

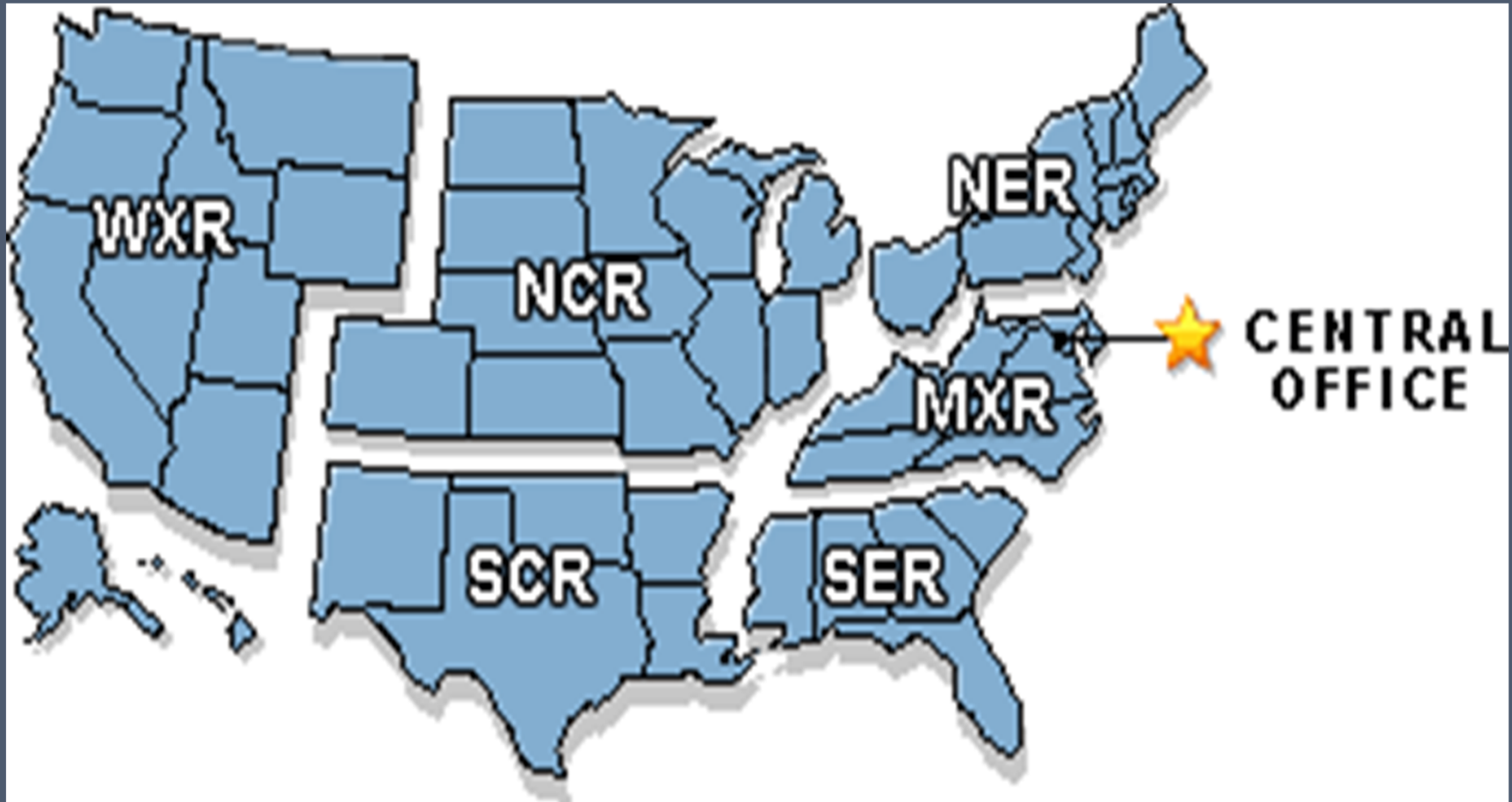
# FEDERAL BUREAU OF PRISONS



*Virtual Training Presentation for the  
Western District of Arkansas - BOP Sentence  
Computation and More*

**Jason A. Sickler, Regional Counsel**

# Federal Bureau of Prisons The Central Office & 6 Regions



**Federal Bureau of Prisons  
Designation and Sentence Computation Center  
Grand Prairie, Texas**

Opened in 2006



# Sentence Computation Roadmap

- **Authority for Sentence Computation Responsibility**
- Foundation of Sentence Computations
- **Review of Eligibility for Prior Custody Credit**
- Sentencing Guideline Provisions for Desired Sentencing Court Consideration
- **Scenario Examples**
- Recourse Avenues for Inmates Dissatisfied with the BOP Sentence Computation



# Authority for Sentence Computation Responsibility



# Authority for Sentence Computation Responsibility



The United States Supreme Court reaffirmed the long standing practice that federal sentence computation was the responsibility of the Attorney General and delegated to the Bureau of Prisons under 28 C.F.R. § 0.96. *United States v. Wilson*, 503 U.S. 329, 336 (1992) (concluding “it likely that the former reference to the Attorney General was simply lost in the shuffle [of the passage of the Sentencing Reform Act of 1984]”).

