" (see this chapter, paragraph 8.b.), an "aggregated absorbed concurrent sentence" (see this chapter, paragraph 8.c.) or a "non-aggregated concurrent sentence" (see this chapter, paragraph 8.d.). A comparison of the EFT's and SRD's of the sentences involved must be made to determine which method of computation is required. The examples below will contain at least one of each situation just mentioned.

Because of the statutory language in **18 USC § 4206(d)** (see this chapter, paragraph 4.e.), 2/3's/thirty year dates are computed separately on each count and applied to an aggregate computation in the manner in which the court imposed each count. As a result, the latest (or more distant) 2/3's/thirty year date on any count that is part of an aggregate computation becomes the single 2/3's/thirty year date for the aggregate. Calculation of a final 2/3's/thirty year date can become quite complicated when parolable and nonparolable sentences are involved. **Appendix IV** has been developed to establish the rules that should be followed in calculating a 2/3's/thirty year date for multiple sentences.

Following are sentence computation examples, with parole under the provisions of 18 USC § 4205(a), where the length of sentence must be determined: **(Note: The actual calculation of number of days inoperative time** (Chapter III, paragraph 2.i. and Chapter V, paragraph 4.) **and presentence time credit days** (Chapter III, paragraph 2.i. and Chapter VI, paragraph 8.a. and b.) **and parole ineligibility time periods** (Chapter VII, paragraph 4.a., b. and e.), **as well as SGT days** (Chapter IV, paragraph 4.) **will not be shown below since they have been fully discussed and demonstrated in the chapters just mentioned:)**

Example No. VII - 32:

Sentence No. 1: Arrested on 04-06-80; sentenced on 04-12-80 to 2 years; released pending appeal on 04-15-80; returned to custody on 04-19-80.

Sentence No. 2: Sentenced on 07-01-80 to 2 years and 6 months **consecutive**.

Only the final computation will be shown as follows.

Sentence No. 1	=	02-00-00		2 Years
Sentence No. 2	= +	02-06-00		2 Years 6 Months
Total Sentence	=	04-06-00		4 Years 6 Months
Aggregate DCB	= +	80-04-12		
Original EFT	=	84-10-11*	=	16721
Inoperative Time			= +	3 3 Days
Tentative EFT	=	84-10-14	=	16724
Presentence Time			= -	6 6 Days
Final EFT	**=**	**84-10-08**	**=**	**16718**
SGT			= -	378 378 Days
SRD	**=**	**83-09-26**	**=**	**16340**

Final EFT	=	84-10-08	=	16718
Less 180 Days			= -	180 180 Days
180 Day Date	**=**	**84-04-11**	**=**	**16538**

Aggregate DCB	=	80-04-12		
1/3 of 4 Yrs 6 Mos	= +	01-06-00		1 Year 6 Months
Original PE Date	=	81-10-11*	=	15625
Inoperative Time			= +	3 3 Days
Tentative PE Date	=	81-10-14	=	15628
Presentence Time			= -	6 6 Days
Final PE Date	**=**	**81-10-08**	**=**	**15622**

(There is no 2/3's date for the above "aggregated consecutive sentence" since neither the aggregate or either sentence is equal to five years or more.)

Example No. VII - 33:

Sentence No. 1: Arrested on 03-12-79; released on bond on 03-17-79; returned to custody and sentenced to 4 years on 04-09-79; released pending appeal on 09-12-81; returned to custody on 09-19-81.

Sentence No. 2: Sentenced to 8 years **concurrent** on 10-16-81.

Only the final computation will be shown below.

Sentence No. 1 DCB	=	79-04-09		
Sentence	= +	04-00-00		4 Years
Original EFT	=	83-04-08*	=	16169
Inoperative Time			= +	6 6 Days
Tentative EFT	**=**	**83-04-14**	**=**	**16175**

(Note that the presentence time that belongs to Sentence No. 1 **was not** used to calculate the tentative EFT of Sentence No. 1. That presentence time will be deducted from the aggregate EFT. The inoperative time **was** used to calculate the EFT of Sentence No. 1 since

it occurred **prior** to the DCB of Sentence No. 2, but it has no effect on the final aggregate EFT.)

Sentence No. 2 DCB	= 81-10-16		
Sentence	= +08-00-00 8 Years		
Original EFT	**= 89-10-15***		
Sent. No. 2 Original EFT	= 89-10-15		
Sent. No. 1 Tentative EFT	= -83-04-14		
Overlap of Sent. No. 2	**= 06-06-01 6 Yrs 6 Mos 1 Dy**		
Sent. No. 1 Sentence	= +04-00-00 4 Years		
Aggregate Sentence	**= 10-06-01 10 Yrs 6 Mos 1 Dy**		
Aggregate Original EFT	= 89-10-15	=	18551
Presentence Time		= - 6	6 Days
Final EFT	**= 89-10-09**	**=**	**18545**
SGT		= - 1260	1260 Days
SRD	**= 86-04-28**	**=**	**17285**
Final EFT	= 89-10-09	=	18545
Less 180 Days		= - 180	180 Days
180 Day Date	**= 89-04-12**	**=**	**18365**
Aggregate DCB	= 79-04-09		
1/3 of 10 Yrs 6 Mos 1 Dy	= +03-06-00 3 Years 6 Months		
Original PE Date	= 82-10-08*	=	15987
Inoperative Time		= + 6	6 Days
Tentative PE Date	= 82-10-14	=	15993
Presentence Time		= - 6	6 Days
Final PE Date	**= 82-10-08**	**=**	**15987**

(The 2/3's date calculation below is based on the concurrent 8 year sentence (Sentence No. 2) only. See **Appendix IV**, rule number 3.a.(2).)

DCB	= 81-10-16		
2/3's of 8 Years	= +05-04-00 5 Years 4 Months		
Original 2/3's Date	= 87-02-15*	=	17578
Presentence Time		= - 6	Days
Final 2/3's Date	**= 87-02-09**	**=**	**17572**

Example No. VII - 34:

Sentence No. 1: Arrested on 07-01-79; released on bond on 07-14-79; returned to custody and sentenced on 08-19-79 to 6 years; released pending appeal on 08-20-79; returned to custody on 12-20-79.

Sentence No. 2: Arrested on 09-21-78; released on bond on 09-30-78; sentenced on 05-05-82 to 9 months concurrent. (A quick mental calculation reveals that Sentence No. 1 will easily absorb the EFT of Sentence No. 2. It is necessary, however, to calculate the SRD.

If the SRD of Sentence No. 2 exceeds the SRD of Sentence No. 1, then the sentences must be computed separately (standing alone) as though the other did not exist. If the SRD of Sentence No. 2 is absorbed, then Sentence No. 2 will have no effect on the aggregate sentence (6 years in this case) with the exception of the 2/3's date. Also see **Appendix IV** (rule number 3.a.(3)).

Sentence No. 1 DCB	=	79-08-19		
Sentence	= +	06-00-00	Years	
Original EFT	=	85-08-18*	=	17032
Inoperative Time			= +	121 121 Days
Tentative EFT	=	85-12-17	=	17153
Presentence Time			= -	14 14 Days
Final EFT	**=**	**85-12-03**	**=**	**17139**
SGT			= -	576 576 Days
SRD	**=**	**84-05-06**	**=**	**16563**

Sentence No. 1 DCB	=	79-08-19		
2/3's of 6 Yrs	= +	04-00-00	4 Years	
Original 2/3's Date	=	83-08-18*	=	16301
Inoperative Time			= +	121 121 Days
Tentative 2/3's Date	=	83-12-17	=	16422
Presentence Time			= -	14 14 Days
Final 2/3's Date	**=**	**83-12-03**	**=**	**16408**

Sentence No. 2 DCB	=	82-05-05		
Sentence	= +	00-09-00	9 Months	
Unconverted EFT	=	82-14-04*		
Original EFT	=	83-02-04	=	16106
Presentence Time			= -	10 10 Days
Final EFT (Less than No.1)	**=**	**83-01-25**	**=**	**16096**
SGT			= -	45 45 Days
SRD (Less than No. 1)	**=**	**82-12-11**	**=**	**16051**

Sentence No. 2 DCB	=	82-05-05		
2/3's of 9 Months	= +	00-06-00	6 Months	
Original 2/3's Date	=	82-11-04*	=	16014
Presentence Time			= -	10 10 Days
Final 2/3's Date	**=**	**82-10-25**	**=**	**16004**

(The EFT, SRD and 2/3's date of Sentence No. 2 are less than those in Sentence No. 1 and the sentence is, therefore, completely absorbed resulting in an "aggregated absorbed concurrent sentence" (see this chapter, paragraph 8.c.). As a result, the 2/3's date of Sentence No. 1, since it is the more distant date, becomes the single 2/3's date for the aggregate sentence (6 years in this case), minus the presentence time belonging to both Sentence No. 1 and Sentence No. 2 (a total of 24 days) resulting in a **Final 2/3's Date** of **11-23-83**.)

Aggregate DCB	= 79-08-19		
Sentence	= +06-00-00 Years		
Original EFT	= 85-08-18*	= 17032	
Inoperative Time		= + 121	121 Days
Tentative EFT	= 85-12-17	= 17153	
Presentence Time		= - 24	24 Days
Final EFT	**= 85-11-23**	**= 17129**	
SGT		= - 576	576 Days
SRD	**= 84-04-26**	**= 16553**	

Aggregate DCB	= 79-08-19		
1/3 of 6 Yrs	= +02-00-00	2 Years	
Original PE Date	= 81-08-18*	= 15571	
Presentence Time		= - 24	24 Days
Final PE Date	**= 81-07-25**	**= 15547**	

Final EFT	= 85-11-23	= 17129	
Less 180 Days		= - 180	180 Days
180 Day Date	**= 85-05-27**	**= 16949**	

Example No. VII - 35:

Sentence No. 1: Arrested on 08-09-81; released on bond on 08-12-81; returned to custody and sentenced on 08-25-81 to 5 years.

Sentence No. 2: Arrested on 04-01-79; released on bond on 04-05-79; sentenced on 04-26-85 to 1 year and 1 day.

(Sentence No. 2 is silent as to how it is to run (concurrently or consecutively) in relationship to Sentence No. 1 and, therefore, runs concurrently (see this chapter, paragraph 7.b.). The EFT and SRD for each sentence must be computed separately and then compared to determine which method of computation is required.)

Sentence No. 1 DCB	= 81-08-25		
Sentence	= +05-00-00	5 Years	
Original EFT	= 86-08-24*	= 17403	
Presentence Time		= - 4	4 Days
Final EFT	**= 86-08-20**	**= 17399**	
SGT		= - 480	480 Days
SRD	**= 85-04-27**	**= 16919**	

Sentence No. 2 DCB	= 85-04-26		
Sentence	= +01-00-01	1 year 1 day	
Original EFT	= 86-04-26*	= 17283	
Presentence Time		= - 5	5 Days
Final EFT	**= 86-04-21**	**= 17278**	
SGT		= - 72	72 Days
SRD	**= 86-02-08**	**= 17206**	

(The EFT of Sentence No. 2 **does not** exceed the EFT of Sentence No. 1, but the SRD of Sentence No. 2 **does** exceed the SRD Sentence No. 1. As a result, a "non-aggregated concurrent sentence" (see this chapter, paragraph 8.d.) situation exists and the sentences cannot be aggregated and must be served separately. The calculations for the other parts of each sentence are shown below.)

Sentence No. 1 EFT	=	86-08-20	=	17399
Less 180 Days			= -	180 180 Days
180 Day Date	**=**	**86-02-21**	**=**	**17219**
Sentence No. 1 DCB	=	81-08-25		
1/3 of 5 Yrs	= +	01-08-00		1 Year 8 Months
Unconverted PE Date	=	82-16-24*		
Original PE Date	=	83-04-24	=	16185
Presentence Time			= -	4 4 Days
Final PE Date	**=**	**83-04-20**	**=**	**16181**
Sentence No. 1 DCB	=	81-08-25		
2/3 of 5 Yrs	= +	03-04-00		3 Years 4 Months
Original 2/3 Date	=	84-12-24*	=	16795
Presentence Time			= -	4 4 Days
Final 2/3's Date	**=**	**84-12-20**	**=**	**16791**
Sentence No. 2 DCB	=	85-04-26		
1/3 of 1 Year 1 Day	= +	00-04-01		4 Months 1 Day
Original PE Date	=	85-08-26*	=	17040
Presentence Time			= -	5 5 Days
Final PE Date	**=**	**85-08-21**	**=**	**17035**

(There is no 180 day date for Sentence No. 2 since 180 days of good time cannot be earned on a sentence of 1 year and 1 day. There is no 2/3's date since the sentence is less than 5 years.)

* **11. Execution of warrant issued by the U.S. Parole Commission for alleged parole violation (18 U.S.C. § 4213) and computation of mandatory release (18 U.S.C. § 4164) or parole (18 U.S.C. § 4205 and 4206(d)) violator terms under 18 U.S.C. § 4210 and 4214.** A prisoner who is mandatorily released "as if on parole" (**18 U.S.C. § 4164**) or who is paroled (**18 U.S.C. § 4205 and 4206(d)**) remains, as stated by **18 U.S.C. § 4210(a),** *

> **". . . in the legal custody and under the control of the Attorney General, until the expiration of the maximum term or terms for which such parolee was sentenced."**

*

18 U.S.C. § 4213 provides that,

(a) If any parolee is alleged to have violated his parole, the Commission may--

(1) summon such parolee to appear at a hearing conducted pursuant to section 4214; or

(2) issue a warrant and retake the parolee as provided in this section.

(b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be suspended pending disposition of the charge.

(c) Any summons or warrant issued pursuant to this section shall provide the parolee with written notice of--

(1) the conditions of parole he is alleged to have violated as provided under section 4209;

(2) his rights under this chapter; and

(3) the possible action which may be taken by the Commission.

(d) Any officer of any Federal penal or correctional institution, or any Federal officer authorized to serve criminal process within the United States, to whom a warrant issued under this section is delivered, shall execute such warrant by taking such parolee and returning him to the custody of the regional commissioner, or to the custody of the Attorney General, if the Commission shall so direct.

If the parolee appears before the U.S. Parole Commission for a hearing based on a summons, no time credit shall be given off a subsequent violator term, either in the form of presentence time credits or time off the violator term, for the time spent undergoing the hearing. In the unlikely event that a warrant is issued and executed on the same day as the hearing, then the subsequently revoked violator term shall be calculated as beginning on the date the warrant was executed.

On occasion, a warrant that was issued for alleged parole violation does not catch up with the parolee for a few days or weeks after apprehension. In those cases where the execution of the late arriving warrant is shown as a date different from the date of apprehension, ISM staff shall calculate the violator term as having begun on the date of actual arrest rather than the later date on the warrant. The time gap between the apprehension date and the later date shall not be treated as jail time credit. In no case, of course, may a warrant be executed prior to its date of issuance.

As noted in § **4213(d)** above, it is that subsection that authorizes Bureau of Prisons' staff to execute a warrant issued by the Parole Commission. *

18 U.S.C. § 4214(d) states in pertinent part,

> **(d) Whenever a parolee is summoned or retaken pursuant to section 4213, and the Commission finds pursuant to the procedures of this section and by a preponderance of the evidence that the parolee has violated a condition of his parole the Commission may take any of the following actions:**
>
> **(1) restore the parolee to supervision;**
>
> **(2) reprimand the parolee;**
>
> **(3) modify the parolee's conditions of parole;**

(4) refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(5) formally revoke parole or release as if on parole pursuant to this title [emphasis added].

"The Commission may take any such action provided it has taken into consideration whether or not the parolee has been convicted of any Federal, State, or local crime subsequent to his release on parole, and the seriousness thereof, or whether such action is warranted by the frequency or seriousness of the parolee's violation of any other condition or conditions of parole."

As noted above in **§ 4214(d)(5)**, the U.S. Parole Commission, under certain conditions, may revoke a prisoner's parole. During the revocation process, and based on the language in **§ 4214**, as quoted above, and **18 U.S.C. § 4210** as discussed below, the Parole Commission will make a determination as to which parole condition (or conditions) has been violated for computation purposes of the violator term. (See this chapter, paragraph 12. for instructions pertaining to **SPT** violator terms.)

* It is important to remember that **a parole violator, including a mandatory release (18 U.S.C. § 4164) violator, is always eligible for re-parole at the discretion of the Parole Commission.** This re-parole **rule also applies** to a **special parole term violator** and to any prisoner who was released by **mandatory release** but who was not initially eligible for parole because of the offense. *

a. Parole revocation under 18 U.S.C. § 4210(b) with credit for "street time:" Section **4210(b)** states in part,

"(b) Except as otherwise provided in this section, the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced, except . . ." (For the "except" see this chapter, paragraph 10.b and c.)

To implement **18 U.S.C. § 4210(b)**, the Parole Commission has published the following rule in **28 CFR § 2.52(c):**

"(c) A parolee whose release is revoked by the Commission will receive credit on service of his sentence for time spent under supervision, except . . ." (For the "except" see this chapter, paragraph 10.b and c.)

In view of the above, the Parole Commission will grant credit toward service of the sentence, commonly referred to as **"street time"** credit, for time under parole supervision in the community if the revocation is for a **"technical"** violation of a condition of parole. A **"technical"** condition set by the Parole Commission is ". . . sufficiently specific to serve as a guide to supervision and conduct . . ." (**18 U.S.C. § 4209(b)**) and which ". . . may provide for such supervision and other limitations as are reasonable to protect the public welfare" (**18 U.S.C. § 4209(a)(2)**) but does not include a violation as the result of "absconding" (see this chapter, paragraph 10.b. below) or for conviction of a "crime" (see this chapter, paragraph 10.c. below).

(1) When the Parole Commission revokes parole and grants credit for all time in the community under supervision (**"street time"**), the calculation of the parole violator (PV) term will be based on the amount of time remaining to be served from, but not including, the date the warrant was executed through the EFT of the sentence that existed at the time of release.

(2) The date the warrant was executed will be subtracted from the EFT that existed at the time of release to establish the years, months, and days so that the proper amount of SGT can be awarded.

(3) SGT for the PV term will be at the same rate as the sentence from which paroled and will be awarded only for the amount of time remaining to be served.

Example No. VII - 36:

Sentence No. 1: Arrested on 04-12-79 and remained in continuous custody and sentenced on 05-12-79 to 6 years. EFT was 04-11-85 and released by mandatory release on 09-13-83 with 576 days remaining.

Sentence No. 1 PV (Mandatory Release Violator): Arrested (warrant executed) as an alleged parole violator on 02-17-84, parole revoked on 03-21-84 and all "street time" credited.

(Only the EFT for the 6 year sentence will be calculated since that is the only information that needs to be known from the original calculation in order to compute the violator term.)

Step No. 1.

Sentence No. 1 DCB	=	79-05-12		
Sentence	= +	06-00-00	6 Years	
Tentative EFT	=	85-05-11*	=	16933
Presentence Time			= -	30 30 Days
Final EFT	=	85-04-11	=	16903

Step No. 2.

Sentence No. 1 EFT	=	85-04-11	=	16903
Date Warrant Executed	=	84-02-16*	= -	16483
Days Remaining			**=**	**420 420 Days**

Step No. 3.

Sentence No. 1 PV DCB	=	84-02-17	=	16484 (War. Ex.)
Days Remaining			= +	420 420 Days
Sentence No. 1 PV EFT	**=**	**85-04-11***	**=**	**16903**
Sentence No. 1 PV DCB	= -	84-02-16*		
PV Term for SGT Purposes	=	01-01-26 1 Yr 1 Mo 26 Dys		

1 Yr, 1 Mo, 26 Dys x 8 SGT Per Mo = 110 Days SGT

Step No. 4.

Sentence No. 1 PV EFT	=	85-04-11	=	16903
SGT			= -	110 110 Days
SRD	**=**	**84-12-22**	**=**	**16793**

Eligible for Re-Parole at Parole Commission's Discretion

b. Parole revocation under 18 USC § 4210(c) as a result of "absconding:" 18 USC § 4210(c) (Also see **28 CFR § 2.52(c)(1).**) states,

> **"[(c) In the case of any parolee found to have intentionally refused or failed to respond to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond.]"**

This subsection means that the Parole Commission may extend its jurisdiction over any parolee who has refused or failed to respond to any reasonable request, order, summons or warrant for such time as the parolee refused or failed to respond. Hereinafter, "refused or failed to respond" time will be referred to as **"absconder"** time. Absconder time is reported by the Parole Commission in a variety of ways on the "Notice of Action" (NOA). Regardless of the manner in which the absconder time is reported on the NOA, the Warrant Application shall be reviewed to verify the NOA information. If there is a discrepancy between the information on the NOA and the Warrant Application, then the Parole Commission shall be consulted to resolve the problem.

(1) In calculating time, the Parole Commission ". . . may order the forfeiture of the time during which the parolee so refused or failed to respond, and such time shall not be credited to service of the sentence" (**28 CFR § 52(c)(1)**). If the inmate absconds during the parole supervision period in the community, he essentially removes himself from supervision and thus, the jurisdiction of the Parole Commission. This **absconder** time, as just stated, may be forfeited by the Parole Commission.

The Parole Commission **Rules and Procedures Manual**, Rule 2.52-01(b)(1), states in part,

> **". . . The voluntary return of the parolee, or execution of the warrant (or filing of a detainer) marks the limit of the period which can be forfeited. If no clear earlier date is possible, the date on which the warrant was issued should be used. NOTE: In all cases of failure to report or submit to supervision, the failure must have been intentional. For example, if the parolee was hospitalized because of an emergency, no forfeiture should be made. A parolee who absconds and then is detained as a result of a subsequent criminal charge should have time forfeited from the date he absconded till the date taken into custody on such charge (federal, state, local)."**

(2) If the Parole Commission revokes parole and "forfeits" **absconder** (inoperative) time that occurred **between** the date of release and the EFT as it existed at the time of release, then the following procedures shall be followed:

(a) The number of days in an **absconder** status (ordinarily the period of time from the date of abscondence to the date the warrant is executed before the EFT), as reported in the NOA, shall be added to the EFT as it existed at the time of release to establish a new EFT.

(b) After the new EFT has been determined, the date the warrant was executed must be subtracted from the new EFT to establish the total number of years, months and days imprisonment time remaining to be served on the violator term.

(c) SGT will be awarded on the amount of imprisonment time remaining to be served based on the same rate applicable to the sentence from which paroled and that SGT shall be subtracted from the new EFT to establish the SRD of the PV term..

Example No. VII - 37:

Sentence No. 1: Arrested on 04-12-79 and remained in continuous custody and sentenced on 05-12-79 to 6 years. EFT was 04-11-85 and released by mandatory release on 09-13-83 with 576 days remaining.

Sentence No. 1 PV (Mandatory Release Violator): Absconded from supervision on 12-11-83; arrested (warrant executed) as an alleged parole violator on 02-17-84; parole revoked on 03-21-84 and all "street time" credited with the exception of the time in an absconder status.

(Prior to beginning the calculation of the violator term, a determination must be made as to whether the absconder status ended on or before the EFT as it existed prior to release. This determination shall be accomplished by reviewing existing records, and verified by a recalculation of the original sentence.)

Step No. 1.

Sentence No. 1 DCB	=	79-05-12		
Sentence	= +	06-00-00	6 Years	
Tentative EFT	=	85-05-11*	=	16933
Presentence Time			= -	30 30 Days
Final EFT	=	85-04-11	=	16903

Step No. 2.

Day Before PV Warr. Exec.	=	84-02-16	=	16483
Absconded	=	83-12-11	= -	16416
Absconder Status Time			**=**	**67 67 Days**

Step No. 3.

Sentence No. 1 EFT	=	85-04-11	=	16903
Absconder Status Time			= +	67 67 Days
Sentence No. 1 PV EFT	**=**	**85-06-17**	**=**	**16970**
PV Warrant Executed	= -	84-02-16*		
Sent. No. 1 PV Time Remain.	**=**	**01-04-01**	**1 Yr 4 Mos 1 Dy**	

1 Yr, 4 Mos, 1 Dy x 8 SGT Per Mo = 128 Days SGT

Step No. 4.

Sentence No. 1 PV EFT	=	85-06-17	=	16970
SGT			= -	128 128 Days
Sentence No. 1 PV SRD	**=**	**85-02-09**	**=**	**16842**

Eligible for Re-Parole at Parole Commission's Discretion

(3) If the Parole Commission revokes parole and "forfeits" absconder (inoperative) time for all time remaining to be served on the sentence as the result of the fact that the parolee was in an absconder status beyond the date of the EFT the way it existed at the time of release, then the following procedures shall be followed:

(a) The number of days in an **absconder** status remaining to be served under supervision from the absconding date through the EFT shall be added to the date that the warrant is executed to establish a new EFT.

(b) After the new EFT has been determined, then the date the warrant was executed must be subtracted from the new EFT to establish the total number of years, months and days imprisonment time remaining to be served on the violator term.

(c) SGT will be awarded on the amount of imprisonment time remaining to be served based on the same rate applicable to the sentence from which paroled and that SGT shall be subtracted from the new EFT to establish the SRD of the PV term.

Example No. VII - 38:

Sentence No. 1: Arrested on 04-12-79 and remained in continuous custody and sentenced on 05-12-79 to 6 years. EFT was 04-11-85 and released by mandatory release on 09-13-83 with 576 days remaining.

Sentence No. 1 PV (Mandatory Release Violator): Absconded from supervision on 12-11-83; arrested (warrant executed) as an alleged parole violator on 06-15-86; parole revoked on 08-21-86 and all "street time" credited with the exception of the time in an absconder status.

(Prior to beginning the calculation of the violator term, a determination must be made as to whether the last day of the absconder status exceeded the EFT as it existed prior to release. This determination shall be accomplished by reviewing existing records, and verified by a recalculation of the original sentence.)

Step No. 1.

Sentence No. 1 DCB	=	79-05-12		
Sentence	= +	06-00-00	6 Years	
Tentative EFT	=	85-05-11*	=	16933
Presentence Time			= -	30 30 Days
Final EFT	=	85-04-11	=	16903

Step No. 2.

Sentence No. 1 EFT	=	85-04-11	=	16903
Absconded	=	83-12-11	= -	16416
Sent. No. 1 PV Days Remain.			**=**	**487 487 Days**

Step No. 3.

PV Warrant Executed	=	86-06-15	=	17333
Sent. No. 1 PV Days Remain.			= +	487 487 Days
Sentence No. 1 PV EFT	**=**	**87-10-14***	**=**	**17819***
PV Warrant Executed	= -	86-06-14*		
Sent. No. PV 1 Time Remain.	**=**	**01-04-00**	**1 Year 4 Months**	

1 Yr, 4 Mos x 8 SGT per Mo = 128 Days SGT

Step No. 4.

Sentence No. 1 PV EFT	=	87-10-14	= 17819
SGT			= - 128 128 Days
Sentence No. 1 PV SRD	**=**	**87-06-08**	**= 17691**

Eligible for Re-Parole at Parole Commission's Discretion

c. Parole revocation under 18 USC § 4210(b)(2) with "no credit for street time:" **18 USC § 4210(b)(2)** states,

> **"(2) in the case of a parolee who has been convicted of a Federal, State, or local crime committed subsequent to his release on parole, and such crime is punishable by a term of imprisonment, detention or incarceration in any penal facility, the Commission shall determine, in accordance with the provisions of section 4214(b) or (c), whether all or any part of the unexpired term being served at the time of parole shall run concurrently or consecutively with the sentence imposed for the new offense, but in no case shall such service together with such time as the parolee has previously served in connection with the offense for which he was paroled, be longer than the maximum term for which he was sentenced in connection with such offense."**

28 CFR § 2.52(c)(2) states,

> **"[(2) It is the Commission's interpretation of 18 U.S.C. 4210(b)(2) that, if a parolee has been convicted of a new offense committed subsequent to his release on parole, which is punishable by any term of imprisonment, detention, or incarceration in any penal facility, <u>forfeiture from the date of such release to the date of execution of the warrant is an automatic statutory penalty, and such time shall not be credited to the service of the sentence</u>** [emphasis added]. **An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits the trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.]"**

A further explanation of the phrase, "punishable by any term of imprisonment, detention or incarceration in a penal facility," means any term of imprisonment that may be levied upon an adjudication of guilt. For example, a person convicted of any offense punishable by even **one day** of imprisonment would not receive credit for parole supervision time towards service of the violator term even if no sentence of imprisonment was imposed on the sentence that caused the parole to be revoked.

(1) If the Parole Commission revokes the parole, the calculation of the violator term will be based on the number of days remaining to be served beginning the day after the SRD through the EFT which should equal, after verification, the number of days as shown on the release certificate (no credit for "street time"). The number of days to be served shall be added to the date the warrant was executed to establish a new EFT.

(2) The date the warrant was executed shall be subtracted from the new EFT to convert the number of days to be served into years, months and days so that the proper amount of SGT can be awarded.

(3) SGT will be awarded at the same rate as the sentence from which released and will be awarded only for the amount of time remaining to be served.

Example No. VII - 39:

Sentence No. 1: Arrested on 04-12-79 and remained in continuous custody and sentenced on 05-12-79 to 6 years. EFT was 04-11-85 and released by mandatory release on 09-13-83 with 576 days remaining.

Sentence No. 1 PV (Mandatory Release Violator): Arrested (warrant executed) as an alleged parole violator on 02-17-84 after conviction for a state felony for which probation was granted; parole revoked on 03-21-84.

(The number of days remaining to be served at the time of mandatory release from the original sentence must be learned before calculation of the violator term can begin.)

Step No. 1.

Sentence No. 1 DCB	= 79-05-12		
Sentence	= +06-00-00 6 Years		
Tentative EFT	= 85-05-11*	= 16933	
Presentence Time		= - 30	30 Days
Final EFT	= 85-04-11	= 16903	

Step No. 2.
Sentence No. 1 EFT = 85-04-11 = 16903
Sent. No. 1 Release Date = 83-09-13 = -16327
Sent. No. 1 Days Remain. = 576 576 Days

Step No. 3.
PV Warrant Executed = 84-02-17 = 16484
Sent. No. 1 Days Remain. = + 576 576 Days
Sentence No. 1 PV EFT = 85-09-14* = 17059*
PV Warrant Executed = -84-02-16*
Sent. No. 1 PV Time Remain. = 01-06-29 1 Yr 6 Mos 29 Dys

1 Yr, 6 Mos, 29 Dys x 8 SGT Per Mo = 151 Days SGT

Step No. 4.
Sentence No. 1 PV EFT = 85-09-14 = 17059
SGT = - 151 151 Days
Sentence No.1 PV SRD = 85-04-16 = 16908

Eligible for Re-Parole at Parole Commission's Discretion

12. Determination of the statutory good time rate for an aggregate that includes a violator term. Determining the SGT rate for an aggregate that includes a **PV term** [as the result of a release by mandatory release with supervision to follow ("as if on parole" under **18 USC § 4164**) or on parole] and another **adult** sentence may require more calculation steps than an aggregation of two or more non-violator sentences. As a result, special rules have been devised for those situations, and examples have been developed to demonstrate those rules.

(Special Note: Credit granted by the Parole Commission for time in the community, i.e., "street time credit," while under parole supervision shall, for calculation of SGT rate determination purposes, be treated the same as if no "street time credit" existed.)

After the SGT rate has been determined, the examples will demonstrate the calculation process for only the final **EFT** and **SRD.** (One hundred and eighty day dates (**18 USC § 4164**) (see paragraph 3.d.) parole eligible dates (see **Appendix III**) and two-thirds/thirty year dates (see **Appendix IV**), if any, are not shown in the examples below since those types of calculations have been thoroughly demonstrated in paragraphs 6. and 9.)

a. A PV term followed by a consecutive adult sentence: A **PV term** followed by a consecutive **adult** sentence shall be aggregated with the **PV term** into a single sentence. The **rate of SGT** shall be determined by adding the length of the original sentence, as it stood prior to the **PV term**, to the consecutive sentence to arrive at a total sentence for SGT purposes only.

