

Residential Drug Abuse Treatment Program (RDAP)

BY ALAN ELLIS AND TODD A. BUSSERT

The Federal Bureau of Prisons (BOP) estimates that 40 percent of federal inmates have diagnosable, moderate to severe substance abuse problems. The BOP operates three drug abuse programs. The first program is the 12- to 15-hour voluntary Drug Abuse Education Course offered at all institutions, designed to teach inmates about the consequences of drug/alcohol abuse and addiction by reviewing their personal drug use and the cycle of drug use and crime. The second program is the 12- to 24-week (90–120 minutes per week) Non-Residential Drug Abuse Treatment Program (NRDAP), which is targeted to, inter alia, those awaiting RDAP, those who do not meet RDAP admission criteria, and those found guilty of an incident report for use of drugs or alcohol. In addition to paying NRDAP graduates \$30, BOP policy encourages wardens to consider them for maximum pre-release (halfway house and/or home confinement) placement. The third program is the nine-plus-month, 500-hour Residential Drug Abuse Treatment Program (RDAP) for inmates with a diagnosable and verifiable substance abuse disorder.

RDAP has been in existence since 1989 and employs cognitive behavioral therapy (CBT) to treat substance abuse. The “in-patient” component is followed by an aftercare component, which is administered in the community during the final six months of an inmate’s sentence. Male inmates who successfully complete RDAP are 16 percent less likely to be rearrested or revoked than cohorts who went untreated, and 15 percent less likely to use drugs. Female graduates are 18 percent less likely to reoffend or use drugs.

Through the 1994 Crime Bill, Congress also



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incentivized RDAP participation: *nonviolent* offenders who successfully complete the program while incarcerated (and who have not previously received early release via RDAP) are eligible for release up to one year before the expiration of their sentence. (18 U.S.C. § 3621(e).) Importantly, prisoners ineligible for a reduction in sentence under § 3621(e) are not precluded from participating in RDAP; the two are not mutually exclusive.

Congress’s action had its desired result, especially since RDAP is the only BOP program through which federal prisoners can earn a sentence reduction.

Admission to RDAP

RDAP participation is voluntary. Interested prisoners within 36 months of release may apply by requesting an eligibility interview via a “cop-out” (informal request from a staff member) or a BP-8 (formal request for resolution). The written request serves to initiate the RDAP application and should prompt an interview with either the institution’s RDAP coordinator or a drug treatment specialist (DTS), or, if a prisoner is housed at a facility that does not offer the RDAP, a member of the psychology services staff.

To qualify for RDAP, one must, inter alia, have at least 24 months or more remaining to serve; present a verifiable, documented pattern of substance abuse or dependence within the 12-month period preceding arrest on the underlying offense; have no serious mental or cognitive impairment precluding full program participation; be halfway house eligible (which precludes participation by removable non-US citizens); and sign an acknowledgment of program responsibilities.

Section 3621 is silent with respect to how determinations about whether a prisoner has “a substance abuse problem” are made. And, while 28 C.F.R. § 550.53(b) establishes criteria, in practice Program Statement 5330.11 controls. (*See* FED. BUREAU OF PRISONS, P5330.11, U.S. DEP’T OF JUSTICE, PSYCHOLOGY TREATMENT PROGRAMS (2009) [hereinafter P.S. 5330.11].) Staff review each program applicant’s presentence investigation report (PSR) before scheduling an interview to ascertain whether the applicant meets the diagnostic criteria for abuse or dependence indicated in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V)*. An RDAP applicant’s chemical dependency need not be linked to his or her offense conduct, nor is a judicial recommendation necessary. There is, however, debate over how much drug or alcohol use is enough. (*Compare* P.S. 5330.11, § 2.5.8(2) (noting that “recreational, social, or occasional use of alcohol and/or other drugs that does not rise to the level of excessive or abusive drinking does not provide the required verification of a substance abuse disorder”), with *Kuna v. Daniels*, 234 F. Supp. 2d 1168 (D. Or. 2002) (finding social use of alcohol sufficient

to warrant RDAP admission).)

In terms of assessing a prisoner's substance abuse history, the BOP places primary reliance on a prisoner's self-reporting to the PSR writer. Whatever is written in the PSR is presumptively valid, and any claim of a disorder that the PSR does not plainly substantiate is treated as suspect. Counsel must, therefore, be attuned to a client's substance abuse history. Counsel should meet with the client before the presentence interview to fully understand the nature and extent of the client's problem(s) (e.g., illegal drugs, prescribed pharmaceuticals, alcohol, etc.). Prudence also dictates that counsel encourage clients to be fully forthcoming with the PSR writer, that is, not to minimize for fear of embarrassment. Subject to client preapproval, counsel can foster this conversation by offering the PSR writer an overview during the interview, allowing the writer to follow up directly with the client as deemed appropriate. Counsel can also provide documentation (e.g., medical records and clinical assessments) from an independent professional (e.g., physician, mental health professional, or drug and alcohol counselor) concerning the existence and degree of a client's dependence. Barring that, it is useful to find records that demonstrate the nature and extent of the client's substance abuse difficulties, such as certified copies of DUI judgments, hospital records noting blood alcohol level, and/or a primary physician's treatment notes with entries that substantiate the existence of the problem.

