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## Securing a Favorable Federal Prison Placement

**T**he process of designating a facility for service of a federal sentence has become more complex and involved. Previously, an inmate was assigned a security level and a Bureau of Prisons (BOP) facility with a corresponding security level was identified and designated. Now, however, in addition to receiving a security level, each incoming inmate receives a presumptive Medical Care Level reflecting the level of medical services the inmate requires and a presumptive Mental Health Care Level based on his mental health status. The assignment of these levels is discussed more fully below. When an inmate has received all three assignments, a facility that meets each of those requirements is identified and designated for service. Thus, if an inmate is classified as minimum security with a Care Level of 2 (chronic but stable) and Mental Health Care Level of 1 (no or minimal need for mental health intervention), he may be placed at most BOP minimum security camps. However, if that inmate requires a Medical Care Level 3 placement, there are very few camps for which he will be qualified.

The information used for these classifications is based primarily on the information contained in the Presentence Report (PSR), thus emphasizing the importance of having full, complete, and accurate information included in that document. In addition to the PSR, judicial recommendations or even medical evaluations ordered by the court to be amended to the PSR are considered. Sometimes, additional medical or mental health records are sought prior to designation.

### The Federal Prison System

The federal prison system's institutions are divided into five categories: minimum, low, medium, high (the most secure), and administrative.

Minimum security institutions, commonly called "federal prison camps," are designed for offenders who do not pose a risk of violence or escape. According to Bureau statistics, approximately 15 percent of all inmates are housed in minimum security facilities, i.e., prison camps, and in community settings. Most individuals want to be designated to a federal prison camp because of the lack of violence and what they perceive to be better conditions of confinement. Minimum security institutions have dormitory and room housing, a relatively low staff-to-inmate ratio, and limited or no perimeter fencing. These institutions are work- and program-oriented, and many are located adjacent to larger institutions or on military bases, where inmates help serve the labor needs of the larger institution or base. While inmates are theoretically free to "walk away" from these facili-

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ties, few of them do because inmates who escape from prison camps and are recaptured face severe consequences. In addition to being prosecuted for escape, such inmates serve the rest of their time in more secure (and therefore harsher) facilities.

Although prison camp designation is the most common type of minimum security placement, the BOP also operates minimum security work cadres at administrative facilities, i.e., Metropolitan Correctional Centers, Metropolitan Detention Centers and Federal Detention Centers, whose primary mission is the detention of pre-trial defendants. Usually, an inmate must be within five years of release to be considered for cadre placement. And, the odds of being so designated increase in the absence of a valid judicial recommendation or in the face of a non-specific recommendation (for example, the court recommends that the BOP designate someone who resides near a major urban center “to a facility closest to home”). Work cadre placement is fundamentally different than camp placement. Although housed in a segregated unit with other minimum security inmates, cadre inmates, who are tasked with helping maintain the institution’s daily operation, are exposed to a general population of all security levels, including individuals who have been charged with or convicted of very serious offenses — the latter awaiting transfer. Also, environmentally, cadre inmates are confined similar to high security inmates, i.e., in a cell as opposed to an open cubicle; heightened noise levels persist throughout the institution at all hours of the day and night; and inmates cannot walk outdoors or breathe fresh air.

Low security Federal Correctional Institutions (FCIs) have double-fenced perimeters, mostly dormitory or cubicle housing, and strong work and program components. The staff-to-inmate ratio in these institutions is higher than at minimum-security facilities.

Medium security FCIs have strengthened perimeters (often double fences with electronic detection systems), mostly cell-type housing, a wide variety of work and treatment programs, an even higher staff-to-inmate ratio than low security FCIs, and even greater internal controls.

High security institutions, also known as United States Penitentiaries (USPs), have highly secured perimeters (featuring walls or reinforced

fences), multiple- and single-occupant cell housing, the highest staff-to-inmate ratio, and close control of inmate movement.

Administrative facilities are institutions with special missions, such as the detention of pretrial offenders; the treatment of inmates with serious or chronic medical problems; or the containment of extremely dangerous, violent, or escape-prone inmates. They are capable of holding inmates in all security categories. Administrative facilities include Metropolitan Correctional Centers (MCCs), Metropolitan Detention Centers (MDCs), Federal Detention Centers (FDCs), and Federal Medical Centers (FMCs), as well as the Federal Transfer Center (FTC), and the Administrative-Maximum (ADX) U.S. Penitentiary.