# Authority for Sentence Computation Responsibility

- Agency Goals

- Observance of statutory mandates

- Assist carrying out federal judicial intent whenever possible

- ✦ Order for consecutive service with primary federal jurisdiction

- ✦ Regrettably, in some instances statutory mandates prevent fully observing judicial intent



# Foundation of Sentence Computations





# Foundation of Sentence Computations



Although **primary jurisdiction impacts** important aspects of inmate designation and sentence computation, specifically

- which correctional system will first confine the defendant and
- which judicial sovereign controls consecutive v. concurrent service,

and there are **misconceptions that these determinations are impacted by which sovereign first enters a conviction or imposes sentence**, three questions serve as the basis of each sentence computation.

# Foundation of Sentence Computations



## Basis of Each Sentence Computation

- What is the duration of the term of imprisonment?
- When did the sentence commence?
- To what extent is the defendant entitled to prior custody credit?

# Foundation of Sentence Computations



## What is the duration of the term of imprisonment?

- Without debate, this is left to the sole discretion of the sentencing court.
  - In all cases, the sentencing court does the math. See *In Re U.S. Bureau of Prisons, Dept. of Justice*, 918 F.3d 431, 439 (5<sup>th</sup> Cir. 2019) (stating the district court must calculate the defendant's final sentence).
    - ❖ But in some circumstances (U.S.S.G. § 5G1.3(b)), notation of how the court arrived at the imposed term facilitates the Bureau of Prisons' honoring of judicial intent.



# Foundation of Sentence Computations



## When did the sentence commence?

- *“A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.”* 18 U.S.C. § 3585(a).
- Bureau policy recognizes a sentence may not commence prior to the date of imposition. *See U.S. v. Taylor*, 973 F.3d 414, 418 (5<sup>th</sup> Cir. 2020).

# Foundation of Sentence Computations

## When did the sentence commence?

- Remand after sentencing:



# Foundation of Sentence Computations



## When did the sentence commence?

- Voluntary surrender after sentencing:

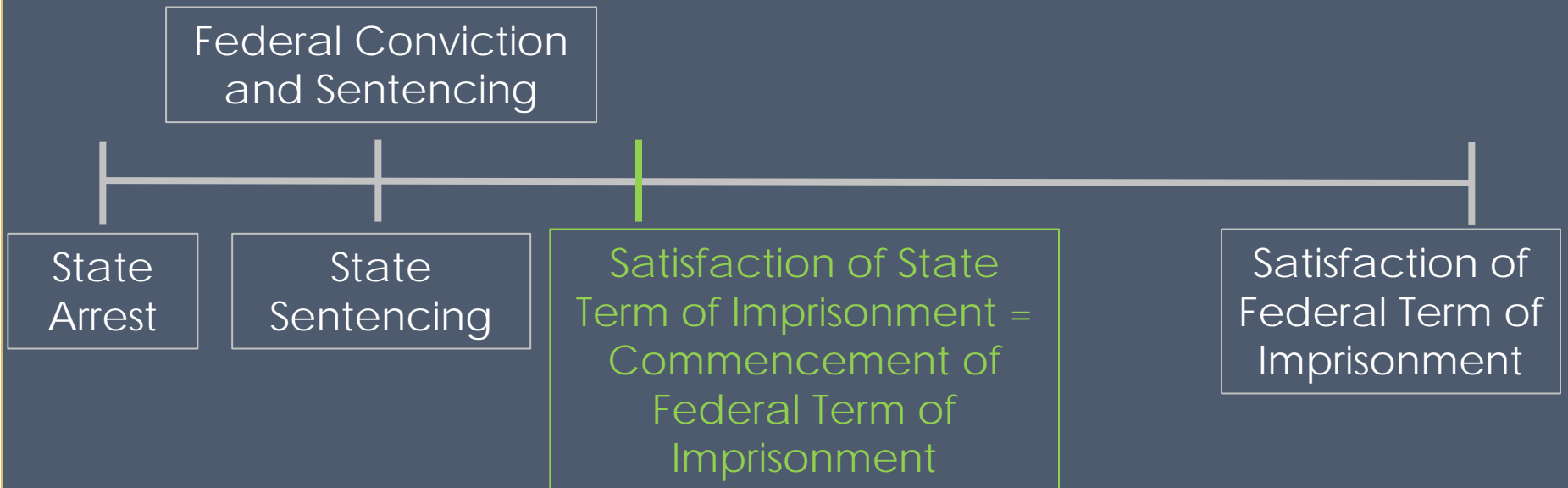


# Foundation of Sentence Computations



## When did the sentence commence?

- Federal sentence consecutive to state term – primary state jurisdiction:



# Foundation of Sentence Computations



## When did the sentence commence?

- Federal sentence concurrent to state term – primary state jurisdiction:



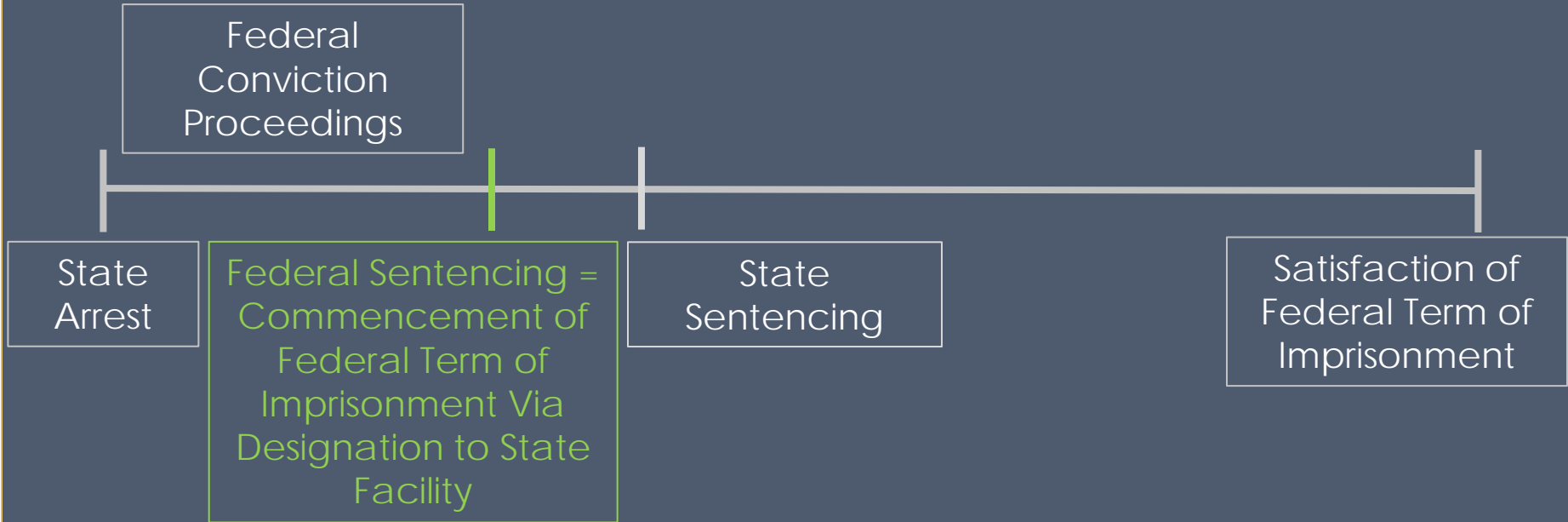


# Foundation of Sentence Computations



## When did the sentence commence?

- Federal sentence concurrent to state term – primary state jurisdiction:



# Foundation of Sentence Computations



## When did the sentence commence?

- Federal sentence consecutive to state term – primary federal jurisdiction:

# Foundation of Sentence Computations



## When did the sentence commence?

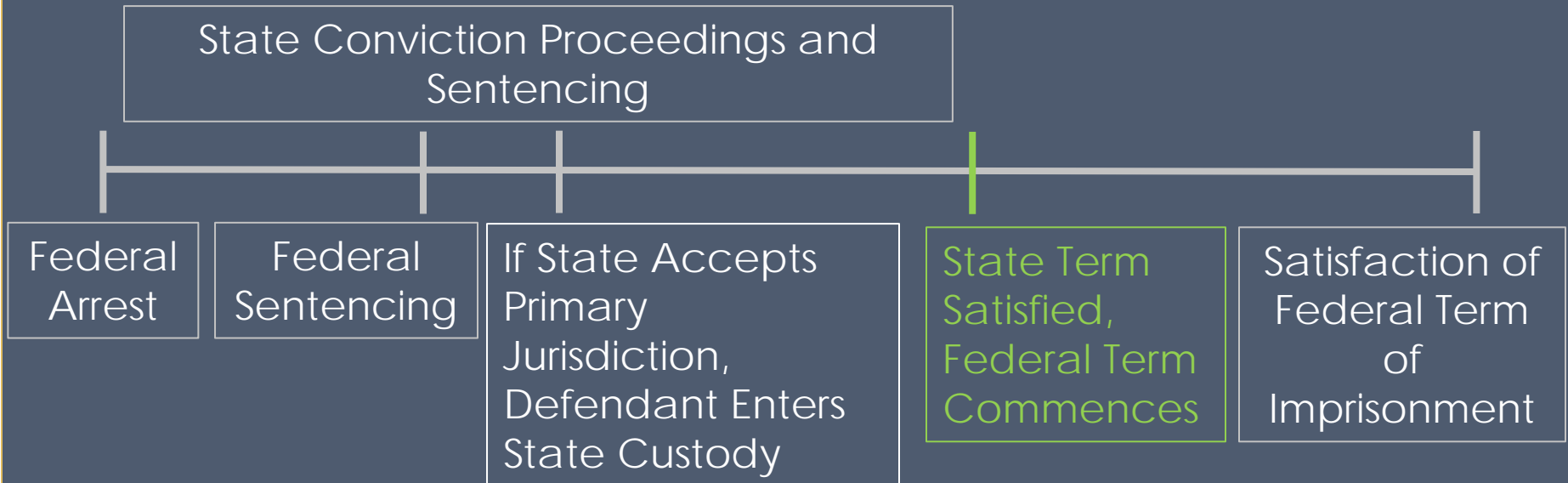
- Federal sentence consecutive to state term – primary federal jurisdiction:
  - May be impossible for Bureau to honor
  - The Bureau has offered primary jurisdiction to state
    - ✦ If state accepts,
      - Federal detainer will be lodged and
      - Bureau will commence federal term upon satisfaction of state term.