Given the § 3621(e) incentive, and to ferret out malingering, RDAP eligibility interviews often entail difficult questions designed to determine whether admission is sought in good faith to obtain treatment or simply to secure a quicker return home. Applicants are routinely asked when they learned about the program and the § 3621(e) credit, whether attorneys advised them to exaggerate treatment needs when meeting with probation, and the details of their drug or alcohol use (e.g., when, how often, where, with whom, others' awareness, etc.). Counsel should thus advise clients not to mangle or to overstate their problems, either during the presentence interview or when seeking entrance into the program.

Should the BOP deem a PSR factually insufficient, an inmate might well be refused an interview or found ineligible for services. In that instance, counsel and/or the client may supply "collateral documentation." As set forth in P.S. 5330.11, this requires documentation "from a substance abuse treatment provider or medical provider who diagnosed and treated the inmate for a substance abuse disorder *within the 12-month period before the inmate's arrest on his or her current offense*" (emphasis added). This documentation must be sent to and received by the drug abuse treatment staff in the BOP institution. It is not to be given to

INELIGIBILITY FOR EARLY RELEASE

1. Inmates who have a prior felony or misdemeanor conviction for:
 - homicide (including deaths caused by recklessness, but not including deaths caused by negligence or justifiable homicide);
 - forcible rape;
 - robbery;
 - aggravated assault;
 - arson;
 - kidnapping; or
 - an offense that by its nature or conduct involves sexual abuse offenses committed upon minors.
2. Inmates who have a current felony conviction for:
 - an offense that has as an element the actual, attempted, or threatened use of physical force against the person or property of another;
 - an offense that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device);
 - an offense that by its nature or conduct presents a serious potential risk of physical force against the person or property of another; or
 - an offense that by its nature or conduct involves sexual abuse offense committed upon minors.
3. Inmates who have been convicted of an attempt, conspiracy, or other offense that involved an underlying offense listed in 1. and/or 2. above.
4. Inmates who previously received an early release under 18 U.S.C. § 3621.

Certain sex offenders, in particular individuals convicted of possession of child pornography, are *not* automatically disqualified from § 3621(e) eligibility.

Amount of Reduction

The BOP has implemented a sliding scale for the amount of a sentence reduction: those serving 30 months or less are ineligible for more than a six-month reduction; those serving 31 to 36 months are ineligible for more than a nine-month reduction; and those serving 37 months or longer are eligible for the full 12 months. (See P.S. 5331.02, § 10.)

RESIDENTIAL DRUG ABUSE TREATMENT PROGRAM LOCATIONS

RDAP is available at the following facilities:

Northeast Region

FCI Allenwood-Low (PA)
 FCI Allenwood-Medium (PA)
 FCI Berlin (NH)
 USP Canaan (PA)
 FCI Danbury (CT)*
 FCI Elkton (OH)
 FCI Fairton (NJ)
 FCI Fort Dix 1 (NJ)
 FCI Fort Dix 2 (NJ)
 FPC Lewisburg (PA)
 FPC McKean (PA)
 FCI Schuylkill (PA)

North Central Region

FPC Duluth (MN)
 FCI Englewood (CO)
 FCI Florence (CO)
 FPC Florence (CO)
 FPC Greenville (IL)*
 FPC Leavenworth (KS)
 USP Leavenworth (KS)
 USP Marion (IL)
 FCI Milan (MI)
 FCI Oxford (WI)
 FPC Pekin (IL)
 FCI Sandstone (MN)
 MCFP Springfield (MO)
 FCI Terre Haute (IN)

FCI Waseca (MN)*
 FPC Yankton (SD)

Southeast Region

FCI Coleman (FL)
 USP Coleman II (FL)
 FPC Edgefield (SC)
 FCI Jesup (GA)
 FCI Marianna (FL)
 FPC Miami (FL)
 FCI Miami (FL)
 FPC Montgomery (AL)
 FPC Pensacola (FL)
 FCI Talladega (AL)
 FCI Tallahassee (FL)*
 FCI Yazoo City (MS)