Example No. VII - 40:

Sentence No. 1. Arrested on 09-24-78; released on bond on 09-25-78; returned and DCB on 10-12-78 to a **§ 4205(a)** sentence of 5 years; released on Parole on 09-09-80 with 1125 days remaining to serve.

Sentence No. 1 PV term. Warrant issued on 12-01-80; warrant executed on 12-31-80.

Sentence No. 2. Arrested on 09-12-80; released on bond on 09-15-80; sentenced on 08-11-81 to a **§ 4205(a)** sentence of 5 years consecutive.

Step No. 1. Determine the SGT rate by adding original Sentence No. 1 of 5 years to consecutive Sentence No. 2 of 5 years.

Original Sentence No. 1	=	05-00-00 5 Years
Consecutive Sentence No. 2	= +	05-00-00 5 Years
Total Time for SGT Rate	**=**	**10-00-00 10 Years**

SGT Rate for 10 Years = 10 Days SGT Per Month

Step No. 2. Calculate the EFT of the aggregate, the aggregate sentence length and then the SGT for the aggregate sentence length.

DCB of Sent. No. 1 PV Term	=	80-12-31	=	15341
Sentence No. 1 PV Term			= +	1125 1125 Days
EFT of Sent. No. 1 PV Term	=	84-01-29*	=	16465*
Consecutive Sentence No. 2	= +	05-00-00 5 Years		
Aggregate Original EFT	**=**	**89-01-29**		
DCB of PV Term	= -	80-12-30*		
Aggregate Sentence Length	**=**	**08-00-30 8 Years 30 Days**		

10 SGT Dys Per Mo x 8 Yrs 30 Dys = 970 Dys Tot SGT

Step No. 3. Calculate the Final EFT and the SRD.

Aggregate Original EFT	=	89-01-29	=	18292
Presentence Time			= -	4 4 Days
Final EFT	**=**	**89-01-25**	=	18288
SGT			= -	970 970 Days
SRD	**=**	**86-05-31**	**=**	**17318**

See **Appendix III**, paragraph 6.c.(1) for **18 USC § 4205** and **Appendix IV**, paragraph 3.a.(1) for **18 USC § 4206(d)** parole eligibility calculation instructions.

b. A PV term followed by a concurrent adult sentence with a later EFT: A **PV term** followed by a concurrent **adult** sentence that has a later EFT than the **PV term** shall be aggregated with the **adult** sentence into a single sentence. The **rate of SGT** shall

be determined by adding the **time served** originally, on what has since become a **PV term**, to the aggregate just determined for a total. The rate of SGT applicable to that total shall be awarded.

Example No. VII - 41:

Sentence No. 1. Arrested on 12-21-79; remained in continuous custody and DCB on 12-29-79 to an **§ 4205(a)** sentence of 4 years and 6 months; released by mandatory release on 03-23-83 (includes 77 EGT) with 455 days remaining to be served.

Sentence No. 1 PV term. Warrant issued on 05-06-83; warrant executed on 05-08-83.

Sentence No. 2. Sentenced on 06-09-83 to an **§ 4205(a)** sentence of 8 years concurrent.

Step No. 1. Calculate the amount of time served on Sentence No. 1 prior to release on mandatory release.

DCB of Sentence No. 1. = 79-12-29 = 14973
Presentence Time = - 8 8 Days
Comp. Date For Time Served = 79-12-21 = 14965

Mand. Rel. Date Sent. No. 1 = 83-03-23
Comp. Date For Time Served = -79-12-21
Time Served on Sent. No. 1 = 03-03-03 3 Yrs 3 Mos 3 Dys

Step No. 2. Calculate the EFT of Sentence No. 1 PV Term and the Length of Sentence No. 1 PV Term.

DCB of Sent. No. 1 PV Term = 83-05-08 = 16199
Sentence No. 1 PV Term = + 455 455 Days
EFT of Sent. No. 1 PV Term = 84-08-04* = 16653*
DCB of Sent. No. 1 PV Term = -83-05-07*
Length of Sent. No. 1 PV Tm.= 01-02-28 1 Yr 2 Mos 28 Dys

Step No. 3. Calculate the Overlap between EFT of Sentence No. 1 PV Term and Sentence No. 2; the Aggregate Sentence Length; the Total Time for SGT Rate; and the SGT for the aggregate sentence length.

DCB of Sentence No. 2 = 83-06-09
Sentence No. 2 Sentence = +08-00-00 8 Years
EFT of Sentence No. 2 = 91-06-08*
EFT of Sent. No. 1 PV Term = -84-08-04
Overlap = 06-10-04 6 Yrs 10 Mos 4 Dys
Length of PV Term = +01-02-28 1 Yr 2 Mos 28 Dys
Unconverted Sent. Length = 07-12-32
Aggregate Sentence Length = 08-01-01 8 Yrs 1 Mo 1 Dy
Time Served on Sent. No. 1 = +03-03-03 3 Yrs 3 Mo 3 Dys
Total Time for SGT Rate = 11-04-04 11 Yrs 4 Mos 4 Dys

SGT Rate for 11 Yrs 4 Mos 4 Dys = 10 SGT Per Mo

10 Dys SGT Per Mo x 8 Yrs 1 Mo 1 Dy = 970 Total SGT

Step No. 4. Calculate the final SRD.

Final EFT	= 91-06-08	= 19152	
SGT		= - 970	
SRD	= 88-10-11	= 18182	

See **Appendix III**, paragraph 6.c.(2) for **18 USC § 4205** and **Appendix IV**, paragraph for **18 USC § 4206(d)** parole eligibility calculation instructions.

c. A PV term followed by a concurrent adult sentence with an EFT and an SRD that are absorbed by the PV term: If the EFT and SRD of a concurrent **adult** sentence are absorbed by the **PV term**, then the SGT rate for the **PV term** shall be the the same as if the **adult** sentence did not exist.

Example No. VII - 42:

Sentence No. 1. Arrested on 07-06-79; remained in continuous custody and DCB on 07-30-79 to a **§ 4205(a)** sentence of 9 years; and released on parole on 09-12-82 with 2123 days remaining to serve.

Sentence No. 1 PV term. Warrant issued on 09-14-82; warrant executed on 01-04-83.

Sentence No. 2. DCB, while serving PV term, on 07-18-85 to a **§ 4205(a)** sentence of 2 years concurrent.

Only the computation necessary to show that Sentence No. 2 is totally absorbed by Sentence No. 1 PV term is shown.

Step No. 1. Determine the EFT and SRD of Sentence No. 1 PV term.

DCB	= 83-01-04	= 16075	
Sentence No. 1 PV Term		= + 2123	2123 Days
EFT	**= 88-10-26***	**= 18197***	
SGT		= - 558	558 Days
SRD	**= 87-04-17**	**= 17639**	

Step No. 2. Determine the EFT and SRD of Sentence No. 2 and compare them to the EFT and SRD of Sentence No. 1 PV term.

DCB	= 85-07-18		
Sentence	= +02-00-00	2 Years	
EFT	**= 87-07-17***	**= 17730**	
SGT		= - 144	144 Days
SRD	**= 87-02-23**	**= 17586**	

Both the EFT and SRD of Sentence No. 2 are absorbed within the EFT and SRD of Sentence No. 1 PV term. As a result, the Sentence No. 1 PV term is computed as though Sentence No. 2 does not exist and the SGT rate for the Sentence No. 1 PV term is based on the original sentence imposed. Any presentence time that belongs to Sentence No. 2 shall be applied to the Sentence No. 1 PV term.

See **Appendix III**, paragraph 6.c.(3) for **18 USC § 4205** and **Appendix IV**, paragraph 3.a.(3) for **18 USC § 4206(d)** parole eligibility calculation instructions.

d. A PV term followed by a concurrent adult sentence with an EFT that is earlier and a SRD that is later than the PV term: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

Example No. VII - 43:

Sentence No. 1. Arrested on 11-05-78; remained in continuous custody and DCB on 11-12-78 to a **§ 4205(a)** sentence of 3 years; released on parole on 03-21-80 with 593 days remaining to serve.

Sentence No. 1 PV term. Warrant issued 07-06-80; warrant executed 09-12-80.

Sentence No. 2. Arrested on 08-14-80; released on bond on 08-16-80; DCB on 11-11-81 to a **§ 4205(a)** sentence of 5 months concurrent.

Step No. 1. Calculate the EFT and SRD of Sentence No. 1 PV term.

DCB	=	80-09-12	=	15231
Sentence No. 1 PV Term			= + 593	593 Days
EFT	**=**	**82-04-27***	**=**	**15823***
SGT			= - 136	136 Days
SRD	**=**	**81-12-12**	**=**	**15687**

Step No. 2. Calculate the EFT and SRD of Sentence No. 2 and compare them with the EFT and SRD of Sentence No. 1 PV term.

DCB	=	81-11-11		
Sentence	= +	00-05-00		5 Months
Unconverted EFT	=	81-16-10*		
Original EFT	=	82-04-10	=	15806
Presentence Time			= - 3	3 Days
EFT	**=**	**82-04-07**	**=**	**15803**
SRD	**=**	**82-04-07**		

The SRD and EFT Date of Sentence No. 2 are the same since no SGT can be earned on the 5 month sentence. Since the EFT is the SRD for Sentence No. 2 and falls after the SRD of, but before, the Sentence No. 1 PV term the two sentences **cannot** be aggregated and must be served separately.

e. An adult parolable sentence followed by a concurrent or consecutive PV term with a later EFT: An **adult** sentence followed by a concurrent or consecutive **PV term** with a **later EFT** shall be aggregated into a single sentence. The rate of SGT shall be determined by adding the time served originally on what has since become a **PV term** to this aggregate for a total. The rate applicable to that total shall be authorized.

Example No. VII - 44:

Sentence No. 1. Arrested on 08-06-78; released on bond on 08-09-78; returned to custody and DCB on 09-21-78 to an **18 USC § 4205(a)** sentence of 6 years; released on parole on 03-16-81 with 1280 days remaining to serve.

Sentence No. 2. Arrested on 05-21-83; released on bond on 05-24-83; returned to custody and DCB on 09-01-83 to an **18 USC § 4205(a)** sentence of 4 years.

Sentence No. 1 PV term. Warrant issued on 10-15-83; Parole Commission on 11-20-83 orders that the warrant be executed upon release from Sentence No. 1 causing a the PV term to be served consecutively to the SRD of Sentence No. 2.

Step No. 1. Calculate the time served on the original portion of Sentence No. 1.

Paroled from Sentence No. 1	= 81-03-16	
DCB Sentence No. 1	= -78-09-20*	
Tentative Time Served	**= 02-05-24**	**2 Yrs 5 Mos 24 Dys**
Presentence Time	= +00-00-04	4 Days
Final Time Served	**= 02-05-28**	**2 Yrs 5 Mos 28 Dys**

Step No. 2. Calculate the EFT and SRD of Sentence No. 2.

DCB	= 83-09-01		
Sentence No. 2	= +04-00-00	4 Years	
Original EFT	= 87-08-31*	= 17775	
Presentence Time		= - 4	4 Days
Final EFT	**= 87-08-27**	**= 17771**	
SGT		= - 336	336 Days
SRD	**= 86-09-25**	**= 17435**	

* **Step No. 3**. Calculate the EFT of Sentence No. 1 PV term. Next, calculate the time difference between the four year sentence EFT and the PV term EFT, then the aggregate sentence, and then the total time that is considered for SGT purposes.

DCB (Date PV Warr. Exec.)	= 86-09-25	= 17435	
Sentence No. 1 PV Term		= + 1280	1280 Days
EFT of Sent. No. 1 PV Term	= 90-03-27*	= 18714*	Agg. EFT
Final EFT of Sentence No. 2	= -87-08-27		
Time Difference	**= 02-07-00**		
Sentence No. 2	= +04-00-00		
Aggregate Sentence	**= 06-07-00**		
Sentence No. 1 Time Served	= +02-05-28		
Unconverted Total	= 08-12-28		
Total Time for SGT Rate	**= 09-00-28**	**9 Years 28 Days**	

SGT Rate for 9 Years 28 Days = 8 SGT Per Mo

Step No. 4. A PV term that follows a regular sentence is neither a concurrent or a consecutive sentence situation. Therefore, it is not necessary to consider an "overlap" as is the requirement for concurrent sentences, nor can the PV term be added to the first sentence as would be the practice in a normal consecutive type of sentence calculation. To determine the "new" length of sentence after execution of the PV warrant on the last confinement day of the sentence just served, add the PV term (adjusted for any "street credit") to arrive at an aggregate EFT and follow the remaining steps shown in the example below. Any jail time credit earned on the first sentence shall not be carried over to the "new" aggregate.

Aggregate EFT	= 90-03-27		
Aggregate DCB	= -83-09-00*		
Aggregate Sentence	**= 06-06-27**	**= 6Yrs 6Mo 27Dys**	

8 Days SGT Per Mo x 6 Yrs 6 Mos 27 Dys = 631 Total SGT

Aggregate EFT	= 90-03-27	= 18714	
SGT		= - 631	
Aggregate SRD	**= 88-07-04**	**= 18083**	*

See **Appendix III**, paragraph 6.a.(6) for **18 U.S.C. § 4205** and **Appendix IV**, paragraph 3.a.(2) for **18 U.S.C. § 4206(d)** parole eligibility calculation instructions.

f. An adult sentence followed by a concurrent PV term with an EFT and a SRD that are absorbed by the adult sentence: If the EFT and SRD of a concurrent **PV term** are absorbed by the **adult** sentence, then the SGT rate for the **adult** sentence shall be the same as if the **PV term** did not exist.

Each sentence shall be calculated separately as though the other did not exist in order to make a determination as to whether the EFT and SRD of the concurrent sentence are absorbed. No presentence time credit shall be used to make this determination. After determining that the concurrent sentence is absorbed, the presentence time credit for each sentence, if any, shall be added together and applied to the sentence that began running first.

g. An adult sentence followed by a concurrent PV term with an EFT that is earlier and a SRD that is later than the adult sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

Each sentence shall be calculated separately as though the other did not exist in order to make a determination as to whether the EFT and SRD of the concurrent sentence are absorbed. No presentence time credit shall be used to make this determination. After determining that the concurrent sentence is not absorbed, then the presentence time credit for each sentence shall be applied only to the sentence to which it pertains.

13. Special parole and supervised release terms. On October 27, 1970, the **Drug Abuse Prevention and Control Act of 1970** (DAPCA), **P.L. 91-513,** was enacted to become **effective on May 1, 1971.** The DAPCA includes a requirement that a court impose a special parole term (SPT) for certain offenses that involve a controlled substance. An SPT is imposed in addition to and not in lieu of the sentence imposed for conviction of the offense. A number of other "Acts" have amended the original DAPCA over the years and they are referenced in this chapter, paragraph 5. and are implemented in accordance with the information provided in Appendices IX, X, XI and XII.

Supervised release (SR) terms replaced SPT's for certain narcotic offenses as a result of the ADAA of 1986, effective October 27, 1986.

(See this chapter, paragraph 5. for information about the time period (October 12, 1984 to October 27, 1986) during which the courts were unable to impose either an SPT or a SR term.)

If the court fails to impose an SPT or SR when one or the other applies, then the procedures for resolving the problem as contained in the **Inmate Systems Management Manual**, Chapter 6., Section 604, paragraph 3.C.(3) shall be followed.

The applicability of SPT's and SR's in the sentencing scheme is as follows:

a. Relationship to other sentence types: SPT's and SR terms **cannot** be included in conjunction with sentences imposed under the provisions of the **Juvenile Justice and Delinquency Prevention Act of 1974** (JJDPA); the **Federal Youth Corrections Act of 1950** (YCA); or the **Narcotic Addict Rehabilitation Act of 1966** (NARA) regardless of the date of offense.

b. Relationship to an adult single count "split sentence" (18 U.S.C. § 3651): If required by the offense, an SPT or SR term should be imposed upon imposition of a one count "split sentence" (**18 U.S.C. § 3651**). An SPT or SR term will become effective, however, **only** if the period of probation that follows the "split sentence" is subsequently revoked and imprisonment for the remainder, or part of the remainder, of the original sentence is ordered into operation. If the period of probation is successfully completed, the SPT or SR term will be of no consequence.

c. When an SPT or SR period of supervision begins to run: If required by the offense, an SPT or SR supervision period should be imposed in addition to the regular term of imprisonment for the adult sentence. An SPT or SR supervision period is **separate** from the sentence to which it is attached.

* Under **18 U.S.C. § 3624(e)**, a **". . . term of supervised release commences on the day the person is released from <u>imprisonment</u>** [emphasis added] . . ." Because of the preceding statutory language, it is clear for an SRA sentence (offense occurred on or after November 1, 1987) that an **SR** term begins to run on the last day of confinement since that last day is in fact the last day of imprisonment. For "Old Law" sentences, the Administrative Office of the U. S. Courts and the Parole Commission have taken the position that an **SR** term imposed in connection with an "Old Law" sentence does not commence until parole (includes mandatory release) supervision terminates. Since the Bureau of Prisons is not responsible for implementing or enforcing the **SR** term, staff should refer inmate questions about the commencement date, or any other questions about the **SR** term, to the U.S. Probation Service office that will be supervising the inmate upon release. As to an "Old Law" sentence that has no supervision to follow (release by expiration of sentence), the **SR** term will begin on the final day of confinement.

An SPT begins to run as follows:

(1) Mandatory release (**18 U.S.C. § 4164**): The **SPT** begins to run the day **after** completion of the mandatory release supervision period. From a technical time standpoint, this means that the mandatory release will terminate at midnight on the final day of supervision and that the **SPT** commences at the exact moment in time when the next day begins.

(2) Parole (**18 U.S.C. § 4205 and 4206(d)**): The **SPT** begins to run the day **after** completion of the parole supervision period. From a technical time standpoint, this means that the parole will terminate at midnight on the final day of supervision and that the **SPT** will commence at the exact moment in time when the next day begins.

(3) If a prisoner's mandatory release or parole is revoked before the **SPT** supervision can begin, and a return to imprisonment is required as a result, then the **SPT** remains to follow the violator term unaffected and the rules in (1) and (2) above would apply anew.

(4) Sentence expiration (**18 U.S.C. § 4163**): For a release from a sentence with no supervision to follow (also known as

"expiration of sentence-good time" (Exp-GT), "expiration of sentence-full term" (Exp-FT), and "minimum-expiration" (Min-Exp)), the **SPT** begins to run **on** the day of release from confinement. This means that the **SPT** supervision begins to run at that point in time of the same day immediately following official release from the sentence just served.

(5) Fines are processed in accordance with the program statement on **Fines and Costs**.

(6) Remember, a prisoner who is returned to serve a sentence as the result of SR revocation shall not receive SGT or EGT and is not under the jurisdiction of the Parole Commission. A sentence received as a result of an SR violation may not be aggregated with any sentence that was imposed for an offense that occurred **prior** to November 1, 1987. An SR violator term shall, of course, be aggregated with another SR violator term (provided the offense for the original sentence occurred **on or after** October 27, 1986) or with another SRA sentence (a sentence imposed for an offense that occurred **on or after** November 1, 1987). The prisoner does, of course, receive good conduct time under **18 U.S.C. § 3624(b)** if the imprisonment time to serve is more than one year.

(7) The same rules about the "beginning to run" point in time for an SPT or SR as explained above apply. For example, if the first sentence imposed is for five years and includes an SPT or SR of eight years and a consecutive sentence of five years is imposed for a total sentence of ten years, then the SPT or SR will begin at the expiration of the aggregate ten year sentence, including the period of supervision. The same rule applies to a concurrent sentence situation, i.e., if the EFT of the concurrent sentence without an SPT or SR is longer than the sentence with the SPT or SR, then the SPT or SR will not begin to run until expiration of the aggregated sentence, including any period of supervision. *

d. Calculation of an SR or SPT violator term. SR and SPT violator terms are computed as follows.

(1) An SR violator term is computed in the same manner as described in the **Sentence Computation Manual (CCCA of 1984)**, Chapter I, paragraph 3.i.

(2) The SRD for an SPT violator term shall be computed the same as an adult violator term as described in paragraph 10. of this chapter, with one exception. The SGT **rate** shall be determined by adding the original sentence imposed to the SPT for

a total number of years. That combined total of the sentence plus the SPT will determine the SGT rate. For example, if the sentence is two years and the SPT is eight years for a total of ten years, then the SGT rate will be ten days (**18 USC § 4161**). If the SPT violator is re-released and again returned as a violator, the SGT rate, in this case, would remain at ten days per month. The two year sentence, of course, shall be computed at the six day per month SGT rate as if the SPT term did not exist, i.e., the possible elevated SGT rate for the SPT shall have no effect on the basic sentence to be served.

For another example, if the first sentence imposed is for two years with an SPT of three years and a consecutive sentence of two years is imposed for a total sentence of four years, then the SPT would begin to run after the four year sentence, including the period of supervision. If the prisoner is returned as a violator of the SPT, the SGT rate will be determined by adding the aggregate four year sentence to the SPT of three years for a total of seven years. The SGT rate for the seven year SPT violator term will be eight days per month and the aggregate four year sentence will be computed at the SGT rate of seven days per month.

18 USC § 4164 (180 day date) is not applicable to an SPT violator term.

EGT shall be applicable to an SPT violator at the usual rates of three days per month during the first year in an EGT earning status and at the five day rate thereafter. Regardless of any EGT or seniority accrued on the basic sentence, an SPT violator has no seniority at the beginning of the violator term and must begin at the three day rate as a first or subsequent violator.

Because the basic sentence to imprisonment and the SPT are separate entities for sentencing purposes, the court should specify the manner in which multiple SPT's are to be served. If the court is silent as to how multiple SPT's terms are to be served, then they shall be treated as running concurrently regardless of the manner in which the multiple basic sentences were ordered to run.

14. Presentence study under 18 USC § 4205(c): Under the provisions of **18 USC § 4205(c)**, the court may request a presentence study prior to sentencing as stated below:

> **"(c) if the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum term of imprisonment prescribed by law, <u>for a study</u>** [emphasis added] **as described in subsection (d) of this section. The results of such**

study, together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months [emphasis added] **unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) place the offender on probation as authorized by section 3651; or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from the date of original commitment under this section."**

The program statement, **Study and Observation Report**, provides staff with the instructions for producing the study report as requested by the court. The procedures for requesting an extension of time to complete the study is also covered by this program statement. It is a unit management function to produce the study report and to request an extension of time, if necessary. The program statement also specifies that the appropriate Regional Office shall notify the United States Marshal when the prisoner is ready for return to court.

a. Determination of maximum sentence length. Since the Bureau of Prisons makes a sentencing recommendation in its report to the court, and since the commitment during the study period is deemed to be a sentence for the maximum term of imprisonment as prescribed by law, it is necessary that ISM staff determine the maximum term of imprisonment based on the offense, or offenses, for which convicted. Sometimes the court indicates in the study judgment and commitment the total maximum term. When the study judgment and commitment does not contain maximum sentence information, then each offense statute must be reviewed to learn that information. If more than one count is involved, then the maximum sentence shall be determined considering the maximum sentence for the offense on each count as being served **consecutive** to each other.

b. Computation of the study time: The only computation involved for a **§ 4205(c)** study is to determine when the three months expires so that the unit management staff will know the time frame in which the study must be completed and whether to request additional time.

(1) Effect of presentence time on the study period. Presentence time does not affect the study period. The amount of presentence time available, however, must be determined at this time and entered into the Sentry **Sentence Monitoring** data base for future use if, after the study is complete, the prisoner is returned to serve a sentence.

(2) Effect of an escape (and possible inoperative time) on the study period. If the prisoner escapes during the study period the court must be notified as required by the program statement on **Escapes/Deaths Notification**. When the prisoner is returned to federal custody, staff shall contact the court to ascertain if the balance of the study is to be completed or cancelled or otherwise modified. (See the **Inmate Systems Management Manual**, chapter 6, section 604, paragraph 3.C.(3), page 6-9, for information pertaining to correspondence with the courts. If time is a critical factor, then the RISA should be contacted for assistance.) If the prisoner eventually receives a term of imprisonment as the result of the study commitment, then the time in escape status is considered **inoperative time** (see Chapter V, paragraph 2.a.).

c. Effect of the study period on the affirmed or reduced sentence. Ordinarily, the sentence, that is affirmed or reduced following the study, begins to run from the date of commitment for the study. There is nothing in this section, however, that prohibits the court from ordering the affirmed or reduced sentence to be served consecutively to an earlier imposed federal sentence. In such a case, no credit will be given for the time undergoing study, provided that the prisoner was in custody serving the preceding sentence during the time that the study was being conducted and provided that the preceding sentence was running prior to imposition of the study order.

d. Effect of the study period on the affirmed or reduced sentence while under a writ of habeas corpus ad prosequendum from state custody. No credit will be given for the study period time or the time after the sentence is affirmed or reduced if the entire process took place while under the jurisdiction of a federal writ of habeas corpus ad prosequendum from state custody. In other words the federal sentence will not commence until the prisoner is released from state custody and turned over to federal authorities for service of the federal sentence. If the court, however, recommends that the federal sentence be served concurrently with the state sentence, then that state **may** be designated (see the program statement on **Designation of State Institution for Service of Federal Sentence**) as the place to serve the federal sentence. The retroactive (nunc pro tunc) designation can be made back to a date no earlier than the date on which the **§ 4205(c)** study was ordered.

15. Motion for reduction of the minimum term (period of parole ineligibility) under 18 USC § 4205(g). The Bureau of Prisons may request that the court issue an order that will allow the prisoner to become eligible for parole at an earlier time than otherwise authorized, as provided under **18 USC § 4205(g)**, which states,

> **"(g) At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served** [emphasis added]. **The court shall have jurisdiction to act upon the application at any time and no hearing shall be required."**

a. Request for a minimum term reduction. As noted in **§ 4205(g),** it is the Bureau of Prisons that makes a request for reduction of the minimum term (period of parole ineligibility) to the court. The program statement on **Procedures for the Implementation of 18 U.S.C. § 4205(g)** sets forth the definitive procedures that the Bureau of Prisons follows for making a determination as to whether a **§ 4205(g)** motion should be made to the court for a reduction of the minimum term.

b. Implementation of a minimum term reduction. Upon receipt of an order from the court to reduce the minimum term to "time served," the parole eligible date will be changed to show that parole is now at the discretion of the Parole Commission and the sentence shall be treated as if it was imposed under the provisions of **18 USC § 4205(b)(2).**

c. No 18 USC § 4205(g) motion for non-parolable offense. **§ 4205(g)** does not apply to any sentence that is non-parolable as the result of the offense for which convicted.

VIII FOREIGN TREATY SENTENCE

1. Background. The United States has entered into treaty agreements with numerous countries which allow the transfer of sentenced prisoners between countries for service of the sentence imposed in the sending country. A citizen of a party nation, convicted and sentenced for a crime in the United States, may be transferred to the country of citizenship for service of the U.S. sentence and a U.S. citizen, convicted and sentenced in that country, may be transferred to the United States for service of the foreign sentence.

P.L. 95-144, enacted on October 28, 1977, is the implementing legislation for the United States and is codified at **18 USC § 4100-4115.**

2. Definitions.

a. C1 Sentence. A foreign treaty sentence that has earned good conduct time and may have earned some or no labor/work time credits in the foreign country (C1 Country) prior to transfer to the United States and that is entitled to earn SGT credits only on the balance of the sentence remaining to be served in the United States (**18 USC 4105(c)(1)**).

b. C2 Sentence. A foreign treaty sentence that has earned **no** good conduct time but may have earned some or no labor/work time credits in the foreign country (C2 Country) prior to transfer to the United States and that is entitled to earn SGT credits on the entire total sentence as imposed in the foreign country (**18 USC 4105 (c)(2)**).

3. General instructions for a foreign treaty sentence.

a. Presentence Time Credit. Presentence time credit shall be awarded for the time spent in custody in connection with the offense or acts for which the sentence was imposed prior to the date of commencement of the foreign sentence (**18 USC § 4105(b)**). This credit shall be applied to a foreign treaty sentence the same as to a U.S. Code sentence. (See Chapter VII.)

b. Parole. Under the provisions of **18 USC § 4106(c),** a transferred prisoner is immediately eligible for parole and may be released on parole at such time as the Parole Commission shall determine the same as if sentenced under the provisions of **18 USC § 4205(b)(2).** (See Chapter VII, paragraph 4.c.)

The Two Thirds/Thirty Year parole eligibility provisions of **18 USC § 4206(d)** shall be applied in the same manner as if the sentence was imposed in the United States for a U.S. Code violation (see Chapter VII, paragraph 4.e.).

c. Good time credit. The **good time credit** to which a prisoner is entitled, as referred to in **18 USC § 4105(c)(1) and (2),** is deducted from the sentence because of the prisoner's satisfactory **conduct**. This type of good time credit is similar to statutory good time (**SGT**) (**18 USC § 4161**).

d. Labor/work time credits. Time credits for labor, as referred to in **18 USC § 4105(c)(1),** is deducted from the sentence because of the **labor or work** performed by the prisoner. This type of labor/work time credit is similar to extra good time (**EGT**) (**18 USC § 4162**).

Labor/work time credits earned in the foreign country shall be deducted from the SRD (also referred to as the expiration or mandatory release date), the same as an EGT lump sum award (see Chapter XIII.). No seniority is accrued for foreign country labor/work credits.

After transfer to the United States, all prisoners assigned to an EGT earning status, shall begin at the three day per month rate and must acquire one year of seniority before advancing to the five day rate (see **18 USC § 4105(c)(3)**). Future calculations for lump sum awards shall be based on the amount of time served from the date on which the prisoner was received in the United States from that foreign country.

e. Rendition or remission time credits. On occasion, a foreign treaty transfer will have earned what some foreign governments term as "rendition" or "remission" time credits. In these cases, a determination must be made as to whether the time credits are based on good **conduct** or on **labor/work** performance, or both, so that the time credits can be properly applied. Sometimes it will be clear from the accompanying documentation as to the type of time credits involved and sometimes not. Those cases in which a determination cannot be made as to the type of time credits that make up the rendition or remission time must be referred to the central office ISM Department for assistance. The central office ISM Department consults with the Department of Justice, Office of Enforcement Operations, in any matters requiring communication with a foreign government.

f. Forfeiture of time credits. Under the provisions of **18 USC § 4105(c)(4),** time credits earned on a foreign treaty sentence may be forfeited and restored as follows:

> **"(4) All credits toward service of the sentence, other than the credit for time in custody before sentencing, may be forfeited as provided in section 4165 of this title and may be restored by the Attorney General as provided in section 4166 of this title."**

Even though **§ 4105(c)(4)** authorizes the forfeiture of all types of time credits earned in the foreign country prior to transfer, the rule established in **28 CFR § 523.10(q)** (see Chapter XIII) will not allow the Bureau of Prisons to forfeit any labor/work credits earned in the foreign country since those credits are treated the same as an EGT lump sum award.

To reiterate, SGT and/or good **conduct** time credits earned in either the United States or a foreign country may be forfeited and restored.

4. C1 sentence information.

a. Language in 18 USC § 4105(c)(1). Based on the language in **§ 4105(c)(1)**, all good time credits earned in the foreign country shall carry over with the foreign sentence when the prisoner is transferred to the United States.

> **"(c)(1) The transferred offender shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of transfer. Subsequent to the transfer, the offender shall in addition be entitled to credits for good time, computed on the basis of the time remaining to be served at the time of the transfer and at the rate provided in section 4161 of this title for a sentence of the length of the total sentence imposed and certified by the foreign authorities. These credits shall be combined to provide a release date for the offender pursuant to section 4164 of this title."**

b. Computation steps. The following steps shall be followed for the computation of a foreign treaty **C1** sentence.

(1) Determine the date of the **offense**. (Offense must have occurred prior to November 1, 1987.)

(2) Determine the date that the sentence was imposed.

(3) Determine the DCB (usually the date that the sentence was imposed).

(4) Calculate a **tentative** EFT.

(5) Determine the **presentence time** credit, if any, and subtract it from the EFT to establish a **final** EFT. (If the prisoner was in presentence custody in the foreign country based on the charges that resulted in the sentence, and the foreign country failed or refused to apply the time, then the Bureau of Prisons must award the time. See **§ 4105(b)**.)

