

97% OF FEDERAL CASES END UP GUILTY

Its Never To Early To Start Developing:
The PSR * A Sentencing Strategy

Born out of my own experiences from within the BOP, and my current medical license of 30 years...

Combined with my extensive healthcare background has allowed me to experience firsthand how the system at times fails inmates, which motivated me to transition from patient care to developing...

My Mission

‘to provide the best and appropriate BOP placement options that attempts to ensure your client's ability to participate in whatever required relevant BOP programs may be available’.

BOP Facts – Did You Know?

- I. Medical Visits: May Have Copays?
- II. Self Surrender – Do they know you’re coming?
- III. BOP Satellite Camps vs FPC; They’re all the same, right?
- IV. Medications: On Formulary vs Non-Formulary vs Similar Equivalents, What are they?
- V. Dementia or Veteran / Psychology or Occupational Trades Training Programs; What is the Availability?
- VI. Mental vs Physical Health Placement: which CARE LEVEL takes precedent? What is a CARE LEVEL?
- VII. **First Step Act (FSA) Programs**, Earned Time Credits (ETC), Early Release

PSR

Thoughts On Preparation



The defense must determine what medical and nonmedical information needs to be included (or not included) in your client's PSR, accuracy and documentation is key.



The goal is to request the client's placement according to his or her security classification, while taking into consideration their individual medical, psychological, and educational/programming/occupational trades training interests and needs.



The Sentencing Memorandum, along with Personal Narrative could sway the judge .

Its Never To Early To Start Developing: A Sentencing Strategy as 97+% Are Found Guilty

'Federal Sentencing: The Basics 2018 (Page 5)'

The Sentencing Memorandum

- ▶ Precedent is Persuasive
- ▶ cite legal **authority** for the sentence you are advocating.

The Personal Narrative

- ▶ accept responsibility,
- ▶ Tell your story but don't minimize the seriousness of the crime.
- ▶ What you will do to not re-offend
- ▶ Review prior history: Criminal, Medical, Family, and its influence
- ▶ In person, written and/or with video

Statement Of Reasons Trumps Erroneous Presentence Report and carries more weight in the eyes of the BOP.
It influences: Security Level * RDAP * Programming * Medical Care * PSF * Management Variables

THE USSC SENTENCING TABLE

'HOW IT ALL FITS TOGETHER'

Vertically - Offense Level

Points (0-43+)

Vs.

Horizontally - Criminal History

Points (0-13+)

United States v. Vargas, 230 F.3d 328 (7th Cir. 2000) §4A1.3 -
DEPARTURES BASED ON INADEQUACY OF CRIMINAL
HISTORY CATEGORY



Determining the Sentence:

The sentencing table is divided into four zones (A, B, C, & D). The zones determine the confinement options for each sentencing range.

Determining months of imprisonment: the intersection of:

Offense Level: Zones (A-D), and Criminal History Category Points: I - VI

	Offense Level	Criminal History Category (Criminal History Points)					
		I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
• Zone A - confinement - which may consist of probation-only, confinement with probation, or complete imprisonment.	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	8-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
• Zone B - confinement - which may be served with probation, prison, or home confinement.	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
• Zone C - confinement - which requires that half of the sentence be imprisonment, but may allow the remainder of the sentence to be served with supervised release or home confinement.	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
• Zone D - requires prison.	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125
	25	57-71	63-78	70-87	84-105	100-125	110-137
	26	63-78	70-87	78-97	92-115	110-137	120-150
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

USSC Sentencing Table

Implemented on a Complicated
Point System



Is your client a Veteran?

FCI Morgantown: Military Veteran Service Dog Training Program.

Catholic University Law Review, 2017

Creative Rehabilitation:

- I) Therapy for Inmates while,
- II) They're learning a skill;
- III) Training Service Guide Dogs

FCI Morgantown Begins Service Dog Training Program

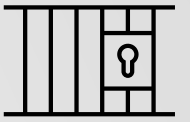
Inmate Veterans to be certified as service dog trainers.



