



FREQUENTLY ASKED QUESTIONS ABOUT FEDERAL GOOD TIME CREDIT

1. What is good time credit?

Good time credit is earned for “good behavior” described in law as “exemplary compliance with institutional disciplinary regulations.” Good time credit reduces a prisoner’s actual time in Bureau of Prisons (BOP) custody. This time off is also called “good conduct time.” The law governing good time can be found at 18 U.S.C. § 3624(b).

2. In general, how much good credit time can prisoners receive?

Section 3624(b) provides:

“a prisoner who is serving a term of imprisonment of more than 1 year 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.”

In reality, based on the way the BOP calculates good time (see below), prisoners only earn a maximum of 47 days of good time for each year of the sentence imposed.

For so-called “PLRA inmates” (prisoners convicted after April 26, 1996, the effective date of the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997(e)), how much good time they may receive depends on whether they have earned or are pursuing a GED or high school diploma:

1. If the prisoner has earned or has made satisfactory progress toward earning a GED or high school diploma, he can get a **maximum of 54 days** good time credit on each year served. **This 54 days is still subject to the BOP’s creative math explained below, so in reality is still only 47 days per year of the sentence imposed.**
2. If the prisoner has *not* earned or has *not* made satisfactory progress toward earning a GED or high school diploma, he can get a maximum of **just 42 days** good time credit on each year served. **This 42 days is still subject to the BOP’s creative math explained below, so in reality fewer than 42 days per year may be credited.**

3. Who is eligible to get good time credit under 18 U.S.C. § 3624(b)?

Federal prisoners serving a “term of imprisonment” of *more than one year* (at least 12 months and one day) and less than life in prison are eligible to earn good time. Only federal prisoners are eligible for good time under 18 U.S.C. § 3624(b).

4. What BOP regulations govern good time credit calculations?

These BOP Policy Statements are available online or in prison law libraries:

- Good Conduct Time Under the Prison Litigation Reform Act (PLRA): BOP Policy Statement 5884.03, pp. 1-40 (Mar. 31, 2006), *available at* <http://www.bop.gov/DataSource/execute/dsPolicyLoc>.
- Sentence Computation Manual: BOP Policy Statement 5880.28 (July 20, 1999), *available at* <http://www.bop.gov/DataSource/execute/dsPolicyLoc>.



5. Who calculates good time?

All good time calculations for federal offenders in BOP-run prisons are performed by the Designation and Sentence Computation Center in Grand Prairie, TX. All private prisons except one (FCI Rivers) do their own calculation of good time. Whether a person is in a privately-run or BOP-run prison should not affect the way good time is calculated.

6. When is good time credited to a prisoner's sentence?

The statute says that good time is counted at the end of each year that the prisoner is incarcerated, beginning at the end of the person's first year in prison. The BOP gives itself 15 days from the last day of each year of the sentence to calculate good time. For example, if a prisoner's first day in prison was April 1, 2008, the end of the first year in prison is April 1, 2009, and the BOP must calculate the good time earned by April 16, 2009 (15 days from the last day of each year of the sentence). The last day of this 15-day period is called the "vested date."

When the BOP has to credit good time for a partial year (when the prisoner has less than a full year left to serve), the BOP gives itself 6 weeks before the last day of the sentence to calculate how much prorated good time to credit. In this case, the vested date is the last day of the prisoner's sentence. On the vested date, good time is officially "credited."

If the BOP does not calculate the earned good time by the vested date, the BOP must give the prisoner the full award of good time. Good time also cannot be awarded before it has been earned. *See* 18 U.S.C. § 3624(b) (2008).

7. How can a prisoner lose good time credit?

Before the vested date (the date when good time is credited), it can easily be reduced. If a prisoner gets into some kind of trouble anytime before the vested date, the credit they are earning for that year is in jeopardy. Correctional officers and prison staff can reduce good time in bits and pieces for infractions.

After the vested date, when a prisoner's good time has already been credited to him, the BOP can take that good time away in *only two situations*:

- for good cause (e.g., riot, food strike, work stoppage, etc.), OR
- the prisoner misbehaved during the year for which the good time was credited to him, and the BOP learns about the misconduct only *after* it already granted the good time credit.

8. How can a prisoner find out how much good time he has earned so far?

Prisoners should ask prison staff to look at their "Central File." Records of good time credit are kept in Section 1 of the Central File, and disciplinary records are located in Section 4.