(6) Utilizing the date of arrival in the United States and the **final** EFT as determined in (5) above, determine the amount of time remaining to be served in the United States. Calculate the SGT for that remaining portion of the sentence to be served in this country. The SGT rate shall be based on the sentence as imposed in the foreign country.

The formula for determining SGT for a single month, or any number of months, is: **Month(s)** x **rate** = **Days SGT.**

The formula for determining SGT for a partial month is: **Days** x **rate** ÷ **30** = **Days SGT for Partial Month (fractions are dropped).**

(7) Add the good conduct time earned in the foreign country to the SGT that can be earned in the United States for a total amount of good conduct time and then subtract that amount from the **final** EFT to arrive at the **original** SRD.

(8) Subtract any labor/work credits from the **original** SRD to arrive at a **current** SRD. Any future EGT earned in this country will be subtracted from the current SRD.

5. C2 sentence information.

a. Language in 18 USC § 4105(c)(2). Based on the language in **§ 4105(c)(2)**, if the foreign country allows no good **conduct** time credits then the foreign sentence shall be treated the same as a U.S. Code sentence for SGT purposes.

> **"(2) If the country from which the offender is transferred does not give credit for good time, the basis of computing the deduction from the sentence shall be the sentence imposed by the sentencing court and certified to be served upon transfer, at the rate provided in section 4161 of this title."**

b. Computation. Based on **§ 4105(c)(2)** as quoted above, the computation of a **C2** sentence is the same, in every respect, as for an adult U.S. Code **§ 4205(b)(2)** sentence.

Labor/work time credits earned in the foreign country shall be treated as described in paragraph 3.d. above.

6. Sentence Aggregation. 18 USC § 4105(c)(5) states,

> **"Any sentence for an offense against the United States, imposed while the transferred offender is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was imposed by a United States district court for an offense against the United States."**

a. Aggregation of a C1 sentence with another adult sentence. For parole purposes, the foreign treaty sentence is treated the same as if imposed under the provisions of **18 USC § 4205(b)(2).**

For both a concurrent or consecutive adult sentence aggregated with a **C1** sentence, the SGT **rate** is based on the total length of the aggregate. The **total** amount of SGT to award shall be determined by calculating the period of time between the prisoner's date of arrival in this country and the EFT of the aggregate and then finding the amount of SGT to award for that period (see Chapter IV, paragraph 4). Add the SGT earned in the foreign country to the SGT that can be earned in the United States for a total and then calculate the sentence the same as for a regular adult sentence.

b. Aggregation of a C2 sentence with another adult sentence. For parole purposes, the foreign treaty sentence is treated the same as if imposed under the provisions of **18 USC § 4205(b)(2).**

Since a **C2** sentence is arithmetically computed the same as a U.S. Code sentence, then aggregating such a sentence with a U.S. Code sentence should be accomplished in the same manner as if aggregating two or more U.S. Code sentences.

IX SPLIT SENTENCE

1. Explanation of split sentence under 18 USC § 3651. A sentence on **one count** imposed under **§ 3651** (second paragraph) may include a short term of imprisonment and a period of probation. This type of sentence is often referred to as a "split sentence" because a term of imprisonment plus a period of probation can be served on one count. This type of sentence is also known as a "741" sentence. The "741" phrase comes from **P.L. 85-741**, enacted on August 23, 1958, which is the act that added the one count "split sentence" provision to **§ 3651.** **§ 3651** states in part,

> **"Upon entering a judgement of conviction of any offense not punishable by death or life imprisonment, if the maximum punishment provided for such offense is more than six months, any court having jurisdiction to try offenses against the United States, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby, may impose a sentence in excess of six months** [emphasis added] **and provide that the defendant be confined in a jail-type institution or a treatment institution for** [emphasis added] **a period not exceeding six months** [emphasis added] **and that the execution of the remainder** [emphasis added] **of the sentence be suspended** [emphasis added] **and the defendant placed on probation** [emphasis added] **for such period and upon such terms as the court deems best."**
>
> **"The period of probation, together with any extension thereof, shall not exceed five years."**

2. Purpose of one count "split sentence." Prior to the enactment of **P.L. 85-741** in August of 1958, the court could impose imprisonment or probation after a one count conviction, but not both. This restriction prevented the courts from exposing a "new inexperienced offender" to the undesirable and harsh realty of imprisonment to be followed by a period of supervision (probation) wherein the court could monitor a defendant's community adjustment to assure a return to a lawful member of society. As a result of **P.L. 85-741**, the court can impose a short term of imprisonment to be followed by up to five years of probation.

Technically, the provisions of the one count "split sentence" amendment apply only to one, or single, count cases. The law on its face, however, does not make this clear, so a "split sentence" on individual counts within a judgment and commitment must be accepted, i.e., each single count within a judgment and commitment could contain a single count "split sentence." In such cases, each "split sentence" is computed separately and may run concurrently or consecutively in relation

to one another or to other sentences. **A one count "split sentence" may not be aggregated with another one count "split sentence" or with any other sentence.**

3. Multiple count "split sentence." A court may, in a multiple count case, impose a term of imprisonment on one count, and probation to follow in another count. This sentencing procedure, which is still used, antedates **P.L. 85-741** and is sometimes called a "split sentence" as well. A court can, after conviction on two counts for example, impose a term of imprisonment on one count and a period of probation on the other count. For example, if a defendant is charged with two separate mail theft offenses, a sentence of three years imprisonment may be imposed on one count, to be followed by five years probation (with suspended imposition or execution of sentence) on the second count. The term of imprisonment in this sentence may be served concurrently or consecutively with other sentences and may be aggregated with other **18 USC § 4205(a), (b)(1) or (b)(2)** sentences.

4. Imposition of a one count "split sentence." The statutory requirements that the court must follow to impose a one count "split sentence" are very specific and includes a three step process: 1) The actual sentence for the offense must exceed six months but may not exceed the maximum authorized for the offense. If the offense requires a minimum term of special parole or supervised release, then that term must be imposed at this time as well; 2) The defendant must be ordered confined in a jail-type institution or a treatment institution for a period not exceeding six months; and 3) the execution of the remainder of the sentence must be suspended and the defendant placed on probation for such period and upon such terms as the court deems best.

To sum up, a definite overall sentence of imprisonment must be imposed (not to exceed the maximum for the offense), a jail-type sentence of **six months or less** must be required to be served, and **execution** of the remainder of the overall sentence must be **suspended** with a period of **probation** to follow. Eligibility for parole is **not** authorized on this initial portion of the sentence.

Any term of special parole or supervised release will not be "activated" at the time of release from the initial portion of the one count "split sentence." The special parole or supervised release term will become effective only if the probation is revoked and the prisoner is returned to serve the balance (or something less) of the initially imposed sentence. The special parole or supervised release would, of course, follow the balance of sentence to be served the same as in any other case. If the probation is successfully completed, then the special parole or supervised release term would have no present or future effect.

As noted above, the imprisonment portion of a "split sentence" cannot exceed **six months** and **SGT** is applicable only if the confinement portion of the "split sentence" is **exactly** six months (**18 USC § 4161**). Any sentence less than six months is not entitled to SGT. **EGT** may be awarded on a one count "split sentence" regardless of length, provided the EGT is awarded in accordance with the program statement on **Extra Good Time** (see Chapter XIII.). **Presentence time** is awarded on a "split sentence."

5. Recommitment of a one count "split sentence" following revocation of probation. A prisoner whose probation, that was a part of a one count "split sentence," is revoked, is returned to confinement to serve the **balance** of the original sentence imposed, or **any part** of the original sentence imposed that the court orders. The amount of probation that was to follow the "split sentence" has nothing to do with the amount of time that the court may require the prisoner to serve upon revocation of probation. The amount of time to serve on probation has no relationship to the amount of time that may be required to be served in confinement on the overall sentence.

Determining the balance of the sentence to be served after revocation of probation can be difficult because of the numerous different ways in which the various courts word the revocation of probation order. The singular most important rule to remember is that, **in no case may the amount of time served in a "jail-type institution" plus the amount of time that the court orders to be served upon revocation exceed the amount of time that was originally imposed.**

A couple of **presumptions** can be made based on the wording in the judgment and commitment about the length of the total sentence that the court may impose upon revocation of probation--**1) If the court, upon revocation of probation, states that the revocation sentence is for a specific period of time, e.g., three years, and nothing more, then it can be presumed that the court wants the prisoner to serve that much time in addition to the time already served; and 2) if the court, upon revocation of probation, states that the revocation is for a specific period of time, e.g., three years, and states further that the prisoner is to receive credit for all time served, then it can be presumed that the court wants the revocation sentence to include the time already served.**

Following are some examples of situations that may arise.

(1) For the offense of mail theft (**18 USC § 1708**) the maximum penalty is five years and/or a fine of $2,000. If the court imposes a sentence of **five** years on one count with the condition that the prisoner spend **six** months in a jail-type institution and sentences the prisoner to **four** years upon revocation of probation without saying anything more, then the total length of the sentence should be computed as **four and one-half** years.

(2) For the offense of mail theft (**18 USC § 1708**) the maximum penalty is five years and/or a fine of $2,000. If the court imposes a sentence of **five** years on one count with the condition that the prisoner spend **three** months in a jail-type institution and sentences the prisoner to **four** years upon revocation of probation without saying anything more, then the total length of the sentence should be computed as **four** years and **three** months.

(3) For the offense of mail theft (**18 USC § 1708**) the maximum penalty is five years and/or a fine of $2,000. If the court imposes a sentence of **five** years on one count with the condition that the prisoner spend **six** months in a jail-type institution and sentences the prisoner to **five** years upon revocation of probation, then the total length of the sentence should be computed as **five** years even though the court did not order that credit for the initial **six** months served be included in the revocation sentence. Since **five** years is the maximum for the offense, that is the maximum to which the total sentence must be limited.

(4) For the offense of mail theft (**18 USC § 1708**) the maximum penalty is five years and/or a fine of $2,000. If the court imposes a sentence of **five** years on one count with the condition that the prisoner spend **four** months in a jail-type institution and sentences the prisoner to **four** years and **nine** months upon revocation of probation, then the total length of the sentence should be computed as **five** years. Since **five** years is the maximum for the offense, that is the maximum to which the total sentence must be limited.

(5) For the offense of mail theft (**18 USC § 1708**) the maximum penalty is five years and/or a fine of $2,000. If the court imposes a sentence of **three** years on one count with the condition that the prisoner spend **two** months in a jail-type institution and sentences the prisoner to **three** years upon revocation of probation, then the total length of the sentence should be computed as **three** years. Since **three** years was the initial sentence that was imposed, then the **two** months served on the "split sentence" portion **cannot** be added to the revocation sentence of **three** years.

(6) For the offense of mail theft (**18 USC § 1708**) the maximum penalty is five years and/or a fine of $2,000. If the court imposes a sentence of **three** years on one count with the condition that the prisoner spend **two** months in a jail-type institution and sentences the prisoner to **eighteen** months upon revocation of probation, then the total length of the sentence should be computed as **twenty** months.

Whenever staff believe that the revocation sentence should not be implemented exactly as ordered, or if the language in the judgment and commitment appears to be ambiguous or unclear as to the court's intent, then that case must be referred to the court

for clarification or resolution. (See the **Inmate System's Manual** for the procedures to follow in communicating with a court.)

Any EGT (including accrued seniority) and presentence time that was awarded to the initial portion of the "split sentence" shall also be credited to the probation revocation sentence.

The time between release from the initial "split sentence" portion part of the sentence and the resumption of the originally imposed sentence (ordinarily the date on which probation is revoked) shall be treated as **inoperative time** since the sentence was not in operation during that interim period of time. Any time in custody, prior to the revocation of probation, as a result of an arrest warrant for an alleged violation of probation shall be treated the same as **presentence time** credits.

The samples below will not include the inoperative time (see Chapter V, paragraph 4.) or presentence time (see Chapter VI, paragraph 8.) calculations since those types of calculations have been fully demonstrated.

Example No. VIII - 1:

Split sentence. Arrested on 04-11-79; remained in continuous custody and sentenced on 04-13-79 to 5 years, to serve 6 months in a jail-type institution with 4 years and 6 months probation to follow; released on 09-08-79 by Exp. GT with 2 days EGT.

Revocation sentence. Arrested on 08-06-80; remained in continuous custody and probation revoked on 08-15-80 and ordered to serve 4 years and 6 months under the provisions of **18 USC § 4205(a).**

Total sentence after probation revocation equals 5 years.

Split sentence.

DCB	= 79-04-13		
Sentence	= +00-06-00	6 Months	
Original EFT	= 79-10-12*	= 14895	
Presentence Time		= - 2	2 Days
Final EFT	= 79-10-10	= 14893	
SGT		= - 30	30 Days
SRD	**= 79-09-10**	**= 14863**	
EGT		= - 2	2 Days
SRD with EGT	**= 79-09-08**	**= 14861**	

Final computation after probation revocation.

DCB	=	79-04-13		
Sentence	= +	05-00-00	5 Years	
Original EFT	=	84-04-12*	=	16539
Inoperative Time			= +	341 341 Days
New EFT	=	85-03-19	=	16880
Presentence Time			= -	11 11 Days
Final EFT	=	85-03-08	=	16869
SGT			= -	480 480 Days
SRD	**=**	**83-11-14**	**=**	**16389**
EGT From Split Sentence			= -	2 2 Days
SRD with EGT	**=**	**83-11-12**	**=**	**16387**

Final EFT	=	85-03-08	=	16869
Less 180 Days			= -	180 180 Days
180 Day Date	**=**	**84-09-09**	**=**	**16689**

DCB	=	79-04-13		
1/3 of 5 Yrs	= +	01-08-00	1 Year 8 Months	
Original PE Date	=	80-12-12*	=	15322
Inoperative Time			= +	341 341 Days
Tentative PE Date	=	81-11-18	=	15663
Presentence Time			= -	11 11 Days
Final PE Date	**=**	**81-11-07**	**=**	**15652**

DCB	=	79-04-13		
2/3's of 5 Years	= +	03-04-00	3 Years 4 Months	
Original 2/3's Date	=	82-08-12*	=	15930
Inoperative Time			= +	341 341 Days
Tentative 2/3's Date	=	83-07-19	=	16271
Presentence Time			= -	11 11 Days
Final 2/3's Date	**=**	**83-07-08**	**=**	**16260**

Example No. VIII - 2:

Split Sentence. Arrested on 06-17-80; remained in continuous custody and sentenced on 06-21-80 to 4 years, to serve 6 months in a jail-type institution with 3 years and 6 months probation to follow; released on 11-13-80 by Exp. GT with 3 days EGT.

Revocation sentence. Arrested on 03-14-81; remained in continuous custody and probation revoked on 03-19-81 and ordered to serve 3 years and 6 months.

Total sentence after probation revocation equals 4 years.

Split sentence.

DCB	=	80-06-21		
Sentence	=	+00-06-00	6 Months	
Original EFT	=	80-12-20*	=	15330
Presentence Time			= -	4 4 Days
Final EFT	=	80-12-16	=	15326
SGT			= -	30 30 Days
Original SRD	**=**	**80-11-16**	**=**	**15296**
EGT			= -	3 3 Days
Final SRD	**=**	**80-11-13**	**=**	**15293**

Final computation after probation revocation.

DCB	=	80-06-21		
Sentence	=	+04-00-00		
Original EFT	=	84-06-20*	=	16608
Inoperative Time			= +	125 125 Days
Original EFT	=	84-10-23	=	16733
Presentence Time			= -	9 9 Days
Final EFT	**=**	**84-10-14**	**=**	**16724**
SGT			= -	336 336 Days
SRD	**=**	**83-11-13**	**=**	**16388**

Final EFT	=	84-10-14	=	16724
Less 180 Days			= -	180 180 Days
180 Day Date	**=**	**84-04-17**	**=**	**16544**

DCB	=	80-06-21		
1/3 of 4 Years	=	+01-04-00	1 Year 4 Months	
Original PE Date	=	81-10-20*	=	15634
Inoperative Time			= +	125 125 Days
Tentative PE Date	=	82-02-22	=	15759
Presentence Time			= -	9 9 Days
Final PE Date	=	82-02-13	=	15750

(There is no 2/3's date for the above sentence since it is less than five years.)

Example No. VIII - 3:

Split sentence. Arrested on 09-14-79; released on bond 09-29-79; returned to custody and sentenced on 10-04-79 to 5 years, to serve 3 months in a jail-type institution with 3 years probation to follow; released on 12-16-79.

Revocation sentence. Arrested on 04-07-80 and remained in continuous custody and probation revoked on 04-10-80 and ordered to serve 15 months.

Total sentence after probation revocation equals 18 months.

Split sentence.

DCB	= 79-10-04		
Sentence	= +00-03-00		
Unconverted EFT	= 79-13-03*		
Original EFT	= 80-01-03	= 14978	
Presentence Time		= - 16	16 Days
Final EFT and SRD	**= 79-12-18**	**= 14962**	

Final computation after probation revocation.

DCB	= 79-10-04		
Sentence	= +01-06-00		
Unconverted EFT	= 80-16-03*		
Original EFT	= 81-04-03	= 15434	
Inoperative Time		= + 115	115 Days
Tentative EFT	= 81-07-27	= 15549	
Presentence Time		= - 19	19 Days
Final EFT	**= 81-07-08**	**= 15530**	
SGT		= - 108	108 Days
SRD	**= 81-03-22**	**= 15422**	

(No **180 Day Date** has been calculated since only 108 SGT can be earned on this sentence.)

DCB	= 79-10-04		
1/3 of 1 Year 6 Months	= +00-06-00	6 Months	
Unconverted PE Date	= 79-16-03*		
Original PE Date	= 80-04-03	= 15069	
Inoperative Time		= + 115	115 Days
Tentative PE Date	= 80-07-27	= 15184	
Presentence Time		= - 19	19 Days
Final PE Date	**= 80-07-08**	**= 15165**	

(There is no 2/3's date for the above sentence since the sentence after revocation is less than five years.)

6. Aggregation of a one count "split sentence" revocation of probation sentence with another sentence. After the revocation of the probation that followed the initial portion of the one count "split sentence," the sentence as a whole (see examples above) may then be aggregated with other adult sentences (**18 USC § 4205(a); (b)(1) and (b)(2)**). The number of different combinations of aggregations involving a former "split sentence" and one or more other sentences and the exact procedures to follow in the subsequent computations are far too numerous to create an example of each situation. The examples below demonstrate the most frequent situations that arise from aggregations. (Consecutive sentence examples, where the second sentence imposed is consecutive to the former one count "split sentence," will not be shown since they are treated the same as any other consecutive sentence aggregation.)

The samples below will not include the inoperative time (see Chapter V, paragraph 4.) or presentence time (see Chapter VI, paragraph 8.) calculations since those types of calculations have been fully demonstrated.

Example No. VIII - 4:

Sentence No. 1 "split sentence." Arrested on 03-18-79 and remained in continuous custody and sentenced on 06-11-79 to 2 years, to serve 6 months in a jail-type institution with 4 years and 6 months probation to follow; released on 08-17-79.

Sentence No. 2. Arrested on 09-16-79 and remained in continuous custody and sentenced on 12-10-79 to 2 years (**18 USC § 4205(a)**).

Sentence No. 1 revocation sentence. Probation revoked on 12-17-79 and sentenced to 2 years (**18 USC § 4205(a)**). **Total sentence after probation revocation equals 2 years.**

Calculating the aggregate sentence based on the information above requires a several step process as shown below:

Step No.1. Calculate the EFT for the **Sentence No. 1 revocation sentence** without presentence time.

DCB	=	79-06-11	
Sentence	= +	02-00-00	2 Years
Tentative EFT	=	81-06-10*	= 15502
Inoperative Time			= + 121 121 Days
EFT	**=**	**81-10-09**	**= 15623**

Step No.2. Calculate the EFT for **Sentence No. 2** without presentence time.

DCB	=	79-12-10	
Sentence	= +	02-00-00	2 Years
EFT	**=**	**81-12-09***	

Step No.3. Determine **Sentence No. 2 overlap** of **Sentence No. 1 revocation sentence** and add the sentence of **Sentence No. 1 revocation sentence** to the **overlap** to learn the total sentence length for the aggregate sentence.

Sentence No. 2 EFT	=	81-12-09	
Sent. No. 1 Rev. Sent. EFT	= -	81-10-09	
Overlap	**=**	**00-02-00**	**2 Months**
Sent. No. 1 Rev. Sent.	= +	02-00-00	2 Years
Aggregate Sentence	**=**	**02-02-00**	**2 Years 2 Months**

Step No.4. Calculate the aggregate sentence.

Aggregate Sentence DCB	=	79-06-11		
Aggregate Sentence	=	+02-02-00	2 Years 2 Months	
Original EFT	=	81-08-10*	=	15563
Inoperative Time			=	+ 121 121 Days
Tentative EFT	=	81-12-09	=	15684
Presentence Time			=	- 170 170 Days
Final EFT	**=**	**81-06-22**	**=**	**15514**
SGT			=	- 156 156 Days
SRD	**=**	**81-01-17**	**=**	**15358**

(No **180 Day Date** has been calculated since only 156 SGT can be earned on this sentence.)

Aggregate Sentence DCB	=	79-06-11		
1/3 of 2 Years 2 Months	=	+00-08-20	8 Months 20 Days	
Unconverted PE Date	=	79-14-31		
First Conversion	=	80-02-31		
Original PE Date	=	80-03-01*	=	15036
Inoperative Time			=	+ 121 121 Days
Tentative PE Date	=	80-06-30	=	15157
Presentence Time			=	- 170 170 Days
Final PE Date	**=**	**80-01-12**	**=**	**14987**

(There is no 2/3's date for the above aggregated sentence since neither the aggregate nor any sentence in the aggregate is equal to five years or more.)

Example No. VIII - 5:

Sentence No. 1 "split sentence." Arrested on 11-17-78 and remained in continuous custody and sentenced on 03-12-79 to 2 years, to serve 180 days in a jail-type institution with 1 year probation to follow; released on 05-04-79.

Sentence No. 2. Arrested 07-20-79 and remained in continuous custody and sentenced on 10-01-79 to 18 months (**18 USC § 4205(a)**).

Sentence No. 1 revocation sentence. Probation revoked on 01-28-80 and sentenced to 2 years (**18 USC § 4205(a)**). **Total sentence after probation revocation equals 2 years.**

Calculating the aggregate sentence based on the information above requires a several step process as shown below:

Step No.1. Calculate the **Sentence No. 1 revocation sentence** and **Sentence No. 2** "standing alone" (those calculations are not shown below). Compare the EFT's and SRD's. Note that the EFT and SRD of **Sentence No. 2** are completely absorbed within **Sentence No. 1 revocation sentence.**

Step No.2. Since **Sentence No. 2** was imposed during the inoperative time period of **Sentence No. 1 revocation sentence,** the time period during which **Sentence No. 2** was in operation (excluding any presentence time that belongs to **Sentence No. 2**) when no other sentence was in operation (the **underlap** period) must be determined. After the **underlap** has been determined, add it to the total sentence of **Sentence No. 1 revocation sentence (2 Years)** to determine the aggregate length of the combined sentences.

Sent. No. 1 Rev. Date	=	80-01-28		
Sentence No. 2 DCB	= -79-10-00*			
Underlap	**=**	**00-03-28**	3 Months 28 Days	
Sent. No. 1 Rev. Sent.	= +02-00-00		2 Years	
Aggregate Sentence	**=**	**02-03-28**	2 Yrs 3 Mos 28 Dys	

Step No.3. The inoperative time for the aggregate sentence must be based on the amount of time from release on the **"split sentence"** (05-04-79) up to the date (10-01-79) that **Sentence No. 2** was imposed and began running. That period of time (from 05-05-79 through 09-30-79) is **149 days**. The presentence time for the **Sentence No. 1 revocation sentence** (from
11-17-79 through 03-11-79 = 115 days) plus the presentence time for **Sentence No. 2** (from 07-20-79 through 09-30-79 = 73 days) equals **188 days**. Calculate the **EFT** for the aggregate sentence.

Aggregate DCB	=	79-03-12		
Aggregate Sentence	= +02-03-28		2 Yrs 3 Mos 28 Dys	
Original EFT	=	81-07-09*	=	15531
Inoperative Time			= + 149	149 Days
Tentative EFT	=	81-12-05	=	15680
Presentence Time			= - 188	188 Days
Final EFT	**=**	**81-05-31**	**=**	**15492**
SGT			= - 167	167 Days
SRD	**=**	**80-12-15**	**=**	**15325**

(No **180 Day Date** has been calculated since only 167 SGT can be earned on this sentence.)

Aggregate Sentence DCB	=	79-03-12		
1/3 of 2 Yrs. 3 Mos. 28 Dys.	= +00-09-09		9 Months 9 Days	
Original PE Date	=	79-12-20*	=	14964
Inoperative Time			= + 149	149 Days
Tentative PE Date	=	79-07-24	=	15113
Presentence Time			= - 188	188 Days
Final PE Date	**=**	**79-11-11**	**=**	**14925**

(There is no 2/3's date for the above aggregated sentence since neither the aggregate nor any sentence in the aggregate is five years or more.)

Example No. VIII - 6:

Sentence No. 1 "split sentence." Arrested on 06-04-79 and remained in continuous custody and sentenced on 06-12-79 to 3 years, to serve 6 months in a jail-type institution with 5 years probation to follow; released on 11-03-79.

Sentence No. 2. Arrested on 12-02-79 and remained in continuous custody and sentenced on 01-09-80 to 5 years (**18 USC § 4205(a)**).

Sentence No. 1 revocation sentence. Probation revoked on 03-18-81 and sentenced to 2 years consecutive. **Total sentence after probation revocation equals 2 years and 6 months.**

Aggregate Sentence. Determining the aggregate length of this sentence requires simple arithmetic. The prisoner served 6 months before the 5 year sentence was imposed and it was not possible to aggregate the 6 months and the 5 years at that time since the probation had not yet been revoked. After the probation was revoked and the court ordered that 2 years consecutive be served as a result of the probation violation, the next step is to add together the 6 months already served, plus the subsequent 5 years, and then the consecutive 2 years, for a total aggregate sentence of 7 years and 6 months. The computation follows:

Step No.1. Calculate the total time to be served for the **aggregate sentence.**

Sent. No. 1 "split sent."	=	00-06-00 6 Months
Sentence No. 2	=	05-00-00 5 Years
Sent. No. 1 Rev. Sent.	= +	02-00-00 2 Years
Aggregate Sentence	**=**	**07-06-00 7 Years 6 Months**

Step No.2. Calculate the **aggregate sentence.**

Aggregate Sentence DCB	=	79-06-12		
Aggregate Sentence	=	07-06-00	7 Years 6 Months	
Original EFT	=	86-12-11*	=	17512
Inoperative Time			= +	66 66 Days
Tentative EFT	=	87-02-15	=	17578
Presentence Time			= -	46 46 Days
Final EFT	**=**	**86-12-31**	**=**	**17532**
SGT			= -	729 720 Days
SRD	**=**	**85-01-10**	**=**	**16812**

Final EFT	=	86-12-31	=	17532
Less 180 Days			= -	180 180 Days
180 Day Date	**=**	**86-07-04**	**=**	**17352**

Aggregate Sentence DCB		79-06-12		
1/3 of 7 Yrs 6 Mos	= +	02-06-00	2 Years 6 Months	
Original PE Date	=	81-12-11*	= 15686	
Inoperative Time			= + 66	66 Days
Tentative PE Date	=	82-02-15	= 15752	
Presentence Time			= - 46	46 Days
Final PE Date	**=**	**81-12-31**	**= 15706**	
2/3 of 6 Months	=	00-04-00	4 Months	
2/3 of 5 Years	=	03-04-00	3 Years 4 Months	
2/3 of 2 Years	= +	01-04-00	1 Year 4 Months	
Unconverted Agg. 2/3's	=	04-12-00		
Final Aggregate 2/3's	**=**	**05-00-00**	**5 Years**	
Aggregate DCB	= +	79-06-12		
Original 2/3's Date	=	84-06-11*	= 16599	
Inoperative Time			= + 66	66 Days
Tentative 2/3's Date	=	84-08-16	= 16665	
Presentence Time			= - 46	46 Days
Final 2/3's Date	**=**	**84-07-01**	**= 16619**	

X NARCOTIC ADDICT REHABILITATION ACT OF 1966

The **Narcotic Addict Rehabilitation Act of 1966** (NARA) (**P.L. 89-793**) (**18 USC §§ 4251-4255**) became effective on November 8, 1966 for sentences imposed on and after that date.

The arithmetic for calculating both adult and NARA sentences is the same. A NARA sentence is implemented slightly different from an adult sentence because of the language in NARA. Only those sections of NARA that pertain to the manner in which a court may impose a sentence and the manner in which that sentence must be implemented will be covered in this manual. It is important, however, that all sections of NARA be studied by the computation specialist for definition of terms and to gain a knowledge of the other related provisions.

1. Examination to determine addiction under 18 USC § 4252. After conviction for an offense, a court may order that the offender be committed for examination to make a determination about the offender's addiction.
§ 4252 states,

> **"If the court believes that an eligible offender is an addict, it may place him in the custody of the Attorney General for an examination to determine whether he is an addict and is likely to be rehabilitated through treatment. The Attorney General shall report to the court within thirty days; or any additional period granted from the court, the results of such examination and make any recommendations he deems desirable. An offender shall receive full credit towards the service of his sentence for any time spent in custody for an examination."**

The institution to which the eligible offender is committed often times is unable to furnish the court with a report within the statutory limit of 30 days and must request additional time. Unit staff is responsible for completing the examination report and for requesting additional time from the court to complete the report, if necessary.

The examination period begins to run on the date that the examination is ordered. **Presentence time does not affect the examination period.**

2. Commitment for treatment under 18 USC § 4253. After the examination, the court may commit the offender for treatment under the provisions of **§ 4253** which states,

> **"(a) Following the examination provided for in section 4252, if the court determines that an eligible offender**

is an addict and is likely to be rehabilitated through treatment, it shall commit him to the custody of the Attorney General for treatment under this chapter, except that no offender shall be committed under this chapter if the Attorney General certifies that adequate facilities or personnel for treatment are unavailable. Such commitment shall be for an indeterminate period of time not to exceed ten years, but in no event shall it exceed the maximum sentence that could otherwise have been imposed [emphasis added]."

"(b) If, following the examination provided for in section 4252, the court determines that an eligible offender is not an addict, or is an addict not likely to be rehabilitated through treatment, it shall impose such other sentence as may be authorized or required by law."

There is nothing in this section which prohibits a court from ordering commitment for an indeterminate period of time less than ten years for an offense which authorizes a maximum term of ten or more years. There also is nothing in the section which prohibits the court from ordering commitment for an indeterminate period of time less than the maximum sentence which could be imposed under ten years. It is the Bureau of Prisons' position, however, supported by a number of courts, that the commitment under **§ 4253** should be for ten years or the maximum sentence authorized for the offense, whichever is less. A NARA sentence that is **not** imposed in accordance with the Bureau of Prisons' interpretation of this section should be referred to the Regional Inmate Systems Manager for consultation.

All time in custody after the date of arrest to the date of the **§ 4252** order shall be treated as presentence time. If the offender is eventually sentenced under the provisions of **§ 4253,** or any other authorized sentencing provision, the time served under the **§ 4252** commitment shall be computed as time served on the sentence. SGT is awarded in the same manner as for an adult sentence (see Chapter IV).

The EFT shall be extended by **inoperative time** the same as for an adult sentence (see Chapter V) with the exception of a prisoner who is returned as a "conditional release" violator (**hereinafter called "parole violator"**), which is discussed in more detail below.