Updated 07:45 AM ET, February 12, 2014

(BOP) - In November 2013, FCI Morgantown began a Veterans-to-Veterans Service Dog Training Program. The service dog program will provide training and certification to 21 inmates who will become service dog trainers. The inmates have been carefully screened and selected for this particular training. All of them are military veterans and will be training dogs for veterans in the community who have mobility impairments and/or Post Traumatic Stress Disorder (PTSD). This program is made possible through a partnership with the West Virginia University's Division of Animal and Nutritional Sciences and researchers at the National Institute for Occupational Safety and Health. Currently, the inmates are training eight Golden Retriever puppies, a Labradoodle, Labrador Retriever, and a Poodle. The inmate trainers, and the dogs assigned to them, all reside in a housing unit designated specifically for inmate-veterans at FCI Morgantown.





BOP: INTAKE PROCESS

- Bed Space Availability
- Program Needs
 - Healthcare Needs
 - Psychology Support, (limited availability)
 - Life Skills
 - Occupation Trades Training
- Security Requirements
- Aspirational:
 - Placement within 500 driving miles of their legal residence



BOP PLACEMENT:

'HOW IT ALL FITS TOGETHER'

I. Security Designation Data

- 'Point Scoring' Management Variables

II. Public Safety Factors

- Security Level Specific

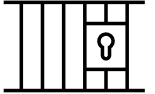
A Public Safety Factor (PSF) or Management Variable: used in 'increasing or lowering' a defendants security level.

[BOP - P5100.08 Appendix A]

Factors affecting placement: release residence, overcrowding, security requirement

* Release residence, overcrowding, security requirement

* The Judges J&C Order recommendation: medical or psychiatric need, voluntary surrender



Female *:

1- **Violence (2 convictions)** within the last five years will be assigned to at least a Low-security unless the PSF is waived.

2- **Serious Escape within the last ten years**, including the current term of confinement, will be assigned to the Carswell Administrative Unit, unless the PSF has been waived.

Female Security Points

0-15

16-30+

Female Security Level

Minimum

Low

Low

Low

Low

Low

Low

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SECURITY DESIGNATION TABLE (MALES) Table 5-2

INMATE SECURITY LEVEL ASSIGNMENTS BASED ON
CLASSIFICATION SCORE AND PUBLIC SAFETY FACTORS

MALE Security Point Total	Public Safety Factors	MALE Inmate Security Level
0 - 11	'No' Public Safety Factors	Minimum
	PSF: Deportable Alien	Low
	PSF: Juvenile Violence	Low
	PSF: Greatest Severity Offense	Low
12 - 15	PSF: Sex Offender	Low
	PSF: Serious Telephone Abuse	Low
	PSF: Threat to Government Officials	Low
	Sentence Length:	Low
16 - 23	Time remaining > 10 Yrs.	Low
	Time remaining > 20 Yrs.	Medium
	Time remaining > 30 Yrs.	High
	(Includes non-parolable LIFE and Death penalty cases)	High
24 +	PSF: Serious Escape	Medium
	PSF: Disruptive Group	High
	PSF: Prison Disturbance	High
	(P5180.05 , 12/31/2007 , Page 3)	High
24 +	PSF: Prison Disturbance	High
	'No' Public Safety Factors	Medium
	PSF: Disruptive Group	High
	PSF: Prison Disturbance	High
24 +	Sentence Length:	High
	Time remaining > 30 Yrs	High
	(Includes non-parolable LIFE and Death penalty cases)	High
	24 +	High



BOP HEALTHCARE: CARE LEVEL I-IV / ADL

Placing someone according to Medical need (Diabetes), is more straightforward than placing someone with a Mental Healthcare Issue; (Dementia or Psychotic Distress)

Healthcare CARE LEVEL - Classification; 5/2019

- ▶ Medical Care I – IV (ADL)
- ▶ Mental Healthcare I-IV (ADL)
 - Mental Healthcare (MH)

Overrides Medical CARE LEVEL

Co-Payments

- ▶ P6031.02 [549.70(b), 549.72, 549.74]



Photo Credit: Butner FMC

BOP HEALTHCARE: ADL vs PADL CHALLENGES TO MANAGING OUR NATIONS **AGING INMATE** POPULATION, 55+



“**P**rison **A**ctivities of **D**aily **L**iving” ([Williams et al., Page 2, 2006](#))

Five specific **PADL**:

1. Dropping to the floor for alarms,
2. Standing for head counts,
3. Ambulating to the dining hall for meals, Up & Down Stairs
4. Hearing & Understanding orders from staff, and
5. Climbing up to and down from the top bunk.