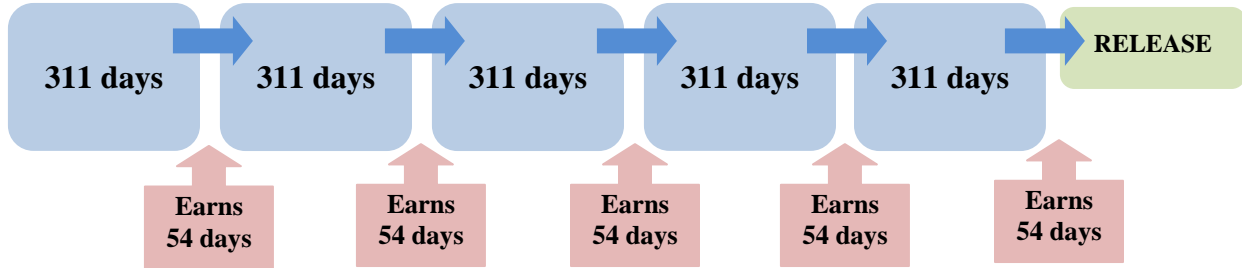
9. What should prisoners do if they disagree with the amount of good time the prison has given them?

To challenge the loss or miscalculation of good time credit, prisoners should use the BOP's administrative remedy process. Prisoners must go through all steps of the administrative remedy process *before* they can challenge their good time credit calculations in court.

10. How should the BOP calculate good time credit under 18 U.S.C. § 3624(b)?

The statute’s plain language says that for every year of imprisonment, prisoners should earn up to 54 days of credit against their entire term of imprisonment. (“Term of imprisonment” is widely understood as meaning the sentence of imprisonment imposed by the judge.).

Here’s an example: a prisoner is serving a term of imprisonment of five years (1,826 days, including an extra day for a leap year). His conduct is excellent and he earns all possible good time. He should serve 85% of each year sentenced:



He should earn 54 days of good time as he completes each set of 311 days. By the end of his five sets, he should serve 1,555 days of his 1,826-day sentence—almost exactly 85%.

11. How does the BOP actually calculate good credit time?

The BOP’s current rules on calculating good time are very different. The BOP uses complicated math that ends up awarding only a 47-days-per-year reduction of the sentence imposed, instead of the 54 days per year mandated by the statute. This is because, since 1988, the BOP has awarded good time credit based on the days *actually served* by the prisoner, *not* the sentence (or “term of imprisonment”) imposed by the judge. The BOP explains its calculation method in 8 complicated steps:

<p>1. They start with the shortest sentence imposed that can trigger the good time statute—a sentence of one year and one day, or 366 days.</p> <p>Then they subtract the 54 days that is mandated by the statute.</p> <p>That equals the 85% of the sentence imposed that the statute requires a prisoner to <i>actually serve</i>. A prisoner serving a 366-day sentence must serve <i>at least</i> 312 days.</p>	<p>366 days sentenced</p> <p><u>- 54 days</u></p> <p>= 312 days served</p>
<p>2. Now that they know that 312 is the minimum number of days served on a 366-day sentence, they want to know what 15% of 312 is. They multiply 312 days by a very interesting number: 0.148. Because the BOP awards good time credit based on the days <i>actually served</i> instead of the sentence (or “term of imprisonment”) imposed</p>	<p>312 days served</p> <p><u>× 0.148</u></p>

by the judge, they do this to figure out how much of the sentence actually served (312 days) should be considered for good time credit.

That equals 46 days of good time credit. = 46 days of good time

Why does the BOP use 0.148 (14.8%) instead of 0.15 (15%)?

The BOP decided that 0.148 was the best way to get to the 54 days that Congress required in §3624(b). The BOP got 0.148 by dividing 54 days by 366 days, which equals 0.1475. They rounded this number up to 0.148. (This is *almost* 15%, the percentage Congress intended to be awarded as good time!) The reason the BOP divided 54 days by 366 days is that it wanted to know what portion of *every day* could be earned as good time credit. This is called “prorating,” and it allows the BOP to award good time credit on every single day a prisoner serves, not just the full years a prisoner serves.

3.	But now the BOP has to double-check its math: What if a prisoner got 46 days of good time on a 366-day sentence—how many days would he actually serve? To find out, they subtract 46 days of good time from the sentence of 366 days.	366 days sentenced <u>- 46 days of good time</u>
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He would serve 320 days. Note that this is more days than 312 days in Step 2. = 320 days served

4.	The whole 366-day sentence must be accounted for, so the BOP checks that if a prisoner actually serves 312 days but earns 46 days of good time, all the days added up equal 366 days. The BOP adds 46 days of good time to the 312 days the prisoner must actually serve.	312 days served <u>+ 46 days of good time</u>
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This *should* equal 366 days, but it doesn’t—the whole sentence is not being accounted for. This means either that the prisoner must actually serve more time or earn more good time or both. = 358 days

5.	Since that didn’t work, the BOP experiments: What if a prisoner actually served 320 days, like in Step 3? How much good time could be allowed for 320 days served?	320 days
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The BOP multiplies by the almost-15% number again: × 0.148