3. Conditional Release under 18 USC § 4254. An offender who is sentenced under the provisions of **§ 4253** may be paroled (conditionally released) by the Parole Commission in its discretion after six months of treatment as provided for in **§ 4254**, which states,

> **"An offender committed under section 4253(a) may not be conditionally released until he has been treated for six months following such commitment in an institution maintained or approved by the Attorney General for treatment. The Attorney General may then or at any time thereafter report to the Board of Parole whether the offender should be conditionally released under supervision. After receipt of the Attorney General's report, and certification from the Surgeon General of the Public Health Service that the offender has made sufficient progress to warrant his conditional release under supervision, the Board may in its discretion order such a release. In determining suitability for release, the Board may make any investigation it deems necessary. If the Board does not conditionally release the offender, or if a conditional release is revoked, the Board may thereafter grant a release on receipt of a further report from the Attorney General."**

An eligible offender, as stated in **§ 4254**, must receive treatment for at least six months before becoming eligible for parole. Presentence time and time undergoing examination (**18 USC § 4252**) do not affect the date upon which the offender becomes eligible for parole. The six months is computed from the date the **§ 4253 sentence** is imposed, providing the sentence is in operation at that time. (See **28 CFR § 2.3**.) Application for parole must be made in accordance with **28 CFR § 2.11**.

The parole "eligible" date shall be extended by **inoperative time** the same as for an adult sentence, providing the inoperative time begins prior to the parole eligible date (see Chapter V).

4. Two-thirds/thirty year date under 18 USC § 4206(d). The provisions of **§ 4206(d)** pertains to a NARA sentence the same as for an adult sentence. See Chapter VII, paragraph 4.e. for complete instructions for implementation of this section.

5. Weekend/holiday release. The same rules that apply to an adult sentence apply to a NARA sentence for a weekend/holiday release (see Chapter VII, paragraph 3.c.).

6. Supervision in the community under 18 USC § 4255. **§ 4255** states in part,

> **"An offender who has been <u>conditionally released</u>** [emphasis added] **shall be under the jurisdiction of the United States Parole Commission <u>as if on parole</u>** [emphasis added], **pursuant to chapter 311 of this title."**

Regardless of the length of the sentence imposed and based on the underlined language in **§ 4253** above, it is the Bureau of Prisons' interpretation of that provision that the offender has to serve no longer than the total sentence imposed, including presentence and examination time. As a result, if a prisoner is recommitted as a parole violator for a violation of the conditional release, then the prisoner cannot be required to serve beyond the original EFT date, i.e., the prisoner receives credit for all "street time" (see **28 CFR §§ 2.47(e)(2) and 2.52(d)(1)**). If the prisoner **absconds**, however, during the supervision period in the community, then the EFT date can be extended by the amount of absconder time as determined by the Parole Commission (see **28 CFR § 2.40(j)**).

It is the Bureau of Prison's interpretation of the intent of NARA that that much of **18 USC § 4164** that pertains to an early release from parole supervision of one hundred and eighty days does not apply to a NARA sentence since the primary purpose of the Act is to provide a continuum of treatment that begins in the institution and continues throughout the remainder of the sentence that is served in the community (see **18 USC § 4151(c)**). To shorten that period of treatment by one hundred and eighty days would not conform to the purpose or intent of NARA. In addition, if a prisoner earned less than one hundred and eighty days of good time prior to release, then the provisions of **§ 4164**, if followed, would preclude any treatment at all in the community after release.

7. Summary of NARA provisions. The following information is provided as a summary of the various NARA provisions.

a. Eligible offender (18 USC(f)(3). An offender against whom there is a pending charge is **ordinarily** not eligible for sentencing under NARA (see **18 USC § 4251(f)(3)**). If a detainer, federal or state, is received, the RISA must be contacted for consultation purposes.

b. Presentence time on a NARA sentence. Presentence time (see Chapter VI) applies to a NARA sentence the same as for any other sentence except that it does not reduce the parole eligible date or examination period.

c. Examination (18 USC § 4252). The examination period is thirty days and begins to run on the date of the examination order unless the court delays implementation of the order. Additional examination time may be requested from the court. Presentence time does not apply to the examination period.

d. Sentence (18 USC § 4253). The maximum sentence cannot exceed ten years or the maximum term of the offended statute. The sentence imposed must be for the maximum allowable.

e. Parole (18 USC § 4254). The prisoner becomes eligible for parole after six months from the date that the NARA sentence is imposed. Presentence time does not reduce the six months.

f. Mandatory release (18 USC § 4164). If not paroled by the Parole Commission, the prisoner shall be released as if on parole by operation of good time calculated in the same manner as if an adult prisoner except that the one hundred and eighty day early release from supervision does not apply. Therefore, every release by operation of good time shall be treated as if released on parole regardless of the amount of time remaining to be served.

g. Inoperative time. Inoperative time applies to a NARA sentence the same as for an adult prisoner (see Chapter V).

h. Parole violation (18 USC § 4255). A NARA prisoner under parole supervision is treated the same as an adult prisoner, except that a parole violator **does** receive credit for all "street time," i.e., the EFT cannot be extended as a result of a parole violation, except as noted in "i." below.

i. Absconding during parole supervision. Absconding from parole supervision does interrupt the running of the sentence during the time that the parolee is in an absconder status.

j. Aggregation. A NARA sentence may **not** be aggregated with another NARA sentence or with any other sentence.

8. The Duvall Case--Operations Memorandum 71-80, Time Credit for NARA Sentences Served at FCI, Danbury, dated March 13, 1980. Operations Memorandum 71-80, which pertained to the case of **Duvall v. Carlson** (United States District Court for the District of Connecticut (Civil No. N-77-234) had a cancellation date of December 31, 1980. The order of the court in this case, however, remains in effect and shall be applied to any prisoner to which it applies at any time in the future regardless of the operations memorandum cancellation date.

a. Purpose of the Duvall suit. In 1978, **Duvall**, a former prisoner at FCI-Danbury, brought a petition for a writ of habeas corpus and civil rights complaint against the Bureau of Prisons alleging that, from **December 1, 1975 until August 24, 1978**, inmates sentenced under the provisions of NARA were not afforded drug treatment as required by the NARA statute.

b. The Duvall agreement. The **Duvall** case was settled between the plaintiffs and the Bureau of Prisons according to an agreement made effective by order of the court on February 4, 1980. The settlement agreement provided that any prisoner who served any part of a NARA sentence at FCI-Danbury **between December 1, 1975 and August 24, 1978** would receive **one day of time credit** for each day served at Danbury. This **time credit** is

to be deducted from the end date (EFT) of the NARA sentence if, **and only when**, the prisoner is released from prison, and the time credit deducted is not to exceed the amount of time remaining to be served on the NARA sentence.

c. Impact of implementation of the Duvall agreement. Actual implementation of the **Duvall** agreement has an impact only on the amount of time remaining to be served in the community under supervision, which determination is made at the time the prisoner is released from imprisonment. If the prisoner is in the community under NARA supervision at the time the discovery is made that entitlement to the time credit is authorized, then the remainder of the supervision time shall be reduced accordingly.

d. Implementing the Duvall agreement. The case of any NARA prisoner who may have been **confined at FCI-Danbury between December 1, 1975 and August 24, 1978** and who may **not** have been awarded **Duvall** time credits, shall be referred to the Chief of Inmate Systems at FCI-Danbury for verification and resolution.

No NARA sentencing examples are shown below since all the calculation procedures necessary to calculate a NARA sentence have been fully explained and demonstrated in other parts of this manual.

XI FEDERAL YOUTH CORRECTION ACT OF 1950

The Federal Youth Correction Act (YCA) (**18 USC §§ 5005-5026**) was enacted in **1950** and amended in **1970** (**P.L. 94-233**). Only those sections of the YCA (including **18 USC § 4216,** which pertains to young adult offenders) affecting sentence computation will be discussed. It is necessary, however, that all sections of the YCA be studied to gain a knowledge of the other related provisions.

1. Definitions under 18 USC § 5006. The following terms are used throughout the various statutory provisions pertaining to **youth** and **young adult** offenders and knowing the definitions are necessary to understand the sentences that may be imposed.

> **"(a) 'Commission' means the United States Parole Commission;**
> **(b) 'Bureau' means the Bureau of Prisons;**
> **(c) 'Director' means the Director of the Bureau of prisons;**
> **(d) 'youth offender' means a person under the age of Twenty-two years at the time of conviction;**
> **(e) 'committed youth offender' is one committed for treatment hereunder to the custody of the Attorney General pursuant to sections 5010(b) and 5010(c) of this chapter;**
> **(f) 'treatment' means corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders; and (g) 'conviction' means the judgment on a verdict or finding of guilty, or a plea of nolo contendere."**

2. Young adult offender under 18 USC § 4216. A **young adult offender** is defined as follows.

> **"In the case of a defendant who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction, if, after taking into consideration the previous record of the defendant as to delinquency and criminal experience, his social background, capabilities, mental and physical health, and such other factors as may be considered pertinent, the court finds that there are reasonable grounds to believe that the defendant will benefit from the treatment provided under the Federal Youth Corrections Act (18 U.S.C., chap. 402) sentence may be imposed pursuant to such provisions of the act."**

As to a **young adult offender**, it is necessary to point out that the YCA sentencing provisions are not available if a young adult is convicted of an offense which requires imposition of a **mandatory penalty** such as required for a violation of certain narcotic laws and violation of **18 USC §§ 2113(e) and 2114**. (See paragraph 7, **P.L. 85-752**, codified as a note to **28 USC § 334**. Also see **United States v. Lane, 284 F. 2nd, 935, 9th Cir. 1960**.) A mandatory penalty offense is one in which the imposition or execution of the sentence may not be suspended, probation may not be granted and parole is precluded.

3. Beginning date or DCB of a YCA sentence. The term "conviction," as defined in paragraph 1. above, is the key word in establishing the DCB of a YCA sentence and, as used in reference to a YCA sentence, means the **date** the judgment or sentence is imposed. If a stay of execution (release pending appeal or for personal/business matters) is granted on the date that the sentence is imposed, then the date on which the stay of execution terminates, provided the defendant is returned to custody on that date, will be the DCB (date on which the sentence begins to run).

A YCA sentence imposed while the offender is under the jurisdiction of a federal writ of habeas corpus ad prosequendum or the Interstate Agreement on Detainers from a non-federal authority shall be treated the same as if in federal custody, i.e., the sentence shall be calculated as beginning on the date that the YCA sentence was imposed and shall continue to run as long as the offender is in the continuous custody of **any** federal or non-federal law enforcement agency.

4. Inoperative time on a YCA sentence. Inoperative time shall be applied to a YCA sentence in accordance with Chapter V., with one exception. A prisoner who has been paroled from a YCA sentence receives credit for all "street time" if parole is revoked (see **28 CFR §§ 2.47(e)(2) and 2.52(d)(1)**) but does not receive credit for any time, after release on parole, that was spent in an **absconder status** (see **28 CFR § 2.40(j)**) as determined by the Parole Commission.

A prisoner who is granted probation under the provisions of **§ 5010(a)** ordinarily receives credit for the time under supervision toward service of the total YCA sentence that may be imposed as the result of probation violation unless the prisoner **absconds** from probation supervision in which case the YCA sentence would be **inoperative** during the time in absconder status, as determined by the court that revoked the probation. If the court, however, placed the prisoner on probation without making a determination that the defendant was a youth or young adult offender and subsequently imposed a YCA sentence as a result of a probation violation, then **none** of the time under probation supervision counts toward service of the YCA sentence.

5. Presentence time on a YCA sentence. Presentence time shall be applied to a YCA sentence in accordance with Chapter VI, i.e., it shall be deducted from the EFT and mandatory conditional (parole) release date.

6. Effect of statutory good time and extra good time on a YCA sentence. The YCA does not provide for, or authorize, the awarding of SGT or EGT for a YCA sentence and, therefore, a YCA sentence does not earn either SGT or EGT. (See paragraphs 17. and 18. below for exceptions.)

7. Probation under 18 USC § 5010(a). **§ 5010(a)** allows the court to impose a period of probation for a youth or young adult offender and states,

> **"(a) If the court is of the opinion that the youth offender does not need commitment, it may suspend the imposition or execution of sentence and place the youth offender on probation."**

This section is self-explanatory and allows the court to grant probation in accordance with **§§ 3651 and 3653** when either a **§ 5010(b) or (c)** sentence is imposed. The court may also impose sentence under the one count "split sentence" provisions of **§ 3651.**

If the probation is later revoked and the offender ordered committed then all time under **probation supervision will count as time served on the sentence**, i.e., computed uninterruptedly from the date of conviction. This same rule also applies if the court imposed a YCA **split sentence** (i.e., orders a **YCA § 5010(b) or (c) sentence**, requires that six months or less be served in a jail-type institution and suspends execution of the balance of the sentence, with a period of probation to follow). No SGT or EGT is authorized for a YCA **split sentence** nor is the prisoner eligible for parole.

On occasion, a prisoner will have been sentenced under a **§ 5010(b)** split sentence and will have been under probation supervision for four years or longer at the time probation is revoked, in which case the prisoner must be immediately released under conditional (parole) release and placed under the supervision of the Parole Commission. The Parole Commission must be immediately notified when this situation occurs so that a parole certificate can be issued and sent to the appropriate probation officer for execution.

As stated in paragraph 4. above, if the prisoner **absconds** from probation supervision, and the sentence was imposed under the provisions of **§ 5010(a)**, then the sentence will be **inoperative** during the time in absconder status, as determined by the court that revoked the probation. If the court, however,

placed the prisoner on probation without making a determination that the defendant was a youth or young adult offender and subsequently imposed a YCA sentence as a result of a probation violation, then **none** of the time under probation supervision counts toward service of the YCA sentence.

8. Sentence under 18 USC § 5010(b). **§ 5010(b)** allows a court to impose a sentence under the YCA and states,

> **"(b) If the court shall find that a convicted person is a youth offender, and the offense is punishable by imprisonment under applicable provisions of law other than this subsection, the court may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the Attorney General for treatment and supervision pursuant to this chapter until discharged by the Commission as provided in section 5017(c) of this chapter; . . ."**
>
> **18 USC § 5017(c)** states ,
>
> **"(c) A youth offender committed under section 5010(b) of this chapter shall be released conditionally under supervision on or before the expiration of four years from the date of his conviction and shall be discharged unconditionally on or before six years from the date of his conviction."**

When the court imposes a sentence under **§ 5010(b)** it is called an "indeterminate sentence of four to six years" because of the language in **§ 5017** that refers to the time frames of four years and six years.

The EFT of a **§ 5010(b)** sentence is calculated in the same manner as an adult sentence (see Chapter VII, Example Nos. VII - 1 through VII - 10 and VII - 26 through VII - 31). The SRD, based on the minimum term of four years, is also calculated the same as an adult EFT (i.e., DCB plus four years and adjusted for any presentence or inoperative time) since no good time can be accrued on a YCA sentence.

§ 5010(b) may also be used in connection with a grant of probation under the "split sentence" provisions of **18 USC § 3651** as described in paragraph 7. above.

9. Sentence less than six years under 18 USC § 5010(b). Whenever a court imposes a sentence under **§ 5010(b),** the judgment and commitment is usually silent as to the four to six year term of the sentence since the language in the statute itself is clear as to the sentence term. On occasion, however, a court will impose a sentence of **less** than six years under **§ 5010(b).** The Bureau of Prisons considers a sentence of less than six years

under the YCA to be improper but at least one court does impose that type of sentence and, as a result, the following procedures shall be followed when a sentence, under the YCA, of less than six years is imposed.

a. Letter to United States Attorney and follow-up procedure. ISM staff shall prepare, for the warden's signature, a letter to the United States Attorney for the sentencing district as shown in the draft letter in Appendix VI. It is intended that the letter will cause the United States Attorney to approach the court with the concerns raised by the Bureau of Prisons and that the court will then take appropriate corrective action. If no answer is received within thirty days, then a follow-up letter shall be sent to the United States Attorney. A copy of the letter (or letters) shall be sent to the Regional Inmate Systems Manager.

b. Computation instructions for a YCA sentence of less than six years. If no response to the second letter is received after thirty days, or if the sentencing court refuses to take corrective action, then the sentence shall be computed as follows:

(1) If the term specified by the court is four years or less, compute the sentence without a mandatory parole (four year) date. The EFT shall be modified for any presentence time credit or inoperative time and the resulting date will be the date on which the prisoner must be released. For this computation, this release date shall be considered both the SRD and the EFT.

(2) If the term specified by the court is more than four years but is less than six years, establish a mandatory parole (four year) date at four years from the DCB, adjusted for presentence time and inoperative time, if any. The EFT shall be based on the length of the sentence imposed by the court, also adjusted for both presentence time and inoperative time, if any.

c. Affect of statutory and extra good time on a YCA sentence of less than six years. Statutory and extra good time (**18 USC §§ 4161 and 4162**) shall not be applied to these commitments as release procedures for a YCA sentence are governed by **18 USC § 5017.** (See paragraphs 17. and 18. for exceptions.)

10. Sentence under 18 USC § 5010(c). **§ 5010(c)** allows a court to impose a sentence under the YCA and states,

> **"(c) If the court shall find that the youth offender may not be able to derive maximum benefit from treatment by the Commission prior to the expiration of six years from the date of conviction it may, in lieu of the penalty of imprisonment otherwise provided by law, sentence the youth offender to the custody of the**

Attorney General for treatment and supervision pursuant to this chapter for any further period that may be authorized by law for the offense or offenses of which he stands convicted or until discharged by the Commission as provided in section 5017(d) of this chapter."

18 USC 5017(d) states in part,

"(d) A youth offender committed under section 5010(c) of this chapter shall be released conditionally under supervision not later than two years before the expiration of the term imposed by the court."

a. Implementation of 18 USC § 5010(c) and (d). When the court imposes a sentence under **§ 5010(c)** of the YCA, it must impose a definite term of imprisonment **exceeding** six years but within the limit of the maximum authorized by the offended statute. If the maximum penalty for the offense which could be imposed is twenty years, then the court could impose a sentence of twenty years or a lesser sentence, provided that the lesser sentence exceeds six years. The mandatory conditional (parole) release date, under **§ 5017(c)** is established at exactly **two years less** than the term imposed.

b. Calculation of the EFT for an 18 USC § 5010(c) sentence. The EFT of a **§ 5010(c)** sentence is calculated in the same manner as an adult sentence (see Chapter VII, Example Nos. VII - 1 through VII - 10 and VII - 26 through VII - 31).

c. Calculation of the SRD for an 18 USC § 5010(c) sentence. Because of the language in **§ 5010(c)** that states that the offender shall be released not later than **"two years before"** the EFT, the two years must be subtracted from the EFT to establish the SRD (mandatory conditional (parole) release date) rather than following the conventional method of calculating time by adding the minimum term to the EFT. The resulting SRD could actually be different by one day depending on the method used, thereby requiring that the **"two years before"** language be precisely followed. For example, if a **§ 5010(c)** sentence of **five to seven years** has a DCB of March 1, 1979 and the minimum term of five years is added to the DCB then the SRD would be February **29**, 1984 (a leap year). If the **"two years before"** time period is subtracted from the previously established EFT (seven years added to the DCB), then the SRD would be February **28**, 1984.

§ 5010(c) may also be used in connection with a grant of probation under the "split sentence" provisions of **18 USC § 3651** as described in paragraph 7. above.

11. Two-thirds/thirty year date under 18 USC § 4206(d). The provisions of **§ 4206(d)** pertain to a youth or young adult sentence the same as for an adult sentence. See Chapter VII, paragraph e. for complete instructions for implementation of this section.

12. Release (parole) of a youth or young adult offender under 18 USC 5017(a) and weekend/holiday release. If a youth or young adult offender wishes to be released conditionally (paroled) under supervision prior to the mandatory conditional (parole) release date (two years before the EFT), then the offender must make application for parole in accordance with **28 CFR § 2.11.**
If the Parole Commission does not parole the prisoner prior to the mandatory conditional (parole) release date, then the prisoner shall be paroled on that date. In this case, there is **no** statutory authority to release the prisoner any earlier than the conditional release date, even if that date falls on a Saturday, Sunday or holiday. If, however, the Parole Commission **acts** to grant parole on the conditional release date or on a date earlier than the conditional release date and such date falls on a weekend or holiday, then the provisions of **28 CFR § 2.29(c) may** be applied as stated below:

> **"(c) When an effective date of parole falls on a Saturday, Sunday, or legal holiday, the Warden of the appropriate institution shall be authorized to release the prisoner on the first working day preceding such date."**

18 USC § 4164, **Released prisoner as parolee**, is not applicable to YCA sentences in any respect.

13. Sentence under 18 USC § 5010(d). **§ 5010(d)** authorizes the court to sentence a youth offender under other sentencing provisions and states,

> **"(d) If the court shall find that the youth offender will not derive benefit from treatment under subsection (b) or (c), then the court may sentence the youth offender under any other applicable penalty provision."**

When the court becomes convinced that treatment under the provisions of **§ 5010(b) or (c)** will not accomplish the intended purpose, it may then sentence the offender under other sentencing provisions. If this occurs, the sentence imposed will be computed in accordance with the statute involved. Such a sentence is not under the provisions of the YCA and does not receive the special YCA "treatment" or other benefits, such as setting aside the conviction under **§ 5021.**

14. Observation and study under 18 USC § 5010(e). The court, in making a determination as to whether commitment under the YCA is appropriate, may commit the youth or young adult offender under the provisions of **§ 5010(e)** which states,

"(e) If the court desires additional information as to whether a youth offender will derive benefit from treatment under subsections (b) or (c) it may order that he be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report to the court its findings."

§ 5010(e) is the observation and study section of the YCA and allows the court to obtain more information about the prisoner prior to making a determination as to whether the YCA provides the appropriate sentencing alternatives. Presentence time does not affect this period of time. All time undergoing study and observation under this section shall be counted as time served on any sentence subsequently imposed.

The program statement, **Study and Observation Report**, provides staff with the instructions for producing the report as requested by the court.

15. Revocation of parole under 18 USC §§ 5018 and 5020. The Parole Commission may revoke the parole of a YCA parolee and **§ 5018** states,

"The Commission may revoke or modify any of its previous orders respecting a committed youth offender except an order of unconditional discharge."

§ 5020 states,

"If, at any time before the unconditional discharge of a committed youth offender, the Commission is of the opinion that such youth offender will be benefited by further treatment in an institution or other facility the Commission may direct his return to custody or if necessary may issue a warrant for the apprehension and return to custody of such youthful offender and cause such warrant to be executed by a United States probation officer, an appointed supervisory agent, a United States Marshal, or any officer of a penal or correctional institution. Upon return to custody, such youth offender shall be given a revocation hearing by the Commission."

If the offender returns as a violator he must serve to the original EFT of the sentence unless, of course, the offender is released by an action of the Parole Commission. If the Parole Commission does reparole the offender, then parole supervision continues to the original EFT unless an **unconditional** discharge is issued as provided in **18 USC § 5021** which states,

"(a) Upon the unconditional discharge by the Commission of a committed youth offender before the expiration of the maximum sentence imposed upon him, the conviction shall be automatically set aside and the Commission shall issue to the youth offender a certificate to that effect."

No calculation examples are shown for YCA sentences since no good time can be earned and since only two dates need to be known--the SRD and the EFT.

16. Unconditional discharge of a YCA sentenced inmate under 18 USC § 5017(b). A YCA inmate (including a **Johnson** or **Lewis** inmate--see paragraphs 17. and 18. below.) who is released on parole (regardless of how the parole originated) may be unconditionally discharged prior to the EFT as provided under **18 USC § 5017(b)** (also see **28 CFR 2.43(a)(2)**) which states,

"(b) The Commission may discharge a committed youth offender unconditionally at the expiration of one year from the date of conditional release."

For example, if a YCA inmate was paroled on December 12, 1983 with an EFT of October 10, 1989 and served one year of supervision successfully, the Parole Commission could unconditionally discharge the inmate from further service of the sentence any time after December 11, 1984.

17. Johnson YCA inmates. As a result of a remedial order issued by the **United States District Court for the Eastern District of Michigan** on **April 20, 1983** in the case of **Johnson v. Smith, Civil Action No. 78-71747**, the Bureau of Prisons was ordered to award SGT, and EGT where appropriate, to certain YCA offenders.

The initial **Johnson** order was followed by two other orders that broadened the **Johnson** good time credit requirements and they were **Johnson v. Meese, Civil No. 78-71747, dated September 10, 1986** and **Johnson v. Meese, Civil No. 78-71747, dated October 22, 1986.**

Based on the three **Johnson** orders, the following instructions shall be followed to calculate a **Johnson** sentence.

a. Definition of a Johnson inmate. Based on the three court orders just mentioned, a **Johnson inmate** is defined as **any** YCA inmate who who served any portion of a YCA sentence at the Federal Correctional Institution at **Milan**, Michigan on or after **November 13, 1978**, including parole violators. YCA holdovers who passed through **Milan** during that time enroute to a designated facility or who were held temporarily for a United States Marshal (e.g., on writ, in presentence custody) are not **Johnson inmates** as a result of such temporary lodging.

b. Definition of "pure" and "non-pure" YCA institutions.

(1) **Pure** YCA institution. An institution that **housed YCA** sentenced offenders **only**. Good time **credit is not given** for a YCA inmate housed in a **pure** YCA institution even if he qualifies for **Johnson** credit for time spent in **Milan** or some other non-pure YCA institution.

(2) **Non-pure** YCA institution. Any institution that houses adult offenders even if the institution also houses YCA offenders. Good time **credit is given** to a **Johnson** inmate.

c. Pure YCA institutions. There have been only **three** pure YCA institutions in the **history** of the Bureau of Prisons. Those three institutions, and dates during which they were "pure," are listed below.

Morgantown, WV	**April 1, 1982 - May 1, 1985**
Englewood, CO	**May 1, 1982 - December 10, 1985**
Petersburg, VA	**November 1, 1982 - November 7, 1985**

d. Determining Johnson status. Determining whether a YCA sentenced inmate is a **Johnson inmate**, and for how long (called **Johnson** time), requires a careful record analysis and review. If the staff is unable to determine with a certainty from available documents or from SENTRY that a YCA inmate is a **Johnson inmate**, then ISM staff at **Milan** shall be contacted to confirm the inmate's status.

As stated in paragraph 17.a. above, in order to qualify as a **Johnson** inmate, the prisoner must have served at least some part of the YCA sentence at Milan on or after **November 13, 1978**. Having once qualified as a **Johnson** inmate, then any time spent serving the YCA sentence (usually back to the commencement date of the YCA sentence) in Milan or any other institution prior to that date, even if that date precedes **November 13, 1978**, shall be included in the calculation for determining the amount of good time to award. There were no **pure** YCA institutions prior to **November 13, 1978**. The first **pure** YCA institution was **Morgantown** and it did not exist until **April 1, 1982** (see paragraph 17.c. above). Following are some **Johnson** determination examples.

(1) Doe I begins serving a YCA sentence on November 19, 1978 and is committed to **Milan** on that date as a holdover with a designation to Morgantown. On January 15, 1979, Jones is moved from Milan to Morgantown and is released on parole on January 5, 1982. Jones **is not** a **Johnson** inmate.

(2) Doe II begins serving a YCA sentence on June 11, 1977 at Petersburg. On September 15, 1977, he is transferred to **Milan** and is still confined there beyond November 13, 1978. Smith **is** a **Johnson** inmate beginning on June 11, 1977.

(3) Doe III begins serving a YCA sentence on November 1, 1978 at Englewood. On March 15, 1979, he is transferred to **Milan**. On March 29, 1979, Doe is transferred to Morgantown. On May 30, 1980, Doe is transferred to Allenwood. Doe **is** a **Johnson** inmate beginning on November 1, 1978 and remains in that status throughout the transfers.

(4) Doe IV begins serving a YCA sentence on June 3, 1982 at Morgantown, is transferred to **Milan** on December 21, 1982 and is transferred to Englewood on October 17, 1983. Doe IV **is** a **Johnson inmate** from December 21, 1982 to October 17, 1983.

(5) Doe V begins serving a YCA sentence on October 15, 1981 at Texarkana and is transferred to Petersburg on December 20, 1982 and is transferred to **Milan** on November 11, 1983. Doe V **is** a **Johnson inmate** from October 15, 1981 to December 20, 1982 and beginning again on November 11, 1983.

(6) Doe VI begins serving a YCA sentence on May 2, 1982 at Morgantown and is paroled on April 3, 1985. Doe VI is arrested as an alleged parole violator on January 13, 1986, and is committed to **Milan** where parole is revoked. Doe VI does not become a **Johnson inmate** until commitment to **Milan** on January 13, 1986 since all prior sentence time was spent in a **pure** YCA institution.

(7) Doe VII begins serving a YCA sentence on January 19, 1982 at Englewood, is transferred to Seagoville on March 12, 1983, is transferred on November 12, 1983 to Morgantown and is transferred to **Milan** on February 25, 1984 and is paroled on April 4, 1984. Doe VII is a **Johnson inmate** from January 19, 1982 to May 1, 1982 (the date on which Englewood became a **pure** YCA institution), from March 12, 1983 to November 12, 1983 and from February 25, 1984.

(8) Using the same example for Doe VII above in subparagraph (7), Doe VIII is arrested as an alleged parole violator on June 4, 1984 and is committed to Petersburg and on January 15, 1986, Doe VIII is transferred to Texarkana. Doe VIII **is** a **Johnson inmate** from November 8, 1985 (the day after Petersburg became a **non-pure** YCA institution).

e. Calculation of the mandatory parole date and EFT for a § 5010(b) Johnson sentence. The following procedures apply when calculating the 5010(b) mandatory parole date and the EFT.

(1) Mandatory parole date. The SGT rate shall always be at the seven day rate, regardless of the amount of **Johnson** time involved, because of the four year minimum term. The amount of SGT to award will be based on the amount of **Johnson** time accumulated. The easiest situation, of course, would involve an inmate who was in a continuous **Johnson** status from the beginning date of the sentence (see subparagraphs d.(2) and (3) above, for example). In such a case, the SGT rate would be seven days per

month based on the 5010(b) minimum term of four years and the total SGT would equal three hundred and thirty-six days (4 years x 12 months = 48 months x 7 SGT per month = 336 days of SGT).

If the **Johnson** time does not cover the entire confinement period, then the **Johnson** time is multiplied by the SGT rate based on the minimum term.

Whenever SGT is awarded for the entire minimum term of four years, presentence time need **not** be considered. The SGT, however, would be subtracted from the mandatory parole date that resulted after the application of presentence time.

Presentence time **does** have to be considered if the **Johnson** time does not cover the **entire** confinement period prior to release on mandatory parole. Again, the SGT would be subtracted from the mandatory parole date that resulted after the application of presentence time.

MGT is not earned on the **Johnson** time period. Other EGT (usually IGT or CGT) that was earned during the **Johnson** time period shall be deducted from the mandatory parole date. If the Parole Commission grants parole prior to the final mandatory parole date, then any SGT or EGT will have no effect the same as for adult parolees.

(2) EFT. The EFT is calculated by using the same **Johnson** time that is used to calculate the final mandatory parole date. The SGT rate, however, shall be at a one day per month rate to make up the difference between the seven day rate authorized for a sentence of four years (minimum term for a 5010(b) sentence) and the eight day rate authorized for a sentence of six years (maximum term for a 5010(b) sentence). The **Johnson** time is then multiplied by the one day per month rate and the resulting number of SGT days shall be subtracted from the EFT, reduced by any presentence time, to arrive at a final EFT. As in the case of the mandatory parole date, the easiest situation would involve an inmate who was in a continuous **Johnson** status from the beginning date of sentence which would result in a total of 48 days SGT (4 years x 12 months = 48 months x 1 SGT per month = 48 days SGT) to be awarded off the EFT.

No EGT of any type is deducted from the EFT.

Following are some examples that demonstrate **5010(b) Johnson** time calculations and subsequent SGT calculations.

Example No. XI - 1:

Arrested on 06-11-77; remained in continuous custody and sentenced as a 5010(b) on 06-25-77 and committed to Morgantown on 07-08-77. Transferred to **Milan** on September 15, 1977 and confined there beyond 11-13-78. Smith **is** a **Johnson** inmate beginning on June 11, 1977.

Step No. 1. Since **Johnson** time applies throughout this sentence, calculate the SGT based on the 5010(b) 4 year minimum term.

