

# GRID & BEAR IT

BY TODD BUSSERT AND JOEL SICKLER



## Bureau Of Prisons Update: More Beds, Less Rehabilitation

The July 2002 issue of *The Champion* offered a primer on the Federal Bureau of Prisons (BOP), its programs and regulations.<sup>1</sup> While institutional inertia tends to restrict major policy shifts within government agencies, budget freezes, revised priorities and a perpetually growing prison population have led to numerous noteworthy developments in the BOP over the past 20 months. This column focuses on recent legal challenges to the bureau's time credit calculations and its use of halfway houses, new prisoner designation considerations, and institutional closures and openings. It also summarizes the 500-hour residential drug and alcohol treatment program — now the only meaningful BOP avenue through which inmates can earn sentence reductions.

### Time Credit Litigation

In the Fall of 2002, NACDL member and Oregon Federal Defender Steve Sady wrote an excellent article concerning legal

challenges to the BOP's miscalculation of good conduct time credits, where no prisoner is afforded a full 15 percent sentence reduction for good behavior contrary to a reasonable understanding of federal truth-in-sentencing and 18 U.S.C. § 3624(b).<sup>2</sup> Not surprisingly, word of Steve's efforts in the U.S. Court of Appeals for the Ninth Circuit,<sup>3</sup> which received *amicus* support from NACDL, Families Against Mandatory Minimums (FAMM), and the National Association of Federal Defenders, spread quickly through the federal system.

Dozens, if not hundreds, of *pro se* petitions for writs of *habeas corpus* (28 U.S.C. § 2241) have been filed nationwide, seeking judicial rectification of the BOP's ongoing calculation error.<sup>4</sup> As of this writing, two U.S. Courts of Appeals have followed the Ninth Circuit's reasoning and upheld the BOP's highly complex equation for calculating time credits, which results in prisoners receiving as long as a 12.8 percent sentence reduction for good behavior (or 47 days, instead of the 54 days to which prisoners are entitled), though reconsideration motions have been filed in both cases.<sup>5</sup> The issue continues to be fiercely litigated, with cases pending in the First, Second, Fourth, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuits. FAMM and the federal defenders have worked together to secure representation for a number of *pro se* petitioners, and at least one district court has concurred with petitioner-prisoners' straightforward, common sense interpretation of § 3624(b) and Congress's clear intent.<sup>6</sup>

### Halfway House Restrictions

Arguably its most significant policy change in the past 30 years, in December 2002, BOP abandoned the use of community corrections centers (CCCs or halfway houses) as places of initial designation for nonviolent and first-time offenders serving relatively short periods of incarceration.<sup>7</sup> It also imposed restrictions on the use of CCCs for pre-release purposes. These departures from longstanding practice,<sup>8</sup> which stem from a DOJ Office of Legal Counsel opinion,<sup>9</sup> have drawn considerable attention in this publication and elsewhere.<sup>10</sup> Despite

courts' near wholesale rejection of the failed reasoning underlying its actions,<sup>11</sup> the BOP intends to formalize this ill-conceived policy.

On August 18, 2004, the bureau published proposed "new rules announcing its categorical exercise of discretion for designating inmates to community confinement when serving terms of imprisonment."<sup>12</sup> These "new rules" sought to prohibit direct designations to CCCs and limit pre-release placements to the final 10 percent of a prisoner's time served (up to six months), like a prisoner's eligibility for home confinement under 18 U.S.C. §3624(c), are a codification of the practices implemented two years ago without notice and comment, as required by the Administrative Procedures Act. After review of public comments, including those from NACDL, the BOP announced the rules as finalized, with one minor modification. They became effective February 14, 2005.<sup>13</sup>

### Boot Camps Eliminated

To start the new year, BOP Director Harley Lappin issued a written message to staff outlining the third phase of efforts to reduce costs due to continuing budget cutbacks. Among the "cost savings initiatives" announced was the elimination of the Intensive Confinement Center (ICC or boot camp) program, located at FPC Lewisburg, Pennsylvania, FPC Bryan, Texas, and FPC Lompoc, California. Final ICC classes started in January, and the program is slated to cease operations on July 15, 2005, replaced by ordinary minimum-security programs. According to a spokesperson from the Administrative Office of the U.S. Courts, "The judiciary was not consulted before this change took place . . . [W]e're hearing from judges all over the country who are disappointed that this is no longer an option."<sup>14</sup>