# Foundation of Sentence Computations



## When did the sentence commence?

- Federal sentence consecutive to state term – primary federal jurisdiction: (when possible)

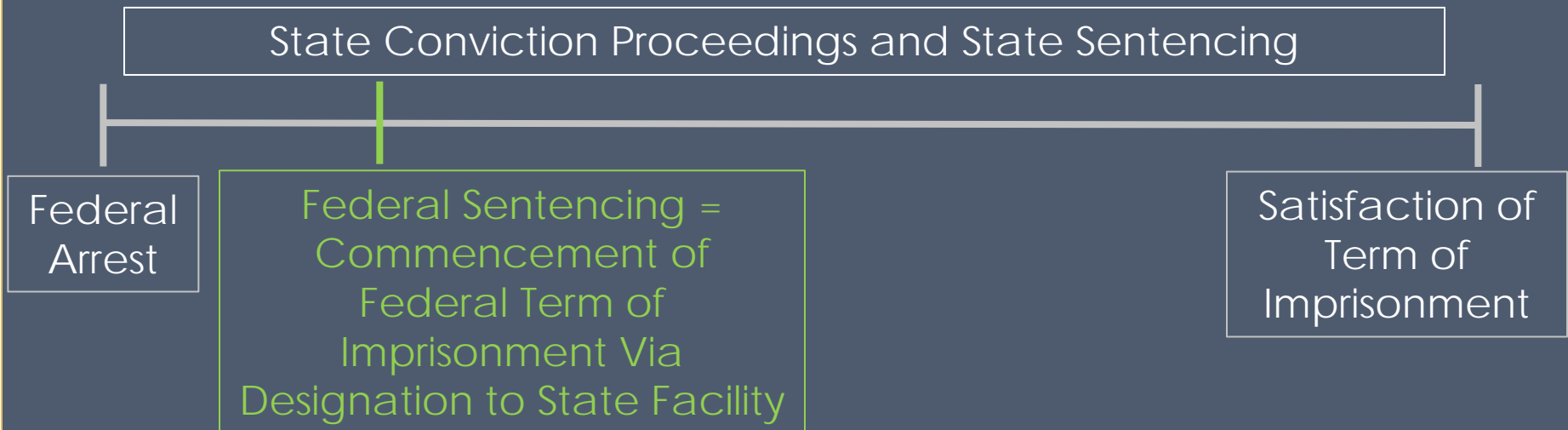


# Foundation of Sentence Computations



## When did the sentence commence?

- “Federal sentence concurrent to state term” – federal primary jurisdiction – really state determination:



# Review of Eligibility for Prior Custody Credit



# Review of Eligibility for Prior Custody Credit



## To what extent is the defendant entitled to prior custody credit?

- Controlled by 18 U.S.C. § 3585(b).
- The strict limitations of 18 U.S.C. § 3585(b) tend to elicit efforts to artificially modify sentence commencement or directives that are contrary to the Bureau's authority to compute terms of imprisonment. *See In re Bureau of Prisons*, 918 F.3d at 439 (recognizing “[c]onfusion sometimes arises . . . when a defendant requests that the district court award credit for time served and the court purports to grant or deny this request at sentencing.”).
  - There may be other means to provide a benefit for confinement that does not meet the statutory requirement of prior custody credit.

# Review of Eligibility for Prior Custody Credit



## To what extent is the defendant entitled to prior custody credit?

*18 U.S.C. § 3585, Calculation of a term of imprisonment . . .*

*(b) Credit for prior custody. - A defendant shall be given credit toward the service of a term of imprisonment for any time spent in official detention prior to the date the sentence commences –*

*(1) as a result of the offense for which the sentence was imposed; or*

*(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;*

***that has not been credited against another sentence.** (Emphasis added).*



# Review of Eligibility for Prior Custody Credit

## To what extent is the defendant entitled to prior custody credit?

Time spent in official detention applied to federal term of imprisonment to the extent it has not been credited against another sentence.

