

Sentencing, Probation & Parole
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The Department of Correction's Implementation of Sentences and Sentencing Issues

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I. THE MITTIMUS FOR STATE PRISON SENTENCES:

A. Statutory Basis:

1. G.L. c. 279, §34:
 - a. "a duly certified transcript from the minutes of the court of the conviction and sentence"
 - b. authorizes officer to deliver defendant to reception center (Souza Baranowski Correctional Center since mid-2022; MCI-Framingham for females)

2. G.L. c. 125, §12:
 - a. requires that anyone sentenced to a state correctional facility be held in accordance with the sentences or orders of the Courts and the rules and regulations of the Commissioner
 - b. implications from this statute:
 - (1) DOC has no discretionary authority to discharge an incarcerated individual from their criminal sentence until term completed or upon receipt of parole permit (but can determine place of commitment)
 - (2) If Court orders change to terms of a sentence, must issue an Order or a new mittimus reflecting any changes in order for DOC to implement it (this includes if appellate court reverses conviction and/or if motion for new trial is allowed and the Court wishes to vacate or stay the sentence)

B. Prerequisites for DOC Implementation:

1. Generally, DOC needs physical custody of the individual in order to execute mittimus (mitt) and calculate sentence terms.

2. "Paperbooking" exception for incarcerated individual currently serving sentence in other jurisdiction; process of paperbooking:
 - a. mitt needs to list sentence of the other jurisdiction and state relationship between Massachusetts sentence(s) and the

out-of-jurisdiction sentence (whether concurrent or consecutive)

- b. DOC must actually receive mitt (should not accompany incarcerated individual back to other jurisdiction)
- c. incarcerated individual must provide DOC with waiver of extradition to Massachusetts (DOC will provide)

C. Process of DOC Date Computation:

1. DOC's Central Date Computation Unit (CDCU) receives the mitt and enters all of its information into DOC's Inmate Management System (IMS).
2. IMS will calculate the sentence(s) based on the statute of conviction, the date of offense, the terms imposed, and the jail credit awarded and/or a *nunc pro tunc* date (discussed below).
3. The Sentence Effective (SE) Date is calculated by subtracting jail credits from the sentence invocation date or by entering the *nunc pro tunc* date as the SE Date. The original Parole Eligibility and Maximum dates are then calculated using the SE Date, and adjusted for sentence deductions, discussed below.
4. Per G.L. c. 279, §24, sentences to State Prison have two terms: the minimum (Min), which sets the parole eligibility (PE),¹ and the maximum (Max), which sets the date of discharge from sentence.
Exceptions:
 - a. Life Sentences:
 - (1) a nonparoleable life sentence has one term—life is the maximum.
 - (2) where a paroleable life sentence is imposed, the Court sets the minimum term (which establishes the PE), normally between the range of 15 to 25 years for adult offenders; not less than 20 years nor more than 30 years for juvenile homicide offenders convicted of first-degree murder. G.L. c. 279, §24.
 - b. Habitual criminals² (G.L. c. 279, § 25 (a)) and habitual offenders (G.L. c. 279, §25 (b)) are also imposed single-term sentences, the maximum term. The PE for habitual criminals is set by law at two-thirds the imposed maximum

¹ If the offender has a date of offense before July 1, 1994, the PE is calculated as either 1/3rd of the Min or 2/3rd of the Min for specific offenses.

² Confusingly, these defendants have been historically and colloquially called “habitual offenders,” despite that the statute (old G.L. c. 279, §25, and current G.L. c. 279, §25(a)) referring to them as habitual *criminals*. Habitual *offenders* did not exist until August 2, 2012, the date Chapter 192 of the Acts of 2012 became effective.

term. G.L. c. 127, §133B. Habitual offenders are not eligible for parole. G.L. c. 279, §25(b); G.L. c. 127, §133B.