This ignominious conclusion to a program authorized by Congress and initiated by the BOP in 1990 should not pass without some skepticism. Director Lappin asserts that "(t)he ICC programs are exceedingly costly to maintain and a substantial body of research indicates that they have no impact on reducing recidivism."<sup>15</sup> Yet the last substantive

research into the ICCs' cost and efficacy was done in 1996,<sup>16</sup> when the program was estimated to save the BOP \$2,500 per participant serving a one-year-and-a-day sentence, as compared to the cost of other minimum-security inmates, and \$9,300 for those serving 30-month sentences.<sup>17</sup> These figures seem inconsistent with the \$1.2 million savings that Director Lappin projects from the ICC closure, which annually accepted only about 750 of the bureau's more than 170,000 prisoners.

A representative for the Council of Prison Locals aptly observed, "We feel like we're just warehousing prisoners now . . . That's what we feel the White House wants us to do — warehouse prisoners, put them in a box."<sup>18</sup> Perhaps all is not lost, though. Senator Charles Schumer requested that the Attorney General and the Justice Department reconsider the move, commenting, "There are many effective ways to fight crime and this program is an important one of them."<sup>19</sup>

### New Designation Criteria

There is a new wrinkle to the question of where within the BOP a client may be designated.<sup>20</sup> Although neither an operations memorandum nor a revised program statement has issued,<sup>21</sup> the bureau has reportedly begun to employ a four-level scale in the (re-) designation process that seeks to correlate prisoners' perceived medical needs to resources both at institutions and in their corresponding communities. Level 1 prisoners are characterized as healthy (overall,) requiring only emergency medical care. Level 2 prisoners have chronic conditions and can manage independently with quarterly status reviews (e.g., an asthma condition controlled by prisoner-held inhaler). 'Fragile' persons — those who call for assistance with daily livings activities and monthly clinical evaluations (e.g., oncology follow-ups) — are classified Level 3. Finally, "inpatient" prisoners, those requiring daily nursing care, are classified Level 4.

The bureau has also established corresponding levels for facilities beyond those related to security concerns. Level 1 institutions are located approximately one hour or more from community medical centers (e.g., Manchester, Kentucky (two hours from Lexington); Lee, Virginia; and Yazoo City, Mississippi). Level 2 institutions have no special capabilities beyond those that health services staff ordinarily provide; however, they are within about an hour of major regional treatment centers (e.g., Fort Dix and Fairton, New Jersey), thereby permitting more immediate attention to medical

emergencies. Level 3 institutions are adjacent to Level 4 institutions, that is federal medical centers (e.g., FPCs Lexington, Kentucky and Devens, Massachusetts).

In terms of client placement, counsel should take extra care in presenting and documenting health concerns before sentencing.<sup>22</sup> Likewise, for clients with medical needs, albeit minor, prudence suggests contacting the BOP before requesting a judicial recommendation concerning designation, particularly if a client may not be deemed other than Level 1 but is seeking placement in a remote locale (e.g., Ray Brook, New York; Alderson, West Virginia; or La Tuna, New Mexico).

### Around The Regions

**Northeast.** One aspect of the December 2002 CCC rule change that went largely unnoticed was its systemic repercussions, when federal prisoners awaiting commitment to halfway houses were diverted elsewhere and those scheduled for pre-release transfers were held unexpectedly at their parent institutions. The BOP contemporaneously announced the downsizing of the Allenwood Federal Prison Camp (FPC) in White Deer, Pennsylvania, one of the its oldest and largest minimum-security prisons, modifying it from a stand-alone facility housing roughly 1,000 inmates to a work cadre of some 200 serving the bureau's nearby correctional complex. Together, these events created a backlog that upset designations and movement of minimum-security prisoners for much of 2003-2004.