Mid-Atlantic Region

FPC Alderson (WV)*
 FCI Beckley (WV)
 FPC Beckley (WV)
 USP Big Sandy (KY)
 FCI Butner (NC)
 FCI Cumberland (MD)
 FPC Cumberland (MD)
 SFF Hazelton (WV)*
 FMC Lexington (KY)
 FCI Memphis (TN)
 FCI Morgantown (WV)
 FCI Petersburg-Low (VA)
 FCI Petersburg-Medium (VA)

South Central Region

FCI Bastrop (TX)
 FCI Beaumont-Low (TX)
 FCI Beaumont-Medium (TX)
 FPC Beaumont (TX)
 USP Beaumont (TX)
 FPC Bryan (TX)*
 FMC Carswell (TX)*
 FCI El Reno (OK)
 FCI Forrest City-Low (AK)
 FCI Forrest City-Medium (AK)
 FCI Fort Worth (TX)
 FCI La Tuna (TX)
 FCI Seagoville (TX)
 FPC Texarkana (TX)

Western Region

FCI Dublin (CA)*
 FPC Dublin (CA)*
 FCI Herlong (CA)
 FPC Lompoc (CA)
 FCI Phoenix (AZ)
 FPC Phoenix (AZ)*
 FCI Safford (AZ)
 FCI Sheridan (OR)
 FPC Sheridan (OR)
 FCI Terminal Island (CA)

Contract Facility

RCI Rivers (NC)

KEY

FCI = Federal Correctional Institution
 FMC = Federal Medical Center
 FPC = Federal Prison Camp
 MCFP = Medical Center for Federal Prisoners

USP = United States Penitentiary
 RCI = Rivers Correctional Institution
 SFF = Secure Female Facility
 * = Female Facility

the inmate to provide to the drug abuse treatment staff. If the document is acceptable, the inmate will be referred to the Drug Abuse Program coordinator for a diagnostic interview. Multiple convictions (two or more) for driving under the influence (DUI) or driving while intoxicated (DWI) in the five years prior to the most recent arrest will suffice to show eligibility for the RDAP program.

Program Statement 5330.11 directs that otherwise eligible prisoners must “ordinarily” be within 24 months of release to qualify for admittance to RDAP. Accounting for customary good time credits, the 24-month cutoff means that a defendant with a diagnosable disorder and no pretrial jail credit must receive a sentence of 27.6

months or greater to even be considered for the program. Notably, BOP officials have stated publicly that the 24-month cutoff has shifted to 27 months, which means a sentence of at least 31 months (if the prisoner is ineligible for pretrial jail credit).

Ineligibility for RDAP

The following categories of inmates are not eligible for the RDAP program:

1. Immigration and Customs Enforcement detainees;
2. pretrial inmates;
3. contractual boarders (for example, state or military inmates); and

4. inmates with detainers that preclude halfway house placement.

The Sentence Reduction

The determination as to whether an inmate is ineligible for early release has been the subject of significant controversy. After much litigation, the BOP modified the criteria for eligibility for early release from a sentence for successful completion of RDAP. (See 28 C.F.R. § 550.55; FED. BUREAU OF PRISONS, U.S. DEP'T OF JUSTICE, P5331.02 (a pending revision to 28 C.F.R. §550.55 will liberalize criteria for a §3621(e) reduction), EARLY RELEASE PROCEDURES UNDER 18 U.S.C. § 3621(E) (2009) [hereinafter P.S. 5331.02]; FED. BUREAU OF PRISONS, U.S. DEP'T OF JUSTICE, P5162.05, CATEGORIZATION OF OFFENSES (2009) [hereinafter P.S. 5162.05].) This change was intended to exclude violent offenders by the exercise of the implicit discretion placed in the BOP by the statute, 18 U.S.C. § 3621(e)(2)(B), rather than by definition of the statutory language “nonviolent offense.” The authority for determining whether prior offense history or current offense characteristics preclude § 3621(e) credit has been moved to the BOP’s Designation and Sentence Computation Center (DSCC) in Grand Prairie, Texas.

BOP policy, which the US Supreme Court has upheld, denies early release to persons who have been convicted of a crime of violence—homicide, forcible rape, robbery, aggravated assault, child sexual offense (but *not* possession of child pornography), arson, or kidnapping—or a felony offense (1) that has as an element the actual, attempted, or threatened use of physical force against the person or property of another; (2) that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device); (3) that by its nature or conduct presents a serious potential risk of physical force against the person or property of another; or (4) that by its nature or conduct involves sexual abuse offenses committed upon children. Inmates with firearm convictions and inmates who have received a two-level adjustment in their drug guideline offense severity score for possession of a dangerous weapon (including a firearm) pursuant to US Sentencing Guidelines Manual Section 2D1.1(b) (1) are also ineligible for early release. For information on the specific crimes that would preclude an inmate from an early release, see P.S. 5162.05. ■