- c. Lutskov offenders: where a youthful offender (<18 years old on date of offense) is convicted of an offense which has a mandatory minimum greater than fifteen (15) years, absent the finding of extraordinary circumstances, there must be a 15y PE. See Com. v. Lutskov, 480 Mass. 575, 584-585 (2018). Because of this, while the mittimus needs to impose sentences which are compliant with the statute's mandatory minimum, it will also need to state that PE is in 15y in accordance with Lutskov.

D. DOC's Questioning of an Imposed Sentence:

1. If DOC has questions regarding the mitt, CDCU will contact the Clerk's Office via a letter.
2. Common issues with mitts:
 - a. sentence does not meet statutory minimum (see discussion of statutory and mandatory minimums below)
 - b. sentence exceeds statutory maximum
 - c. type of sentence imposed which statute does not authorize (e.g. state prison sentence imposed where statute authorizes only House of Correction [HOC] sentence)
 - d. jail credit/*nunc pro tunc* order results in SE Date before date of offense
 - e. jail credit granted on consecutive sentence. Com. v. Carter, 10 Mass.App.Ct. 618, 619-621 (1980).

E. Sentence Types and Meanings:

1. State Prison:
 - a. As above, sentences are indeterminate (two-term) as per G.L. c. 279, §24, except for life or habitual criminals or habitual offenders
 - b. "and a day" sentences (e.g. 5 years to 5 years and a day): incarcerated individual will not see the Parole Board, as will discharge from sentence on the day after become eligible for parole
2. House of Correction (HOC):
 - a. One term sentence—the maximum term
 - b. Parole eligibility (PE) is by Parole Board regulations, and is one-half of the imposed maximum (with longest PE at two years for "stacked" HOC sentences)

F. Concurrent, Coextensive, or Consecutive:

1. A sentence which is imposed to run alongside another sentence (or one that is already being served) is *concurrent* with that sentence.
 - a. Even where a mitt does not specify that a sentence is being imposed concurrently to another *Massachusetts* sentence (state prison or HOC), DOC will presume it.
 - b. Note that sentences can be concurrent and have different discharge dates. The incarcerated individual will be released from custody on the latest discharge date.
2. Where at least two sentences have the same discharge date, they are *coextensive*, in addition to being concurrent. Sentences which have the same SE Date and the same maximum term are normally coextensive (but may not be if of a different type of sentence, or if one has a mandatory minimum).
3. A sentence which is imposed to run “from and after”/“on and after” is *consecutive* to the lead sentence.
 - a. For a Massachusetts sentence to be consecutive to another Massachusetts sentence, it must be stated on the mitt as DOC will otherwise presume the latter sentence to be concurrent and effective as of its invocation.
 - b. In contrast, a Massachusetts sentence imposed while an incarcerated individual is serving a sentence from another jurisdiction (another state or federal) is presumed to be consecutive to the out-of-jurisdiction sentence (as it is not until completion of the other sentence that the incarcerated individual will then be placed in the physical custody of DOC).
--For that reason, as above, the mitt for the Massachusetts sentence will need to state that the sentence is being imposed concurrently with the sentence of another jurisdiction. The mitt must specify the other jurisdiction and should contain its docket number(s).
 - c. Where sentences are imposed consecutively, with few exceptions, the Parole Board (and DOC as a convenience) will aggregate (add) the terms to state a single PE and maximum date.

F. Vacating/Staying a Sentence:

1. DOC requests that Court use standard Order on Vacated Sentence

form, which was developed by joint committee of Superior Court Clerks and DOC's CDCU (and can also be used for stayed sentence).