Credit Photo: Steemit

Responding to questionnaires:

1. 69% described at least one **PADL** as “very difficult to perform” (Williams et al., 2006),
2. 28% self-reporting memory loss.
3. Resulting in harsh punishment or segregation ([Maschi et al., 2012](#)), or result in;
 - a. Fights, assaults or self-injurious behavior
 - b. Leading to disciplinary consequences, restrictive housing units
 - c. Followed by solitary confinement, which exacerbates their mental illness.

Affects State and Federal Facilities



BOP: HEALTHCARE

- I. Medical Devices: Prosthetics, eyeglasses, etc.
 - ▶ Self-Surrender (Prescriptions in PSR, and taped to devices).
 - ▶ As an Inmate;
 - AUTHORIZATION 'FORM' TO RECEIVE PACKAGES
- II. Programs for Pregnant Females, examples:
 - The Greenbrier Birthing Center MINT Program, WV.
 - Mothers and Infants Nurturing Together Program, Tx.
- III. Diabetics.
 - ▶ P6031.01, Patient Care, (Page 58)
 - ▶ From NIH:
 - Shear-reducing insoles, to prevent foot ulceration in high-risk diabetic patients.

CPAP Photo Credit: thesleepjudge.com





BOP: MENTAL HEALTHCARE

10 NATIONAL PSYCHOLOGY PROGRAM OPTIONS

- ▶ Limited Availability
- ▶ Security Level Specific
- ▶ Defense should ensure that psychiatric and psychological issues are:
 1. Identified and included in the PSR
 2. Include appropriate treatment plan, documented and recommended by current qualified psychiatric healthcare providers. While it may not be followed, at least now it's documented.
 3. Accuracy of PSF or Management Variables may affect eligibility.

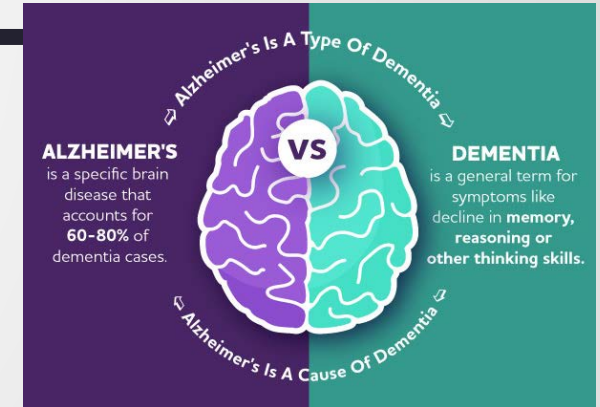


BOP

HEALTHCARE: DEMENTIA



- I. Alzheimer's Dementia is the most common,
- II. Frontotemporal Dementia (FTD) is responsible for 30%+ of the criminal behavior.
- III. Mental Illness:



Prosecution or Protection?

Being imprisoned with Dementia won't impact recidivism

(Jessica Shugart | Alz Forum | /13/2015)