A number of BOP institutions belong to Federal Correctional Complexes (FCCs). At FCCs, institutions with different missions and security levels are located in close proximity to one another. FCCs increase efficiency through the sharing of services, enable staff to gain experience at institutions of many security levels, and enhance emergency preparedness by having additional resources within close proximity.

## How the BOP Designation Process Works

Following the imposition of a sentence of imprisonment, the BOP begins the process of determining the defendant’s facility for service of his sentence. The U.S. court clerk uploads the signed Judgment Order into the “eDesignate” system and transmits it to U.S. Probation.<sup>1</sup> In the next step, U.S. Probation adds the Presentence Report and transmits it to the U.S. Marshals Service. After the U.S. Marshals receive the documentation electronically, they add their USM-129 Form, upon which the Bureau can determine if any jail time credit should be calculated for time already served, and transmit all documents to the Bureau of Prisons Designation and Sentence Computation Center (DSCC) for classification and designation of the offender. If the Statement of Reasons (SOR) has not been included in the Judgment Order the Bureau receives, then DSCC staff must make a reasonable effort to obtain a copy by contacting the court or U.S. Probation Office. This is required to better ensure that the Bureau follows the intentions of the court when designating

a facility, as the SOR may contain information that overrides the PSR and may affect security classification decisions as part of the designation process.

One of several classification teams at the DSCC will handle the incoming documents, according to sentencing district. They compute classification scoring and transmit it to one of seven senior designators for final review and designation. Primary responsibility for inmate placement rests with officials at the DSCC in Grand Prairie, Texas.<sup>2</sup> The DSCC consists of 17 classification teams, based upon the district in which the inmate is sentenced, and one designation team. Hotel Team is the designation team for the DSCC. This is comprised of nine senior designators who process all the initial designations as well as other transfers, and eight designators who process transfers. Also, four specialist designators handle special cases such as Residential Drug Abuse Program (RDAP) transfers. Designator transfer case-loads are based upon the institution the inmate is assigned. In addition, five medical designators (OMDT) assign inmates to BOP FMCs, Medical/Mental Health CARE Level 3 facilities.

## Security Level Scoring And Designation by Designations Staff

The designation of an inmate to a specific institution is governed by Bureau of Prisons Program Statement 5100.08. First, staff members at the DSCC “score” the defendant to determine his or her security level. The designation staff considers various factors, including the following, to score an individual:

- (a) court recommendation, if any;
- (b) voluntary surrender status;
- (c) severity of current offense;
- (d) criminal history category;
- (e) history of violence;
- (f) history of escape;
- (g) detainers, if any;
- (h) age;
- (i) education level (verified high school, enrolled in high school or GED, or no high school); and

## BOP Designation and Sentence Computation Center Classification Teams

### ALPHA

District of Columbia  
D.C. Superior Court

### BRAVO

Maryland  
Tennessee (all districts)  
Eastern Texas  
West Virginia (all districts)

### CHARLIE

Arkansas (all districts)  
Kentucky (all districts)  
North Carolina (all districts)  
Oklahoma (all districts)

### DELTA

Delaware  
Idaho  
Maine  
New Hampshire  
New York (all districts)  
Vermont

### ECHO

New Jersey  
North Dakota  
Pennsylvania (all districts)  
South Carolina

### FOXTROT

Connecticut  
Ohio (all districts)  
Rhode Island  
South Dakota  
Virginia (all districts)

### INDIA

Southern Texas

### JULIET

Western Texas

### KILO

Georgia (all districts)  
Louisiana (all districts)  
Mississippi (all districts)  
Northern Texas

### LIMA

Florida (all districts)  
Guam  
Northern Marianna Islands  
Virgin Islands

### NOVEMBER

Alabama (all districts)  
Central California  
New Mexico

### OSCAR

Arizona

### PAPA

Eastern &  
Southern California

### QUEBEC

Massachusetts  
Montana  
Nevada  
Oregon  
Utah  
Washington (all districts)

### ROMEO

Hawaii  
Illinois (all districts)  
Michigan (all districts)  
Puerto Rico

### SIERRA

Northern California  
Iowa (all districts)  
Kansas  
Nebraska  
Wisconsin (all districts)  
Wyoming

### TANGO

Alaska  
Colorado  
Indiana (all districts)  
Minnesota  
Missouri (all districts)

(j) drug/alcohol abuse within the past five years.