4 Years x 12 Months = 48 Months

48 Months x 7 Days SGT Per Month = 336 Days

Step No. 2. Calculate the final mandatory parole date.

DCB	= 77-06-25		
5010(b) Minimum Term	= +04-00-00	4 Years	
Orig. Mandatory Parole Date	**= 81-06-24***	**=**	**15516**
Presentence Time		= - 14	14 Days
Tent. Mandatory Parole Date	**= 81-06-10**	**=**	**15502**
SGT		= - 336	336 Days
Final Mandatory Parole Date	**= 80-07-09**	**=**	**15166**

Step No. 3. Calculate the SGT to be awarded off the EFT.

SGT Rate Difference Between 4 and 6 Yrs = 1 Day

48 Months x 1 Day SGT Per Month = 48 Total SGT

Step No. 4. Calculate the final EFT.

DCB	= 77-06-25		
5010(b) Maximum Term	= +06-00-00	6 Years	
Original EFT	**= 83-06-24***	**=**	**16246**
Presentence Time		= - 14	14 Days
Tentative EFT	**= 83-06-10**	**=**	**16232**

Example No. XI - 2:

Arrested on 06-03-82; remained in continuous custody and sentenced on 06-23-82 and committed to Morgantown; transferred to Milan on December 21, 1982; and transferred to Englewood on October 25, 1983. **Johnson** time applies from 06-03-82 to 06-23-82 and from 12-21-82 to 10-25-83.

Step No. 1. Calculate the **Johnson** time and the SGT to be awarded off the mandatory parole date.

DCB at MRG	= 82-06-23
Arrested	= -82-06-03
Johnson Time	**= 00-00-20 20 Days**

Arrive ENG	= 83-10-25
Arrive MIL	= -82-12-20*
Johnson Time	**= 00-10-05 10 Months 5 Days**
Plus Prior Johnson Time	= +00-00-20 20 Days
Total Johnson Time	**= 00-10-25 10 Months 25 Days**

10 Mos 25 Dys x 7 Days SGT Per Month = 75 Total SGT

Step No. 2. Calculate the final mandatory parole date.

DCB	= 82-06-23		
5010(b) Minimum Term	= +04-00-00	4 Years	
Orig. Mandatory Parole Date	**= 86-06-22***	**=**	**17340**
Presentence Time		= - 20	20 Days
Tent. Mandatory Parole Date	**= 86-06-02**	**=**	**17320**
SGT		= - 75	75 Days
Final Mandatory Parole Date	**= 86-03-19**	**=**	**17245**

Step No. 3. Calculate the SGT to be awarded off the EFT.

SGT Rate Difference Between 4 and 6 Yrs = 1 Day

10 Mos 25 Dys x 1 Day SGT Per Month = 10 Total SGT

Step No. 4. Calculate the final EFT.

DCB	= 82-06-23		
5010(b) Maximum Term	= +06-00-00	6 Years	
Original EFT	**= 88-06-22***	**=**	**18071**
Presentence Time		= - 20	20 Days
Tentative EFT	**= 88-06-02**	**=**	**18051**
SGT		**= - 10**	**10 Days**
Final EFT	**= 88-05-23**	**=**	**18041**

f. Calculation of the mandatory parole date and EFT for a 5010(c) Johnson sentence. The following procedures apply when calculating the 5010(b) mandatory parole date and the EFT.

(1) Mandatory parole date. The SGT **rate** shall be based on the length of the minimum term imposed, e.g., eight days per month for a minimum term of five years **to** ten years and ten days per month for any minimum term that is ten or more years. For example, an inmate who had a 5010(c) minimum term of six years and who was in a continuous **Johnson** status throughout the sentence would earn eight days of SGT per month for a total of five hundred and seventy-six days (6 years x 12 months = 72 months x 8 SGT per month = 576 days of SGT).

If the **Johnson** time does not cover the entire confinement period, then the **Johnson** time is multiplied by the SGT rate based on the minimum term.

Whenever SGT is awarded for the entire minimum term, presentence time need **not** be considered. The SGT, however, would be subtracted from the mandatory parole date that resulted after the application of presentence time.

Presentence time **does** have to be considered if the **Johnson** time does not cover the **entire** confinement period prior to release on mandatory parole. Again, the SGT would be subtracted from the mandatory parole date that resulted after the application of presentence time.

MGT is not earned on the **Johnson** time period. Other EGT (usually IGT or CGT) that was earned during the **Johnson** time period shall be deducted from the mandatory parole date. If the Parole Commission grants parole prior to the final mandatory parole date, then any SGT or EGT will have no effect the same as for adult parolees.

(2) EFT. The EFT is calculated by using the same **Johnson** time that is used to calculate the final mandatory parole date. After the SGT rate has been determined, the amount of SGT to be awarded off the EFT is accomplished in the same manner as for a 5010(b) sentence, i.e., the SGT rate times the **Johnson** time equals the total SGT to award. Unlike a 5010(b) sentence, however, the SGT rate difference is not always one day. The rate difference can be no days, one day, or two days, depending on the length of the minimum and maximum terms that were imposed. Some examples follow:

Minimum term = 5 Years (**8** days Per Month)
Maximum term = 7 Years (**8** days Per Month)
Rate Difference = 0 Days Per Month

Minimum term = 18 Years (**10** days Per Month)
Maximum term = 20 Years (**10** days Per Month)
Rate Difference = 0 Days Per Month

Minimum term = 4½ Years (**7** days Per Month)
Maximum term = 6½ Years (**8** days Per Month)
Rate Difference = 1 Day Per Month

Minimum term = 9 Years (**8** days Per Month)
Maximum term = 11 Years (**10** days Per Month)
Rate Difference = 2 Days Per Month

Like a 5010(b) sentence, after the SGT that is to be awarded is known, then those SGT days shall be subtracted from the 5010(c) sentence EFT, reduced by any presentence time, to arrive at a final EFT. If there is no SGT rate difference between the minimum and maximum terms, then the EFT, of course, will remain as is.

No EGT of any type is deducted from the EFT.

Following are some examples that demonstrate **5010(c) Johnson** time calculations and subsequent SGT calculations.

Example No. XI - 3:

Arrested on 06-11-77; remained in continuous custody and sentenced to a 4½ to 6½ year 5010(c) sentence on 06-25-77 and committed to Morgantown on 07-08-77. Transferred to **Milan** on September 15, 1977 and confined there beyond 11-13-78. **Johnson** status begins on 06-11-77.

Step No. 1. Since the minimum term is 4½ years the SGT rate will be 7 days per month and since the **Johnson** time applies throughout this sentence, calculate the SGT to be awarded based on the entire minimum term.

4 Years x 12 Months = 48 Months

48 Months + 6 Months = 54 Months

54 Months x 7 Days SGT Per Month = 378 Days

Step No. 2. Calculate the final mandatory parole date.

DCB	= 77-06-25		
5010(b) Minimum Term	= +04-06-00	4½ Years	
Orig. Mandatory Parole Date	**= 81-12-24***	**=**	**15699**
Presentence Time		= - 14	14 Days
Tent. Mandatory Parole Date	**= 81-12-10**	**=**	**15685**
SGT		= - 378	378 Days
Final Mandatory Parole Date	**= 80-11-27**	**=**	**15307**

Step No. 3. Calculate the SGT to be awarded off the EFT.

SGT Rate Diff. Between 4½ and 6½ Yrs = 1 Day

54 Months x 1 Day SGT Per Month = 54 Days

Step No. 4. Calculate the final EFT.

DCB	= 77-06-25		
5010(c) Maximum Term	= +06-06-00	6½ Years	
Original EFT	**= 83-12-24***	**=**	**16429**
Presentence Time		= - 14	14 Days
Tentative EFT	**= 83-12-10**	**=**	**16415**

Example No. XI - 4:

Arrested on 06-03-82; remained in continuous custody and sentenced to an 8 to 10 year 5010(c) sentence on 06-23-82 and committed to Morgantown; transferred to Milan on 12-21-82; and transferred to Englewood on 10-25-87. **Johnson** time applies from 06-03-82 to 06-23-82 and from 12-21-82 to 10-25-87.

Step No. 1. Calculate the **Johnson** time and the SGT to be awarded off the mandatory parole date.

DCB at MRG	= 82-06-23	
Arrested	= -82-06-03	
Johnson Time	**=**	**00-00-20 20 Days**

Arrive ENG	= 87-10-25		
Arrive MIL	= -82-12-20*		
Johnson Time	**= 04-10-05**		**4 Yrs 10 Mos 5 Dys**
Plus Prior Johnson Time	= +00-00-20		20 Days
Total Johnson Time	**= 04-10-25**		**4 Yrs 10 Mos 25 Dys**

4 Yrs 10 Mos 25 Dys x 8 Days SGT Per Mo = 470 Total SGT

Step No. 2. Calculate the final mandatory parole date.

DCB	= 82-06-23		
5010(c) Minimum Term	= +08-00-00		8 Years
Orig. Mandatory Parole Date	**= 90-06-22***	**=**	**18801**
Presentence Time		= - 20	20 Days
Tent. Mandatory Parole Date	**= 90-06-02**	**=**	**18781**
SGT		= - 470	470 Days
Final Mandatory Parole Date	**= 89-02-17**	**=**	**18311**

Step No. 3. Calculate the SGT to be awarded off the EFT.

SGT Rate Difference Between 8 and 10 Yrs = 2 Days

4 Yrs 10 Mos 25 Dys x 2 Days SGT Per Mo = 120 Total SGT

Step No. 4. Calculate the final EFT.

DCB	= 82-06-23		
5010(c) Maximum Term	= +10-00-00		10 Years
Original EFT	**= 92-06-22***	**=**	**19532**
Presentence Time		= - 20	20 Days
Tentative EFT	**= 92-06-02**	**=**	**19512**
SGT		= - 120	120 Days
Final EFT	**= 92-02-03**	**=**	**19392**

g. Special provision for escapees. If **Johnson** credits were awarded to an inmate prior to an escape that occurs prior to the initial parole, then those credits shall be cancelled upon return to federal custody so that they will not be included in the recalculation of the sentence regardless of whether there is any inoperative time. The inmate would, of course, be entitled to **no** future **Johnson** credits after an escape if returned to a **pure** institution. If the inmate was returned to a **non-pure** institution, then **Johnson** credits would be awarded for that portion of time.

This same rule, as stated above, would apply if the inmate escapes after being returned as a parole violator.

h. Calculation of a Johnson sentence (5010(b) or (c)) after revocation of parole. Any inmate who was released on parole prior to the mandatory parole date, or who was released on parole on the mandatory parole date, and who was awarded **Johnson** credits, or who was entitled to **Johnson** credits but who did not receive the credits prior to parole, shall have all those **credits**

cancelled upon revocation of parole. As a result, the EFT as it existed prior to the award of **Johnson** credits, if any were awarded, shall be restored. If any **absconding time** is involved, then the **EFT shall be extended** by the absconding time as noted in the Parole Commission Notice of Action.

Any inmate who is entitled to **Johnson** SGT after revocation of parole shall receive the SGT rate based on the length of the maximum sentence imposed. For example, if the maximum sentence was ten years (10 days SGT per month) and the **Johnson** time equaled three months, then thirty days SGT (3 months x 10 days per month = 30 SGT) would be authorized and if the maximum sentence was nine years (8 days SGT per month) and the **Johnson** time equaled three months, then twenty-four days SGT (3 months x 8 days per month = 24 SGT) would be authorized.

An inmate may earn any type of EGT (including MGT) the same as an adult on the parole violator portion of the sentence that is served in a **non-pure** YCA institution.

(1) Calculation of the EFT if the entire PV term is served in a pure YCA institution. If the inmate is committed to a **pure** YCA institution and serves the remainder of the sentence in that institution, then the inmate is **not** considered to be a **Johnson** inmate and no further good time credits shall be awarded. If not earlier reparoled, then the inmate must serve to the EFT.

(2) Calculation of the EFT if the entire PV term is served in a non-pure YCA institution. If the inmate is committed to a **non-pure** YCA institution and serves the remainder of the sentence in that institution, then **Johnson** credits could be awarded for the entire balance of the sentence from the date that the warrant was executed. Calculate the **Johnson** time and award the SGT accordingly. If not earlier reparoled, then the inmate would be released on the EFT that resulted from application of the **Johnson** credits.

(3) Calculation of the EFT if part of the PV term is served in a non-pure YCA institution and part served in a pure YCA institution. An inmate who serves part of the parole violator term in a **non-pure** YCA institution may be awarded **Johnson** credits for the period of time that is served in that institution. Calculate the **Johnson** time and award the SGT accordingly. If not earlier reparoled, then the inmate would be released on the EFT that resulted from application of the **Johnson** credits.

i. Forfeiture/restoration of Johnson good time credits. Johnson SGT may be forfeited and restored the same as for an adult inmate. EGT is, of course, vested and may not be forfeited, withheld, disallowed or suspended.

j. Release on the adjusted mandatory parole date as a result of Johnson good time credits. Only the **Certificate of Court Ordered Release** need be completed if the inmate is released on the adjusted mandatory release date. Distribution of the certificate is: Original for the inmate; first copy for the judgment and commitment file; second copy for the Chief U.S. Probation Officer; and third copy for the Parole Commission which must be sent to: Office of General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. (A supply of the form may be obtained from the Parole Commission.)

k. Release on parole prior to the adjusted mandatory parole date. If the Parole Commission grants regular parole prior to the adjusted mandatory parole date, then a regular parole certificate shall be requested in accordance with established procedures. Staff shall make certain that the adjusted EFT is on the certificate.

l. Special Johnson parole supervision provision. There is a separate limitation on the parole supervision portion of a **Johnson** sentence. In no case shall the EFT for a **Johnson** sentence or parole supervision be reduced to a date that is less than **one** year from the date of release on parole, mandatory parole or reparole as a result of good time credits. In other words, a **Johnson** inmate is required to serve at least one year under parole supervision after release. In the event that the good time credits would reduce the EFT to a date that is less than one year of supervision, then staff shall set the EFT at one year added to the actual date of release.

18. Lewis YCA inmates. On June 28, 1989, the Third Circuit Court of Appeals, in the case of **Lewis v. Attorney General, No. 88-5515,** decided that a YCA inmate was entitled to receive **SGT** on the YCA term beginning on the date that an adult consecutive sentence (extended by the Bureau of Prisons to also cover a concurrent adult sentence) was imposed and running to the EFT of the YCA sentence. The YCA sentence shall be entitled to SGT/EGT credits regardless of the length of the adult sentence imposed.

A **Lewis** sentence or parole revocation term shall **not** be aggregated with the adult sentence that caused it to become a **Lewis** sentence or parole revocation term nor shall it be aggregated with another **Lewis** sentence or any other sentence, including another YCA sentence.

YCA DC Code Lewis offenders or parole violators shall be referred to the D.C. Department of Corrections for computation of the sentence or violator term. Likewise, the D.C. Code offender or parole violator who questions a **Lewis** computation shall be referred to the D.C. Department of Corrections for an explanation or correction of the computation.

The SGT rate is based on the amount of time to which the SGT applies and not on the maximum length of the YCA sentence or the adult sentence.

Unlike a **Johnson** case, the EFT of the YCA sentence in a **Lewis** case does not change when the SGT is applied. Regardless of how the **Lewis** inmate is released (i.e., on regular parole, mandatory parole or parole as a result of the SGT), the inmate remains under the jurisdiction of the Parole Commission until the EFT, as originally calculated for the YCA sentence, is reached (the one hundred and eighty day provision of **18 USC § 4164** does not apply), unless the Parole Commission unconditionally discharges him on an earlier date (**18 USC § 5017(b) and 28 CFR § 2.43(a)(2)**).

EGT shall be applied to a **Lewis** sentence the same as for an adult sentence.

If a **Lewis** inmate **is** paroled by action of the Parole Commission, or on the mandatory parole date, **prior** to reaching the date established by the application of SGT/EGT, then, like an adult sentence, the SGT/EGT has no effect on this initial portion of the sentence or on a subsequent parole violation term (see **28 CFR § 2.35(b)**).

If a **Lewis** inmate **is not** paroled prior to reaching the date established by the application of SGT/EGT, then he shall be released on that date on parole and will remain on parole supervision until the EFT as originally established.

a. Definition of a Lewis inmate. Regardless of institution location, any YCA inmate who has received a concurrent or consecutive adult sentence is a **Lewis** inmate and any YCA inmate who receives a future concurrent or consecutive adult sentence becomes a **Lewis** inmate.

b. Calculation of Lewis time. Lewis time is determined by subtracting the date on which the adult sentence was imposed from the EFT of the YCA sentence. For example, if a YCA 5010(c) sentence of twelve to fourteen years was imposed on May 25, 1983 and the adult sentence was imposed on June 15, 1983, and the EFT of the YCA sentence is May 24, 1997, then the **Lewis** time would equal thirteen years, eleven months and ten days (05-24-97 minus 06-15-83 = 13 years, 11 months and 10 days). (See Example No. XI-5 below.)

c. Calculation of Lewis SGT rate and the amount of SGT to award. As noted in paragraph 17. above, the SGT rate is determined based on the amount of **Lewis** time that has been determined. In subparagraph b. above, the **Lewis** time example equals a period of time that is ten years and more and, therefore, the SGT rate, relying on **18 USC § 4161** (see Chapter IV, paragraph 1.), is ten days per month.

After the SGT rate has been established, then the amount of SGT to award is based on the same formula as discussed and demonstrated in Chapter IV and Example Nos. IV - 1 and IV - 2. Another example follows.

Example No. XI - 5:

Sentenced as a 5010(c) to 12 to 14 years on 05-25-83 (EFT is 05-24-97); sentenced as an adult on 06-15-83.

Step No. 1. Determine the **Lewis** time.

5010(c) EFT	= 97-05-24
Adult DCB	= -83-06-14*
Lewis Time	**= 13-11-10 13 Yrs 11 Mos 10 Dys**

Step No. 2. Determine the SGT rate and the total SGT to award on the 5010(c) **Lewis** sentence.

13 Yrs 11 Mos 10 Dys = 167 Mos 10 Dys

167 Mos 10 Dys x 10 Dys SGT Per Mo = 1673 Total SGT

d. Calculation of a Lewis parole revocation term. The days remaining to be served on a **Lewis** parole revocation term shall be based on the "Notice of Action" issued by the Parole Commission. The revocation term shall receive SGT the same as an adult parole violator and may receive EGT. (The SGT rate shall be the same rate prior to parole.) The one hundred and eighty day provision of **18 USC § 4164** does not apply.

XII JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974

The **Juvenile Justice and Delinquency Prevention Act of 1974** (JJDPA) (**P.L. 93-415, 18 USC §§ 5031-5042**) was enacted on September 7, 1974 and only those sections, or part of a section, that affects sentence computation will be discussed. It is necessary, however, that all sections of the act be studied to gain a knowledge of the other related provisions.

1. Definitions under 18 USC § 5031. The following terms are used throughout the various statutory provisions of the JJDPA and knowing the meaning of the terms is necessary to understand a sentence that may be imposed under those provisions.

> **"For the purposes of this chapter, a 'juvenile' is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and 'juvenile delinquency' is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult."**

This section (**§ 5031**), stated in another way, means that if a person commits a criminal act prior to age eighteen, that person may be proceeded against as a **juvenile** up to, but not including, the twenty-first birthday.

2. Dispositional hearing under 18 USC § 5037(b). If the court finds that a juvenile is delinquent, a number of commitment options become available under the provisions of **§ 5037(b)** which states,

> **"(b) The court may suspend the adjudication of delinquency or the disposition of the delinquent on such conditions as it deems proper, place him on probation, or commit him to the custody of the Attorney General. Probation, commitment or commitment in accordance with subsection (c) shall not extend beyond the juvenile's twenty-first birthday or the maximum term which could have been imposed on an adult convicted of the same offense, whichever is sooner, unless the juvenile has attained his nineteenth birthday at the time of disposition, in which case probation, commitment, or commitment in accordance with subsection (c) shall not exceed the lesser of two years or the maximum term which could have been imposed on an adult convicted of the same offense."**

Based on the above language in **§ 5037(b)**, the court, depending on the age of the juvenile at the time of **disposition**, has the following options:

a. Under age nineteen at the time of the dispositional hearing. At the time of the dispositional hearing (sentencing), the court may consider the following options. (**In any case, the penalty imposed may not exceed the maximum term which could be imposed for an adult.**)

(1) Place on probation under the provisions **18 USC § 3651 to** age twenty-one.

(a) The court may suspend the imposition of sentence and place the juvenile on probation.

(b) The court may impose a sentence, suspend the execution of the sentence and place the juvenile on probation.

(c) The court may impose a sentence **in excess** of six months and provide that the defendant be confined in a jail-type institution or a treatment institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and the person placed on probation. This type of sentence is known as a one count "split sentence" (see Chapter VIII for computation of a "split sentence" and the revocation of a "split sentence").

(2) Commit for a period of time **not to exceed** the twenty-first birthday.

b. Age nineteen or over at the time of the dispositional hearing. At the time of the dispositional hearing (sentencing), the court may consider the following options. (**In any case, the penalty imposed shall not exceed the lesser of two years or the maximum term which could have been imposed for an adult.**)

(1) Place on probation not to exceed the lesser of two years or the maximum term which could have been imposed for an adult. The probation period **may** extend beyond the twenty-first birthday.

(a) The court may suspend the imposition of sentence and place the juvenile on probation.

(b) The court may impose a sentence, suspend the execution of the sentence and place the juvenile on probation.

(c) The court may impose a sentence **in excess** of six months (but not more than two years) and provide that the defendant be confined in a jail-type institution or a treatment institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and the

person placed on probation not to exceed two years. This type of sentence is known as a one count "split sentence" (see Chapter XI for computation of a "split sentence" and the revocation of a "split sentence").

(2) Commit for a definite period of time not to exceed the lesser of two years or the maximum term which could have been imposed for an adult.

c. Probation revocation under 18 USC § 3653. Under the provisions of **§ 3653**, after arrest within the probation period,

> **". . . the court may revoke the probation and require him to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed."**

(1) If the juvenile was under age nineteen at the time of sentencing, then any sentence imposed as a result of the probation revocation **may not** exceed the juvenile's twenty-first birthday or, in the case of a sentence that was imposed with some or all of the execution of the sentence suspended, the length of the sentence originally imposed.

(2) If the juvenile was age nineteen or over at the time of sentencing, then the probation sentence may not exceed the length of the sentence that was originally imposed or two years, whichever is the lesser.

3. Beginning date or DCB of a JJDPA sentence. The date of the dispositional hearing (date of sentencing) is the date on which the JJDPA sentence shall commence to run provided the juvenile was in federal custody based on the charge leading to the JJDPA sentence.

If a stay of execution (release pending appeal or for personal/business matters) is granted on the date that the sentence is imposed, then the date on which the stay of execution terminates, provided the juvenile is returned to custody on that date, will be the DCB (date on which the sentence begins to run).

4. Inoperative time on a JJDPA sentence. Inoperative time shall be applied to a JJDPA sentence the same as for an adult, in accordance with Chapter V. This rule also applies to a juvenile who was under age **nineteen** at the time of sentencing and who was ordered confined to (sentenced to) the juvenile's twenty-first birthday. Once a juvenile places himself in an inoperative time status, he has essentially nullified the twenty-first birthday ceiling.

5. Presentence time on a JJDPA Sentence. Presentence time shall be applied to a JJDPA sentence the same as for an adult, in accordance with Chapter VI, except that the presentence time credit shall not be deducted from the EFT when the court has ordered the juvenile committed to the twenty-first birthday. Presentence time for a juvenile who was ordered committed to the twenty-first birthday shall be deducted from the SRD only.

Time spent in custody undergoing an **18 USC § 5037(c)** observation and study period shall be treated as presentence time credit, unlike an adult **18 USC § 4205(c)** study which is treated as time served on the subsequent sentence.

6. Non-application of 18 USC § 4164 to a JJDPA sentence. § 4164 (one hundred and eighty day date) does not apply to a sentence imposed under the provisions of the **JJDPA.** This means that any juvenile who is released by operation of good time must serve to the EFT under the supervision of the Parole Commission, even if one hundred and eighty days or less remains on the sentence at the time of release.

7. Effect of statutory good time and extra good time on a JJDPA sentence. SGT and EGT shall be awarded to a JJDPA sentence the same as for an adult sentence. The same instructions pertaining to weekend/holiday release as contained in Chapter VII, paragraph 3.c., apply to a JJDPA sentence.

8. Calculation of a JJDPA sentence to a specific term. Calculation of the EFT and SRD for a JJDPA sentence wherein the court sets a definite term, e.g., six months; two years; eighteen months; fours years, etc., is performed in the same manner as if an adult sentence (see Chapter VII, subparagraphs 3.a. and b.).

9. Special calculation procedures for a juvenile who was ordered committed to the twenty-first birthday. Ordinarily, a court will not state the length of sentence for a juvenile that the court has ordered to be committed to the twenty-first birthday. As a result, staff must determine the actual length of sentence so that the proper amount of SGT can be calculated and awarded (see Chapter IV, paragraph 4.). Determining the length of sentence is accomplished by subtracting the DCB from EFT (date of twenty-first birthday minus one day). (**Do not use any presentence time in this calculation**. Presentence time is, of course, deducted from the SRD.) Example follows:

Example No. XII - 1:

Arrested on 06-15-81; remained in continuous custody and sentenced to 21st birthday on 07-12-81. Date of birth was 08-18-64.

Add 21 to the date of birth and back up 1 day to learn the EFT. Subtract the DCB from the EFT to learn the length of the sentence to be served for SGT purposes.

Date of Birth	= 64-08-18	
Sentenced to Age 21	= +21-00-00	21 Years
EFT (Date Before Age 21)	**= 85-08-17***	
DCB	= -81-07-11*	
Length of Sentence	**= 04-01-06**	**4 Yrs 1 Mo 6 Dys**

SGT Rate for 4 Yrs 1 Mo 6 Dys = 7 Days Per Month

49 Mos 6 Dys x 7 Days SGT Per Month = 344 Days SGT

EFT	= 85-08-17	=	17031
SGT		= -	344 Days
SRD	**= 84-09-07**	**=**	**16687**

10. Parole of a juvenile delinquent under 18 USC § 5041. A juvenile may be paroled under the provisions of **18 USC § 5041** which reads as follows:

> **"A juvenile delinquent who has been committed may be released on parole at any time under such conditions and regulations as the United States Parole Commission deems proper in accordance with the provisions in section 4206 of this title."**

Under the provisions of **28 CFR § 2.11**, a juvenile delinquent shall be,

> **". . . considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings."**

As you will note from the information above, a juvenile is immediately eligible for parole and will be considered for parole by the Parole Commission without making application.

11. Two-thirds/thirty year date under 18 USC § 4206(d). The provisions of **§ 4206(d)** pertain to a juvenile sentence the same as for an adult sentence. See Chapter VII, paragraph 4.e. for complete instructions for implementation of this section.

12. Observation and study of a juvenile under 18 USC § 5037(c). Under **§ 5037(c)**, the court may commit a juvenile for observation and study as follows:

> **"(c) If the court desires more detailed information concerning an alleged or adjudicated delinquent, it may**

commit him, after notice and hearing at which the juvenile is represented by counsel, to the custody of the Attorney General for observation and study by an appropriate agency. Such observation and study shall be conducted on an outpatient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information. In the case of an alleged juvenile delinquent, inpatient study may be ordered only with the consent of the juvenile and his attorney. The agency shall make a complete study of the alleged or adjudicated delinquent to ascertain his personal traits, his capabilities, his background, any previous delinquency or criminal experience, any mental or physical defect, and any other relevant factors. The Attorney General shall submit to the court and the attorneys for the juvenile and the Government the results of the study within thirty days after commitment of the juvenile, unless the court grants additional time."

The program statement, **Study and Observation Report**, provides staff with the instructions for producing the study report as requested by the court. The time period authorized for a **§ 5037(c)** study is **thirty days** and the procedures for requesting an extension of time to complete the study is also covered by the program statement just cited. It is a unit management function to produce the study report and to request an extension of time, if necessary. The program statement also specifies that the appropriate Regional Office shall notify the United States Marshal when the prisoner is ready for return to court.

a. Treatment of the custody time undergoing observation and study. Unlike an adult study under **§ 4205(c)**, the commitment of a juvenile for a **§ 5037(c)** study **is not** deemed to be for the maximum term of imprisonment prescribed by law. Therefore, all time spent undergoing the study up to the date of the dispositional hearing (DCB) is **treated as presentence time credit.** The final sentence to be served will be imposed at the dispositional hearing.

b. Computation of the study time: The only computation involved for a **§ 5037(c)** study is to determine when the thirty days expires so that the unit management staff will know the time frame in which the study must be completed and whether to request additional time (see paragraph 12. above).

(1) The amount of presentence time accumulated prior to the date that the study was ordered does not serve to reduce the thirty days authorized for the study. The amount of presentence time available, however, must be determined at this time and entered into the Sentry **Sentence Monitoring** data base for future use if, after the study is complete, the juvenile is returned to serve a sentence.

(2) Effect of an escape (and possible inoperative time) on the study period. If the juvenile escapes during the study period the court must be notified as required by the program statement on **Escapes/Deaths Notification**. When the juvenile is returned to federal custody, staff shall contact the court to ascertain if the balance of the study is to be completed or cancelled or otherwise modified. (See the **Inmate Systems Management Manual**, chapter 6, section 604, paragraph 3.C.(3), for information pertaining to correspondence with the courts. If time is a critical factor, then the RISA should be contacted for assistance.) The time in escape status shall **not** be considered as **inoperative time** since it will have occurred prior to the DCB (dispositional hearing).

c. Effect of the study period while under a writ of habeas corpus ad prosequendum from state custody. No credit will be given for the study period time or the time after the dispositional hearing if the entire process took place while under the jurisdiction of a federal writ of habeas corpus ad prosequendum from state custody. In other words the federal sentence will not commence until the prisoner is released from state custody and turned over to federal authorities for service of the federal sentence. If the court, however, recommends that the federal sentence be served concurrently with the state sentence, then that state **may** be designated (See the program statement on **Designation of State Institution for Service of Federal Sentence**) as the place to serve the federal sentence provided that the state place of confinement has been determined to be a suitable place of confinement for the juvenile. A retroactive (nunc pro tunc) designation can be made back to a date no earlier than the date of the dispositional hearing.

XIII EXTRA GOOD TIME

1. **[PURPOSE AND SCOPE § 523.10.]**

[(a) The Bureau of Prisons awards extra good time credit for performing exceptionally meritorious service, or for performing duties of outstanding importance or for employment in an industry or camp. An inmate may earn only one type of extra good time award at a time (e.g., an inmate earning industrial or camp good time is not eligible for meritorious good time), except that a lump sum award as provided in § 523.16 may be given in addition to another extra good time award. The Warden or the Discipline Hearing Officer may not forfeit or withhold extra good time. The Warden may disallow or terminate the awarding of any type of extra good time (except lump sum awards), but only in a nondisciplinary context and only upon recommendation of staff. The Discipline Hearing Officer may disallow or terminate the awarding of any type of extra good time (except lump sum awards), as a disciplinary sanction. Once an awarding of meritorious good time has been terminated, the Warden must approve a new staff recommendation in order for the award to recommence. A "disallowance" means that an inmate does not receive an extra good time award for only one calendar month. Unless other action is taken, the award resumes the following calendar month. A "disallowance" must be for the entire amount of extra good time for that calendar month. There may be no partial disallowance. A decision to disallow or terminate extra good time may not be suspended pending future consideration. A retroactive award of meritorious good time may not include a month in which extra good time has been disallowed or terminated.]

b. The Attorney General is authorized to deduct extra good time (EGT) credits from an inmate's sentence under the provisions of 18 U.S.C. § 4162 for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations (MGT) or for actual employment in an industry (IGT) or camp (CGT):

(1) The Attorney General has delegated his authority to the Director of the Bureau of Prisons under the provision of 28 Code of Federal Regulations 0.96(h).