Commission of Federal Offense

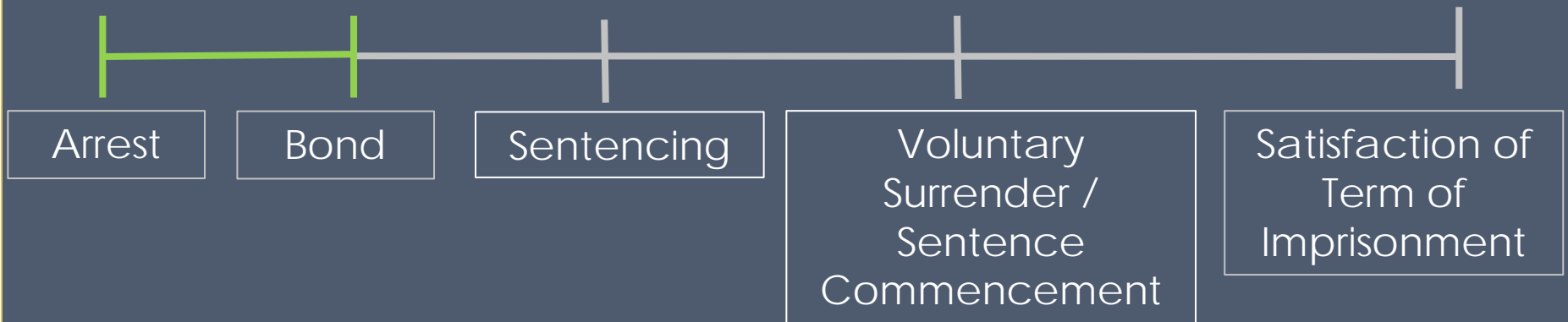
Date Federal Sentence Commenced

Satisfaction of Term of Imprisonment

# Review of Eligibility for Prior Custody Credit



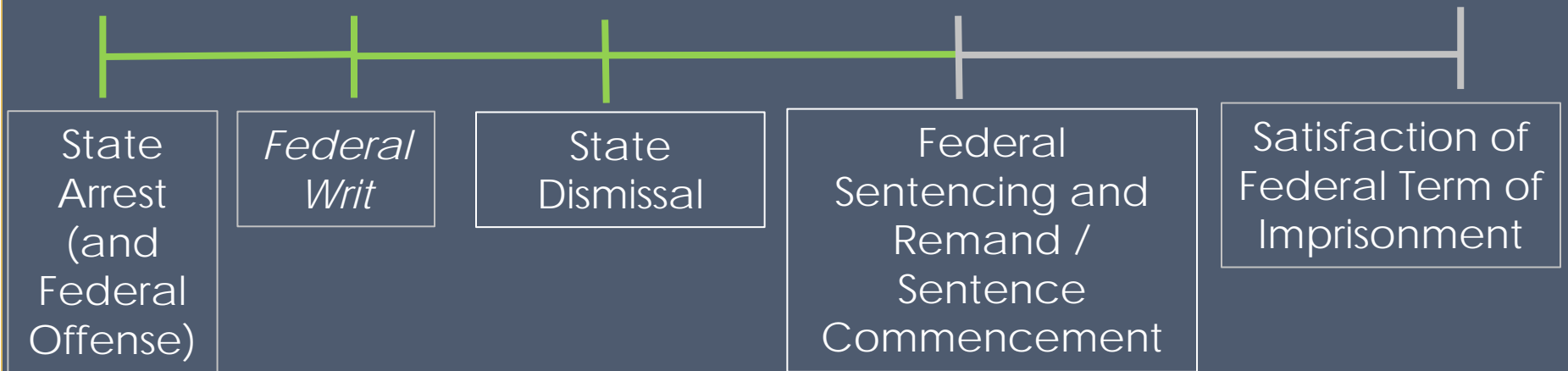
To what extent is the defendant entitled to prior custody credit?