Although most factors the designation staff consider can raise a defendant's score (and potentially the security level), a court order permitting the defendant to voluntarily surrender to the designated institution can actually *lower* a defendant's score by three points. Inmates will not receive the reduction of points for voluntary surrender if they voluntarily surrender on the same day they are sentenced or if they are a Supervised Release Violator.

This factor can sometimes make the difference between a defendant being designated to a camp or a low security institution. Additionally, voluntary surrender spares an individual the unpleasantness of being shackled and transferred via "con air" aboard the U.S. Marshal Service inmate transport aircraft, or bussed. Bussing, known as "diesel therapy" by inmates, can often take weeks. Defense counsel should therefore request voluntary surrender whenever it is possible that the court will grant it.

Scoring with regard to drug/alcohol abuse and education levels can raise the total security level score by no more than three points. However, the criminal history category can increase the total by up to 13 points, which could increase security by one or two levels (for example, from minimum security to low or medium security). The age category requires scoring higher points for younger offenders, which can also increase the security classification by one or two levels. The scoring for education and drug/alcohol abuse can result in a total point increase of no more than three points, which primarily impacts those cases that might be borderline between security levels — for example, a minimum security case scoring at the top of the BOP minimum security range could be raised to low security with the addition of these points.

Next, the DSCC determines whether Public Safety Factors (PSFs) apply. A PSF that applies to an individual will rule out a prison camp designation — even if he or she would have otherwise qualified for one. PSFs can be waived, but only by the DSCC.

Finally, the DSCC considers whether any medical or mental health factors might affect designation. Generally speaking, Care Level 1 includes inmates less than 70 years of age, generally healthy, having limited

medical needs that can easily be managed by clinician evaluations every six months. Level 1 institutions are located approximately one hour or more from community medical centers because medical care is not often needed.

Care Level 2 inmates are stable outpatients who require at least quarterly clinical evaluations. Their medical conditions can be managed through routine, regularly scheduled appointments with clinicians for monitoring. Examples of issues at this level include medication-controlled diabetes, epilepsy, or emphysema. Medical Care Level 2 institutions have no special capabilities beyond those that health services staff ordinarily provide; however, they are located within one hour of major regional treatment centers, thereby permitting more immediate attention to medical emergencies. Most BOP facilities are classified as Medical Care Level 2 facilities.

Care Level 3 inmates are fragile outpatients who require frequent clinical contacts to prevent hospitalization for catastrophic events. They may require some assistance with activities of daily living, such as bathing, dressing or eating, but do not need daily nursing care. Examples of these medical conditions include cancer in remission less than a year, advanced HIV disease, severe congestive heart failure, and end-stage liver disease. Care Level 3 institutions may be located within Medical Referral Centers. To date, the only Care Level 3 facilities are FCI Butner (North Carolina), FCI Fort Worth (Texas), FCI Terminal Island (California), USP Terre Haute (Indiana), USP Tucson (Arizona), FCI Allenwood-Medium (Pennsylvania), and USP Allenwood (Pennsylvania).

Care Level 4 inmates require services available only at a BOP Medical Referral Center (MRC), which provides significantly enhanced medical services and limited inpatient care. Functioning may be so severely impaired that it requires 24-hour skilled nursing care or nursing assistance. Examples include cancer on active treatment, dialysis, quadriplegia, stroke or head-injury patients, major surgical treatment, and high-risk pregnancy.

The BOP operates six Care Level 4 MRCs:

- ❖ U.S. Medical Center for Federal Prisoners, Springfield (Missouri) provides care primarily for higher

security level inmates, and includes a full dialysis unit as well as an inpatient mental health unit.

- ❖ FMC Rochester (Minnesota) is affiliated with the Mayo Clinic for complex medical requirements, and includes an inpatient mental health unit.
- ❖ FMC Lexington (Kentucky) generally manages lower security level inmates.
- ❖ FMC Devens (Massachusetts) includes a dialysis unit and an inpatient mental health unit, as well as the residential sex offender treatment program.
- ❖ FMC Butner (North Carolina) includes an inpatient mental health unit and can manage inmates at all security levels. It is the cancer treatment center for the BOP.
- ❖ FMC Carswell (Texas) is exclusively for female inmates and is the only FMC available for women.