In revising FPC Allenwood's mission, the BOP also phased out the institution's 500-hour Residential Drug Abuse (treatment) Program (RDAP). Later, in 2004, it did the same with the minimum-security RDAP at the Federal Medical Center in Devens, Massachusetts, freeing beds for inmates needing chronic medical care. This series of events has led to a situation where only one camp in the Northeast is running RDAP classes (FPC McKean). The bureau is directing eligible prisoners from the region to the Federal Correctional Institution-Low in Elkton, Ohio, with plans to open a new RDAP at FPC Schuylkill, Pennsylvania, in April 2005.

Helping offset the need for bed space arising from Allenwood's contraction, a new camp was activated in Waymart, Pennsylvania that will serve the adjacent Canaan penitentiary, which has yet to go on-line. Also, Devens is now accepting and managing "sexual offenders" but not providing treatment services like those at FCI Butner, North Carolina.

**Southeast.** Hurricane Ivan upset life throughout much of the Southeastern United States last year, including life for those in federal custody. Ivan forced the evacuation of FPC Eglin, Florida (located in the Panhandle), and caused structural damage. Although a small number of Eglin inmates were allowed to return (approx. 260), the facility essentially closed for repairs. The bureau relocated the balance of Eglin's population to camps in surrounding states, such as the recently activated FPCs Williamsburg and Bennettsville, South Carolina. While most repairs are complete, Eglin is not scheduled to begin accepting initial designations or re-designations for *at least* six months due to planned upgrades (i.e., "hurricane proofing").

Eglin's RDAP, one the bureau's most consistently running, has also been suspended during renovations. For prospective minimum-security participants, the interruption at Eglin means greater demand at other programs within the region and delays in admittance that effectively limit the time credit inmates can earn pursuant to 18 U.S.C. § 3621(e). Before October 2004, minimum-security RDAPers in the Southeast could reasonably expect to earn a sentence reduction of 7.5 to 8.5 months (the reported national average). That number now



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stands closer to five-to-six months.

Ivan's reverberations will be felt for some time. Within the coming year, a second U.S. penitentiary (high-security) is scheduled to open at the Coleman, Florida, complex, and Yazoo City will grow to include a low-security FCI (male).

*Western.* The BOP is undergoing a major facility reorganization on the West Coast. With the addition of USP Victorville, California, USP Lompoc is being converted from a high- to a medium-security level institution, and FCI Terminal Island is being converted from a medium- to a low-security facility. The west is also opening new medium-security institutions for male prisoners, including a second FCI at Victorville and, later this year, FCI Herlong, California, near Reno. Finally, in the Spring, another USP should become a part of the bureau's Tucson, Arizona, complex.

*Elsewhere.* Bureau officials report no new institutions or major program changes within the North Central Region. The South Central has added FCI Forrest City, Arkansas (male, medium-security), within the past six months, and the Mid-Atlantic is in the process of activating USP Hazelton, West Virginia, and its satellite camp (male, minimum-security).

## RDAP

As noted above, the bureau's 500-hour residential drug abuse treatment program is the only corrections-based mechanism by which federal prisoners might now potentially receive a reduction in sentence beyond earned good conduct time credit.<sup>23</sup> For those possessing appropriate treatment needs without a disqualifying history (e.g., violence, sexual offense),<sup>24</sup> nine months in RDAP precedes an assured six-month pre-release placement (halfway house/home confinement) and an *up to* one-year sentence reduction pursuant to 18 U.S.C. § 3621(e). Accordingly, and notwithstanding the general utility of treatment and associated reduction in recidivism, considerable interest for RDAP exists within the federal prison population, with many investing anxiety-inducing hope in the program and the rewards completion offers.

*Admission Criteria.* A defendant's presentence investigation report (PSI or PSR) is the BOP's "bible" as to individual prisoner determinations — it carries the single most weight of any document affecting your client's term of imprisonment.<sup>25</sup> This is particularly true of RDAP eligibility review, where members of an

institution's psychological services unit will consider a prisoner's substance abuse history, as documented in the PSI, to the virtual exclusion of any other information.

