

**William J. Holloway, Jr. Inn of Court**

**October 19, 2022**

**Interaction of Federal and State**  
**Sentences of Incarceration**

Jeffrey M. Byers

Federal Public Defender

Western District of Oklahoma

[Jeff\\_Byers@fd.org](mailto:Jeff_Byers@fd.org)

405-609-5980

## Relevant Federal Statues (or Excerpts From):

### 18 U.S.C. §3584. Multiple sentences of imprisonment

**(a) Imposition of concurrent or consecutive terms.**--If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. *Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.*

**(b) Factors to be considered in imposing concurrent or consecutive terms.**--The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a).

**(c) Treatment of multiple sentences as an aggregate.**--Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

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### 18 U.S.C. §3585. Calculation of a term of imprisonment

**(a) Commencement of sentence.**--A sentence to a term of imprisonment commences *on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.*

**(b) Credit for prior custody.**--A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences--

(1) as a result of the offense for which the sentence was imposed; or

(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

*that has not been credited against another sentence.*

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## 18 U.S.C. §3621. Imprisonment of a convicted person

**(a) Commitment to custody of Bureau of Prisons.**--A person who has been sentenced to a term of imprisonment pursuant to the provisions of subchapter D of chapter 227 shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 3624.

**(b) Place of imprisonment.**--*The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise* and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering--

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence--
  - (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
  - (B) recommending a type of penal or correctional facility as appropriate; and
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status. The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another. The Bureau shall make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse. Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person...*[remainder of statute omitted]*.

## 18 U.S.C. §3624. Release of a prisoner

**(a) Date of release.**--A prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

**(b) Credit toward service of sentence for satisfactory behavior.**--

**(1)** Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year<sup>1</sup> other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. Subject to paragraph (2), if the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's sentence or shall receive such lesser credit as the Bureau determines to be appropriate. In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. Credit that has not been earned may not later be granted. Subject to paragraph (2), credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

**(2)** Notwithstanding any other law, credit awarded under this subsection after the date of enactment of the Prison Litigation Reform Act shall vest on the date the prisoner is released from custody.

**(3)** The Attorney General shall ensure that the Bureau of Prisons has in effect an optional General Educational Development program for inmates who have not earned a high school diploma or its equivalent.

**(4)** Exemptions to the General Educational Development requirement may be made as deemed appropriate by the Director of the Federal Bureau of Prisons.

**(c) Prerelease custody.--**

**(1) In general.--**The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.

**(2) Home confinement authority.--**The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.

**(3) Assistance.--**The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during prerelease custody under this subsection.

**(4) No limitations.--**Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.

**(5) Reporting.--**Not later than 1 year after the date of the enactment of the Second Chance Act of 2007 (and every year thereafter), the Director of the Bureau of Prisons shall transmit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing the Bureau's utilization of community corrections facilities. Each report under this paragraph shall set forth the number and percentage of Federal prisoners placed in community corrections facilities during the preceding year, the average length of such placements, trends in such utilization, the reasons some prisoners are not placed in community corrections facilities, and any other information that may be useful to the committees in determining if the Bureau is utilizing community corrections facilities in an effective manner.

**(6) Issuance of regulations.--**The Director of the Bureau of Prisons shall issue regulations pursuant to this subsection not later than 90 days after the date of the enactment of the Second Chance Act of 2007, which shall ensure that placement in a community correctional facility by the Bureau of Prisons is--

**(A)** conducted in a manner consistent with section 3621(b) of this title;

**(B)** determined on an individual basis; and

**(C)** of sufficient duration to provide the greatest likelihood of successful reintegration into the community....[*remainder of statute omitted*].

## Relevant Federal Sentencing Guidelines:

### **U.S.S.G. §5G1.3. Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment**

(a) If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentencing for, but before commencing service of, such term of imprisonment, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment.

(b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that is relevant conduct to the instant offense of conviction under the provisions of subsections (a)(1), (a)(2), or (a)(3) of §1B1.3 (Relevant Conduct) and that was the basis for an increase in the offense level for the instant offense under Chapter Two (Offense Conduct) or Chapter Three (Adjustments), the sentence for the instant offense shall be imposed as follows:

(1) the *court shall* adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and

(2) the sentence for the instant offense *shall be imposed to run concurrently* to the remainder of the undischarged term of imprisonment.

(c) (Policy Statement) In any other case involving an undischarged term of imprisonment, the sentence for the instant offense may be imposed to run concurrently, partially concurrently, or consecutively to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense.