Thus, an inmate is assigned a security level, Medical Care Level, and Mental Health Care Level.

When initially scoring an inmate, the assigned team utilizes a Medical Calculator to determine the screen level. If the inmate is scored as a SCR3 or SCR4, the inmate will be referred to the Office of the Medical Designator (OMDT) for further review. OMDT then decides what the SCR level will be after a further review of the documents. If the inmate comes back from OMDT as a SCR1 or SCR2, Hotel Team will designate the inmate to an appropriate CARE1 or CARE2 facility. If inmates are determined to meet the criteria for a CARE3 or CARE4 facility, OMDT will designate them. Assuming that Medical Care Level and Mental Health Care Levels are 1 and 2, the Hotel Team will then make a designation taking into consideration the inmate's release residence, the inmate's determined Security Level, any judicial recommendation and prison population pressures.

In addition to receiving a classification for security and health care, BOP inmates are now classified based on mental health care needs. Similar to the four medical care levels, all inmates are assigned to one of four mental health levels:

CARE1-MH: No Significant Mental Health Care: those who show no significant level of functional impairment associated with mental illness and demonstrate no need for regular mental health interventions, and either have no history of serious functional impairment due to mental illness or if a history of mental illness is present, have consistently demonstrated appropriate help-seeking behavior in response to any re-emergence of symptoms.

CARE2-MH: Routine Outpatient Mental Health Care or Crisis-Oriented Mental Health Care: those requiring routine outpatient mental health care on an ongoing basis; and/or brief, crisis-oriented mental health care of significant intensity; e.g., placement on suicide watch or behavioral observation status.

CARE3-MH: Enhanced Outpatient Mental Health Care or Residential Mental Health Care: those requiring enhanced outpatient mental health care (i.e., weekly mental health interventions); or residential mental health care (i.e., placement in a residential Psychology Treatment Program).

CARE4-MH: Inpatient Psychiatric Care: those who are gravely disabled and cannot function in general population in a CARE3-MH environment. In determining an individual's mental health care level, an individual's current, recent, and historical need for services is considered, along with consideration of any type of psychotropic medication required. The BOP offers a number of formal, organized psychology treatment programs with specific target populations, admission criteria, and treatment modalities. Many of these are residential programs offered only at select facilities. General psychological services and mental health crisis intervention are available throughout the BOP. Psychiatric services, including psychotropic medication, are generally coordinated through health services in conjunction with psychology services staff. Psychiatry services may be available either through contracts with a community psychiatrist, or increasingly, through telepsychiatry with a BOP psychiatrist at another location.

## Public Safety Factors

*Disruptive Group.* A "disruptive group" is a prison gang that has been identified by prison staff and certified by the BOP as engaging in illicit activities within the BOP and/or being disruptive

to the internal operation of the BOP. Organized crime groups such as La Cosa Nostra, which operate outside the prison environment, are not disruptive groups as defined by the PSF unless they meet these criteria.

A male inmate who is identified in the BOP Central Inmate Monitoring System will be housed in a high security level institution unless the PSF has been waived.

*Greatest Severity Offense.* A male inmate whose current term of confinement falls into the “Greatest Severity” range according to the Offense Severity Scale (Appendix A) of BOP Program Statement 5100.08 will be housed in at least a low security level institution unless the PSF has been waived.

The following are considered greatest severity offenses:

- ❖ aircraft piracy;
- ❖ arson;
- ❖ assault (serious bodily injury intended or permanent or life-threatening bodily injury resulting);
- ❖ car-jacking;
- ❖ certain drug offenses;
- ❖ escape from a closed institution or secure custody through the use of force or weapons;
- ❖ espionage, including treason, sabotage or related offenses;
- ❖ the use or possession of explosives involving risk of death or bodily injury;
- ❖ extortion by weapons or threat of violence;
- ❖ homicide or voluntary manslaughter;
- ❖ kidnapping involving abduction, unlawful restraint, or demanding or receiving ransom money;
- ❖ robbery;
- ❖ sexual offenses, including rape, sodomy, incest, carnal knowledge, or transportation with coercion or force for commercial purposes;
- ❖ use of toxic substances or chemi-

cals as weapons to endanger human life; and

- ❖ distribution of automatic weapons or exporting sophisticated weaponry, or brandishing or threatening use of a weapon.