2. Use of form eliminates ambiguities that can arise with other types of orders (e.g. Order of Release).
3. Form:
 - a. states the further action taken by a court, whether Superior Court, SJC, or Appeals Court
 - b. specifically vacates previous sentence and declares earlier mitt void
 - c. tells DOC specifically what to do with the individual (release from custody, transfer to other agency, etc.)
 - d. can be used in conjunction with new mitt issued (including bail mitt)

II. JAIL CREDIT:

A. Statutory Basis:

1. G.L. c. 279, §33A
2. G.L. c. 127, §129B (Note: DOC reads this statute as conferring authority on it to apply jail credit granted by a court; it does not read this statute as conferring authority on it to grant jail credit)

B. Method:

1. Granted by the Court on the mitt
2. Granted by the Court by means of a jail credit letter
3. DOC does not grant jail credit; it only implements jail credit awarded by the Court.
4. The number of days of jail credit can be changed by Court at any time during service of that sentence, but not after the sentence is discharged. Williams v. Supt., Mass. Treatment Center, 463 Mass. 627, 633 (2012).
5. Award of jail credit should be viewed “against the backdrop of fair treatment of the prisoner”. Com. v. Grant, 366 Mass. 272, 275 (1974).
6. Balances prevention of “dead time” with issue of “banking time”;

should not be granted when for a time period during service of another sentence, as does not remedy “dead time”.

7. Jail Credit is subtracted from the sentence invocation date to establish the SE Date, from which the minimum/parole eligibility and maximum dates are calculated.
8. DOC questions a sentence granting jail credit which results in a SE date being before the date of offense.
9. DOC questions a sentence granting jail credit on a consecutive sentence when jail credit already granted on lead sentence (when sentences aggregated, DOC will not execute grant of jail credit on consecutive sentence as results in “double dipping”).

C. Nunc Pro Tunc vs. Granting of Jail Credit:

1. Court can establish specific SE date by means of *nunc pro tunc* (NPT) order, instead of granting jail credit.
2. DOC will question a sentence that both provides for a NPT SE date and also grants jail credit (as such will almost always result in a sentence whose SE date is before the date of offense).
3. Difference in sentence execution: DOC *may* award Earned Good Time (EGT) for the time period following a NPT SE date (provided it otherwise qualifies, see below), but will not award EGT for time period between an SE date established by jail credit and the date of DOC receiving physical custody of the incarcerated individual.

III. SENTENCE DEDUCTIONS:

A. EARNED GOOD TIME (EGT):

1. Statutory Basis: G.L. c. 127, §129D (a)
2. Prerequisites:
 - a. Statutory Prerequisites (G.L. c. 127, §129D (a)):
 - (1) Satisfactory participation
 - (2) in an approved
 - (3) work, education, vocation, or rehabilitation program
 - b. DOC Prerequisites:
 - (1) Must be program approved by Commissioner for EGT

- (2) Must receive “S” (satisfactory) rating, not “U” (unsatisfactory) or “I” (incomplete):
 - (a) program requirements (as specified in program)
 - (b) attendance requirements (attend >80%, unless program itself has higher attendance requirements)
 - c. Absent the meeting of all these prerequisites, Commissioner does not have authority to grant EGT; once prerequisites are met, Commissioner then has the *discretion* to grant EGT—statute does not *require* Commissioner to grant EGT; EGT is at most an expectancy, not an entitlement. Com. v. DeWeldon, 80 Mass.App.Ct. 626, 632 n.10 (2011); Haverty v. Comm’r of Corr’n, 440 Mass. 1, 5-6 (2003) (no constitutional or statutory right to EGT).
3. Amounts:
- a. up to 7.5 days/month per program for state prison sentences (but not all programs provide for 7.5 days/month) and 15 days/month limit (so can max out with two 7.5 days/month programs)
 - b. up to 5 days/month per program for HOC sentences, and 10 days/month limit (so can max out with two 5 days/month programs); Note that if a court imposes concurrent state prison and HOC sentences of equal length, EGT cap differences may result in serving longer time on HOC sentence (and DOC will transfer to HOC at completion of state prison sentence)
 - c. EGT reduces both maximum and minimum/parole eligibility (PE) date; will reduce established RTS date (see below)
4. EGT is Different from Statutory Good Time (SGT):
- a. Statutory Basis for SGT: G.L. c. 127, §129 (repealed effective 7/1/94 via “Truth in Sentencing” Act)
 - b. SGT prospectively granted by Commissioner and created a new date besides max, min, and PE called Good Conduct Discharge (GCD) date
 - c. SGT was an entitlement, but could be forfeited following disciplinary offense convictions
- B. BOOST TIME: one time award of 10 days for specified, long-term program (*e.g.*, HiSet); must pass test/demonstrate competency in order to receive Boost Time. Has the same statutory and DOC prerequisites as EGT, but incarcerated individual serving HOC sentence is only eligible

for Boost Time if the program requires 6 months of satisfactory participation. Incarcerated individuals can receive multiple awards of Boost Time for completion of separate approved programs during their incarceration.