(2) The Director of the Bureau of Prisons delegates his/her authority to the Regional Directors, Wardens or Chief Executive Officers (CEO), Regional Inmate Systems Administrators, and Community Corrections Managers under the provisions of 28 Code of Federal Regulations 0.97.

(3) Wardens and CEOs are authorized to delegate their authority to institution teams or committees, consistent with existing delegations.

(4) The rules in this chapter apply to sentences imposed for offenses that were committed prior to November 1, 1987, regardless of when the sentence was, or is, imposed.

[(c) The provisions of this rule do not apply to inmates sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. This means that inmates sentenced under the Sentencing Reform Act provisions for offenses committed on or after November 1, 1987 are not eligible for either statutory or extra good time, but may be considered for a maximum of 54 days of good conduct time credit per year [see 18 U.S.C. § 3624(b)].

2. **[DEFINITIONS § 523.1.]**

[(a) "Statutory Good Time" means a credit to a sentence as authorized by 18 U.S.C. § 4161. The total amount of statutory good time which an inmate is entitled to have deducted on any given sentence, or aggregate of sentences, is calculated and credited in advance, when the sentence is computed.]

[(b) "Extra Good Time" means a credit to a sentence as authorized by 18 U.S.C. § 4162 for performing exceptionally meritorious service or for performing duties of outstanding importance in an institution or for employment in a Federal Prison Industry or Camp. "Extra Good Time" thus includes Meritorious Good Time, Work/Study Release Good Time, Community Corrections Center Good Time, Industrial Good Time, Camp or Farm Good Time, and Lump Sum Awards. Extra good time and seniority are inseparable with the exception of lump sum awards for which no seniority is earned.]

[(c) "Seniority" refers to the time accrued in an extra good time earning status. Twelve months of "seniority" automatically causes the earning rate to increase from three days per month to five days per month and seniority is then vested.]

[(d) "Earning Status" refers to the status of an inmate who is in an assignment or employment which accrues extra good time.]

3. **[GOOD TIME CREDIT FOR VIOLATORS § 523.2.]**

[(a) An inmate conditionally released from imprisonment either by parole or mandatory release can earn statutory good time, upon being returned to custody for violation of supervised release, based on the number of days remaining to be served on the sentence. The rate of statutory good time for the violator term is computed at the rate of the total sentence from which released.]

[(b) An inmate whose special parole term is revoked can earn statutory good time based on the number of days remaining to be served on the special parole violator term. The rate of statutory good time for the violator term is computed at the rate of the initial special parole term plus the total sentence that was served prior to the special parole term and to which the special parole term was attached.]

[(c) Once an inmate is conditionally released from imprisonment, either by parole, including special parole, or mandatory release, the good time earned (extra or statutory) during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the inmate may be required to serve for violation of parole or mandatory release.]

4. **[MERITORIOUS GOOD TIME §523.11**

(a) Staff are responsible for recommending meritorious good time based upon work performance. Each recommendation must include a justification which clearly shows that the work being performed is of an exceptionally meritorious nature or is of outstanding importance in connection with institutional operations. Work performance and the importance of the work performed are the only criteria for awarding meritorious good time.]

* The inmate's work supervisor is responsible for recommending that an inmate receive MGT based on work performance. The recommendation must include a justification which clearly shows the inmate's work performance meets all necessary criteria to receive MGT. The recommendation shall be approved by the Warden, or designee before MGT is awarded. *

Participation in institutional educational or vocational programs, or both, or maintaining good housekeeping, is not in itself a justification for an award of MGT. However, when an inmate's participation in a vocational work program is of an exceptionally meritorious nature or is of outstanding importance in connection with institution operations, staff may recommend the inmate for MGT. The quality of the work performed must meet all of the standards set forth for the awarding of EGT. Participation in vocational programs consisting only of classroom activity does not qualify an inmate for MGT.

[(b) A retroactive award of meritorious good time is ordinarily limited to three months, excluding the month in which the recommendation is made. A retroactive award in excess of three months requires the approval of the Warden or designee (may not be delegated below the level of Associate Warden). Staff are to include with any recommendation for an inmate to receive a retroactive award of meritorious good time, a written statement confirming the inmate's eligibility for the retroactive award.]

An inmate who was approved for MGT while in pretrial status and who is subsequently sentenced on the same crime for which he or she was being detained will be granted EGT on the approved beginning date. The inmate's eligibility for MGT begins once the inmate is placed in the work assignment. A retroactive award in excess of three months will ordinarily be considered to remedy an administrative error or oversight. A retroactive award or presentence award may not be in an amount which would cause the inmate to be past due for release.

[(c) Meritorious good time continues uninterrupted regardless of work assignment changes unless the Warden or the Discipline Hearing Officer takes specific action to terminate or disallow the award.]

When action is taken to terminate EGT, it will be terminated as of the date of the incident. When EGT is to be disallowed, it will be disallowed for the month in which the incident occurred.

5. **[WORK/STUDY RELEASE GOOD TIME §523.12. Extra good time for an inmate in work or study release programs is awarded automatically, beginning on the date the inmate is assigned to the program and continuing without further approval as long as the inmate is participating in the program, unless the award is disallowed.]**

6. **[COMMUNITY CORRECTIONS CENTER GOOD TIME §523.13. Extra good time for an inmate in a Federal or contract Community Corrections Center is awarded automatically, beginning on arrival at the facility and continuing as long as the inmate is confined at the Center, unless the award is disallowed].**

When an inmate is transferred to a contract Community Corrections Center (CCC) from a Federal facility, the community corrections center good time (CCCGT) shall become effective on the date of arrival at the CCC. In all cases, the transferring federal facility shall project the CCCGT to a final SRD. This will be done by using the SENTRY Extra Good Time Status/Update transaction or manually on the Good Time Record.

When an inmate is committed directly to a CCC, the appropriate Community Corrections Manager shall award CCCGT from the date of commitment to determine the correct SRD. This will be accomplished using the SENTRY Extra Good Time Status/Update transaction, or manually, using the **BP-380.**

7. **[INDUSTRIAL GOOD TIME §523.14. Extra good time for an inmate employed in Federal Prison Industries, Inc., is automatically awarded, beginning on the first day of such employment, and continuing as long as the inmate is employed by Federal Prison Industries, unless the award is disallowed. An inmate on a waiting list for employment in Federal Prison Industries is not awarded industrial good time until actually employed.]**

When an inmate leaves an industrial assignment, the IGT is terminated. Thereafter, a prisoner will not receive EGT until the new work supervisor recommends the award by issuance of an Extra Good Time Recommendation, **BP-390**, or the prisoner is reassigned to industries, a camp, or CCC.

* An inmate assigned to Federal Prison Industries (UNICOR), or detailed to duty approved by the Director as being essential to an industrial operation, is entitled to receive Industrial Good Time (IGT). Notification of an inmate's entry into or removal from an industrial assignment is provided to ISM by use of the Industrial/RAPS Action Report, **FPI-96**. This form is completed by Industries and indicates the industry to which the inmate is assigned or removed from and the date of the action.

If an Industrial/RAPS Action Report, **FPI-96** is prepared removing an inmate from an industrial assignment because of a non-disciplinary temporary release (e.g., writ, medical treatment, parole hearing, etc.), the inmate should not be removed from IGT earning status. Individual circumstances will determine if an inmate will receive IGT when temporarily removed from the industrial assignment. IGT will ordinarily continue when an inmate is temporarily removed for a non-disciplinary reason. Also, when an inmate is transferred, IGT will continue until arrival at the designated institution unless the Warden or DHO determines otherwise.

An Extra Good Time Recommendation will be completed to notify ISM of a monthly disallowance of IGT. The absence of this notification will be construed as evidence that the inmate's work performance has met the standards for the awarding of IGT. *

8. **[CAMP OR FARM GOOD TIME §523.15. An inmate assigned to a farm or camp is automatically awarded extra good time, beginning on the date of commitment to the camp or farm, and continuing as long as the inmate is assigned to the farm or camp, unless the award is disallowed.]**

* An inmate committed to a camp is automatically entitled to receive Camp Good Time (CGT), even though the inmate may be prevented from actual employment. The CGT may be disallowed the same as any other form of EGT in accordance with § 523.10(a). *

9. **[LUMP SUM AWARDS §523.16. Any staff member may recommend to the Warden the approval of an inmate for a lump sum award of extra good time. Such recommendations must be for an exceptional act or service that is not part of a regularly assigned duty. The Warden may make lump sum awards of extra good time not to exceed thirty days. If the recommendation is for an award in excess of thirty days and the Warden concurs, the Warden shall refer the recommendation to the Regional Director who may approve**

the award. No award may be approved which would exceed the maximum number of days allowed under 18 U.S.C. § 4162. The actual length of time served on the sentence, to the date that the exceptional act or service terminated, is the basis on which the maximum amount possible to award is calculated. No seniority is accrued for such awards. Staff may recommend lump sum awards of extra good time for the following reasons:

(a) An act of heroism;

(b) Voluntary acceptance and satisfactory performance of an unusually hazardous assignment;

(c) An act which protects the lives of staff or inmates or the property of the United States; this is to be an act and not merely the providing of information in custodial or security matters;

(d) A suggestion which results in substantial improvement of a program or operation, or which results in significant savings; or

(e) Any other exceptional or outstanding service.]

When determining the maximum amount possible to award, jail time and months in which EGT may have been disallowed shall be included. Any EGT previously earned is then deducted from the maximum amount possible to determine the total amount available for the lump sum award.

10. **[PROCEDURES §523.17**

[(a) Extra good time is awarded at a rate of three days per month during the first twelve months of seniority in an earning status and at the rate of five days per month thereafter. The first twelve months of seniority need not be based on a continuous period of twelve months. If the beginning or termination date of an extra good time award occurs after the first day of a month, a partial award of days is made.]

* If SENTRY is used to calculate EGT, a hard copy of the Good Time Data transaction will be signed and dated by the ISM staff accomplishing the transaction and a copy will be placed in the J&C file with a copy to the central file. Any hard copy previously filed will be discarded so that the file reflects the inmate's current status.

All documents pertaining to the award, disallowance, and termination of EGT must be controlled by staff and may not be left in an area accessible to inmates. All documents must be hand carried by staff or sent through the mail to the ISM Staff for processing.

Instructions for entering EGT transactions in SENTRY can be found in the **SENTRY Sentence Monitoring Manual**. Instructions for manually computing EGT when SENTRY is not available or appropriate, must be used. The manual calculation must be recorded on a manual Good Time Record, Form **BP-380** and maintained in the inmates's J&C File. All EGT actions will be updated as source documentation is received. The ISM Manager must establish adequate systems of control to ensure that all necessary documentation is received that affects the inmate's EGT earning status. It is usually necessary to project EGT on the manual Good Time Record all the way to the SRD.

The abbreviations for the various types of good time are:

IGT	-	Industrial Good Time
CGT	-	Camp/Farm Good Time
MGT	-	Meritorious Good Time
WDS	-	District of Columbia Good Time
WST	-	Work/Study Release Good Time
CCC	-	Community Corrections Center Good Time
LSA	-	Lump Sum Award
ADJ	-	Adjustment of Extra Good Time
GCT	-	Good Conduct Time
SGT	-	Statutory Good Time

When an inmate's EGT is terminated, a SENTRY Extra Good Time Update transaction must be performed. The date the EGT terminates must be entered so that the inmate's SRD will be adjusted accordingly.

If EGT is disallowed for a particular month, the disallowance will be indicated on the SENTRY Extra Good Time Update transaction by removing the inmate from earning status for that month. The Inmate Systems Manager will be responsible for establishing procedures to ensure the inmate's EGT resumes the following month. A SENTRY waiting list may be used for this purpose.

When an inmate is transferred to a CCC, CCCGT will automatically accrue. The transferring institution will be responsible for performing the Extra Good Time Update transaction so that the CCCGT will begin on the scheduled date of arrival at the CCC.

If the sentence was not calculated by SENTRY, the transferring institution is responsible for computing the CCCGT manually on the Good Time Record so that the final SRD is determined. The SRD must then be entered on SENTRY. CCCGT must be projected to determine a SRD for all inmates, including those who have been granted a parole date.

If approval is received for a lump sum award, SENTRY must be updated using the Extra Good Time Update transaction. The date of approval of the award must be keyed as well as the amount of the award.

A manual Extra Good Time Record (**BP-380**) shall be initiated for each inmate whose sentence cannot be automatically calculated on SENTRY. This Extra Good Time Record will be used to document all EGT and SGT actions. EGT will be calculated to the SRD and recorded on the manual Extra Good Time Record. Any Parole Eligibility Date affected by the application of EGT will be calculated, posted in SENTRY and documented on the manual Extra Good Time Record as well. Camp Good Time, Work-Study Release Good Time, and CCC Good Time may be projected to the final SRD as required for realistic programming or release planning. The Extra Good Time Record will then be filed on the right side of the J&C file. As an inmate's projected SRD is adjusted, that date will be keyed on SENTRY using the Calc/Update Computation transaction so that the inmate's name will appear on the appropriate release list. After the adjusted SRD has been keyed, the SENTRY Extra Good Time Record and the original Form **BP-380** will be placed in the J&C File.

The information in the heading of the Extra Good Time Record, e.g., name, register number, etc., will be typed when the form is initiated. This data will be obtained from the judgment and commitment order and sentence computation. The presumptive or effective parole date will be entered on the Extra Good Time Record and on SENTRY when the Notice of Action is received. Any time a Notice of Action appears to be inconsistent with policy or appears to be altered, the United States Parole Commission (USPC) should be contacted for verification. The person contacting the USPC will document the contact on the Notice of Action and it will be filed in the J&C file. EGT adjustments will be entered by indicating the type of EGT earned, the date in and/or out of the assignment, and the mnemonic code of the institution. Adjustments of SGT will be entered by indicating the type of action, e.g., forfeiture, restoration, etc., the mnemonic code of the institution, and the date the action occurred. All calculations are to be handwritten in pencil for ease in updating. *

SENTRY Extra Good Time Status/Update transaction (PSEG) is used to make SENTRY entries for all IGT, and EGT awards, disallowances, and terminations. The printed copy of the Good Time Data transaction shall serve as the Bureau of Prisons' official record of EGT credit. Whenever a good time action is taken, a hard copy will be placed in the inmate's J&C file.

Copies reflecting previous action need not be retained, so that there will be only one hard copy which shows the inmate's current

status. In addition, all entries of lump sum and EGT awards and terminations must be supported by placing the original of the Extra Good Time Recommendation in the J&C file.

All EGT disallowances must be supported by placing the original of the completed Extra Good Time Recommendation in the J&C file. All IGT awards and terminations entered in SENTRY must be supported by placing the Industrial Employment, or a copy of the PP37 inmate work history in the J&C file.

The projection of SRD's for those sentences that cannot be automatically calculated by SENTRY will be accomplished manually on the Good Time Record. The SRD will then be entered on SENTRY by using the CALC/UPDATE Computation Transaction.

[(b) An inmate may be awarded extra good time even though some or all of the inmate's statutory good time has been forfeited or withheld.]

[(c) Parole and mandatory release violators may earn extra good time the same as other inmates. Once an inmate is conditionally released from imprisonment, either by parole, including special parole, or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the inmate may be required to serve for violation of parole or mandatory release.]

Seniority gained on the original portion of the sentence does not carry over to the violator term. The beginning rate of EGT for a parole or mandatory release violator will be at the three day rate and the prisoner must gain twelve months of seniority while serving the violator term prior to advancing to the five day rate.

[(d) Staff working in the community have the same extra good time authority as the Warden when approving the award of good time for an inmate confined in a non-federal facility and may approve meritorious good time or lump sum awards in accordance with this rule upon recommendations made by a responsible person employed by the non-federal facility. The appropriate staff in the Regional Office may review all such awards if the Regional Director requires the review.]

The Community Corrections Manager shall consult with the appropriate Regional Inmate Systems Administrator for guidance should any problems arise as to the applicability of EGT or lump sum awards in non-federal facilities.

An inmate serving a concurrent federal sentence in a non-federal institution may earn EGT. State authorities will

make the recommendation to the appropriate Regional Inmate Systems Administrator for final approval. Any such award shall be consistent with the requirements for awarding EGT to inmates who are serving their sentence in a federal institution.

[(e) An inmate who is transferred remains in the earning status at time of transfer, unless the reason for transfer would otherwise have caused removal from an earning status, and provided the inmate's behavior is such while in transit that it does not justify removal. Where the receiving institution is a camp, farm, or community corrections center, the extra good time continues automatically upon the inmate's arrival. Where the receiving institution is other than a camp, farm, or community corrections center, the extra good time is terminated upon arrival, and staff at the receiving institution shall review each case to determine if the inmate should continue in meritorious good time earning status if not immediately employed in Federal Prison Industries or assigned to a work/study release program. If the inmate then is not continued in meritorious good time earning status, later awards must comply with procedures outlined in § 523.11.]

Section 523.11 refers to paragraph 4 in this Chapter.

* For EGT purposes, a prisoner the Bureau places in **home confinement** shall be treated the same as if received at a CCC.

The Unit Team, at the prisoner's first review after arrival at the receiving facility, shall note in the Team Comments section of the Program Review Report that the inmate's EGT status was reviewed and that a determination was made to continue, or not to continue, the inmate in an MGT earning status **from the date of arrival**. When the decision by the Unit Team is to continue the inmate in an MGT status, the Team approving the continuation must execute an Extra Good Time Recommendation and forward it for processing to Inmate Systems. *

[(f) An inmate serving a life sentence may earn extra good time even though there is no mandatory release date from which to deduct the credit since the possibility exists that the sentence may be reduced or commuted to a definite term.

(g) Extra good time is not automatically discontinued while an inmate is hospitalized, on furlough, out of the institution on a writ of habeas corpus, or removed under the Interstate Agreement on Detainers. Extra good time may be terminated or disallowed during such absences if the Warden or the Discipline Hearing Officer finds that the inmate's behavior warrants such action.]

Inmates who are transferred from one federal institution to another for medical attention (which includes psychological evaluation/treatment), and who are in an earning status, will

continue to earn EGT regardless of the type, e.g., MGT, IGT,
* or CGT. Inmates who are temporarily transferred to another facility for a hearing before a member of the Parole Commission continue to earn EGT. *

Staff designated by the Warden should review such cases on a periodic basis to assure that the EGT is properly awarded.

[(h) Extra good time earned by an inmate in a District of Columbia Department of Corrections facility is treated the same as if earned in a Bureau of Prisons institution, upon transfer to a Bureau institution.

(i) An inmate committed under the provisions of 18 U.S.C. § 3651 (split sentence) may earn extra good time credits provided the sentence imposed is not under the provisions of 18 U.S.C. § 5010(b) or (c) (YCA). All extra good time and seniority earned is carried over to any subsequent probation violator sentence based on the original split sentence.

(j) An inmate committed under the provisions of 18 U.S.C. § 4205(c) may earn extra good time credits towards the final sentence that may be imposed. Such extra good time credits do not reduce the three months allowed for study. An inmate committed under the provisions of 18 U.S.C. § 4244, as amended effective October 12, 1984, may earn extra good time credits toward the final sentence that may be imposed. Such extra good time credits do not reduce the provisional sentence. Extra good time may continue during a commitment for examination of hospitalization and treatment under 18 U.S.C. § 4245, as amended effective October 12, 1984.]

The reference to "as amended effective October 12, 1984" refers to the date that Congress passed the Comprehensive Crime Control Act of 1984 (P.L. 98-473).

[(k) Inmates committed under the provisions of 18 U.S.C. § 4244, 4246-47, 4252, 5010(b), (c), (e), or 5037(c) as these sections were in effect prior to October 12, 1984, are not entitled to extra good time deductions. Inmates committed under the provisions of 18 U.S.C. § 4241, 4242, 4243, or 4246 as these sections were amended effective October 12, 1984, are not entitled to extra good time deductions.]

Even though an inmate serving a Youth Corrections Act or Sentence Reform Act of 1984 sentence (an SRA sentence may earn good conduct time under 18 U.S.C. 3624(e)) may not earn EGT credit toward his/her SRD when placed in a work assignment, he/she may accrue seniority toward a subsequent concurrent or consecutive "old law" adult sentence that is imposed prior to release from the YCA or SRA sentence and the later imposed "old law" adult sentence. For example, if an inmate serving a

YCA or SRA sentence is employed in industries and an "old law" adult sentence begins to run one year and two months later, then the inmate would begin earning IGT at the rate of five days per month, since the person has accrued fourteen months of seniority while serving the YCA or SRA sentence. The inmate, of course, would receive no IGT credit toward the adult sentence for those fourteen months. In other words, he/she receives the seniority from the YCA or SRA sentence but no days.

[(l) A pretrial detainee may not earn good time while in pretrial status. A pretrial detainee, however, may be recommended for good time credit. This recommendation shall be considered in the event that the pretrial detainee is later sentenced on the crime for which he or she was in pretrial status.]

An inmate in pretrial status may be approved for EGT (IGT and CGT will automatically accrue the same as for a sentenced inmate and MGT must be approved the same as for a sentenced inmate) and Lump Sum Awards the same as a sentenced inmate. If the inmate is subsequently sentenced, the pretrial EGT or Lump Sum Award shall then be deducted from the sentence. The dates of assignment to and removal from an EGT earning status shall be entered into SENTRY for future use should the prisoner receive a sentence to imprisonment.

A pretrial inmate is only eligible for EGT credits for time detained in a Bureau of Prisons' facility. EGT is not available for those released from detention to a program or residence as a condition of bond. A pretrial inmate released from detention is not subject to the custody of the Attorney General, and is therefore, not eligible for credits pursuant to 18 USC § 4162.

[(m) An inmate committed for civil contempt is not entitled to extra good time deductions while serving the civil contempt sentence.]

Where the inmate is serving a criminal sentence concurrently with the civil contempt sentence, EGT may be awarded on the concurrent criminal sentence. An inmate serving a civil contempt sentence may earn seniority toward a criminal sentence in the same way that seniority may be accrued while serving a YCA or SRA sentence as discussed in paragraph 10.l. above.

[(n) A military or Coast Guard inmate may earn extra good time. Extra good time earned in Federal Prison Industries in a military or Coast Guard installation is treated the same as if earned in Federal Prison Industries in the Bureau of Prisons. Other forms of military or Coast Guard extra good time, such as Army Abatement time, are fully credited, but no seniority is allowed.]

[(o) American citizens who are serving sentences in foreign countries and who are subsequently returned to this country under the provisions of 18 U.S.C. Chapter 306 (P.L. 95-144) may have earned work, labor, or program time credits in the foreign country similar to extra good time earned under 18 U.S.C. § 4162. Such foreign "extra good time" credits shall be treated as if awarded under § 523.16, Lump Sum Awards, with any future lump sum award consideration in this country calculated on the basis of time served in custody of the Bureau of Prisons. After return to this country an inmate may earn extra good time at the three-day rate and advance to the five-day rate after one year of seniority is accrued. No seniority is accrued for foreign "extra good time" credits.]

Section 523.16 refers to paragraph 9 in this Chapter.

Foreign "extra good time" credits shall be entered on the SENTRY Extra Good Time Status/Update transaction as "Adjustment of Extra Good Time". The "Date In/Action Date" will be the date of commitment to the designated institution. If a Good Time Record is maintained, they will be entered as "Foreign Extra Good Time Credits." (See Chapter VIII.)

[(p) An inmate in extra good time earning status may not waive or refuse extra good time credits.]

[(q) Once extra good time is awarded, it becomes vested and may not be forfeited or withheld, or retroactively terminated or disallowed.]

r. If the institution feels that a state inmate is entitled to good time compensation, a request may be made to state authorities to award good time credits. Any such award shall be made in accordance with the state's laws or regulations. It is the responsibility of state authorities to make changes to release dates for their inmates and their responsibility to keep the Inmate Systems Manager notified of changes.

11. Seniority Calculations. As stated in paragraph 2.c. above, twelve months of seniority automatically causes the EGT earning rate to increase from three days per month to five days per month. The following example demonstrates the method for determining seniority:

Example No. XIII - 1:

Assigned to IGT status on 08-29-69; removed from IGT on 12-31-69; awarded MGT beginning on 03-04-70. Determine the date that the rate changes after placement in an MGT earning status on 03-04-70.

Date Out of IGT	= 69-12-31
Date In IGT	= -69-08-28*
Seniority Accrued	**= 00-04-03 4 Mos 3 Dys**
1 Yr	= 00-11-31 11 Mos 31 Dys
Seniority Accrued	= -00-04-03 4 Mos 3 Dys
Seniority Necessary	**= 00-07-28 7 Mos 28 Dys**
Date In MGT	= +70-03-03*
Rate Changes On	**= 70-10-31**

12. EGT Formula. The basic formula for the computation of EGT is: Days on Assignment x Rate = Product ÷ Days in Month = Total Number of Days To Be Awarded for a Month (any fraction of a day equals 1 day). Appendix XV shows the number of days to be awarded when assigned or removed on any date of any month. The number of days to award were determined by using this formula. An examples follow.

Example No. XIII - 2:

Assigned to IGT on 03-13-81. Counting the day assigned, IGT is authorized for the balance of March and equals 19 days. The EGT rate for this example is 3 days per month.

19 Days x 3 Day Rate = 57 Product

57 Product ÷ 31 Days in Mar = 1.8 = 2 Dys for Mar

Example No. XIII - 3:

Removed from IGT on 04-25-82. Counting the day on which removed, IGT is authorized for 25 days in April 1982. The EGT rate for this example is 5 days per month.

25 Days x 5 Day Rate = 125 Product

125 Product ÷ 30 Dys in Apr = 4.1 = 5 Dys for Apr

(See Appendix V for a chart that shows the number of EGT days to award for the month in which assigned and for the month in which removed from an EGT earning assignment.)

If a prisoner goes in and out of more than one EGT assignment during any one month, then the total number of days in an earning status during the month is used in the formula to determine the total product for the month and the total product is then divided by the number of days in that month to determine the proper number of days to award. In **no case** may a prisoner earn more than the rate authorized for that particular month. An example follows.

Example No. XIII - 4:

Assigned to IGT on 05-01-82, removed on 05-09-82, reassigned on 05-13-82, removed on 05-19-82, reassigned on 05-25-82 for the balance of the month. EGT rate for this example is 3 days per month.

05-01-82 thru 05-09-82	=	9 Days
05-13-82 thru 05-19-82	=	7 Days
05-25-82 thru 05-31-82	= +	7 Days
Total Dys Assigned	**=**	**23 Days**

23 Days x 3 Day Rate = 69 Product

69 Product ÷ 31 Dys in May = 2.2 = 3 Dys for May

13. Use of EGT formula to determine days to award in a rate change month. The same formula used in paragraph 12. above to determine the amount of EGT to award for a partial month is used at least **twice** (used **only** twice if the prisoner is in an earning status for the entire month) to determine the amount of EGT to award in the month in which the rate changes. In **no case** may an EGT award for any one month exceed five days. Following is an example that demonstrates the rate change formula.

Example No. XIII - 5:

Inmate was in a continuous IGT assignment for 1 year and the rate changed on 02-15-86. Determine the **Product** for the first 14 days of the month at the 3 day rate and the **Product** for the last 14 days of the month. Add the two **Products** together and divide by the number of days (28) in this non-leap year of February 1986.

First 14 Days x 3 Day Rate	=	42 Product
Last 14 Days x 5 Day Rate	= +	70 Product
Total Product	**=**	**112 Product**

112 Product ÷ 28 Dys in Feb = 4.0 = 4 Days for Feb

The following chart shows the amount of EGT to award for the month in which the rate changes and was devised based on the procedures used in **Example No. XII - 5.**

28 Day Month:	**1st thru 14th**	**=**	**5 Days**
	15th thru 28th	**=**	**4 Days**
29 Day Month:	**1st thru 15th**	**=**	**5 Days**
	16th thru 29th	**=**	**4 Days**
30 Day Month:	**1st thru 15th**	**=**	**5 Days**
	16th thru 30th	**=**	**4 Days**
31 Day Month:	**1st thru 16th**	**=**	**5 Days**

17th thru 31st = 4 Days

14. Lump Sum Award Calculations. Lump sum awards may be granted at the rate of 3 days per month from the beginning date of sentence for the first year and at the 5 day rate beginning the second year. The actual length of time served on the sentence including jail time to the date that the "Exceptionally Meritorious or Outstanding Service" terminated, less any EGT previously accumulated, is the basis on which the maximum amount possible to award must be made.

XIV JUDGMENT AND COMMITMENT

1. Judgment and commitment information. The judgment and commitment must contain certain information as required by the Federal Rules of Criminal Procedure, Rule 32(b)(1), 18 USC, which states,

> **"(1) In General. A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk."**

2. Examination of the judgment and commitment. Each judgment and commitment must be carefully examined to ensure that it is a bonafide legal document that has been issued by the appropriate court. The copy left at the institution with the prisoner must either be certified by signature of the clerk of the court or be imprinted with the seal of the court.

3. Certificate of deduction at time of release. 18 USC § 4163 states in part,

> **"Except as hereinafter provided a prisoner shall be released at the expiration of his term of sentence less the time deducted for good conduct. A certificate of such deduction shall be entered on the commitment by the warden or keeper."**

The above language of **§ 4163** means that the total number of days of SGT and EGT shall be reported on the reverse of the judgment and commitment along with the date and method of release. If the release is by parole or mandatory release the total good time deductions should equal the number of days as entered on the certificates. For YCA cases, only the date and method of release need be entered.

A simple statement such as "certified correct", the date, and the signature of the person who does the final sentence computation is sufficient.

XV RULE 35. CORRECTION OR REDUCTION OF SENTENCE

1. Correction or reduction of sentence. Rule 35. of the Federal Rules of Criminal Procedure, 18 USC, states,

> **"(a) Correction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.**
>
> **(b) Reduction of Sentence. A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgement or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. The court shall determine the motion within a reasonable time. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision."**

2. Monitoring time frames and appropriateness of a sentence correction or reduction. Whenever an order is received from the court that corrects or reduces a sentence, a review of such correction or reduction must be made to determine if the change was in accordance with **Rule 35.** Any case that appears to be outside the changes authorized by **Rule 35.** shall be referred to the Regional Inmate Systems Manager for assistance and advice about how to proceed.

3. Examination and authenticity of a Rule 35. court order. Each **Rule 35.** court order must be carefully examined to ensure that it is a bonafide legal document that has been issued by the appropriate court. Each **Rule 35.** document, regardless of how it is received, must be verified with the clerk of court that issued the document. In addition, the document must either be certified by signature of the clerk of the court or be imprinted with the seal of the court.

XVI VACATED CONVICTION OR SENTENCE

1. A prisoner, after sentencing, may appeal the conviction and sentence. A successful appeal of the conviction that results in the entire conviction (including the sentence) being vacated with a new trial ordered can produce a different result when a new sentence is imposed, from a sentence calculation standpoint, than if only the sentence is vacated with a resentencing ordered.

(Note: Unless specified otherwise, all discussions pertain to prisoners who are in, and remain in, the custody of, or under the jurisdiction of, the United States during these events.)

2. Conviction vacated with new trial ordered that results in a new sentence. The following procedures shall apply when a conviction is vacated with a new trial ordered that results in a new sentence.

a. Single judgment and commitment with the conviction vacated on all counts. If a prisoner is serving a single or multi-count sentence on a single judgment and commitment and the entire conviction on all counts is vacated with a new trial ordered, then any new sentence imposed shall be computed as beginning on a date no earlier than the new sentence. If more than one count exists, then the new sentences for those counts shall be served in the sequence as ordered by the court.

The prior conviction and sentence is treated as if it does not exist. Therefore, the commencement date for the new sentence is based on 18 U.S.C. § 3568, meaning that it will begin on the date of imposition. Also, based on § 3568, all former presentence time, time spent serving the sentence just vacated, and time between the vacated sentence and the new sentence shall be counted as presentence time on the new sentence.