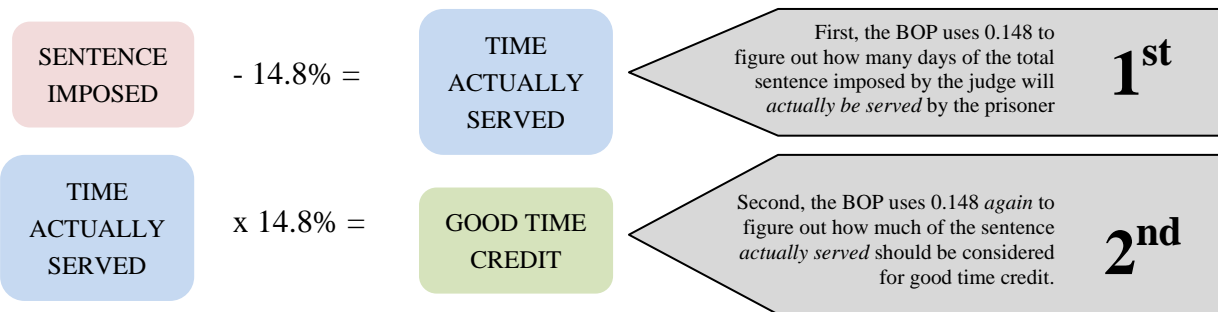
This equals slightly more than the 46 days of good time the BOP experimented with in Step 4. = 47 days of good time

	Then, the BOP checks again, just as in Step 4: If they award 47 days of good time on a 366-day sentence, how many days would a prisoner actually	366 days of the sentence <u>- 47 days of good time</u>
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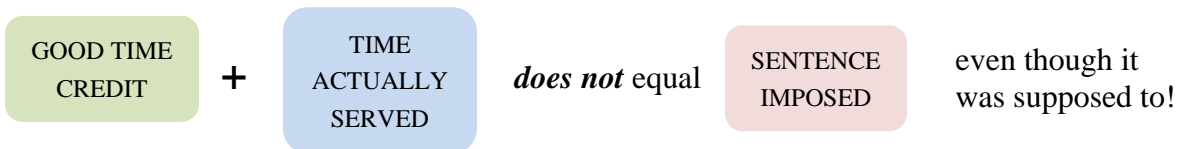
	serve? He would actually serve 319 days.	= 319 days served
6.	Now, the BOP wants to make sure that the whole 366-day sentence is accounted for, just like they did in Step 4: Because this equals 366, the BOP is confident that 319 days served actually served correlates to 47 days of good time.	319 days served <u>+ 47 days of good time</u> = 366 days of the sentence
7.	Now, the BOP double-checks the math: If the almost-15% number multiplied by the days actually served equals 47 days of good time, they know they are right. And it does equal 47 days, so the BOP thinks it has reached the right number.	319 days served <u>× 0.148</u> = 47 days of good time
8.	Last, the BOP restates that 47 days of good time added to 319 days actually served by the prisoner will account for a 366-day sentence imposed by the judge. To the BOP, this means that the maximum number of good time days the prisoner can earn is 47 days, even though the statute plainly says that the maximum number should be 54 days.	319 days served <u>+ 47 days</u> = 366 days of the sentence

12. Is there a simpler way of explaining the BOP math?

Yes. As we said before, the BOP awards good time based on the “number of days actually served” instead of the length of the sentence imposed. This means they end up calculating the math twice—once to determine how long prisoners will probably serve, and a second time to get to the number of good time days they believe they can credit. Here’s how it looks:



But the unnecessary second step messes up the math:





Because the good time credit plus the time actually served didn't equal the full sentence imposed, the BOP had to experiment with some other nearby numbers until the good time credit plus the time actually served *did* equal the sentence imposed. **The number of good time days that ended up working was 47**—so that's what the BOP decided to award.

13. It's so much simpler to just award 54 days every year. Why does the BOP not do so?

According to the BOP's policy statements, they actually do award 54 days for every full year. But because people end up serving only *part* of the last year (not a full year), the BOP has to prorate the good time calculations. "Prorate" means that the BOP figures out how much good time a prisoner earns for each day he's in prison, which, because good time credit shortened the sentence, is shorter than the full year. The BOP's proration is so skewed that the prisoner ends up being awarded 47 days per year instead of 54.

14. Why do they use 366 days when there are 365 days in a year?

The BOP uses 366 days (one year + 1 day) because that is the shortest sentence that a prisoner can receive and still be eligible to earn good time credit.

15. Has Congress done anything to clarify the good time credit statute?

Yes—the BOP's mistaken interpretation of the phrase "term of imprisonment" to mean "time served" has actually caused problems once before, 60 years ago. In 1948, Congress added some clarifying words to the good time statute in effect at the time (18 U.S.C. §701 (1944)), requiring that good time be "credited as earned and computed monthly." Instead, the BOP interpreted this addition as requiring that calculation of good time be based on the time prisoners actually served in prison. So, in 1959, Congress corrected the BOP by amending the statute again. Congress deleted the words "be credited as earned and computed monthly" so that the BOP would not base (or limit) the good time calculation on the time actually served.