The “certain drug offenses” category will be applicable only if the defendant was a manager or owner of large-scale drug activities (i.e., drug activities involving drug quantities in excess of 10 kilograms of cocaine, 31 grams of crack, 250 kilograms of hashish, 620 kilograms of marijuana, 2 kilograms of heroin, 17 kilograms of methamphetamine, 20,000 dosage units of PCP, and 250,000 dosage units of amphetamine, barbiturates, LSD or other illicit drugs). The fact that an individual is involved in large-scale drug activity does not mean that the offense is considered “greatest severity.” That appellation is reserved for “organizers/leaders,” which includes importers, high level suppliers, growers, manufacturers, financiers, money launderers, aircraft pilots, and captains of large boats or ships. For example, in a drug case involving more than 10 kilograms of cocaine or 620 kilograms of marijuana, designation staff will look at the “role in the offense” portion of the PSR to see if there is any upward adjustment under U.S. Sentencing Guideline § 3B1.1. If not, the offender will generally not be treated as a greatest severity offender. An individual who receives a mitigating role under USSG § 3B1.2 will not qualify for the greatest severity PSF.

Similarly, if the sentencing judge finds that an individual’s guideline offense level should not be enhanced under USSG § 3B1.1 for an aggravating role, defense counsel must make sure that the PSR is corrected and/or that the judge issues findings pursuant to Rule 32(c)(1) of the Federal Rules of Criminal Procedure in the Statement of Reasons (SOR). When it is a close call whether this PSF applies, a finding by the sentencing judge in the SOR that the defendant was not part of an organizational network and did not organize or maintain ownership interest/profits from large-scale drug activities will help avoid this PSF.

*Sex Offender.* A male or female inmate whose behavior (current or prior) includes one or more of the elements listed here will be housed in at least a low security level institution unless the PSF has been waived. A

defendant need not have a sex offense conviction for this PSF to apply. For example, if a sex offense was dismissed as a result of a plea bargain, the BOP will apply this PSF if the PSR documents the behavior that triggers it. Any of the following offense elements (or attempts to commit any of them) can trigger the “sex offender” PSF:

- ❖ engaging in sexual conduct with another person without obtaining permission (examples include forcible rape, sexual assault, or sexual battery);
- ❖ possession, distribution, or mailing of child pornography or related paraphernalia;
- ❖ any sexual contact with a minor or other person physically or mentally incapable of granting consent (examples include indecent liberties with a minor, statutory rape, sexual abuse of the mentally ill, and rape by administering a drug or substance); and
- ❖ any sexual act or contact not identified above that is aggressive or abusive in nature (examples include rape by instrument, encouraging use of a minor for prostitution purposes, and incest).

Application of this PSF is also required if a defendant’s current offense is referenced in the Sex Offender Notification and Registration Program Statement, or if it involves a violation of any of the following statutes: 18 U.S.C. § 2241, 18 U.S.C. § 2242, 18 U.S.C. § 2243, 18 U.S.C. § 2244, 18 U.S.C. § 2251, or 18 U.S.C. § 2252.

*Threat to Government Officials.* A male or female inmate classified under the BOP Central Inmate Monitoring system as a “threat to government official” will be housed in at least a low security level institution unless this PSF has been waived.

*Deportable Alien.* The BOP now applies this PSF to any male or female inmate who is not a citizen of the United States. This includes all long-term detainees. Application of this PSF requires placement in at least a low security facility. It is not to be applied when the U.S. Immigration and Customs Enforcement (ICE) or the Executive Office for Immigration Review (EOIR) has determined that deportation proceedings will not be warranted or when there is a finding

not to deport.

**Sentence Length.** A male offender with more than 10 years remaining to be served will be housed in at least a low security facility unless this PSF has been waived. A male offender with more than 20 years remaining to be served will be housed in at least a medium security facility unless the PSF has been waived. A male offender with more than 30 years remaining to be served (including non-parolable life sentences) will be housed in a high security facility unless the PSF has been waived. This rule does not mean that a defendant who receives a 12-year (i.e., 144-month) sentence would necessarily be ineligible for a prison camp. First, the BOP does not look to the *sentence* the defendant received to determine whether this PSF applies — it looks to the time a defendant has left to serve. After expected good time credit is subtracted, a sentence of 144 months results in approximately 123 months to serve ( $144 \times .85 = 122.4$ ). While this might still leave more than 10 years to serve, if the defendant has already served more than three months in pre-trial confinement, he may have less than 10 years to serve following designation, and may therefore be eligible for a federal prison camp.