Standard RDAP eligibility requires a verifiable, documented drug or alcohol problem.<sup>26</sup> Specifically, an "inmate must meet the diagnostic criteria for substance abuse or dependence indicated in the *Diagnostic and Statistical Manual of the Mental Disorders, Fourth Edition, (DSM-IV)*," though questions concerning what form of drug or alcohol use rises to this level exist.<sup>27</sup> Because members of an institution's psychological services unit will look at an RDAP applicant's PSI before scheduling an eligibility interview, it is imperative that defense counsel discuss substance abuse histories with clients before probation office interviews and, when possible, provide PSI writers with other corroborative sources, such as medical records or clinical assessments. Otherwise, saddled with a factually deficient PSI, clients will likely be deemed ineligible for services and refused an eligibility interview. In that instance, the only, non-guaranteed recourse is supplying documentation from a reputable source subsequent to incarceration, which can produce delays in admission and possible loss of otherwise allowable §3621(e) credit.

In addition to merely confirming the existence and degree of a client's substance abuse, defense counsel must also ensure verification of time frames. Historically, the bureau's residential treatment program had an unwritten practice of accepting only inmates able to demonstrate drug or alcohol use during either the one year before arrest; or, if no arrest, than the one year before indictment; or, if no indictment, than the one year before confinement — a condition at least one court rejected.<sup>28</sup> At some indeterminable point within the last two years, however, the practice appears to have changed to "one year prior to incarceration" only. In other words, prisoners with lifelong histories of addiction or abuse, even if confirmed by documented drug arrests or past treatment efforts, are ineligible for RDAP participation unless BOP staff can confirm use during their last 12 months on the street. Importantly, alcohol abusers are presented with a higher bar; they must have been active alcoholics or have had at least one confirmed relapse within a year of incarceration.

According to RDAP clinical staff, if a prisoner remains sober for 12 consecutive months before entering federal custody, she should be considered in "sustained

full remission" and, therefore, no longer in need of treatment services. When questioned, BOP officials cite the DSM-IV to justify this unannounced and unpublished change. Closer review reveals nothing in that diagnostic tool to support the BOP's program restriction.<sup>29</sup> Yet it persists.

*Eligibility Interview.* Unlike the former ICC, RDAP participation does not require a judicial recommendation, though a prisoner is in an obviously stronger position with a court's recognition and encouragement of treatment, especially if accompanied by a recommendation for a facility with the program. Also, a judicial recommendation and a satisfactory PSI do not assure designation to one of the dozens of facilities nationwide that offer the program. A prisoner's sentence length or a simple administrative oversight can result in placement at an institution lacking requisite services.

With respect to the application process, once placed in BOP custody and within 36 months of release, a prisoner can request an eligibility interview by filling out either a "cop-out" (informal request from a staff member) or its procedural equivalent, a BP-8 (formal request for resolution), with his counselor or case manager.<sup>30</sup> Submission of the request initiates the RDAP application, and, within a short period, the prisoner should receive notice of an interview with either the institution's RDAP coordinator or a drug treatment specialist (DTS), or, if his facility does not offer RDAP, a member of the psychological services staff.

The eligibility interview should ideally be scheduled within sufficient time for prisoners to begin RDAP while 27 months or more from projected release (sentence length less any pre-trial or anticipated good time credits); a prisoner entering RDAP at or before her 27-month mark has a greater opportunity of maximizing the full one-year reduction that 18 U.S.C. § 3621(e) affords. However, due to inadequate budgets, staff shortages and turnover or administrative inefficiency, few RDAPs are run in a manner that allows prisoners to make the most of this benefit. Today, most RDAPs award graduates about fifty percent of what was achievable just a few short years ago.

The interview itself can be a source of extreme stress. Given the § 3621(e) incentive, as well as a general suspicion of prisoners, interviewers approach each applicant with an abundance of cynicism. An applicant can safely assume that no

matter what appears in the presentence report, the interviewer will pose difficult questions and insist on knowing whether voluntary admission is sought in good faith to obtain treatment, or simply to secure a quicker return home. Customary inquiries include when applicants learned about the program, particularly about the § 3621(e) credit; whether attorneys advised them to exaggerate treatment needs when meeting with Probation; and exacting details about drug or alcohol use (e.g., when, how often, where, with whom, others' awareness, etc.).