The new sentence shall be adjusted for any prior forfeiture, withholding or restoration of SGT (as modified for any rate change) and for any EGT (carried over the same as a lump sum award), including seniority.

b. Multiple counts with the conviction vacated on less than all counts. Complex computation situations can arise when concurrent and consecutive sentences (on a single judgment and commitment or multiple judgments and commitments) are involved and less than all of the counts are vacated. If the practice, as described in 2.a. above, was rigidly followed as to beginning the new sentence no earlier than the date of the new sentence, the possibility exists that the defendant could receive a shortened sentence on one count, but end up with a longer period of time to serve than in the beginning, thus having a "chilling effect" on a defendant's decision as to appeal in the first instance.

In those cases that involve multiple counts and less than all the counts are vacated, the newly imposed sentence shall be computed as beginning on the date that it is imposed provided that the subsequent computation does not result in an aggregate sentence that is greater than the original aggregate. If the new aggregate is greater, then the new sentence shall be computed as beginning on the date that it originally commenced or in the order that it was originally ordered to commence, i.e., all sentences shall remain in the same order as originally imposed. If the court orders that the new sentence be served in a different order than originally imposed, then the new order shall be controlling.

Any prior forfeiture, withholding or restoration of SGT (as modified for any rate change) and any EGT, including seniority, shall be carried over to the new sentence.

3. Sentence vacated with a resentencing ordered. In those instances when a court vacates only the sentence and then resentences the defendant to the same or a shorter sentence, the sentence shall be computed as commencing on the date of the original computation and remain in the same sequence as originally imposed in relation to other sentences unless the court orders that the new sentence be served in a different sequence.

Any prior forfeiture, withholding or restoration of SGT (as modified for any rate change) and any EGT, including seniority, shall be carried over to the new sentence.

* 4. Effect of vacated conviction or sentence on a parole violator (includes mandatory release and special parole term violators). Computations of parole violations may require recalculation as the result of a vacated conviction or sentence. In such cases, the sentence from which the inmate was paroled must be recalculated as if the parole had not occurred. The result of the recalculation could drastically alter the violator term such as causing the violator term to be reduced to a point that will require immediate release or making the violator term longer. All recalculations that may affect parole supervision time or parole revocation time must be referred to the Regional Inmate Systems Administrator for review and assistance. It is important to notify the Parole Commission if any sentence changes affect the parole term. *

GLOSSARY

ADDICT: Any individual who habitually uses any narcotic drug as defined by section 102(16) of the Controlled Substances Act so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such narcotic drugs as to have lost the power of self-control with reference to his addiction (18 USC § 4251).

AGGREGATED (SENTENCE): Two or more sentences combined (consecutive or concurrent) to form a single sentence for computation and other administrative purposes.

BUREAU: The Federal Bureau of Prisons (18 USC § 4041).

CASE LAW: Court decisions interpreting a statute, regulation or prior court decision.

COMMISSION: The United States Parole Commission (18 USC § 4202).

CONCURRENT (SENTENCE): A sentence that operates simultaneously with another sentence for a period of time, not necessarily sharing a common ending or beginning date prior to aggregation.

CONSECUTIVE (SENTENCE): A sentence that is ordered to follow another sentence.

CONVICTION: The judgement on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere (18 USC § 5006).

COUNT (IN AN INDICTMENT): A charge contained in an indictment that describes an unlawful act.

DATE COMPUTATION BEGAN (DCB): The date from which a single or aggregate sentence is calculated.

DESIGNATED FACILITY: The place (federal or non-federal) to which the Bureau of Prisons designates a prisoner to serve the term of imprisonment (18 USC § 4082).

DESIGNATION: An act required by the Bureau of Prisons to commit a prisoner to, or to transfer a prisoner to, a specific place to serve a federal sentence (18 USC § 4082).

DETAINER: A request from a law enforcement agency that a prisoner be turned over to such agency at the time of release to answer charges, to serve a sentence or to be considered for deportation (if an alien). The original (or certified copy thereof) of the official document that supports the basis for the request must accompany the request, and represents the authority to take custody of the person wanted, in the jurisdiction from which the request originated.

EXTRA GOOD TIME (EGT): Good time authorized under 18 USC § 4162, which may be administratively given in addition to statutory good time.

EXPIRATION OF SENTENCE: An unconditional release from confinement (18 USC § 4164).

1. EXPIRATION FULL TERM (EXP-FT): An unconditional release from confinement with no accumulation of good time.

2. EXPIRATION GOOD TIME (EXP-GT): An unconditional release from confinement with good time.

FEDERAL RULES OF CRIMINAL PROCEDURES (FRCP): Federal Rules of Criminal Procedure (18 USC, Rules 1 through 60).

FELONY: Any offense punishable by death or imprisonment for a term exceeding one year is a felony (18 USC § 1).

FOREIGN TREATY SENTENCE: A sentence imposed in a foreign country on a citizen of the United States who has been returned to the United States to serve the foreign sentence (18 USC, Chapter 306).

INDETERMINATE SENTENCE: Sentence with parole eligibility date determined by the U. S. Parole Commission.

INDICTMENT: An accusation in writing found and presented by a grand jury, legally convoked and sworn, to the court in which it is impaneled, charging that the person therein named has done some act, or been guilty of some omission, which, by law, is a public offense (Black's Law Dictionary).

INFORMATION: An accusation exhibited against some person for a criminal offense, without an indictment.

INITIAL HEARING: An inmate's first personal appearance at his place of confinement before a member or examiner of the U. S. Parole Commission.

INOPERATIVE TIME: After a sentence begins to run and then stops running prior to release from the confinement portion, then the sentence becomes inoperative (not running).

JUVENILE: A person who has not attained his 18th birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday (18 USC § 5031).

JUVENILE DELINQUENCY: The violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult (18 USC § 5031).

JUVENILE JUSTICE DELINQUENCY AND PREVENTION ACT (JJDPA) OF 1974: 18 USC §§ 5031-5042; effective 6-16-38, as amended 6-25-48, September 7, 1974 and October 3, 1977.

MANDATORY PAROLE: A release from confinement, under the conditions of parole, of a "Young Adult" or "Youth Offender" two years prior to the full term date (18 USC § 5010(b) or (c)) or of an adult released after the two-thirds/thirty year date (18 USC § 4206(d)).

MANDATORY RELEASE: A release from confinement due to the accumulation of earned good time with person remaining under supervision for the period ending 180 days from his full term date (except for JJDPA and NARA commitments, w#ho remain under supervision until the full term date) (18 USC § 4164).

MANDATORY RELEASE VIOLATOR (MRV): One whose mandatory release has been revoked by the U. S. Parole Commission (18 USC § 4214).

MULTI-COUNT INDICTMENT: An indictment that contains more than one count.

MULTIPLE SENTENCES: A judgment and commitment that contains more than one sentence, or more than one judgment and commitment that contain one or more sentences in each.

NARCOTIC ADDICT REHABILITATION ACT OF 1966 (NARA): 18 USC §§ 4251-4255; effective 11-08-66.

NUNC PRO TUNC: A Latin phrase that translates to "now for then." In legal matters, a phrase that is applied to acts allowed to be done after the time when they should be done, with a retroactive effect, i.e., with the same effect as if regularly done (Black's Law Dictionary).

PAROLE: A conditional release from confinement with supervision by direction of the U. S. Parole Commission.

PAROLE COMMISSION: The United States Parole Commission (18 USC § 4202).

PAROLE VIOLATOR (PV): One whose parole has been revoked by the U. S. Parole Commission (18 USC § 4214).

PROBATION: A sentence imposed by a U. S. Court to be served in the community under supervision (18 USC § 3651).

PROBATION VIOLATOR: One whose probation has been revoked by the U. S. Courts (18 USC § 3653).

SPLIT SENTENCE: A sentence under the provisions of 18 USC § 3651 consisting of a definite sentence in excess of six months that provides that the defendant be confined in a jail-type institution or treatment institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and that a period of probation follow.

STATUTORY GOOD TIME (SGT): Good time authorized under 18 USC 4161.

STAY OF EXECUTION: A postponing of the date sentence begins.

SUPERVISION: Supervision in the community by a U. S. Probation Officer.

UNITED STATES CODE (USC): The laws of the United States as codified in the United States Code, Titles 1 through 50.

WRIT OF HABEAS CORPUS AD PROSEQUENDUM (WHCAP): An order issued by the court to produce a prisoner in the proper jurisdiction for the purpose of prosecution.

WRIT OF HABEAS CORPUS AD TESTIFICANDUM (WHCAT): An order issued by the court to produce a prisoner to give evidence before the court.

YOUNG ADULT: A person who has attained his twenty-second birthday but has not attained his twenty-sixth birthday at the time of conviction (18 USC § 4216).

YOUTH CORRECTIONS ACT (YCA): 18 USC §§ 5005-5026.

YOUTH OFFENDER: A person under the age of twenty-two at the time of conviction (18 USC § 5006).

LIST OF STATUTES RELEVANT TO SENTENCE COMPUTATION

AND OTHER INMATE SYSTEMS MANAGEMENT

ACTIVITIES, CONCERNS AND INTERESTS

18 USC § 1	Offenses classified
18 USC § 2	Principals
18 USC § 3	Accessory after the fact
18 USC § 4	Misprision of a felony
18 USC § 5	United States defined
18 USC § 402	Contempts constituting crimes
18 USC § 751	Prisoners in custody of institution or officer
18 USC § 752	Instigating or assisting escape
18 USC § 753	Rescue to prevent execution
18 USC § 754	Rescue of body of executed offender
18 USC § 755	Officer permitting escape
18 USC § 1072	Concealing escaped prisoner
18 USC § 1114	Protection of officers and employees of the United States
18 USC § 1751	Presidential and Presidential staff assassinations, kidnapping, and assault; penalties
18 USC § 1791	Providing or possessing contraband in prison
18 USC § 1792	Mutiny and riot prohibited [Prisons]
18 USC § 1793	Trespass on Bureau of Prisons reservations and land
18 USC § 3050	Bureau of Prisons employees' powers [Arrest and Commitment] (Includes authority to carry firearms)
18 USC § 3161	Time limits and exclusions [Speedy Trial]
18 USC § 3521	Witness relocation and protection [Protection of Witnesses]

18 USC § 3522 Probationers and parolees [Protection of Witnesses]

18 USC § 3526 Cooperation of other Federal agencies and State governments; reimbursement of expenses [Protection of Witnesses]

18 USC § 3568 Effective date of sentence; credit for time in custody prior to imposition of sentence

18 USC § 3569 Discharge of indigent prisoner

18 USC § 3570 Presidential remission as affecting unremitted part

18 USC § 3571 Clerical mistakes (FRCP Rule 36)

18 USC § 3572 Correction or reduction of sentence (FRCP Rule 35)

18 USC § 3574 Stay of execution; supersedeas (FRCP Rule 38(a))

18 USC § 3651 Suspension of sentence and probation

18 USC § 3652 Probation (FRCP Rule 32)

18 USC § 3653 Report of probation officer and arrest of probationer

18 USC § 4082 Commitment to Attorney General; residential treatment centers; extension of limits of confinement; work furlough

18 USC § 4083 Penitentiary imprisonment; consent.

18 USC § 4084 Copy of commitment delivered with prisoner

18 USC § 4086 Temporary safe-keeping of federal offenders by Marshals

18 USC § 4102 Authority of the Attorney General [Transfer To Or From Foreign Countries]

18 USC § 4105 Transfer of offenders serving sentence [Transfers To Or From Foreign Countries]

18 USC § 4106(c) Transfer of offenders on parole; parole of offenders transferred [Transfers To Or From Foreign Countries]

18 USC § 4115 Execution of sentence imposing an obligation to make restitution or reparations [Transfers To Or From Foreign Countries]

18 USC § 4161 Computation generally

18 USC § 4162 Industrial good time

18 USC § 4163 Discharge (From sentence)

18 USC § 4164 Released prisoner as parolee (Mandatory Release)

18 USC § 4165 Forfeiture for offense (Good time)

18 USC § 4166 Restoration of forfeited commutation (Good time)

18 USC § 4205 Time of eligibility for release on parole

18 USC § 4206 Parole determination criteria

18 USC § 4207 Information considered (Parole)

18 USC § 4208 Parole determination proceeding; time

18 USC § 4209 Conditions of parole

18 USC § 4210 Jurisdiction of Commission (Parole Commission)

18 USC § 4211 Early termination of parole

18 USC § 4212 Aliens (Parole)

18 USC § 4213 Summons to appear or warrant for retaking of parolee

18 USC § 4214 Revocation of parole

18 USC § 4215 Reconsideration and appeal (Parole)

18 USC § 4216 Young adult offenders

18 USC § 4217 Warrants to retake Canal Zone parole violators

18 USC § 4241 Determination of mental competency to stand trial

18 USC § 4242 Determination of the existence of insanity at the time of the offense

18 USC § 4243 Hospitalization of a person found not guilty only by reason of insanity

18 USC § 4244 Hospitalization of a convicted person suffering from mental disease or defect

18 USC § 4245 Hospitalization of a imprisoned person suffering from mental disease or defect

18 USC § 4246 Hospitalization of a person due for release but suffering from mental disease or defect

18 USC § 4247 General provisions for chapter [Offenders With Mental Disease Or Defect

18 USC § 4251 Definitions [Narcotic Addicts]

18 USC § 4252 Examination [Narcotic Addicts]

18 USC § 4253 Commitment [Narcotic Addicts]

18 USC § 4254 Conditional release [Narcotic Addicts]

18 USC § 4255 Supervision in the community [Narcotic Addicts]

18 USC § 4281 Discharge from prison

18 USC § 5003 Custody of State offenders

18 USC § 5005 Youth correction decisions

18 USC § 5006 Definitions [Federal Youth Corrections Act]

18 USC § 5010 Sentence [Federal Youth Corrections Act]

18 USC § 5011 Treatment [Federal Youth Corrections Act]

18 USC § 5015 Powers of Director as to placement of youth offenders [Federal Youth Corrections Act]

18 USC § 5017 Release of youth offenders [Federal Youth Corrections Act]

18 USC § 5018 Revocation of Commission orders [Federal Youth Corrections Act]

18 USC § 5019 Supervision of released youth offenders [Federal Youth Corrections Act]

18 USC § 5020 Apprehension of released offenders [Federal Youth Corrections Act]

18 USC § 5021 Certificate setting aside conviction [Federal Youth Corrections Act]

18 USC § 5024 Where applicable [Federal Youth Corrections Act]

18 USC § 5025 Applicability to the District of Columbia [Federal Youth Corrections Act]

18 USC § 5031	Definitions [Juvenile Delinquency]
18 USC § 5032	Delinquency proceedings in district courts; transfer for criminal prosecution [Juvenile Delinquency]
18 USC § 5033	Custody prior to appearance before magistrate [Juvenile Delinquency]
18 USC § 5034	Duties of magistrate [Juvenile Delinquency]
18 USC § 5035	Detention prior to disposition [Juvenile Delinquency]
18 USC § 5036	Speedy trial [Juvenile Delinquency]
18 USC § 5037	Dispositional hearing [Juvenile Delinquency]
18 USC § 5038	Use of juvenile records [Juvenile Delinquency]
18 USC § 5039	Commitment [Juvenile Delinquency]
18 USC § 5040	Support [Juvenile Delinquency]
18 USC § 5041	Parole [Juvenile Delinquency]
18 USC § 5042	Revocation of parole or probation [Juvenile Delinquency]
18 USC, Appendix III, §§ 1 through 9	Interstate Agreement on Detainers

AGGREGATION RULES FOR PAROLE ELIGIBILITY PURPOSES

1. Purpose of appendix. The rules in this appendix establish the procedures to be followed for aggregating two sentences (or two counts within a single judgment and commitment) for parole eligibility date determination purposes.

2. Treatment of sentences/offenses under Parole Commission's discretion. All the rules pertaining to an **18 USC § 4205(a)(2)** sentence that are part of an aggregate shall also apply to any offense that includes a provision that parole is at the **Parole Commission's discretion (PC Disc.)**. Any **parole violator (PV) term** that is part of an aggregate, shall also be treated, for calculation purposes, the same as a **§ 4205(b)(2)** sentence.

3. Treatment of a sentence of one year or less. A single sentence, or an aggregate sentence, of one year or less is not eligible for parole (see Chapter VII, paragraph 4.d., for court ordered parole of a sentence of one year or less). A single sentence, or aggregate sentence, however, of one year or less that is part of an aggregate that is greater than one year shall be treated the same as a sentence under the provisions of **18 USC § 4205(a)**. If, however, a single or aggregate sentence of one year or less is imposed and becomes part of an aggregate that includes a **§ 4205(b)(2)** sentence and it is the **§ 4205(b)(2)** sentence that cases the aggregate to exceed one year, then the single or aggregate sentence of one year or less must be served to the SRD (based on SGT and EGT, if any) before becoming eligible on the total aggregate. For example, If a three month sentence is imposed on May 12, 1983 and a second sentence of five months concurrent is imposed on June 12, 1983 for a total aggregate sentence of six months, and then a third sentence under **§ 4205(b)(2)** of ten years consecutive is imposed resulting in a new total aggregate sentence of ten years and six months, then this prisoner would be eligible for parole on the day after reaching the SRD of the six months portion of the aggregate, computed as if standing alone.

4. Relationship of a parolable sentence followed by a concurrent non-parolable sentence when the SRD and the EFT of the concurrent non-parolable sentence is absorbed by the parolable sentence. Whenever an aggregate sentence includes a parolable sentence followed by a concurrent non-parolable sentence that has an SRD and an EFT that are absorbed by the parolable sentence, then **no release on parole is authorized during the service of any part of the non-parolable sentence.** As a result, you will note that the rules that pertain to this situation that include a parolable sentence and a non-parolable sentence will state that a parole for the aggregate sentence need take into consideration the SRD of the non-parolable sentence. This consideration means that the SRD for the non-parolable sentence must be calculated **standing alone** (as if no other sentence existed) to determine where it fits into the overall aggregate scheme for parole purposes.

Calculating an SRD for the stand alone non-parolable sentence is performed the same as for any other non-parolable sentence that is not part of an aggregate containing a parolable sentence. Each time the originally established non-parolable SRD is adjusted to make it earlier or later, as the result of EGT or forfeited or restored SGT, may have an effect on the eligibility for parole on the aggregate sentence. It is important to remember, therefore, that once the **current** SRD is passed that no future actions pertaining to the forfeiture or restoration of SGT may affect that SRD. For example, if a prisoner loses forty days of SGT that results in an SRD of June 25, 1986, and on June 26, 1986, ten days of SGT are restored, then that restoration would have no effect on the non-parolable SRD just passed. The ten days of restored SGT would, of course, serve to reduce the SRD for the aggregate by the ten days.

Moving the originally established SRD to an earlier or later release date in this type of situation can cause the structure of the computation to change from **1) a parolable sentence followed by a concurrent non-parolable sentence with an EFT and SRD that are absorbed by the parolable sentence** to **2) a parolable sentence followed by a concurrent non-parolable sentence with an EFT that is earlier than the first sentence and a SRD that is later than the first sentence**, thereby changing the aggregate parole rule that governs. As a result, staff must make a determination each time the SRD is changed by an award of EGT or forfeited or restored SGT so as to make certain that the proper aggregate parole rule is followed.

5. Parole ineligibility ten year cap rule. It must always be remembered that no prisoner is required to serve in excess of ten years on any parolable sentence or aggregate of parolable sentences, including one or more life sentences, before becoming eligible for parole. This fact will not be stated in each rule where it applies as that would require too much redundancy. Each staff member performing sentence computation must always keep the **ten year cap** rule in mind.

There is an exception to the **ten year cap** rule as the result of court decisions in at least two circuit courts of appeal. Those courts have held that the **ten year cap** rule does not apply to sentences imposed under the provisions of **18 USC § 4205(b)(1)** which is the section that allows the court to impose a minimum term (period of parole ineligibility) that does not exceed one-third of the sentence for any one count. As a result, each time a judgment and commitment is received that includes an **18 USC § 4205(b)(1)** minimum term greater than ten years shall be referred to the appropriate Regional Inmate Systems Administrator (with a copy to the central office ISM department, attention Chief of Operations) for a determination as to what procedure to follow. (See Chapter VII, paragraph 4.k.)

6. Rules. All of the rules below are based on sentences that are greater than one year: (Remember, a PE date standing alone, or part of an aggregate, cannot exceed ten years of the sentence.)

a. An 18 USC § 4205(a) sentence followed by a consecutive or concurrent sentence (includes PV term).

(1) 4205(a) sentence followed by a consecutive 4205(a) sentence: Eligibility is one-third (not to exceed ten years) of the aggregate computed from the DCB of the first sentence, minus all presentence time.

(2) 4205(a) sentence followed by a concurrent 4205(a) sentence with a later EFT: Eligibility is one-third (not to exceed ten years) of the aggregate computed from the DCB of the first sentence, minus all presentence time.

(3) 4205(a) sentence followed by a concurrent 4205(a) sentence with an EFT and SRD that are absorbed by the first 4205(a) sentence:

(a) If the PE date of the absorbed sentence, computed from the DCB of the absorbed sentence, minus its presentence time, is later than the PE date of the first 4205(a) sentence, minus its presentence time, then the PE date of the absorbed sentence shall be established as the PE date for the aggregate, minus all presentence time.

(b) If the PE date of the first 4205(a) sentence, standing alone, minus its presentence time, is later than the PE date of the absorbed sentence, minus its presentence time, then the PE date of the first sentence shall be established as the PE date for the aggregate, minus all presentence time.

(4) 4205(a) sentence followed by a concurrent 4205(a) sentence with an EFT that is earlier and a SRD that is later than the first 4205(a) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(5) 4205(a) sentence followed by a consecutive 4205(b)(1) sentence: Eligibility for the aggregate is one-third of the 4205(a) sentence plus the minimum of the 4205(b)(1) sentence computed from the DCB of the 4205(a) sentence, minus all presentence time. The period of parole ineligibility for the aggregate cannot exceed the **ten year cap.**

(6) 4205(a) sentence followed by a concurrent 4205(b)(1) sentence with a later EFT: The period of parole ineligibility for the aggregate cannot exceed the **ten year cap.**

(a) If the 4205(b)(1) sentence is imposed prior to the PE date of the 4205(a) sentence, and if the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(1) sentence, minus its presentence time, exceeds the PE date of the

4205(a), minus its presentence time, then the PE date for the aggregate shall be established at the minimum of the 4205(a)(1) sentence computed from the DCB of the 4205(b)(1), minus all presentence time.

(b) If the 4205(b)(1) sentence is imposed prior to the PE date of the 4205(a) sentence and the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(1) sentence, minus its presentence time, is earlier than the PE date for the 4205(a) sentence, minus its presentence time, then the PE date for the aggregate shall be based on one-third of the 4205(a) sentence computed from the DCB of the 4205(a) sentence, minus all presentence time.

(c) If the 4205(b)(1) sentence is imposed after the PE date of the 4205(a) sentence, then the PE date for the aggregate shall be the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(1) sentence, minus all presentence time.

(7) 4205(a) sentence followed by a <u>concurrent</u> 4205(b)(1) sentence with an EFT and a SRD that are absorbed by the 4205(a) sentence: The period of parole ineligibility for the aggregate cannot exceed the **ten year cap**.

(a) If the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(1), minus its presentence time, is earlier than the PE date of the 4205(a) sentence (including its presentence time), then the PE date for the aggregate shall be established at one-third (not to exceed ten years) of the 4205(a) sentence, minus all presentence time.

(b) If the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(1), minus its presentence time, is later than the PE date of the 4205(a) sentence, minus its presentence time, then the PE date for the aggregate shall be established at the minimum of the 4205(b)(1) sentence, minus all presentence time.

(8) 4205(a) sentence followed by a <u>concurrent</u> 4205(b)(1) sentence with an EFT that is earlier than the and a SRD that is later than the 4205(a) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(9) 4205(a) sentence followed by a <u>consecutive</u> 4205(b)(2) sentence: Eligibility for the aggregate is one-third of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus all presentence time.

(10) 4205(a) sentence followed by a <u>concurrent</u> 4205(b)(2) sentence with a later EFT: Eligibility for the aggregate is one-third of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus all presentence time.

(11) 4205(a) sentence followed by a <u>concurrent</u> 4205(b)(2) sentence with an EFT and a SRD that are absorbed by the 4205(a) sentence: Eligibility for the aggregate is one-third of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus all presentence time.

(12) 4205(a) sentence followed by a <u>concurrent</u> 4205(b)(2) sentence with an EFT that is earlier and a SRD that is later than the 4205(a) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(13) 4205(a) sentence followed by a <u>consecutive</u> non-parolable sentence: Eligible for parole to the non-parolable sentence in one-third of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus presentence time applicable to the 4205(a) sentence only.

(14) 4205(a) sentence followed by a <u>concurrent</u> non-parolable sentence with a later EFT: Eligible for parole to the non-parolable sentence in one-third of the 4205(a) sentence computed from the DCB of the 4205(a) sentence, minus presentence time applicable to the 4205(a) sentence only.

(15) 4205(a) sentence followed by a <u>concurrent</u> non-parolable sentence with an EFT and a SRD that are absorbed by the 4205(a) sentence: Eligibility for the aggregate is one-third of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus its presentence time, provided that the current SRD of the non-parolable sentence (computed from the DCB of the non-parolable sentence, minus its presentence time) has been passed. To re-emphasize, there can be no parole until the SRD of the non-parolable sentence has been passed.

(16) 4205(a) sentence followed by a <u>concurrent</u> non-parolable sentence of equal length imposed on the same date: Not eligible for parole.

(17) 4205(a) sentence followed by a <u>concurrent</u> non-parolable sentence with an EFT that is earlier and a SRD that is later than the 4205(a) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

b. An 18 USC § 4205(a)(1) sentence followed by a <u>consecutive</u> or <u>concurrent</u> sentence (includes PV term).

(1) 4205(b)(1) sentence followed by a <u>consecutive</u> 4205(a) sentence: Eligible for parole on the aggregate after the minimum of the 4205(b)(1) sentence plus one-third of the 4205(a) sentence, computed from the DCB of the 4205(a)(l) sentence, minus all presentence time. The period of parole ineligibility for the aggregate cannot exceed the **ten year cap**.

(2) 4205(b)(1) sentence followed by a <u>concurrent</u> 4205(a) sentence with a later EFT: The period of parole ineligibility for the aggregate cannot exceed the ten year cap.

(a) If the DCB of the 4205(a) sentence occurs prior to the PE date of the 4205(b)(l) sentence, minus its presentence time, and if the PE date of the 4205(a) sentence (computed from the DCB of the 4205(a) sentence, minus its presentence time) occurs prior to the PE date of the 4205(b)(l) sentence, then the PE for the aggregate shall be set at the minimum of the 4205(b)(1) sentence, minus all presentence time.

(b) If the DCB of the 4205(a) sentence occurs prior to the PE date of the 4205(b)(l) sentence, minus its presentence time, but the PE date of the 4205(a) sentence (computed from the DCB of the 4205(a) sentence, minus its presentence time) occurs after the PE date of the 4205(b)(l) sentence, then the PE date for the aggregate will be set at one-third of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus all presentence time.

(c) If the DCB of the 4205(a) sentence occurs after the PE date of the 4205(b)(l) sentence, minus its presentence time, then the PE date for the aggregate will be set at one-third of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus all presentence time.

(3) 4205(b)(1) sentence followed by a <u>concurrent</u> 4205(a) sentence with an EFT and a SRD that are absorbed by the 4205(b)(1) sentence: The period of parole ineligibility for the aggregate cannot exceed the ten year cap.

(a) If the DCB of the 4205(a) sentence occurs prior to the PE date of the 4205(b)(l) sentence and if the PE date of the 4205(a) sentence (computed from the DCB of the 4205(a) sentence, minus its presentence time) occurs prior to the PE date of the 4205(b)(l) sentence, minus its presentence time, then the PE for the aggregate shall be set at the minimum of the 4205(b)(1) sentence, minus all presentence time.

(b) If the DCB of the 4205(a) sentence occurs prior to the PE date of the 4205(b)(l), minus its presentence time, sentence but the PE date of the 4205(a) sentence (computed from the DCB of the 4205(a) sentence, minus its presentence time) occurs after the PE date of the 4205(b)(l) sentence, then the PE date for the aggregate will be set at one-third of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus all presentence time.

(c) If the DCB of the 4205(a) sentence occurs after the PE date of the 4205(b)(l) sentence, minus its presentence time, then the PE date for the aggregate will be set at one-third (not to exceed ten years) of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus all presentence time.

(4) 4205(b)(1) sentence followed by a <u>concurrent</u> 4205(a) sentence with an EFT that is earlier and a SRD that is later than the 4205(b)(1) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(5) 4205(b)(1) sentence followed by a <u>consecutive</u> 4205(b)(1) sentence: Add the minimum terms together and compute the PE date for the aggregate from the DCB of the first 4205(b)(l) sentence, minus all presentence time. The period of parole ineligibility for the aggregate cannot exceed the ten year cap.

(6) 4205(b)(1) sentence followed by a <u>concurrent</u> 4205(b)(1) sentence with a later EFT: The period of parole ineligibility for the aggregate cannot exceed the ten year cap.

(a) If the DCB of the concurrent 4205(b)(1) sentence occurs prior to the PE date of the first 4205(b)(l) sentence, minus its presentence time, and if the PE date of the concurrent 4205(b)(1) sentence (computed from the DCB of the concurrent 4205(b)(1) sentence, minus its presentence time) occurs **prior** to the PE date of the first 4205(b)(l) sentence, then the PE for the aggregate shall be set at the minimum of the first 4205(b)(1) sentence, minus all presentence time.

(b) If the DCB of the concurrent 4205(b)(1) sentence occurs prior to the PE date of the first 4205(b)(l) sentence, minus its presentence time, and the PE date of the concurrent 4205(b)(1) sentence (computed from the DCB of the concurrent 4205(b)(1) sentence, minus its presentence time) occurs **after** the PE date of the first 4205(b)(l) sentence, then the PE date for the aggregate will be set at the minimum term of the concurrent 4205(b)(1) sentence, computed from the DCB of the concurrent 4205(b)(1) sentence, minus all presentence time.

(c) If the DCB of the concurrent 4205(b)(1) sentence occurs after the PE date of the first 4205(b)(l) sentence, minus its presentence time, then the PE date for the aggregate will be set at the minimum term of the concurrent 4205(b)(1) sentence, computed from the DCB of the concurrent 4205(b)(1) sentence, minus all presentence time.

(7) 4205(b)(1) sentence followed by a <u>concurrent</u> 4205(b)(1) sentence with an EFT and a SRD that are absorbed by the 4205(b)(1) sentence: The period of parole ineligibility for the aggregate cannot exceed the ten year cap.

(a) If the DCB of the concurrent 4205(b)(1) sentence occurs prior to the PE date of the first 4205(b)(l) sentence, minus its presentence time, and if the PE date of the concurrent 4205(b)(1) sentence (computed from the DCB of the concurrent 4205(b)(1) sentence, minus its presentence time) occurs **prior** to the PE date of the first 4205(b)(l) sentence, then the PE for the aggregate shall be set at the minimum of the first 4205(b)(1) sentence, minus all presentence time.

(b) If the DCB of the concurrent 4205(b)(1) sentence occurs prior to the PE date of the first 4205(b)(l) sentence, minus its presentence time, and the PE date of the concurrent 4205(b)(1) sentence (computed from the DCB of the concurrent 4205(b)(1) sentence, minus its presentence time) occurs **after** the PE date of the first 4205(b)(l) sentence, then the PE date for the aggregate will be set at the minimum term of the concurrent 4205(b)(1) sentence, computed from the DCB of the concurrent 4205(b)(1) sentence, minus all presentence time.

(c) If the DCB of the concurrent 4205(b)(1) sentence occurs after the PE date of the first 4205(b)(l) sentence, minus its presentence time, then the PE date for the aggregate will be set at the minimum term of the concurrent 4205(b)(1) sentence, computed from the DCB of the concurrent 4205(b)(1) sentence, minus all presentence time.

(8) 4205(b)(1) sentence followed by a <u>concurrent</u> 4205(b)(1) sentence with an EFT that is earlier and a SRD that is later than the 4205(b)(1) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(9) 4205(b)(1) sentence followed by a <u>consecutive</u> 4205(b)(2) sentence: Eligibility for the aggregate shall be set at the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(1) sentence, minus all presentence time.