C. COMPLETION CREDITS/RTS DATE (G.L. c.127, 129D (c)):

1. Like Boost, Completion Credits (CC) are a one-time award for completion of an approved program (but incarcerated individual can receive multiple CCs for separate program completions).
2. CC's can only be applied to state prison sentence, not HOC
3. The Commissioner may award up to 80 days of Completion Credits but cannot award more Completion Credits than 17.5 percent of an incarcerated individual's imposed maximum term.
4. An incarcerated individual who is awarded at least 30 days of Completion Credit will have a Release To Supervision (RTS) Date established. The RTS Date is calculated off of the maximum term and is also referred to as the "mandatory parole" date. If an incarcerated individual has not been released on parole after their PE Date, they will be released on parole after their RTS Date, provided the Parole Board approved their home plan. G.L. c. 127, §130B.

D. REENTRY/DISCHARGE PREPARATION (RDP) TIME: in the last 3 months of incarceration, individuals incarcerated in DOC receive a monthly grant of EGT in the same amount of what they were granted in the "freeze" month (the fourth month before discharge), regardless of what they participate in during each of those three months; this is done for the purposes of establishing and maintaining a consistent date of discharge from sentence, and presumes that an incarcerated individual will work on their reentry planning in the last three months. Boost Time cannot be granted in the last 3 months, but Completion Credits can.

E. At most, an incarcerated individual can take off close to a year (360 days) from a state prison sentence for two years' worth of monthly maximum awards of EGT, *but* G.L. c. 127, §129D (b) caps the total award of sentence deductions at 35 percent of the imposed maximum or aggregate maximum.

IV. STATUTORY/MANDATORY MINIMUM SENTENCES:

A. Statutory Minimum: is the shortest sentence of incarceration a Court can impose under the statute of conviction or other statute which governs the applicable punishment. A statutory minimum does not, in itself, require that the Court impose a sentence of incarceration, but if the Court does impose a sentence of incarceration, it cannot impose a sentence with any

term shorter than the statutory minimum. The SJC in Commonwealth v. Rossetti, 489 Mass. 589 (2022), refers to the statutory minimum as a “minimum term”. DOC has historically used the term “statutory minimum” rather than “minimum term” so as to eliminate confusion with the minimum term imposed by the Court as the first term of a state prison sentence.

--Bear in mind that G.L. c. 279, §24 requires that, where an alternative sentence to a HOC is permitted for the offense, a minimum state prison term may not be less than one year. So, even where a statute of offense does not contain a statutory minimum, if the statute provides for both state prison and HOC sentences for the offense, an imposed state prison sentence cannot have any term less than one year.

- B. Mandatory Minimum: caused a lot of confusion for practitioners, but the SJC has eliminated the confusion. See Com. v. Rossetti, 489 Mass. at 594-603. A mandatory minimum can exist in either the *imposition* or *execution* of a sentence, or both.
1. A mandatory minimum in the *imposition* requires the Court to impose a sentence of incarceration whose terms cannot be less than the minimum. The only distinguishing factor between this and a statutory minimum is that a mandatory minimum *requires* a sentence of incarceration to be imposed—the Court is forbidden by the statute from imposing probation, time served, filing, or any other disposition which does not involve incarceration.
 2. In contrast, a mandatory minimum in the *execution* of a sentence sets restrictions as to what can be done with a sentence after it has been imposed. For example, a statute may specifically prohibit parole, furlough, and deductions from sentence until after a specified time period—the mandatory minimum—is served.³
 3. DOC treats mandatory minimums as a time to serve, not a period of program ineligibility, so incarcerated individuals can participate in programs (and receive sentence deductions, as applicable) while serving the mandatory minimum, but they cannot reduce any imposed sentence term to be less than the length of the mandatory minimum. The exception to this is work release: where prohibited by statute during mandatory minimum, incarcerated individuals cannot participate in work release while serving the mandatory minimum.