The keystone of the eligibility interview — indeed, of recovery — is complete candor. For example, if a client has quietly relapsed during the pretrial stages of the case, which is understandable given the strain of prosecution or eventual incarceration, forthrightness is called for. It should be disclosed first during the presentence interview and, later, to the RDAP admission interviewer. Concurrently, clients must be counseled not to overstate their problems or histories since RDAP staff, who are experienced in the pathologies of abuse and denial inherent in addiction, may seek to subtract those with detected embellishments from the program's brimming roles. In short, just as the sober truth will best serve clients' after release, so to it is all that will gain a prisoner's admittance to RDAP.

Successful navigation of the eligibility gauntlet earns placement on a wait list, which is governed not by degree of treatment needs but rather by one's projected release date. Those approved at an institution not offering RDAP are compelled to endure the uncertainty of transfer, which can be time-consuming for staff to arrange, is unlikely to involve out-of-region moves due to the budget crunch, and heightens the risk of delayed program participation. Announcement of one's RDAP entrance is made by the posting of a class list. However, any list is subject to change at the last possible moment, with those at an RDAP institution frequently bumped due to the arrival of a bus carrying others with less time remaining to serve. Removal from the list, for whatever reason, can postpone admittance for up to several months.

**Program Composition.** RDAP participation can be very rewarding for those open to exploring the root causes of addiction. Drawing from a host of public and private treatment models, the program has two distinct parts: the nine-month residential, "in custody" treatment portion (Phase I) and the transitional services portion (Phase II), occurring at

halfway houses and while on home confinement.

The residential phase compels the reconciliation of substance abuse issues in each of the 24-to-27 participants' respective lives. Once enrolled, participants are placed in a housing unit segregated from the general population to minimize outside distractions. Primary institutional assignments (work/school) also become part-time and secondary to the focus on treatment, recovery, and reentry preparation. In addition to regular group and individual therapy sessions (the latter being the main form of treatment), the program requires attendance at daily, 3.5-hour classes, along with assigned reading from one of seven course workbooks and related homework assignments. Paramount to RDAP education are the areas of "criminal thinking" and "criminal behavior," that is, how thought processes associated with substance abuse relate to decisions giving rise to a participant's offense behavior. Another integral element is the preparation of one's "life story," which all participants must present to the group. Finally, to graduate, one must complete a wellness program that consists of exercise, diet and nutrition.

In light of the overall demand for RDAP, staff does not typically suffer foolishness. Class or group tardiness, missed or incomplete assignments and institutional rules violations — especially those giving rise to an incident report — can all result in expulsion from the program and the loss of any anticipated time credit. However, qualified prisoners completing the residential component move to phase II, aftercare under community confinement center supervision.

As in any halfway house placement, RDAP graduates are expected to work and prepare for reentry. They also carry the burden of added monitoring and counseling. These demands continue throughout the period of prerelease confinement, including when moved to home confinement. And, as is true of the institutional component, a rules violation in the community will result in loss of RDAP credit and a transfer back to a prisoner's parent institution. In short, staying out of trouble is essential to successfully completing RDAP.<sup>31</sup>

## Resources

Clients looking at a term of federal imprisonment often ask about the availability or usefulness of prison handbooks, a new one of which seems to appear every few months. In addition to charging for copies of BOP publications

and data that can be found on-line for free (at [www.bop.gov](http://www.bop.gov)),<sup>32</sup> these guides too often offer little more than a single former prisoner's remembrances, which are inevitably narrow in scope and can be become quickly dated. An engaging alternative to this recurring approach is Wesleyan University Professor Mary Bosworth's *The U.S. Federal Prison System* (Sage Publications 2002) (374 pp.) (available on-line in hardcover and paperback). Professor Bosworth presents a sociological perspective of most aspects of BOP programs and practices, blending official positions with views from prisoners and their family members. She also adeptly takes readers through each phase of incarceration, from admission and orientation to release preparation, providing realistic and objective commentary. Of course, it would not be a prison handbook without a list and description of every federal correctional institution. Yet the attention Professor Bosworth dedicates to the subject includes prisoner comments concerning many facilities as well as a list of charities and service organizations serving prisoners and their families.