# Review of Eligibility for Prior Custody Credit

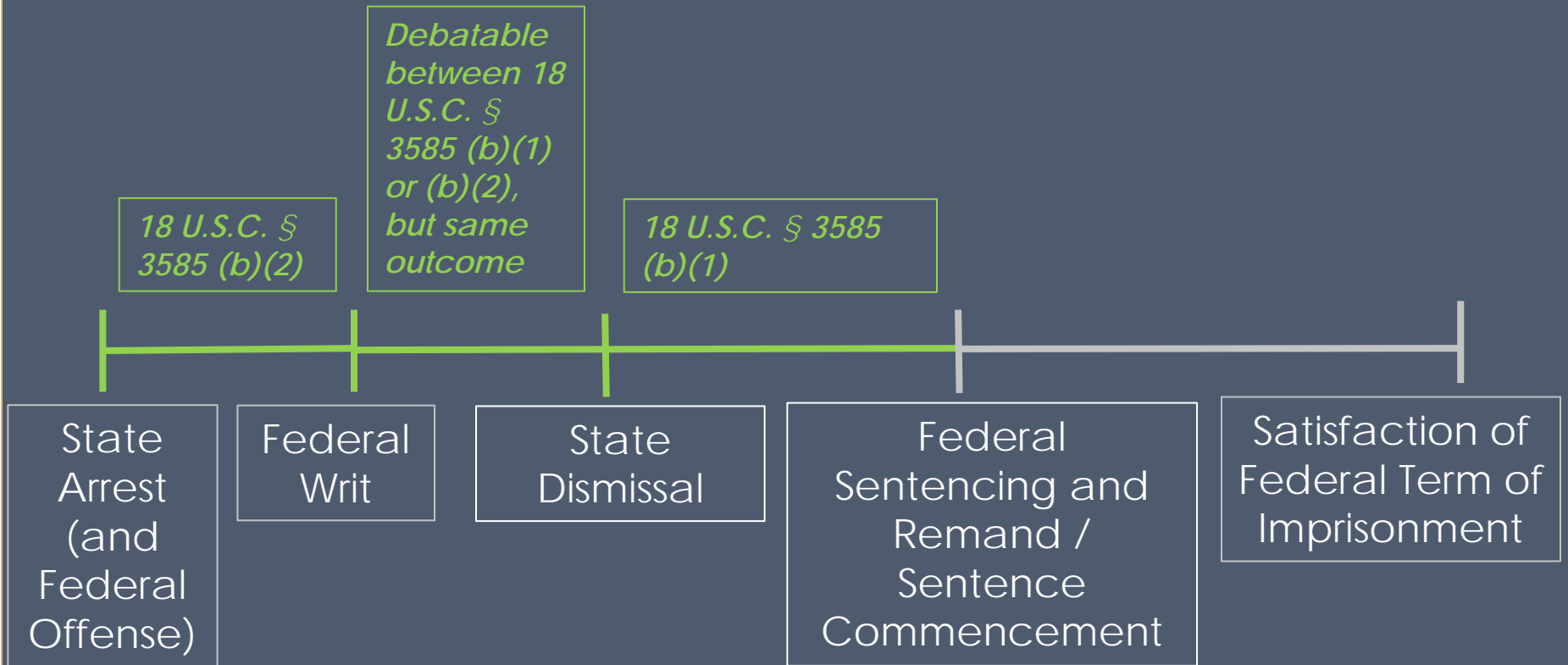


To what extent is the defendant entitled to prior custody credit?



# Review of Eligibility for Prior Custody Credit

To what extent is the defendant entitled to prior custody credit?

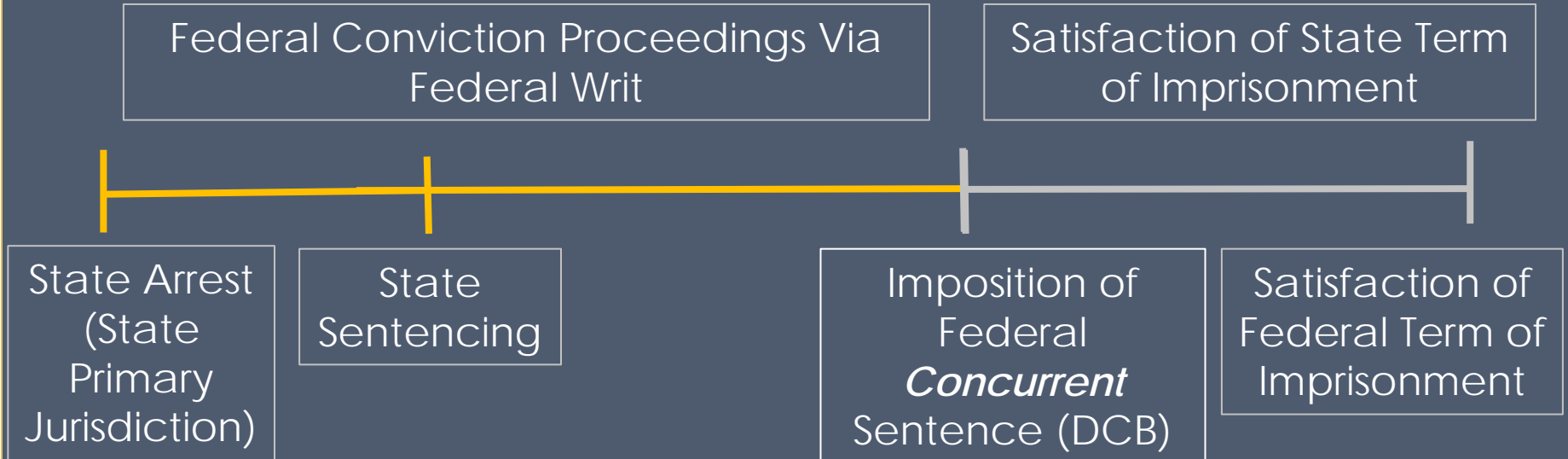


# Sentencing Guideline Provisions for Desired Sentencing Court Consideration



# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## Confinement Preceding Federal Sentencing For Which The Bureau of Prisons Will Not Award Prior Custody Credit



# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## Disclaimer

- Bureau of Prisons staff are by no means United States Sentencing Guideline experts.
  - The following are merely U.S.S.G. sections for consideration for possible use to secure a sentence outcome objective.
  - Any desired supplementation of your local expertise may be had through the United State Sentencing Commission HelpLine. See [www.ussc.gov](http://www.ussc.gov) or 202-502-4545.