Incarceration Doesn't Treat Mental Illness

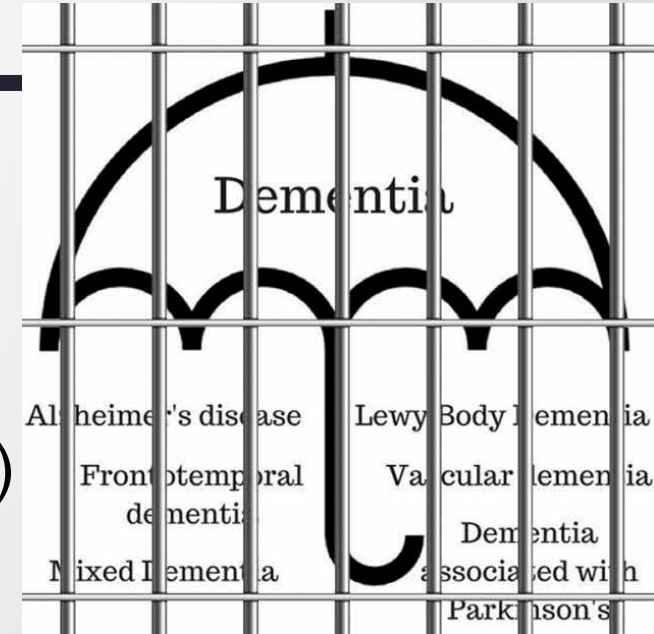


BOP: 1ST Memory Disorder Unit

FMC Devens Memory Disorder Unit (MDU), 2019

- Common Medications not on 2020 BOP Formulary

- 1) Donanemab
- 2) Donepezil (Aricept)
- 3) Galantamine (Razadyne, Razadyne ER, Reminyl)
- 4) Memantine (Namenda)
- 5) Rivastigmine (Exelon)
- 6) Suvorexant (Belsomra): approved for mild-to-moderate Alzheimer's disease



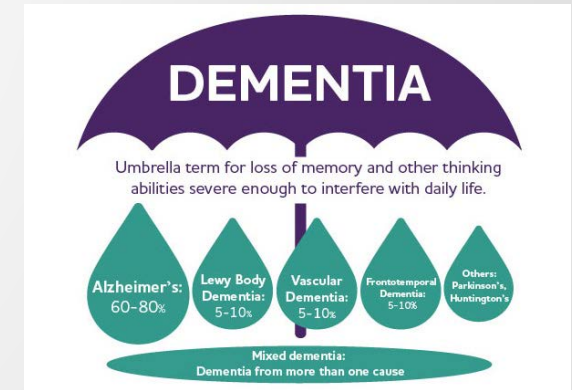
The National Council of Certified Dementia Practitioners ([NCCDP](#)) provides certification training to staff and inmates.

BOP: DEMENTIA

NOW INCLUDED IN THE DIAGNOSTIC CATEGORY OF
'MAJOR NEUROCOGNITIVE DISORDERS'



etc.)	
PROGRESSIVE NEUROLOGICAL CONDITIONS (<i>dementia, Huntington's chorea, multiple sclerosis, myasthenia gravis, Parkinson's disease, etc.</i>)	CARE LEVEL 2 <ul style="list-style-type: none">Based on frequency of clinical interventions needed to maintain outpatient status or ability to do ADLs independently. CARE LEVEL 3 <ul style="list-style-type: none">For multiple sclerosis: Chronic therapy with interferon beta-1a & -1b ORRequires assistance from an inmate companion to perform ADLs in an outpatient setting and not yet meeting the algorithm criteria for CARE LEVEL 4 (does not yet require 24-hour skilled nursing care or nursing assistance) CARE LEVEL 4 <ul style="list-style-type: none">Functional limitations due to cognitive or physical impairment that prevent successful management in general population, despite appropriate assistance from an inmate companion in performing ADLs or the use of durable medical equipment ORRequires daily or near daily assistance from health care staff on a health care unit, e.g., memory unit or nursing care unit



Medications On Formulary:
Paroxetine (Paxil)
Sertraline (Zoloft)
Trazodone

CARE LEVEL CLASSIFICATION FOR MEDICAL AND MENTAL HEALTH CONDITIONS OR DISABILITIES
(BOP Clinical Practice Guidance, 2019, Page 15)

BOP: MEDICATION AVAILABILITY ~ 3000+ DRUGS



Same generic drugs can look different - Let your client know

- ▶ On Formulary, one example;
 - Epipen®: may be issued to inmates with known anaphylaxis, (BOP, Page 6).
- ▶ Non-Formulary - May Not Be Available - What are your options?