Another useful tool is [www.Michael-Santos.net](http://www.Michael-Santos.net), the Web site of a federal prisoner serving a 45-year sentence (drug offense) imposed in 1987. Santos is an inmate of some note, having earned a bachelor's and a master's degree while incarcerated and having thoroughly documented his path to rehabilitation. His site contains countless free articles that offer distinctive insight into the correctional experience, not only from his point of view but also as shared by prisoners with divergent backgrounds and characteristics. Having served nearly 20 years within the BOP, starting in maximum-security and working his way down to minimum-security, Santos also provides a series of suggestions to help those incarcerated.

## Notes

1. Todd Bussert, *Getting to Know the Bureau of Prisons: Extending Advocacy Beyond the Courtroom*, THE CHAMPION at 24-32 (July 2002).

2. Stephen R. Sady, *Misinterpretation of the Federal Good Time Statute Costs Prisoners Seven Days Every Year*, THE CHAMPION at 12-18 (Sept./Oct. 2002).

3. See *Pacheco-Camacho v. Hood*, 272 F.3d 1266 (9th Cir.), cert. denied, 535 U.S. 1105 (2002).

4. See BOP Program Statements 5880.28, SENTENCE COMPUTATION MANUAL (CCCA of 1984) (1999).

5. See *Perez-Olivio v. Chavez*, — F.3d —,

2005 WL 31913 (1st Cir., Jan. 7, 2005); White v. Scibana, 390 F.3d 997 (7th Cir. 2004).

6. See Williams v. Dewalt, — F.Supp. 2d —, 2004 WL 3022300 (D.-Md., Dec. 29, 2004).

7. See USDOJ-BOP, *Direct Designation to a Community Corrections Center* in Judicial Resource Guide to the Federal Bureau of Prisons, at 16 (2000) (listing general eligibility criteria).

8. Compare Michael Cooksey and Christopher Erlewine, *Community Confinement Procedure Changes*, Memorandum for Chief Executive Officers (Dec. 20, 2002) with BOP Program Statements 7310.04, *Community Corrections Center (CCC) Utilization and Transfer Procedures* ¶12.a., at 12 (1998) and 5100.07, *Security Designation and Custody Classification Manual*, ch. 10, ¶12.g., at 8A (2002) (procedures for “pre-release transfers”).

9. USDOJ-OLC, *Re: Bureau of Prisons practice of placing in community confinement certain offenders who have received sentences of imprisonment* (Dec. 13, 2002) (available at [www.usdoj.gov/olc/bopimprisonment2.htm](http://www.usdoj.gov/olc/bopimprisonment2.htm)).

10. *First Circuit Rebukes BOP on Halfway Houses*, THE CHAMPION at 6 (Nov. 2004); *NACDL Members Help Fight Change in Bureau Policy*, THE CHAMPION at 8 (Mar. 2003).

11. The U.S. Courts of Appeals for the First and Eighth Circuits invalidated the rule change on statutory interpretation grounds, and countless district courts also rejected it as violative of the Administrative Procedures Act (APA) and of the Ex Post Facto Clause. See *Elwood v. Jeter*, 386 F.3d 842 (8th Cir. 2004), *Goldings v. Winn*, 383 F.3d 17 (1st Cir. 2004); see also *United States v. Eakman*, 378 F.3d 294 (3d Cir. 2004) (strongly suggesting Ex Post Facto violation); *Solomon v. Zenk*, No. 04-CV-2214, 2004 WL 2370651 (E.D.N.Y., Oct. 22, 2004) (Weinstein, J.) (collecting cases).

12. 69 Fed. Reg. 159 (Aug. 18, 2004).

13. 40 Fed. Reg. 1659 (Jan. 10, 2005).