**Violent Behavior.** A female inmate whose current term of confinement or history involves two convictions for serious incidents of violence within the last five years will be assigned to at least a low security level institution unless the PSF is waived.

**Serious Escape.** A female inmate who has been involved in a serious escape within the last 10 years, including the current term of confinement, will be assigned to the Carswell Administrative Unit unless the PSF has been waived. A male inmate who has escaped from a secure facility, or has an escape from an open institution or program with a threat of violence, will be housed in at least a medium security level institution unless the PSF is waived.

**Prison Disturbance.** This PSF applies to male or female inmates who have been involved in more than one serious incident of violence within an institution and have been found guilty of one or more of certain prohibited acts, such as engaging in or encouraging a riot. Male inmates with this PSF are housed in high security institutions unless the PSF has been waived. Female inmates with this PSF will be assigned to the Carswell

Administrative Unit unless the PSF has been waived.

**Juvenile Violence.** This PSF applies to current male or female juvenile offenders with any documented single instance of violent behavior, past or present, which resulted in a conviction, a delinquency adjudication, or finding of guilt. For purposes of this PSF, “violence” is defined as aggressive behavior causing serious bodily harm or death, or aggressive or intimidating behavior likely to cause serious bodily harm or death (e.g., aggravated assault, intimidation involving a weapon, or arson).

**Serious Telephone Abuse.** This PSF applies to male or female inmates who have used a telephone to further or promote criminal activities. An inmate need not have been convicted of this criminal activity as long as it is documented in the PSR or other official report. Not every inmate who has used a telephone to commit a crime will be assigned this PSF. However, some white collar offenders, who would otherwise be camp-eligible, will be.<sup>3</sup> An inmate assigned this PSF must be housed in at least a low security level institution unless the PSF has been waived. Offenders who are assigned the “serious telephone abuse” PSF may also have their use of the telephone at Bureau of Prisons institutions restricted.

## Management Variables

Management Variables (MGTVs) are factors that can override a defendant’s security score or PSF, and are generally imposed by the designator. Management variables include the following items:

- ❖ **Judicial Recommendation.** Occasionally, the BOP may rely on a judicial recommendation to apply an MGTV to place an inmate in a higher or lower security level than the inmate’s score would otherwise require.
- ❖ **Release Residence.** The BOP occasionally will assign an inmate to an institution because it is close to his “release residence,” even though the inmate’s score would normally require an institution with a different security level. Generally, this MGTV will be applied to assign an inmate to a higher security level institution, although in theory it can work both ways.

- ❖ **Population Management.** Sometimes the BOP will place an inmate in an institution with a higher security level because the lower security level institutions for which the inmate qualifies are overcrowded. When it does, it applies this MGTV.
- ❖ **Central Inmate Monitoring Assignment.** Some inmates need to be monitored or separated from others. Sometimes these special management concerns limit the options for placement. When this happens, the BOP applies this MGTV to permit placement outside normal guidelines.
- ❖ **Medical or Psychiatric.** The BOP will apply this MGTV when an inmate needs medical/psychiatric treatment that is available only in an institution outside his or her security level.
- ❖ **Work Cadre.** At secure facilities without satellite camps, the regional director may authorize a certain number of work cadre inmates to perform work outside the perimeter of the institution. When such a placement is outside normal security level scoring guidelines, the BOP will apply this MGTV to allow the inmate to participate in the work cadre.
- ❖ **PSF Waived.** This MGTV is applied when a PSF has been reviewed, approved for waiver by the DSCC administrator, and will cause the inmate to be placed at a different security level than if the PSF were as in place.
- ❖ **Long-Term Detainee.** Although the BOP assigns security levels to long-term alien detainees at the time of initial classification, these detainees do not receive subsequent custody reviews as do regular BOP inmates who are not aliens. Therefore, should circumstances warrant a transfer to a lesser or higher security, the BOP assigns this MGTV. This MGTV can only be approved by the BOP Detention Services Branch, Correctional Programs Division, Central Office.
- ❖ **Greater Security.** When the Bureau of Prisons believes that an offender represents a greater security risk than the assigned security level would suggest, it may apply

this Management Variable and place the inmate in an institution with a higher security level. The BOP typically applies this MGTV to offenders with lengthy prior arrest records but few convictions, nonviolent offenders who have a history of poor adjustment under probation or community supervision, offenders with a history of organized crime involvement, offenders with sig-

nificant foreign ties and/or financial resources, and offenders who have had disciplinary problems during prior incarceration. Inmates who receive this MGTV are placed one security level higher than their score would otherwise require.