# Sentencing Guideline Provisions for Desired Sentencing Court Consideration



## U.S.S.G. § 5G1.3 – Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment

- Subsection (a) provides *“[i]f the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentencing, but before commencing service of, such a term of imprisonment, the sentence for the instant offense shall be imposed to run consecutively to the undischarged term of imprisonment.”*



# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## U.S.S.G. § 5G1.3 – Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment

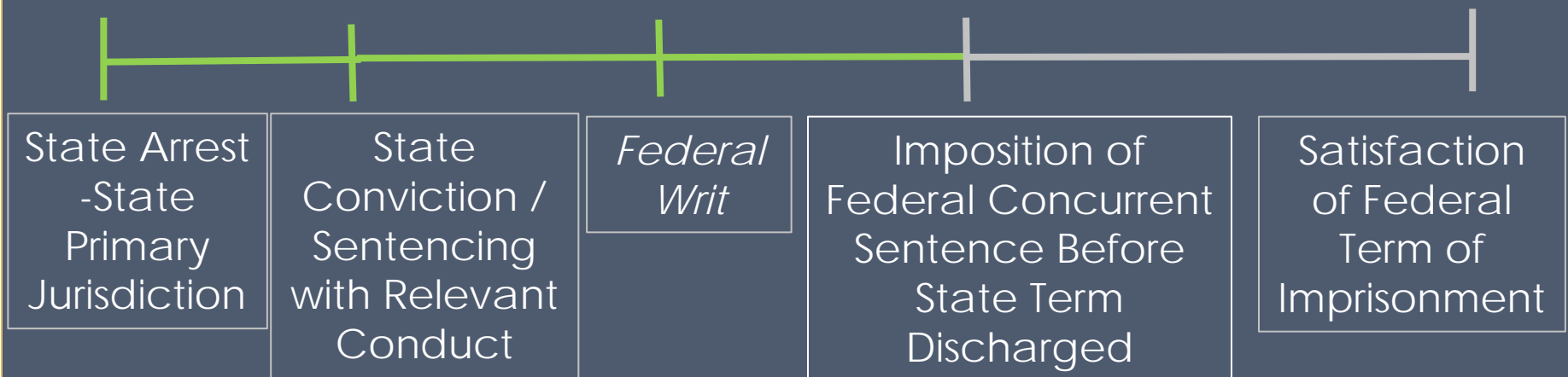
Subsection (b) provides *“[i]f subsection (a) does not apply, and a term of imprisonment resulted from another offense that is **relevant conduct** to the instant offense of conviction . . . the sentence for the instant offense shall be imposed as follows:*

- (1) the court shall **adjust** the sentence for any period of imprisonment already served on the **undischarged** term of imprisonment if the court determines that such period of imprisonment **will not be credited to the federal sentence by the Bureau of Prisons**; and*
- (2) the instant offense shall be imposed to run **concurrently** to the remainder of the undischarged term of imprisonment.”*

# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## U.S.S.G. § 5G1.3(b) – Adjustment with Concurrent Service

- Relevant Conduct,
- Undischarged, and
- Bureau will not apply prior custody credit.



# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## U.S.S.G. § 5G1.3(b)

- Application Note 2(C)
  - *“If subsection (b) applies, and the court adjusts the sentence for a period of time already served, the court should note on the Judgment in a Criminal Case Order (i) the applicable section (e.g. U.S.S.G. § 5G1.3(b)); (ii) the amount of time by which the sentence is being adjusted; (iii) the undischarged term of imprisonment for which the adjustment is being given; and (iv) that the sentence imposed is a sentence reduction pursuant to U.S.S.G. § 5G1.3(b) for a period of imprisonment that will not be credited by the Bureau of Prisons.”*
  - The court’s doing so, preferably with the dates of the contemplated confinement specified, allows the Bureau to properly compute the sentence, to include in the event the undischarged term is vacated.

# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## U.S.S.G. § 5G1.3(b)

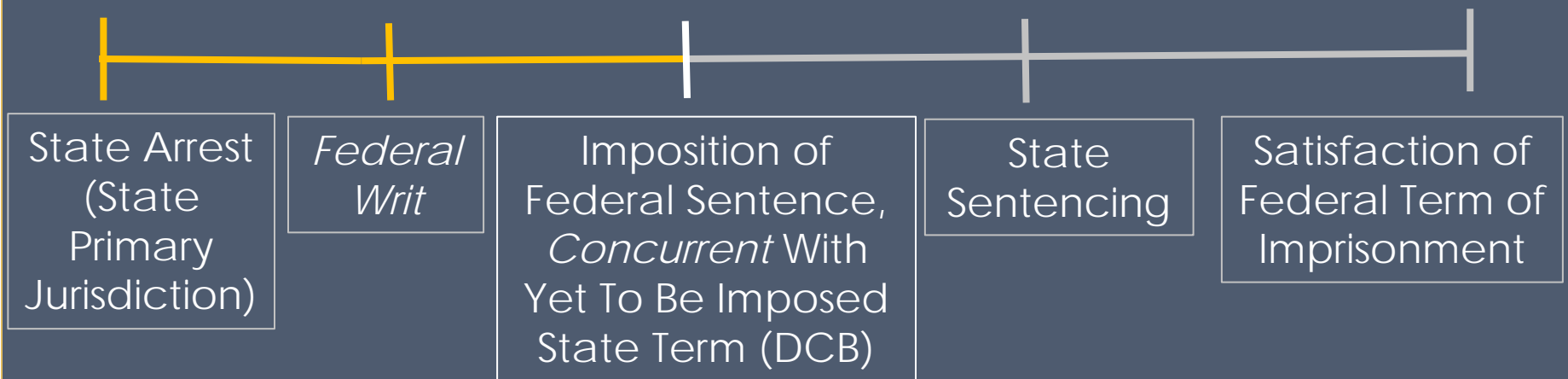
- Bureau of Prisons appreciated judgment language:

“Pursuant to U.S.S.G. § 5G1.3(b) the imposed term is 48 months, adjusted from 60 months, to account for defendant’s confinement from July 1, 2019 – June 30, 2020, in relation to State v. Defendant, [Arkansas Docket No. X], where the Bureau of Prisons will not award prior custody credit for that confinement.”