14. Dan Herbeck, ‘Shock Camp’ Loss a Surprise, THE BUFFALO NEWS (Jan. 11, 2005) (quoting AO Senior Public Affairs Specialist Richard Carelli).

15. Harley G. Lappin, *Message to All Staff* at 2 (Jan. 5, 2005).

16. See Jodi Klein-Saffran, *Bureau of Prisons: Expanding Intermediate Sanctions Through Intensive Confinement Centers* in D.L. MacKenzie and E.E. Hebert (eds.), *Correctional Boot Camps: A Tough Intermediate Sanction* (1996).

17. Miles D. Harer and Jodi Klein-Saffran, *Information Paper for the Executive Staff* at 1-2 (Nov. 15, 1996) (evaluation of post-release success for the first four graduating classes from the Lewisburg ICC).

18. Dan Herbeck, *Schumer urges Ashcroft to reconsider closure of shock prison camps*, THE BUFFALO NEWS (Jan. 16, 2005) (quot-

ing Philip W. Glover, president of the Council of Prison Locals).

19. *Schumer Presses Justice Dept. to Keep Heralded Rehab Program for First-Time Non-Violent Offenders*, Press Release (Jan. 12, 2005) (available at [http://schumer.senate.gov/SchumerWebsite/pressroom/press\\_releases/2004/PR40067.Shock11205.html](http://schumer.senate.gov/SchumerWebsite/pressroom/press_releases/2004/PR40067.Shock11205.html)).

20. See *Getting to Know the Bureau of Prisons*, supra n. 1, at 25-27.

21. BOP Program Statement No. 5100.07, SECURITY DESIGNATION AND CUSTODY CLASSIFICATION MANUAL (2002).

22. See *Getting to Know the Bureau of Prisons*, supra n. 1, at 27.

23. The authors acknowledge the seldom used “compassion release” vehicle. BOP Program Statement 5050.46, *Compassionate Release* (1998) implementing the authority vested under 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g).

24. For a discussion of §3621(e) time reduction eligibility criteria, see BOP Program Statements 5330.10, *Inmate Drug Abuse Programs Manual* (1997) and 5162.04, *Categorization of Offenses* (1997) (defines “crimes of violence”). See also, Lopez v. Davis, 531 U.S. 230 (2001) (upholding denial of § 3621(e) sentence reduction for those whose offense of conviction involves, albeit peripherally, possession of a firearm).

25. See *Getting to Know the Bureau of Prisons*, supra n. 1, at 25.

26. P.S. 5330.10 § 5.4.1(a). Other admission criteria include no serious mental impairment precluding full program participation, signed acknowledgment of program responsibilities and being within 36 months of release. *Id.*

27. P.S. 5330.10 § 5.4.1(a); *but see* Kuna v. Daniels, 234 F.Supp.2d 1168 (D.-Or. 2002) (social use of alcohol sufficient to warrant RDAP admission).

28. *Mitchell v. Andrews*, 235 F.Supp.2d 1085 (E.D. Ca. 2001).

29. *Id.* at 1090 (“The DSM-IV does not require documentation of substance abuse or dependency during the 12-month period immediately preceding either a diagnostic interview, arrest, or incarceration.”) (emphasis in original); *but see* Laws v. Barron, No. CIV.A. 6:04-133-DCR, 2004 WL 2935603, \*12 (E.D. Ky., Sept. 15, 2004) (Reeves, J.) (12-month rule “does not contravene well-settled law”).

30. Although rudimentary, all that the form need contain is language to the following effect: “I respectfully request an eligibility interview for admission to the 500-hour residential drug abuse program, so I can address my [drug abuse/alcoholism] prior to release from custody. Thank you.”

31. Anecdotally, approximately one-third of RDAP participants fail out of the pro-

gram for disciplinary reasons or not taking course requirements seriously. A small percentage (approx. 5 percent) fails while in pre-release custody.

32. An official contacted in preparation of this article reports that the bureau’s Web site is scheduled to be overhauled in the near future and will offer even more comprehensive materials and information than already provided. ■

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