- ❖ *Lesser Security.* When the Bureau of Prisons concludes that offenders represent a lesser security risk

than their scored security level would suggest, it can apply this MGTV to place them in an institution outside normal guidelines.

## Central Inmate Monitoring Information

The Central Inmate Monitoring (CIM) system is an additional classification tool to monitor inmates who present special security management

## Practice Tips

- ❖ The most important thing defense counsel can do to ensure designation to the lowest security prison possible is to make sure that any inaccurate information in the Presentence Investigation Report (PSR) is corrected. The Bureau of Prisons (BOP) relies almost exclusively on the information contained in the PSR to decide where a defendant will do time, as well as to make other important correctional decisions (such as whether a defendant is eligible for the Bureau's Residential Drug Abuse Program (RDAP). It is for good reason that the PSR is known as the "bible" by prisoners and BOP staff alike. If defense counsel objects to inaccurate information at the time of sentencing and the judge sustains those objections, defense counsel must make sure that the PSR is corrected before it is sent to the BOP or, at a minimum, that formal findings are made by the judge pursuant to Fed. R. Crim. P. 32(c)(1) and attached to the PSR before it is forwarded to the Bureau. A finding made in the judgment in a criminal case (preferably in the "statement of reasons" portion) will also suffice.
- ❖ To help avoid having a defendant designated to the Work Cadre program, the court should recommend placement in a "minimum security federal prison camp."
- ❖ It is important for defense counsel to make sure that the PSR adequately documents any drug (illegal and prescription) abuse or alcoholism. Many defense lawyers and defendants tend to downplay substance abuse problems, under the mistaken belief that revealing such problems can harm the client. Unless a client's substance abuse problem is adequately documented in the PSR, he or she may not qualify for RDAP. If not in RDAP, the inmate will not get the chance to earn up to a one-year reduction in sentence pursuant to 18 U.S.C. § 3621(c)(2), which permits such a reduction for nonviolent inmates who successfully complete a residential drug treatment program in a BOP facility.
- ❖ The BOP treats unresolved charges as carrying a detainer, even when none has been lodged. This results in additional security points and possibly placement at a more secure institution, particularly for individuals who otherwise qualify for minimum security placement. Accordingly, when a client is sentenced while in primary federal custody and has a state case that may resolve soon thereafter with a sentence of time served or better (i.e., no additional term of imprisonment), counsel should ask the federal court to (1) hold the judgment in abeyance until after the state sentencing and (2) direct the U.S. Probation Office to amend the PSR to reflect the state resolution before it sends the report electronically to the BOP via the eDesignate system. If the court refuses such a request, counsel should obtain a certified copy of the state disposition and forward it to the BOP, preferably via Probation and eDesignate, before the client's designation package is processed.
- ❖ It is important for counsel to make sure that the PSR's criminal history score is accurate. The addition of one criminal history point may not change a defendant's Criminal History Score (CHS), but it can negatively impact prison designation because the BOP now uses Criminal History Points to calculate an individual's security level.<sup>4</sup> Criminal History Points can affect the type of facility to which the offender may be assigned, even if the judge sentences below the guideline range.
- ❖ If a client is a U.S. citizen, it is important to ensure that the citizenship is verified by the U.S. Probation Officer and duly noted as *verified* in the PSR. This is not generally a problem for persons born in the United States. Verifying citizenship can be especially important for naturalized citizens because if such citizenship is not verified in the PSR at the time of initial designation by the BOP, an individual who might otherwise be eligible for placement in a minimum security camp will be designated instead to a low security prison, the next higher security level. Counsel should provide the U.S. Probation Officer with the client's naturalization certificate.
- ❖ While designation and placement are to be communicated to the defendant by the U.S. Marshal and/or Pre-Trial Services, often, this is not done. It is essential that defense counsel contact the U.S. Marshal and Pre-Trial Services to determine if a defendant who has been granted voluntary surrender has been designated. If so, counsel should determine where and when the defendant should report if the report date was left open to the BOP.