³ There are various ways in which a mandatory minimum may be expressed in statute, but the most common language will include variations of the following “nor shall the person convicted be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served [number] years of such sentence.” See, *e.g.*, G.L. c. 265, §15A (a).

V. CLASSIFICATION:

- A. New commitments to DOC are transported to a Reception Center: Souza Baranowski Correctional Center (SBCC) is the Reception Center for males, and MCI-Framingham is the Reception Center for females.
- B. While at the Reception Center, the incarcerated individual will go through the initial classification process. Classification is conducted in accordance with DOC's Classification regulation, 103 CMR 420.00 et seq., and DOC's Classification Manual. DOC gathers whatever information it can regarding the offender, crime, and criminal history. A Correction Program Officer (CPO) gathers information (including inmate or staff conflicts) and fills out the incarcerated individual's Classification form. DOC uses a Point Based Score (PBS) in initial classification and all reclassification, whose scored factors include the severity of current offense, severity of recent convictions, escape history, history of institutional violence, age, education, employment. The CPO tallies the final score and uses the PBS and any applicable classification restrictions or overrides to determine the security level (maximum, medium, or minimum) for which the incarcerated individual will be considered.
- C. The incarcerated individual is then seen by a three-person Initial Classification Board: one CPO, one Correction Officer (CO) or person whose experience is in institutional security, where they will discuss the PBS and the incarcerated individual's program needs and preferences. The incarcerated individual leaves the room while the Board deliberates. The Board reviews the PBS, the incarcerated individual's history, program needs, facility preferences, and any applicable overrides/restrictions, and makes a recommendation to Central Classification as to the incarcerated individual's security level and facility. The incarcerated individual can challenge or support this recommendation to Central Classification by submitting an "appeal" form. The Classification Report then goes to the institutional director of classification, who reviews it for quality control (*e.g.*, is it based on information that's been obtained, is it reasoned, etc.).
- D. Following qualify control review, the Classification Report then goes to the Central Classification Division, where the Director, or one of the Deputy Directors, makes the classification decision as the Commissioner's Designee. The incarcerated individual will be notified of this decision. Only the Commissioner or her designee has the authority to classify an incarcerated individual. After this decision has been made, the incarcerated individual will be transferred to the designated housing facility when a bed is available, and the facility determines housing placement within that facility.

- E. The classification process repeats itself normally annually but will occur again in six months instead if an override had been used. There are circumstances where an incarcerated individual will be seen earlier, such as receiving a positive vote from the Parole Board requiring time to be spent in lower security. An incarcerated individual can also request an early classification, and those requests are decided upon at the facility level. The main differences between the initial classification and any subsequent classification (a/k/a “reclassification”) are that the incarcerated individual is only seen by a classification board where there is a recommendation for transfer to another facility (but a three-person board will still make the recommendation), and that the housing facility’s superintendent (or designee) makes the final classification decision (instead of Central Classification) when the incarcerated individual is not seen by a classification board.
- F. An incarcerated individual may be classified out-of-state where they cannot be housed safely at their determined security level in any Massachusetts facility. Out-of-state transfer is most commonly done where an incarcerated individual is classified to maximum security, but cannot be safely housed at SBCC, the only maximum-security correctional facility, due to conflicts.

VI. CONTACT:

Sentencing issues: please email (Charles.anderson2@doc.state.ma.us) or call me directly at 857-377-1161 (or 617-727-3300 ext. 1161); please allow me time to obtain the right answer for you.

Non-sentencing issues: call 617-727-3300 ext. 1124 and ask for the Attorney of the Day.