In 1987, the U.S. Sentencing Commission mirrored Congress's intent when it designed the U.S. Sentencing Guidelines. The guideline ranges in the Sentencing Table are 15% *longer* than the time Congress actually wanted prisoners to serve. This made it very clear that prisoners should serve only 85% of the sentences they are given. Congress also amended § 3624(b) to allow a maximum of 54 days of good time for each year of the sentence—54 days is almost exactly 15% of the sentence handed down. The BOP has not followed this clarification.

16. What have courts said about the BOP's calculation of good time credits?

Unfortunately, the courts support the BOP's flawed calculation. On June 7, 2010, the U.S. Supreme Court issued its opinion in *Barber v. Thomas*, 560 U.S. ____ (2010) (available at <http://www.supremecourt.gov/opinions/09pdf/09-5201.pdf>). In a 6-3 decision, the Supreme Court, in an opinion authored by Justice Breyer, sided with the BOP and held that good time calculations should be based on the time actually served by the prisoner. The Court rejected the various textual and legislative history arguments offered by Mr. Barber. And, while conceding that the good time statute is a penal statute subject to the defendant-friendly "rule of lenity," the Court refused to invoke that rule, saying it only applies in the case of a "grievous ambiguity or uncertainty in the statute." The Court found no grievous ambiguity in the statute.



This ruling means that the BOP's current calculation method is lawful and that federal prisoners will continue to receive a maximum of only 47 days of good time credit for each year of the sentence, instead of 54 days.

17. Is there any legislation introduced recently that would clarify the good time statute?

Yes. Read about good time bills currently pending in Congress at <http://www.famm.org/FederalSentencing/USCongress/BillsinCongress.aspx>.

18. Why is the BOP's method of calculating good time bad? Why should the public care?

As a result of the BOP's unusual math, even model prisoners in the federal system spend seven extra days every year in prison. Instead of the intended 15% good time, the BOP's rules cause federal prisoners to receive just 12.8% good time. Seven days of one year means a lot to a prisoner and his family. When that time gets added up over five or 10 or 20 years or when it is multiplied by the all the years that tens of thousands of prisoners spend in prison, it costs taxpayers millions of dollars that Congress may never have wanted the BOP to spend:

1. There are 201,386 federal prisoners eligible for good time credits. Each one of them spends an extra 7 days a year in prison because of the BOP's flawed calculations. We multiply 201,386 by 7 to get the number of extra days they are incarcerated collectively.

$$\begin{array}{r} 201,386 \text{ eligible prisoners} \\ \times \quad 7 \text{ extra days each} \\ \hline = \mathbf{1,409,702 \text{ extra days collectively}} \end{array}$$

2. Next, we multiply 1,409,702 extra days by the average sentence that these people are serving.

$$\begin{array}{r} 1,409,702 \text{ extra days collectively} \\ \times \quad 9\frac{1}{2}\text{-year average sentence} \\ \hline = \mathbf{13,392,169 \text{ extra days over } 9\frac{1}{2} \text{ years}} \end{array}$$

3. We divide 13,392,169 by the number of days in a year to get the number of extra years these people are incarcerated.

$$\begin{array}{r} 13,392,169 \text{ extra days over } 9\frac{1}{2} \text{ years} \\ \div \quad 365 \text{ days in a year} \\ \hline = \mathbf{36,691 \text{ extra years over } 9\frac{1}{2} \text{ years}} \end{array}$$

4. Incarcerating these people costs an average of \$24,922 per year. When considered as a group, these 201,386 people are spending an extra 36,691 extra **years** in prison every 9½ years—that adds up to an extra \$914 million every 9½ years.

$$\begin{array}{r} 36,691 \text{ years over } 9\frac{1}{2} \text{ years} \\ \times \quad \$24,922 \text{ per year} \\ \hline = \mathbf{\$914 \text{ million over } 9\frac{1}{2} \text{ years}} \end{array}$$

FOR FURTHER READING:

Barber v. Thomas, 560 U.S. ____ (2010), available at <http://www.supremecourt.gov/opinions/09pdf/09-5201.pdf>.

Stephen R. Sady & Lynn Deffebach, *The Sentencing Commission, the Bureau of Prisons, and the Need for Full Implementation of Existing Ameliorative Statutes to Address Unwarranted and Unauthorized Over- Incarceration*, UNITED STATES SENTENCING COMMISSION SYMPOSIUM ON ALTERNATIVES TO INCARCERATION, June 2008 at 2, available at <http://or.fd.org/symp2.final%20for%20pdf.pdf>.