needs. This can include inmates who have documented needs to be separated from certain other inmates, inmates who pose threats to government officials, inmates who received widespread publicity, and others whose backgrounds suggest that special supervision is needed in determining prison placement. Pertinent information, especially with regard to inmates requiring separation from specified others, can be communicated to the BOP at the time of initial classification and designation, preferably by the AUSA who prosecuted the case or other federal law enforcement official involved in the case.

## After DSCC Designates An Inmate

After a designation is made, the information is communicated to the U.S. Marshal and Pre-Trial Services (PTS). If the individual is not incarcerated, the marshal is required to inform that person of the designation. Unfortunately, sometimes, this notice is not sent. Hence, it is important that counsel for the defendant keep in touch with PTS or the U.S. Marshal to determine the defendant's designated facility. If the inmate is incarcerated at a federal institution, the inmate may be able to obtain that information from a staff member, who can obtain it from the BOP computer system. (Staff members are not required to provide this information to an inmate, but some will.) If the inmate is in a nonfederal facility, he or she may not be able to obtain this information from institution staff because it is not privy to the computer used by the BOP and the U.S. Marshal Service. If the inmate is unable to obtain this information, defense counsel may be able to obtain it from the marshal. (Marshals are not required to disclose that information, but some will.) Under strict BOP policy, the Bureau will not release this information to non-law enforcement agencies or the public, including defense attorneys in most districts.

## Transfers

Transfers (also known as redesignations) are used to move inmates from one institution to another as needed, with each type of transfer having a specific objective. The following are some of the more frequent reasons for a transfer:

- ❖ institution classification;
- ❖ nearer release;
- ❖ disciplinary/close supervision;
- ❖ adjustment;
- ❖ medical/psychological treatment;
- ❖ temporary transfer;
- ❖ training purposes/program participation;
- ❖ institution Hearing Program;
- ❖ pre-release; and,
- ❖ transfers from residential re-entry centers (halfway houses).

The two most common requests for transfer by inmates are (1) institution classification transfers based on a decrease in the inmate's security level and (2) nearer release transfers.

When a decrease in an inmate's security level is indicated, transfer of the inmate to a lower security institution will be considered.

Nearer release transfers move inmates closer to their legal residence or release destination consistent with their security level. Inmates must be considered for a nearer release transfer only after serving 18 consecutive months of clear conduct in general population. After the inmate has been transferred within 500 miles of his or her release residence, no further referrals will be made for nearer release transfer consideration. Transfers to a facility in an area other than an inmate's legal residence or sentencing district may be considered by the inmate's Unit Team provided that the inmate can provide strong evidence of community and/or family support.

Inmates with an Order for Deportation, an Order of Removal, an ICE detainer for an adjudicated offense or an ICE detainer for hearing will not be nearer release purposes since they will be returning to the community outside, rather than inside, the United States upon release.

A request for nearer release transfer should be made by the inmate. The warden of an institution with a satellite camp may transfer an inmate from the main institution to the camp

if the inmate is assigned an appropriate security and/or custody level.

An inmate may travel via "unescorted transfer" from a low or minimum security level institution to a minimum security level institution if the inmate is a minimum security level inmate and has "out" or "community" custody. The inmate's family (on the approved visiting list) may provide transportation to the receiving institution only if the inmate is transferring from a minimum level security institution to another minimum level security institution and, if approved by the warden, the inmate's family is expected to bear all transportation costs. The inmate must go directly from the sending institution to the receiving institution.

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## Notes

1. Bureau of Prisons Program Statement 5100.08 (Inmate Security Designation and Custody Classification) Sept. 12, 2006.

2. The address for the DSCC is 346 Marine Forces Drive, Grand Prairie, TX 75051; (972) 352-4400; BOPCDP/DSCC@bop.gov.

3. Defense counsel should consult BOP Program Statement 5100.08 to determine its applicability to a particular individual.

4. See Program Statement 5100.08. ■

## About the Author

Alan Ellis, a past president of NACDL,



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