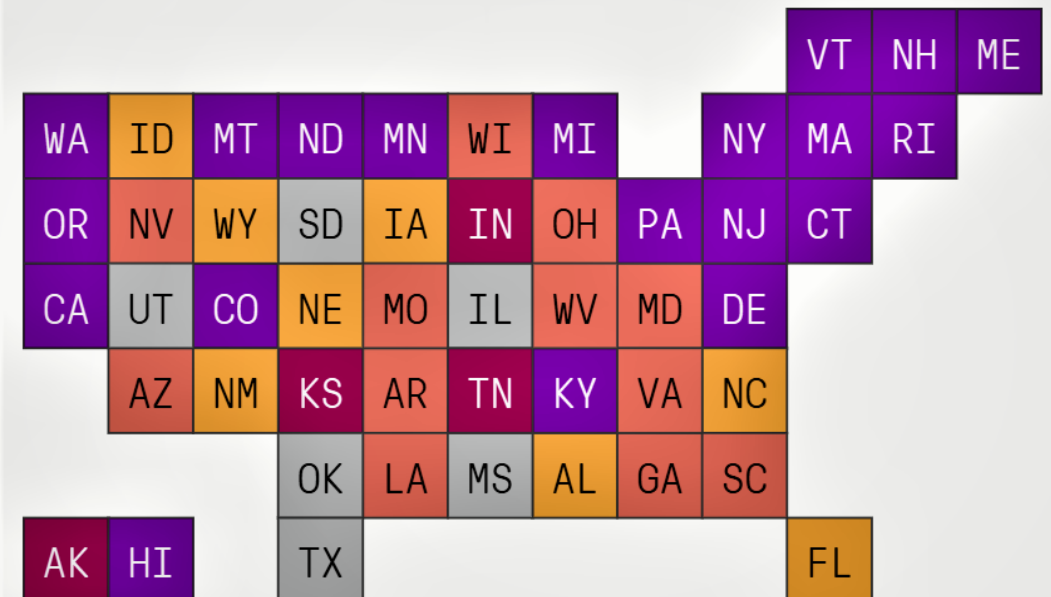
Photo Credit: Marshall Project

FDA APPROVED MEDICATION TREATMENTS FOR OPIOID ADDICTION

- I. **The Federal BOP** approves three, All On BOP Formulary;
 - ▶ Buprenorphine
 - ▶ Methadone, and
 - ▶ Naltrexone
 - ▶ Even so, the BOP only treats 2% of the more than 15,000 people estimated eligible.
- II. **The States**, to the right show the lacking participation in the FDA approved medication treatments, per the intent of the First Step Act (MAT, Page 2).

Which State Prison Systems Offer Medications for Opioid Use Disorder

■ Yes ■ Limited ■ Only Vivitrol ■ No ■ Did Not Respond



Source: The O'Neill Institute for National and Global Health Law and The Marshall Project

States labeled "Yes" offer at least two of the three FDA-approved medications for opioid use disorder at all or most of their facilities. States labeled "Limited" offer medications only as a small-scale or time-limited pilot program, or only make them available to people under narrow circumstances (e.g. to detoxify people from opioids when they enter prison, or only for pregnant women). States labeled "Only Vivitrol" offer a Vivitrol program but do not offer methadone or buprenorphine. "No" means the state prisons do not offer medication-assisted treatment (MAT) of any kind to people inside the prisons. The remaining states did not provide information about their MAT programs despite multiple requests.



BOP: HEALTHCARE SPECIALIST'S AND SURGERY AVAILABILITY

The BOP sorts medical treatment into five categories:

- I. Life-Threatening or Medically Necessary—Acute or Emergent
- II. Medically Necessary: these are not immediately life-threatening, but without treatment now, the inmate could have significant risk of;
- III. Medically Necessary but Not Urgent (“Medically Acceptable—Not Always Necessary”)
- IV. Medically Appropriate but Not Necessary,
- V. Extraordinary

Medical Consults: Even if approved:

The inmate-patient may wait months to years to see a medical specialist...

Then surgery could take additional years of waiting.



MEDICAL CARE IN THE BOP INCLUDES 'SECOND OPINIONS'



Again, PSR Accuracy is Key

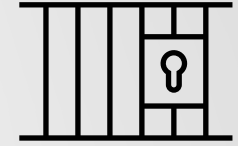
This cannot be overstated, once incarcerated;

While Clinical Directors Can Order Medical Consults

They're under 'No' obligation to follow their Consultants
Treatment Recommendations

(P6031.04 (Pg. 20-21))

The result...



SELF-SURRENDER

ENSURING A SMOOTH TRANSITION, ESPECIALLY FOR THE 1ST TIMER...

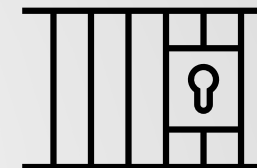
Your client SELF-SURRENDERED, only to find themselves in:

[Solitary Confinement?](#)

(Special Housing Units, or the SHU)

How and Why does this happen?