(10) 4205(b)(1) sentence followed by a <u>concurrent</u> 4205(b)(2) sentence with a later EFT: Eligibility for the aggregate shall be set at the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(1) sentence, minus all presentence time.

(11) 4205(b)(1) sentence followed by a <u>concurrent</u> 4205(b)(2) sentence with an EFT and a SRD that are absorbed by the 4205(b)(1) sentence: Eligibility for the aggregate shall be set at the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(1) sentence, minus all presentence time.

(12) 4205(b)(1) sentence followed by a <u>concurrent</u> 4205(b)(2) sentence with an EFT that is earlier and a SRD that is later than the 4205(b)(1) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(13) 4205(b)(1) sentence followed by a <u>consecutive</u> non-parolable sentence: Eligibility for the 4205(b)(1) sentence shall be set at the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(1) sentence, minus the presentence time applicable to the 4205(b)(1) sentence only. At the PE date of the 4205(b)(1) sentence, the prisoner would be eligible for parole to the non-parolable sentence.

(14) 4205(b)(1) sentence followed by a concurrent non-parolable sentence with a later EFT: Eligible for parole to the non-parolable sentence after the minimum term of the 4205(b)(1) sentence computed from the DCB of the 4205(b)(1) sentence, minus presentence time applicable to the 4205(b)(1) sentence only.

(15) 4205(b)(1) sentence followed by a concurrent non-parolable sentence with an EFT and a SRD that are absorbed by the 4205(b)(1) sentence: Eligibility for parole on the aggregate is any time after the current SRD (computed from the DCB of the non-parolable sentence, minus its presentence time) of the non-parolable sentence has been passed, provided that the minimum term of the 4205(b)(1) sentence (computed from the DCB of the 4205(b)(1) sentence, minus its presentence time) has been reached. To re-emphasize, there can be no parole until the SRD of the non-parolable sentence has been passed.

(16) 4205(b)(1) sentence followed by a concurrent non-parolable sentence of equal length imposed on the same date: Not eligible for parole.

(17) 4205(b)(1) sentence followed by a concurrent non-parolable sentence with an EFT that is earlier and a SRD that is later than the 4205(b)(1) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

c. An 18 USC § 4205(b)(2) sentence followed by a consecutive or concurrent sentence (includes PV term).

(1) 4205(b)(2) sentence followed by a consecutive 4205(a) sentence: Eligibility for the aggregate is one-third (not to exceed ten years) of the 4205(a) sentence, computed from the DCB of the 4205(b)(2) sentence, minus all presentence time.

(2) 4205(b)(2) sentence followed by a concurrent 4205(a) sentence with a later EFT: Eligibility for the aggregate is one-third of the 4205(a) sentence, computed from the DCB of the 4205(b)(2) sentence, minus all presentence time.

(3) 4205(b)(2) sentence followed by a concurrent 4205(a) sentence with an EFT and a SRD that are absorbed by the 4205(b)(2) sentence: Eligibility for the aggregate is one-third of the 4205(a) sentence, computed from the DCB of the 4205(b)(2) sentence, minus all presentence time.

(4) 4205(b)(2) sentence followed by a concurrent 4205(a) sentence with an EFT that is earlier and a SRD that is later than the 4205(b)(2) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(5) 4205(b)(2) sentence followed by a consecutive 4205(b)(1) sentence: Eligibility for the aggregate shall be set at the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(2) sentence, minus all presentence time.

(6) 4205(b)(2) sentence followed by a concurrent 4205(b)(1) sentence with a later EFT: Eligibility for the aggregate shall be set at the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(2) sentence, minus all presentence time.

(7) 4205(b)(2) sentence followed by a concurrent 4205(b)(1) sentence with an EFT and a SRD that are absorbed by the 4205(b)(2) sentence: Eligibility for the aggregate shall be set at the minimum of the 4205(b)(1) sentence, computed from the DCB of the 4205(b)(2) sentence, minus all presentence time.

(8) 4205(b)(2) sentence followed by a concurrent 4205(b)(1) sentence with an EFT that is earlier and a SRD that is later than the 4205(b)(2) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(9) 4205(b)(2) sentence followed by a consecutive 4205(b)(2) sentence: Eligible for parole immediately on the aggregate.

(10) 4205(b)(2) sentence followed by a concurrent 4205(b)(2) sentence: Eligible for parole immediately on the aggregate.

(11) 4205(b)(2) sentence followed by a concurrent 4205(b)(2) sentence with an EFT and a SRD that are absorbed by the 4205(b)(2) sentence: Eligible for parole immediately on the aggregate.

(12) 4205(b)(2) sentence followed by a concurrent 4205(b)(2) sentence with an EFT that is earlier and a SRD that is later than the 4205(b)(2) sentence: Eligible for parole immediately on the aggregate.

(13) 4205(b)(2) sentence followed by a consecutive non-parolable sentence: Eligible immediately for parole on the 4205(b)(2) sentence to the non-parolable sentence.

(14) 4205(b)(2) sentence followed by a concurrent non-parolable sentence with a later EFT: Eligible immediately for parole on the 4205(b)(2) sentence to the non-parolable sentence.

(15) 4205(b)(2) sentence followed by a concurrent non-parolable sentence with an EFT and a SRD that are absorbed by the 4205(b)(2) sentence: Eligible for parole on the aggregate any time after the current SRD (computed from the DCB of the non-parolable sentence, minus its presentence time) of the non-parolable sentence has been passed. To re-emphasize, there can be no parole until the SRD of the non-parolable sentence has been passed.

(16) 4205(b)(2) sentence followed by a concurrent non-parolable sentence of equal length imposed on the same date: Not eligible for parole.

(17) 4205(b)(2) sentence followed by a concurrent non-parolable with an EFT that is earlier and a SRD that is later than the 4205(b)(2) sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

d. A non-parolable sentence followed by a consecutive or concurrent sentence (includes PV term).

(1) Non-parolable sentence followed by a consecutive 4205(a) sentence: Eligibility is one-third of the 4205(a) sentence, computed from the current SRD of the non-parolable sentence, minus its presentence time.

(2) Non-parolable sentence followed by a concurrent 4205(a) sentence with a later EFT: Eligibility is one-third of the 4205(a) sentence, computed from the DCB of the 4205(a) sentence, minus its presentence time. Parole can be granted on the 4205(a) sentence to the non-parolable sentence up to the current SRD of the non-parolable sentence, minus its presentence time. When the current SRD of the non-parolable sentence has been passed, parole may be granted any time thereafter on the aggregate, providing the PE date of the 4205(a) sentence has been reached.

(3) Non-parolable sentence followed by a concurrent 4205(a) sentence with an EFT and a SRD that are absorbed by the Non-parolable sentence: Not eligible for parole.

(4) Non-parolable sentence followed by a concurrent 4205(a) sentence of equal length imposed on the same date: Not eligible for parole.

(5) Non-parolable sentence followed by a concurrent 4205(a) sentence with an EFT that is earlier and a SRD that is later than the non-parolable sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(6) Non-parolable sentence followed by a consecutive 4205(b)(1) sentence: Eligibility on the aggregate is the minimum of the 4205(b)(l) sentence computed from the current SRD of the non-parolable sentence, minus its presentence time.

(7) Non-parolable sentence followed by a concurrent 4205(b)(1) sentence with a later EFT: Eligibility is the minimum of the 4205(b)(l) sentence, computed from the DCB of the 4205(b)(l) sentence, minus its presentence time. Parole can be granted on the 4205(b)(l) sentence to the non-parolable sentence up to the SRD of the non-parolable sentence, minus its presentence time. When the release date of the non-parolable sentence is passed, parole may be granted anytime thereafter on the aggregate, providing the PE date of the 4205(b)(l) sentence has been reached.

(8) Non-parolable sentence followed by a concurrent 4205(b)(1) sentence with an EFT and SRD that are absorbed by the Non-parolable sentence: Not eligible for parole.

(9) Non-parolable sentence followed by a concurrent 4205(b)(1) sentence of equal length imposed on the same date: Not eligible for parole.

(10) Non-parolable sentence followed by a concurrent 4205(b)(1) sentence with an EFT that is earlier and a SRD that is later than the non-parolable sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(11) Non-parolable sentence followed by a consecutive 4205(b)(2) sentence: Eligible for parole on the aggregate after the SRD of the non-parolable sentence has been passed, minus its presentence time.

(12) Non-parolable sentence followed by a concurrent 4205(b)(2) sentence with a later EFT: Eligible for parole to the non-parolable sentence any time after the DCB of the 4205(b)(2) sentence up to the SRD of the of the non-parolable sentence, minus its presentence time. Eligible on the aggregate after the SRD of the non-parolable sentence has been passed, minus its presentence time.

(13) Non-parolable sentence followed by a concurrent 4205(b)(2) sentence with an EFT and SRD that are absorbed by the Non-parolable sentence: Not eligible for parole.

(14) Non-parolable sentence followed by a concurrent 4205(b)(2) sentence of equal length imposed on the same date: Not eligible for parole.

(15) Non-parolable sentence followed by a concurrent 4205(b)(2) sentence with an EFT that is earlier and a SRD that is later than the non-parolable sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

(16) Non-parolable sentence followed by a consecutive non-parolable sentence: Not eligible for parole.

(17) Non-parolable sentence followed by a concurrent non-parolable sentence with a later EFT: Not eligible for parole.

(18) Non-parolable sentence followed by a concurrent non-parolable sentence with an EFT and SRD that are absorbed by the first non-parolable sentence: Not eligible for parole.

(19) Non-parolable sentence followed by a concurrent non-parolable sentence with an EFT that is earlier and a SRD that is later than the non-parolable sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

AGGREGATION RULES FOR TWO-THIRDS/THIRTY YEAR

PAROLE ELIGIBILITY PURPOSES

1. Purpose of appendix. To provide instructions and procedures for the computation of two-thirds or thirty year dates for multiple sentences that exceed five years, as required by 18 USC § 4206(d).

2. Definitions. The following definition of terms apply to this appendix.

a. ⅔: Two thirds of the term in question (not to exceed 30 years for each single term).

b. ⅔ Date: A mandatory U.S. Parole Commission review date. A determination of parole, consistent with paragraph 2 above, will be made by the U.S. Parole Commission. This provision does not establish an actual release date, merely a review date.

c. ⅔ Release: An actual parole release determined by the U.S. Parole Commission based on a ⅔ review consistent with the criteria addressed in Title 18 USC § 4206(d), and paragraph 2 above.

d. Statutory Release Date (SRD): The SRD represents the EFT less any SGT/EGT adjustments for the term in question. In the case of aggregate terms it may represent the SRD of a term standing alone (calculated as though no other sentence was in operation), and it may be used to establish a starting date from which to calculate a ⅔ Date for another term. It is also used to compare the SRD of a parolable term with the ⅔ Date of the same term. An inmate may not receive a ⅔ Release after the SRD of the same term has been reached since **18 USC § 4163** requires that the **". . . prisoner shall** [emphasis added] **be released at the expiration of his term of sentence less the time deducted for good conduct."** Because of this language in **§ 4163**, a ⅔ Release after an SRD becomes a moot point.

3. ⅔ Date calculation rules. The following rules are for two sentence combinations based on the fact that at least one of the sentences is for five years or more.

a. A parolable sentence followed by a consecutive or concurrent parolable sentence (includes PV term).

(1) Parolable sentence followed by a consecutive parolable sentence: Eligibility is ⅔ of each sentence added together for an aggregate and then computed from the DCB of the first sentence, minus all presentence time.

(2) Parolable sentence followed by a concurrent parolable sentence with a later EFT: Eligibility is ⅔ of the concurrent sentence computed from the DCB of the concurrent sentence minus all presentence time.

(3) Parolable sentence followed by a <u>concurrent</u> parolable sentence with an EFT and SRD that are absorbed by the first parolable sentence:

(a) If the ⅔ date of the absorbed sentence, computed from the DCB of the absorbed sentence minus its presentence time, is later than the ⅔ date of the first sentence, minus its presentence time, is later than the ⅔ date of the absorbed sentence it shall be established as the ⅔ for the aggregate, minus all presentence time.

(b) If the ⅔ date of the first sentence, standing alone, minus its' presentence time, is later than the ⅔ date of the absorbed sentence, minus its' presentence time, then the ⅔ date of the first sentence shall be established as the ⅔ date for the aggregate, minus all presentence time.

(4) Parolable sentence followed by a <u>concurrent</u> parolable sentence with an EFT that is earlier and a SRD that is later than the first parolable sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

b. A parolable sentence followed by a <u>consecutive</u> or <u>concurrent</u> non-parolable sentence.

(1) Parolable sentence followed by a <u>consecutive</u> non-parolable sentence: Eligible for parole to the non-parolable sentence in ⅔ of the parolable sentence, computed from the DCB of the parolable sentence, minus presentence time applicable to the parolable sentence only.

(2) Parolable sentence followed by a <u>concurrent</u> non-parolable sentence with a later EFT: Eligible for parole to the non-parolable sentence in ⅔ of the parolable sentence computed from the DCB of the parolable sentence, minus presentence time applicable to the parolable sentence only.

(3) Parolable sentence followed by a <u>concurrent</u> non-parolable sentence with an EFT and a SRD that are absorbed by the parolable sentence: Eligibility for the aggregate is ⅔ of the parolable sentence, computed from the DCB of the parolable sentence, minus its presentence time, provided that the current SRD of the non-parolable sentence (computed from the DCB of the non-parolable sentence, minus its presentence time) has been passed. To re-emphasize, there can be no parole until the SRD of the non-parolable sentence has been passed.

(4) Parolable sentence followed by a <u>concurrent</u> non-parolable sentence of equal length imposed on the same date: Not eligible for parole.

(5) Parolable sentence followed by a <u>concurrent</u> non-parolable sentence with an EFT that is earlier and a SRD that is later than the parolable sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

c. A non-parolable sentence followed by a <u>consecutive</u> or <u>concurrent</u> parolable sentence.

(1) Non-parolable sentence followed by a <u>consecutive</u> parolable sentence: Eligibility is ⅔ of the parolable sentence, computed from the current SRD of the non- parolable sentence, minus its presentence time.

(2) Non-parolable sentence followed by a <u>concurrent</u> parolable sentence with a later EFT: Eligibility is ⅔ of the parolable sentence, computed from the DCB of the parolable sentence, minus its presentence time. Parole can be granted on the parolable sentence to the non-parolable sentence up to the current SRD of the non-parolable sentence, minus its presentence time. When the current SRD of the non-parolable sentence has been passed, parole may be granted any time thereafter on the aggregate, providing the ⅔ date of the parolable sentence has been reached.

(3) Non-parolable sentence followed by a <u>concurrent</u> parolable sentence with an EFT and a SRD that are absorbed by the non-parolable sentence: Not eligible for parole.

(4) Non-parolable sentence followed by a <u>concurrent</u> parolable sentence of equal length imposed on the same date: Not eligible for parole.

(5) Non-parolable sentence followed by a <u>concurrent</u> parolable sentence with an EFT that is earlier and a SRD that is later than the non-parolable sentence: Each sentence must remain separate. Presentence time shall be applied to each sentence to which it pertains.

d. A non-parolable sentence followed by a non- parolable <u>consecutive</u> or <u>concurrent</u> sentence: Not eligible for parole.

4. Complex situations. The rules discussed above for ⅔ date calculations apply to two sentence combinations. Developing rules for computations involving three sentence combinations or more, however, would require literally hundreds of instructions. Therefore, any ⅔ date computation that presents difficulties or questions at the institution level which are not addressed in this manual shall be referred to the appropriate Regional Inmate Systems Administrator for assistance.

Following are some examples that provide guidance for computing the ⅔ date for a combination of three or more sentences:

Example No. App. IV - 1:

Sentence No. 1. PV term or 4205(b)(2) = 3 Yrs

Sentence No. 2. Consecutive non-parolable term = 5 Yrs

Sentence No. 3. Consecutive 4205(a) Term = 3 Yrs

Total sentence = 11 Yrs

Explanation. Since the 5 year non-parolable sentence is "sandwiched" between the two parolable sentences that are each for terms of less than 5 years, a ⅔ date cannot be established, regardless of any parole eligibility established for the parolable sentences.

Example No. App. IV - 2:

Sentence No. 1. 4205(a) term = 5 Yrs

Sentence No. 2. Consecutive non-parolable term = 5 Yrs

Sentence No. 3. Consecutive 4205(a) = 6 Yrs

Total sentence = 16 Years

Explanation. 1) The total sentence is 16 years. Since the non-parolable 5 year term is "sandwiched" between the two parolable 4205(a) sentences, each of which is 5 years or more, then a ⅔ date for each parolable sentence must be established.

The ⅔ date for the 5 year 4205(a) sentence is determined by adding ⅔ of the 5 years (3 years and 4 months) to the DCB of the 5 year 4205(a) sentence, less presentence time credit.

The ⅔ date for the 6 year 4205(a) sentence is determined by adding ⅔ of the 6 years (4 years) to the SRD on the aggregate of the 5 year 4205(a) sentence and the 5 year non-parolable sentence (total sentence = 10 years). Do not use presentence time to calculate the ⅔ date of Sentence No. 3 since the presentence time would have been used to establish the SRD of the aggregate of Sentence Nos. 1 and 2.

2) If parole or ⅔ release is not granted on Sentence No. 1, then a ⅔ release may be granted on the ⅔ date of Sentence No. 3, with a full term of supervision equal to the EFT of the 16 year term.

3) If parole or ⅔ release is granted on Sentence No. 1 (5 year 4205(a) term), the remaining 11 year aggregate term would be computed on the parole or ⅔ release date on the previous term. Determine the ⅔ date on this remaining term by adding ⅔ (4 years) to the SRD of the 5 year non-parolable sentence. Do not use presentence time to calculate the new SRD and eligibility dates, since the presentence time has already been used to establish the eligibility dates and EFT of Sentence No. 1.

Example No. App. IV - 3:

Sentence No. 1. Non-parolable term = 10 Yrs

Sentence No. 2. Consecutive 4205(a) term = 5 Yrs

Sentence No. 3. Consecutive non-parolable term = 5 Yrs

Explanation. 1) The total sentence is 20 years. A ⅔ date will be established for Sentence No. 2 (5 year 4205(a) sentence) by adding ⅔ of Sentence No. 2 (3 years and 4 months) to the SRD of Sentence No. 1 (10 year non-parolable sentence). A ⅔ release would result in a release to the service of the remaining 5 year consecutive non-parolable sentence.

2) If ⅔ release is to Sentence 3, then Sentence No. 3 must be recalculated as beginning on the day of ⅔ release. The EGT rate established on Sentence No. 3 would be based on seniority accrued on the service of Sentences Nos. 1 and 2. Do not use presentence time to calculate the new SRD and eligibility dates since the presentence time has already been used to establish the eligibility dates and EFTs of Sentence Nos. 1 and 2.

Example No. App. IV - 4:

Sentence No. 1. Non-parolable term = 10 Yrs

Sentence No. 2. Conc. 4205(a) term (same date) = 10 Yrs

Sentence No. 3. Consecutive non-parolable term = 5 Yrs

Sentence No. 4. Consecutive 4205(a) term = 5 Yrs

Explanation. 1) The total sentence will be 20 years. Since Sentence No. 1 (10 year non-parolable term) and Sentence No. 2 (10 year 4205(a) term) were imposed on, and began running on, the same date, no ⅔ date need be established for Sentence No. 2. No useful purpose can be gained by paroling from a parolable sentence to a non-parolable sentence that is equal or greater in every respect.

2) Since no parole is available during the first 15 years of this sentence based on good time, a ⅔ date for the last consecutive 5 year 4205(a) sentence (Sentence No. 4) must be determined by adding ⅔ of Sentence No. 4 (3 years and 4 months)

to the SRD, that is established for the aggregation of Sentence Nos. 1, 2 and 3, as if standing alone. ⅔ release on the 20 year aggregate could then be made on/or after the ⅔ date.

Example No. App. IV - 5:

Sentence No. 1. Parolable 4205(a) term = Life

Sentence No. 2. Consecutive 4205(a) term = 1 Yr

Explanation. The total sentence is Life. A ⅔ date is established based on ⅔ of the life sentence (30 years), plus ⅔ of the 1 year sentence (8 months). As a result, 30 years and 8 months is added to the DCB of the aggregated life and 1 year sentence, less presentence time, to determine the ⅔ date.

EGT DAYS TO AWARD FOR MONTH IN WHICH REMOVED

	28 Day Month		29 Day Month		30 Day Month		31 Day Month	
Date Removed	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate
1st	1	1	1	1	1	1	1	1
2nd	1	1	1	1	1	1	1	1
3rd	1	1	1	1	1	1	1	1
4th	1	1	1	1	1	1	1	1
5th	1	1	1	1	1	1	1	1
6th	1	2	1	2	1	1	1	1
7th	1	2	1	2	1	2	1	2
8th	1	2	1	2	1	2	1	2
9th	1	2	1	2	1	2	1	2
10th	2	2	2	2	1	2	1	2
11th	2	2	2	2	2	2	2	2
12th	2	3	2	3	2	2	2	2
13th	2	3	2	3	2	3	2	3
14th	2	3	2	3	2	3	2	3
15th	2	3	2	3	2	3	2	3
16th	2	3	2	3	2	3	2	3
17th	2	4	2	3	2	3	2	3
18th	2	4	2	4	2	3	2	3
19th	3	4	2	4	2	4	2	4
20th	3	4	3	4	2	4	2	4
21st	3	4	3	4	3	4	3	4
22nd	3	4	3	4	3	4	3	4
23rd	3	5	3	4	3	4	3	4
24th	3	5	3	5	3	4	3	4
25th	3	5	3	5	3	5	3	5
26th	3	5	3	5	3	5	3	5

	28 Day Month		29 Day Month		30 Day Month		31 Day Month	
Date	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate
27th	3	5	3	5	3	5	3	5
28th	3	5	3	5	3	5	3	5
29th	-	-	3	5	3	5	3	5
30th	-	-	-	-	3	5	3	5
31st	-	-	-	-	-	-	3	5

EGT DAYS TO AWARD FOR MONTH IN WHICH ASSIGNED

	28 Day Month		29 Day Month		30 Day Month		31 Day Month	
Date Assigned	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate
1st	3	5	3	5	3	5	3	5
2nd	3	5	3	5	3	5	3	5
3rd	3	5	3	5	3	5	3	5
4th	3	5	3	5	3	5	3	5
5th	3	5	3	5	3	5	3	5
6th	3	5	3	5	3	5	3	5
7th	3	4	3	4	3	4	3	5
8th	3	4	3	4	3	4	3	4
9th	3	4	3	4	3	4	3	4
10th	3	4	3	4	3	4	3	4
11th	2	4	2	4	2	4	3	4
12th	2	4	2	4	2	4	2	4
13th	2	3	2	3	2	3	2	4
14th	2	3	2	3	2	3	2	3
15th	2	3	2	3	2	3	2	3
16th	2	3	2	3	2	3	2	3
17th	2	3	2	3	2	3	2	3
18th	2	2	2	3	2	3	2	3
19th	2	2	2	2	2	2	2	3
20th	1	2	2	2	2	2	2	2
21st	1	2	1	2	1	2	2	2
22nd	1	2	1	2	1	2	1	2
23rd	1	2	1	2	1	2	1	2
24th	1	1	1	2	1	2	1	2
25th	1	1	1	1	1	1	1	2
26th	1	1	1	1	1	1	1	1

	28 Day Month		29 Day Month		30 Day Month		31 Day Month	
Date	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate	3 Day Rate	5 Day Rate
27th	1	1	1	1	1	1	1	1
28th	1	1	1	1	1	1	1	1
29th	-	-	1	1	1	1	1	1
30th	-	-	-	-	1	1	1	1
31st	-	-	-	-	-	-	1	1

SAMPLE LETTER TO UNITED STATES ATTORNEY

Mr. John Doe
United States Attorney
Middle District Of Tennessee
P.O. Box 000
Nashville, Tennessee 00000

Re: John Brown
Docket No.: CR 00000

Dear Mr. Doe:

We recently received Judge Smith's order of Judgment and Commitment in the above case, entered on January 1, 1979. In this order, the Court found Mr. Brown to be suitable for handling under the Youth Corrections Act, but also provided that he be committed for a term of three years.

We are writing to you because of the inconsistency of these two provisions. The shortest possible commitment under the Youth Corrections Act requires unconditional release on or before four years from the date of conviction and unconditional release on or before six years from conviction (18 USC §§ 5010(b) and 5017(c)). No shorter commitment is authorized by the Youth Corrections Act. 18 USC § 5010(c) calls for a further or longer commitment than § 5010(b), and § 5010(d) removes the young offender from the Youth Corrections Act and provides for a sentence under regular adult sentencing provisions.

If Judge Smith's primary intent is that Mr. Brown be treated under the Youth Corrections Act, he should be re-sentenced under § 5010(b), without any ceiling to the commitment other than what is provided by the Act. On the other hand, if the Court's intention is that Mr. Brown serve no more than a three year sentence, this would imply a finding that the defendant would not benefit from the special treatment provisions of the Youth Corrections Act, and the reference to § 5010(b) should be eliminated.

The corrections of Mr. Brown's sentence raises certain difficulties. We are advised by the Bureau of Prisons' General Counsel that the problem with omitting the reference to the Youth Corrections Act is that it would deprive Mr. Brown of certain benefits, the most important of which is the opportunity to have his conviction set aside under 18 USC § 5021. On the other hand, if the reference to the three year maximum term is omitted, that omission would open up the possibility of a maximum period of confinement of six years under the Youth Corrections Act. Since either change is a more harsh sentencing disposition in some respect, the General Counsel feels that corrective action may be taken only after returning Mr. Brown to court. His sentence can then be vacated, and he can be re-sentenced.

We would appreciate your calling this problem to the attention of the Court and advising us.

Thank you for your assistance.

Sincerely,

(Warden's Signature Block)

UNITED STATES DEPARTMENT OF JUSTICE
Bureau of Prisons

CERTIFICATE OF COURT ORDERED-RELEASE

TO THE UNITED STATES PAROLE COMMISSION:

It is certified that _____
(Name)

_____, now confined in the _____,
(Reg. No.)

_____ is entitled to

days good time deductions from the maximum term of imprisonment on his 18 USC § 5010(b) or (c) sentence under the good time plan in **Johnson v. Smith, Civil Number 78-7147**, United District Court for the Eastern District of Michigan, dated April 20, 1983. The above named person is released from this institution under the court-ordered plan on _____, 19____.

Upon release the above-named person is to remain under the jurisdiction of the United States Parole Commission, as if on parole, under the conditions set forth on page two of this certificate, and is subject to such conditions until expiration of the maximum term or terms of sentence, on _____, 19____.

He is to remain within the limits of _____

_____.

This certificate in no way lessens the obligation of the person being released to satisfy payment of any fine included in the sentence; nor will it prevent delivery of this person to authorities of any state otherwise entitled to custody.

This CERTIFICATE becomes effective on the date shown above. If the releasee fails to comply with any conditions listed on the next page, he may be summoned or retaken on a warrant issued by a Commissioner of the Parole Commission, and reimprisoned pending a hearing to determine if the court-ordered release should be revoked.

_____ _____

Date Warden or Superintendent

CONDITIONS OF RELEASE

1. You shall go directly to the district shown on this CERTIFICATE OF COURT-ORDERED RELEASE (unless released to the custody of other authorities). Within three days after your arrival, you shall report to your parole advisor if you have one, and the United States Probation Officer whose name appears on this Certificate. If in any emergency you are unable to get in touch with your parole advisor, or your probation officer or the United States Probation Office, you shall communicate with the United States Parole Commission, Department of Justice, Chevy Chase, Maryland 20815.

2. If you are released to the custody of other authorities, and after your release from physical custody of such authorities, you are unable to report to the United States Probation Officer to whom you are assigned within three days, you shall report instead to the nearest United States Probation Officer.

3. You shall not leave the limits fixed by this CERTIFICATE OF COURT-ORDERED RELEASE without written permission from your probation officer.

4. You shall notify your probation officer within 2 days of any change in your place of residence.

5. You shall make a complete and truthful written report (on a form provided for that purpose) to your probation officer between the first and third day of each month, and on the final day of parole. You shall also report to your probation officer at other times as your probation officer directs, providing complete and truthful information

6. You shall not violate any law. Nor shall you associate with persons engaged in criminal activity. You shall get in touch within 2 days with your probation officer or the United States Probation Office if you are arrested or questioned by a law-enforcement officer.

7. You shall not enter into any agreement to act as an "informer" or special agent for any law-enforcement agency.

8. You shall work regularly unless excused by your probation officer, and support your legal dependents, if any, to the best of your ability. You shall report within 2 days to your probation officer any changes in employment.

9. You shall not drink alcoholic beverages to excess. You shall not purchase, possess, use or administer marijuana or narcotic or other habit-forming or dangerous drugs, unless prescribed or advised by a physician. You shall not frequent places where such drugs are illegally sold, dispensed, used or given away.

10. You shall not associate with persons who have a criminal record unless you have permission from your probation officer.

11. You shall not possess a firearm or other dangerous weapons.

12. You shall permit confiscation by your probation officer of any materials which your probation officer believes may constitute contraband in your possession and which your probation officer observes in plain view in your residence, place of business or occupation, vehicle(s) or on your person.

13. You shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment and/or court ordered child support or alimony payment that has been, or may be, imposed, and shall provide such financial information as may be requested, by your Probation Officer, relevant to the payment of the obligation. If unable to pay the obligation in one sum, you will cooperate with your Probation Officer in establishing an installment payment schedule.

14. You shall submit to a drug test whenever ordered by your probation officer.

I have read, or have had read to me, the Certificate of Court-Ordered Release and the Conditions of Court-Ordered Release.

Witness	Inmate
Date	Date

UNITED STATES COURTS OF APPEAL

District of Columbia Circuit: District of Columbia

First Circuit: Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico

Second Circuit: Connecticut, New York, and Vermont

Third Circuit: Delaware, New Jersey, Pennsylvania, and Virgin Islands

Fourth Circuit: Maryland, North Carolina, South Carolina, Virginia, and West Virginia

Fifth Circuit: Louisiana, Mississippi, and Texas

Sixth Circuit: Kentucky, Michigan, Ohio, and Tennessee

Seventh Circuit: Illinois, Indiana, and Wisconsin

Eighth Circuit: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

Ninth Circuit: Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington

Tenth Circuit: Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming

Eleventh Circuit: Alabama, Florida, and Georgia

STATES/TERRITORIES AND CIRCUITS

Alabama (Eleventh)
Alaska (Ninth)
Arizona (Ninth)
Arkansas (Eighth)
California (Ninth)
Colorado (Tenth)
Connecticut (Second)
Delaware (Third)
District of Columbia (D.C.)
Florida (Eleventh)
Georgia (Eleventh)
Guam (Ninth)
Hawaii (Ninth)
Idaho (Ninth)
Illinois (Seventh)
Indiana (Seventh)
Iowa (Eighth)
Kansas (Tenth)
Kentucky (Sixth)
Louisiana (Fifth)
Maine (First)
Maryland (Fourth)
Massachusetts (First)
Michigan (Sixth)
Minnesota (Eighth)
Mississippi (Fifth)
Missouri (Eighth)
Montana (Ninth)
Nebraska (Eighth)
Nevada (Ninth)
New Hampshire (First)
New Jersey (Third)
New Mexico (Tenth)
New York (Second)
North Carolina (Fourth)
North Dakota (Eighth)
Northern Mariana Islands (Ninth)
Ohio (Sixth)
Oklahoma (Tenth)
Oregon (Ninth)
Pennsylvania (Third)
Puerto Rico (First)
Rhode Island (First)
South Carolina (Fourth)
South Dakota (Eighth)
Tennessee (Sixth)
Texas (Fifth)
Utah (Tenth)
Vermont (Second)
Virgin Islands (Third)
Virginia (Fourth)
Washington (Ninth)
West Virginia (Fourth)
Wisconsin (Seventh)
Wyoming (Tenth)