

UPDATED BOP RDAP INFORMATION

By Alan Ellis and J. Michael Henderson

May 21, 2009

The Federal Bureau of Prisons (BOP) has implemented significant policy changes concerning its drug treatment programs and eligibility for, sentence reduction, and placement for completion of its Residential Drug Abuse Program (RDAP). BOP Program Statement (P.S.) 5331-02.¹

The Bureau's drug treatment programs are now outlined in greater depth in the Bureau's new Program Statement 5330.11, Psychology Treatment Programs. Besides fleshing out and expanding the scope of the drug treatment programs, the policy imposes some significant revisions. Such changes include, but are not limited to, the following:

- The Drug Education Course. The Drug Education Course which is to be provided at all Bureau of Prisons institutions. While open to all inmates who may have a substance abuse history and voluntarily request it, certain inmates who are returned to Bureau of Prisons custody as violators of supervised release and who meet specified criteria related to substance abuse are now required to take this course. This course is to be provided at the beginning of an offender's sentence, and is 12-15 hours in duration. Refusal, withdrawal, or expulsion from this program by those for whom it is required will result in being limited to only the lowest Federal Prison wages, and ineligibility for a Federal Prison Industries work assignment.
- The Non-residential Drug Abuse Program. The Non-Residential Drug Abuse Program (NR DAP) is also to be available at all Bureau of Prisons institutions. This program is designed for inmates who are awaiting RDAP; inmates who do not meet RDAP qualifications but wish to benefit from drug abuse treatment; those referred by Bureau of Prisons psychology staff; offenders with Judicial recommendations for drug treatment but either decline or are not qualified for RDAP; inmates who have detoxified upon entering the Bureau of Prisons; inmates who are found guilty of an incident report for alcohol or drug use. NR DAP is 12 to 24 weeks in duration. Successful completion of the NR DAP is rewarded by an award of \$30, in addition to an incentive of possible maximum pre-release time in a residential reentry center (RRC), more commonly known as a halfway house.

¹www.alanellis.com

RDAP. The qualifications for this in-demand program are more explicit in the new policy, including what documentation the Bureau needs to consider an offender for RDAP and how, if such documentation is initially lacking from an offender's file, what the offender can do to document his or her substance abuse history. Specifically, an offender can seek documentation verifying a substance abuse problem from such sources as a previous treatment provider and/or former parole or probation officer, and the offender can have Bureau of Prisons medical staff verify physical evidence of addiction such as track marks or detoxification after entering the Bureau of Prisons. Ultimately, in evaluating eligibility for RDAP, there must be a clinical determination by the Bureau of Prisons of a substance abuse diagnosis in accordance with the American Psychiatric Association's Diagnostic and Statistical Manual. This of course means that a substance abuse or dependency disorder may not necessarily be diagnosed by a Bureau of Prisons practitioner even if there is documentation in the inmate's file i.e. Presentence Report of a substance abuse problem and/or history. The clinical interview for otherwise RDAP eligible inmates is to be conducted "ordinarily no less than 24 months from release". Such a timeframe is a significant factor, because with the high demand for RDAP resulting in full classes and new classes usually starting only every 2-3 months, even with a Court recommendation for RDAP, there is a possibility (if not likelihood) that an offender sentenced to 24 months or less may not be sent to an institution that provides RDAP.

The new policy also clearly defines and outlines three distinct phases of RDAP. Completion incentives include limited financial awards, consideration for maximum time in a pre-release community-based treatment program to include home confinement, and for Low and Medium security inmates who may be in RDAP institutions far from home and have more time remaining on their terms before pre-release placement in a Residential Reentry Center, consideration for transfer closer to their homes. This is significant, because the new policy clearly provides that an offender can be sent to any suitable institution for RDAP without regard for where the offender's home is, based on program space availability. On the other hand, inmates who fail RDAP, can suffer sanctions including reduced work pay, exclusion from work in Federal Prison Industries, possible limitation on length of pre-release RRC placement, and denial of social furloughs.

- Early Release. Early release under the provisions of 18 U.S.C. 3621 (e) for successful completion of RDAP remains an incentive as well, but has been significantly changed by P.S. 5331-02. Whereas offenders who previously completed RDAP and were otherwise eligible for early release were eligible for a sentence reduction of up to 12 months, this new policy substantially reduces the eligibility timeframe for some offenders. Specifically, only those eligible inmates serving 37 months or more will now be eligible for up to a 12 month early release, while those serving 31-36 months will be eligible for only up to a 9 month sentence reduction, and those serving less than 31 months will be eligible for no more than a 6 month sentence reduction. The authority in determining some eligibility factors for early release, for example whether prior offenses or the current offense might preclude early release, is now shifted from the B.O.P. institutions and Regional Offices to the Designation and Sentence Computation Center (DSCC) in Texas. Noteworthy, for the first time, is that certain sex offenders, e.g., possessors of child pornography are not automatically disqualified from early release eligibility. See also, P.S. 5162.05 (Categorization of Offenses).

ⁱ All BOP program statements mentioned in this article can be found at the Bureau’s website, www.BOP.gov.

Alan Ellis, Past President of the NACDL and former Fulbright Visiting Professor of Law, Shanghai Jiaotong University School of Law, specializes in federal sentencing, prison matters, and post-conviction remedies with offices in San Francisco, California, Philadelphia, Pennsylvania, and Shanghai, China. He is a co-author of the *Federal Prison Guidebook*, the *Federal Sentencing Guidebook*, and writes a quarterly column on federal sentencing for the ABA’s *Criminal Justice* magazine. The U.S. Court of Appeals for the Ninth Circuit in a published opinion identified him as a “nationally recognized expert in federal sentencing.” *Federal Lawyer* magazine describes him as “one of this country’s pre-eminent criminal defense lawyers.”

J. Michael Henderson is a federal prison consultant to the Law Offices of Alan Ellis. Mr. Henderson has over 23 years of experience working with the Bureau of Prisons. He served as the regional designator for the Western Region in the 1990s. His duties included oversight of the BOP classification of newly sentenced federal offenders in the western part of the United States.