[This Does Happen Yes!](#)

But it can be avoided:

Verify with the US Marshal & Pretrial Services that 'Your Client and the BOP', both have been informed of the defendants:

- Help your client know where they're going. Why? It is not unusual for, the day before the Marshall's don't know and they'll have to wand until the next morning to call. [This does, and did happen.](#)
- Arrival Date and Time
- Prison Location and
- They've received your client's [Intake Paperwork.](#)
- Know what to bring.

PPRS PRISON MATCH™



Successful Compassionate Release

The Federal Docket - Published by the criminal defense lawyers at Pate, Johnson & Church

- ▶ Medical Condition –based on pre-existing COVID-19
- ▶ COVID-19 Positive/Recovered – tested '+' for COVID-19 or are you a POST-COVID Long Hauler?
- ▶ No Medical Condition – no pre-existing conditions
- ▶ No Confirmed Cases – inmates released with no confirmed COVID-19
- ▶ Mental Health –based on mental health conditions
- ▶ Request to Warden – request as sufficient under 3582(c)(1)(A)'s exhaustion requirement
- ▶ Catch-all – sentence reductions that did not result in immediate released
- ▶ Short Time Served –released after serving short portions of their sentences
- ▶ Family Circumstances – family circumstances or where the inmate was the only caregiver
- ▶ Excessive Sentence – based on excessive sentences, or charge, i.e. 924(c), 851, or “mandatory minimum”
- ▶ Circuit Opinions – to find appellate decisions
- ▶ IBI.13 Policy Statement – “extraordinary and compelling reasons,” NACDL: [COMPASSIONATE RELEASE - SECOUND LOOK](#)
- ▶ Not In Custody – modified sentences on home confinement or at halfway houses
- ▶ Unopposed Motions – where the government consented

FINAL THOUGHTS

It is our belief that the responsibility for a client's Mental and Physical Health should be safeguarded in order to protect them from themselves and others,

...while providing a safe environment for the duration of their incarceration.

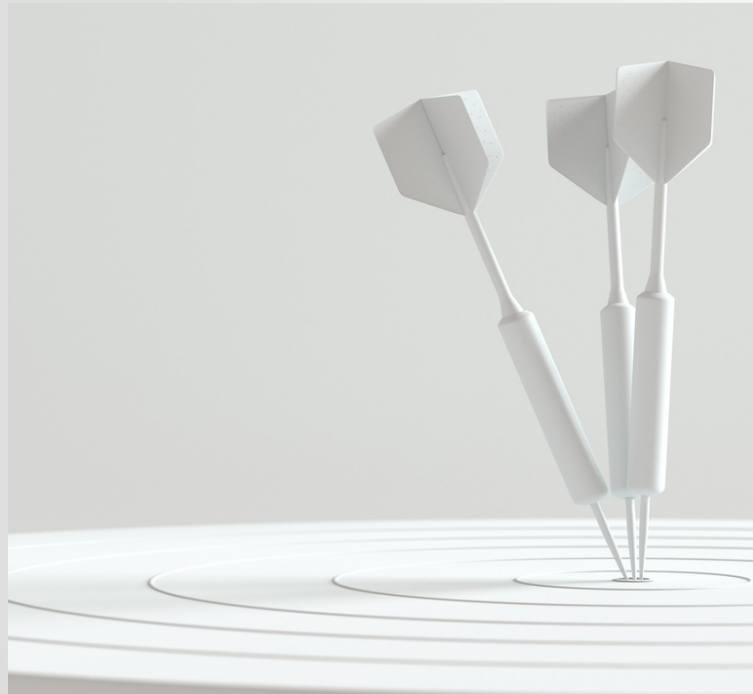
This is the responsibility of the Court, Defense Team and BOP

DISCLAIMER

- Starting with the defense teams' insight as to their client's background and defense strategy; and in preparation of the placement request to the court,
- PPRS Prison Match™ is meant to be used solely as a 'mitigation aide' in the sentencing and prison placement decision-making process.
- For up-to-date information: <https://www.bop.gov>

THANK YOU FOR THE OPPORTUNITY TO PRESENT TO YOU TODAY!

Any Questions?



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