## Relevant Oklahoma Statues:

### 21 Okl.St. §61.1. Sentences to be served in order received by penal institution--Concurrent sentences--Credit for good conduct

When any person is convicted of two or more crimes in the same proceeding or court or in different proceedings or courts, and the judgment and sentence for each conviction arrives at a state penal institution on different dates, the sentence which is first received at the institution shall commence and be followed by those sentences which are subsequently received at the institution, in the order in which they are received by the institution, regardless of the order in which the judgments and sentences were rendered by the respective courts, unless a judgment and sentence provides that it is to run concurrently with another judgment and sentence. This section shall not affect the credits allowed under Section 138 of Title 57.

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### 21 Okl.St. §61.2. Sentences to run concurrent with federal court or another state's court sentence

When a defendant is sentenced in an Oklahoma state court and is also under sentence from a federal court or another state's court, *the court may direct that custody of the defendant be relinquished to the federal or another state's authorities* and that such Oklahoma state court sentences as are imposed may run concurrently with the federal or another state's sentence imposed.

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### 21 Okl.St. §61.3. Parole--Revocation--Relinquishment of custody

When a defendant is on parole from a sentence rendered by an Oklahoma state court and is also under sentence from a federal court or another state's court, the Governor may revoke the defendant's parole and *direct that custody of the defendant be relinquished to the federal or another state's authorities* and that such parole revocation may run concurrently with the federal or another state's sentence which has been imposed. The Governor may also order that a parole revocation run concurrently with any other sentence rendered by an Oklahoma state court.

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## 21 Okl.St. §61.4. Suspended sentence--Revocation-- Relinquishment of custody

When a defendant has received a suspended sentence from an Oklahoma state court and is also under sentence from a federal court or another state's court, the court may revoke the suspended sentence and *direct that custody of the defendant be relinquished to the federal or another state's authorities* and that the sentence may run concurrently with the federal or other state's sentence which has been imposed.

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## 21 Okl.St. §61.5. Return to state to complete sentence

Provided, that, after a defendant has been transferred to another jurisdiction pursuant to the provisions of this act, if any sentence remains to be served in the State of Oklahoma, such defendant shall be returned by the sentencing court to the State of Oklahoma to complete his sentence.

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## 22 Okl.St. §130. Conviction or acquittal outside state or county a bar

When an act charged as a public offense is within the jurisdiction of another territory, county or state, as well as this state, a *conviction or acquittal thereof in the former is a bar to a prosecution therefor in this state.*

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## 63 Okl.St. §2-413. Bar to prosecution

If a violation of this act<sup>1</sup> is a violation of a federal law or the law of another state, *a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.*

<sup>1</sup>[Title 63, § 2-101 et seq.](#)



## Selected Case Law:

*Bloomgren v. Belaski*, 948 F.2d 688, (10<sup>th</sup> Cir. 1991) (Colo.)

Defendant convicted of federal crime was not entitled to reduction of sentence for time spent incarcerated in state prison on unrelated charges, even though state court had ordered its sentences to run concurrently with time to be served on defendant's federal conviction.

*United States v. Jenkins*, 38 F.3d 1143, (10<sup>th</sup> Cir. 1994) (Colo.)

District court lacked jurisdiction to award any sentence credit to defendant at sentencing, either for time served in jail facility or in-home detention, despite government's failure to raise issue; only Attorney General through Bureau of Prisons had power to grant sentence credit in the first instance.

*Setser v. United States*, 566 U.S. 231, 132 S.Ct. 1463, (2012)

District Court has the discretion to order that a federal sentence run consecutively to an anticipated state sentence which has not yet been imposed.

*United States v. Ramon*, 958 F.3d 919 (10<sup>th</sup> Cir. 2020)

district court exceeded its authority when it ordered defendant's sentence following revocation of his supervised release to run consecutively to his anticipated federal sentence,

*Francis v. State*, 474 P.3d 372, (2020) "An act" as stated in the statute prohibiting successive prosecutions in different jurisdictions denotes a single criminal act.

## For Additional Reading:

Stephen J. Greubel, Sentencing Implications of Dual Sovereign Prosecutions, OBJ Vol. 73, No. 26, Sept. 7, 2002.  
[http://www.okbar.org/obj/articles\\_02/sa090702.htm](http://www.okbar.org/obj/articles_02/sa090702.htm)

Henry J. Sadowski, Federal Sentence Computation Applied to The Interaction of Federal and State Sentences, The Champion, April 2014.  
[www.nacdl.org/champion.aspx?id=33352](http://www.nacdl.org/champion.aspx?id=33352)

Erin E. Goffette, Sovereignty in Sentencing: Concurrent and Consecutive Sentencing of a Defendant Subject to Simultaneous State and Federal Jurisdiction, Valparaiso University Law Review, 37 Val.U.L.Rev. 1035. Summer 2003