- *At federal sentencing, an imposed term in State v. Defendant must exist and be undischarged.*

# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## Confinement Preceding Federal Sentencing For Which The Bureau of Prisons Will Not Award Prior Custody Credit



# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## U.S.S.G. § 5G1.3(c) – Concurrent Service

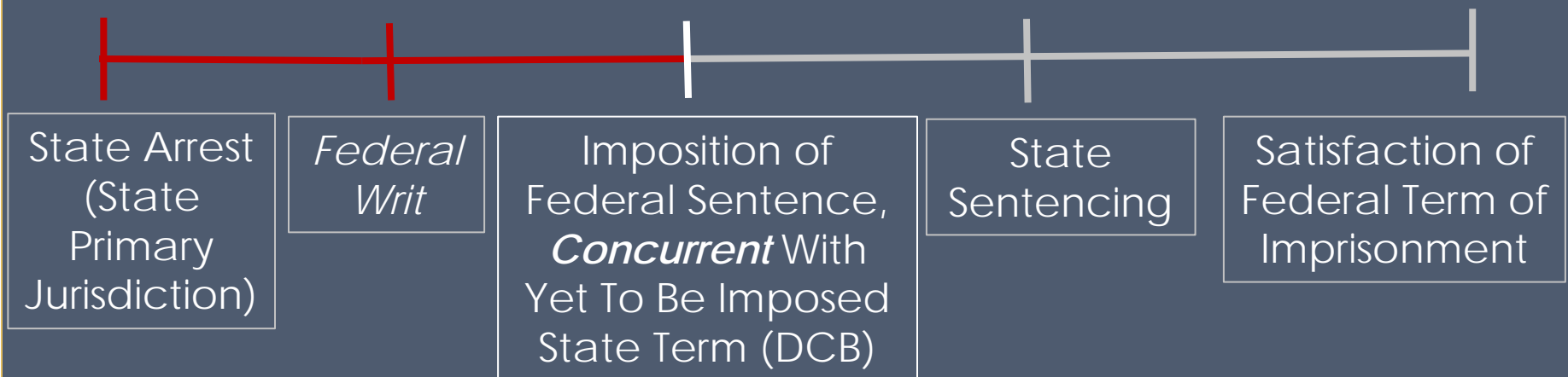
*“If subsection (a) does not apply, and a state term of imprisonment is anticipated to result from another offense that is relevant conduct to the instant offense of conviction . . . the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment.” U.S.S.G. § 5G1.3(c).*

- No adjustment with anticipated state term
- Solely concurrent service

# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

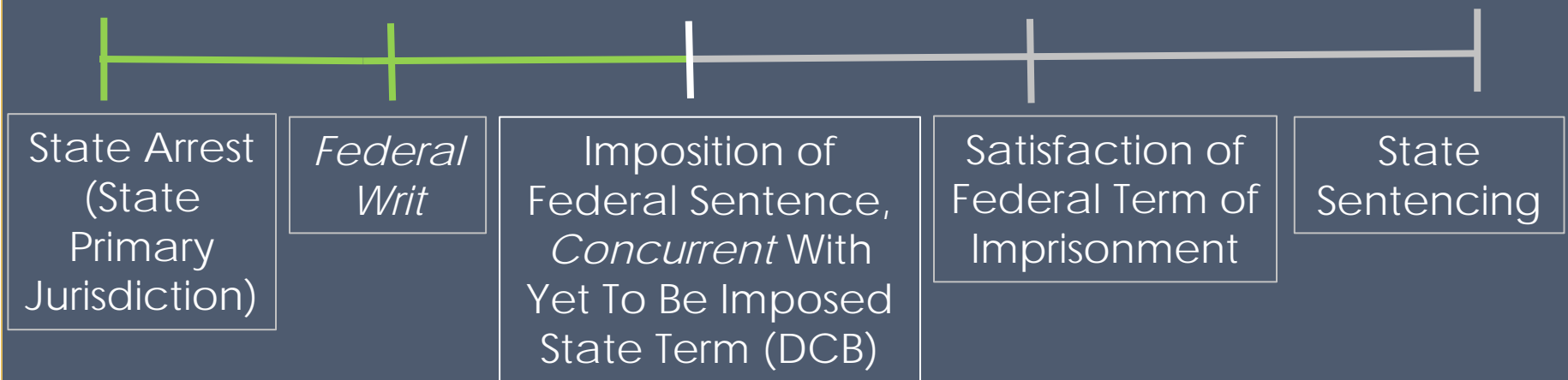
## U.S.S.G. § 5G1.3(c) – Concurrent Service

- Relevant Conduct and
- Anticipated State Term of Imprisonment.



# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

The Bureau of Prisons computes sentences in the “here and now.” *In re Bureau of Prisons*, 918 F.3d at 436. Prior custody credit is awarded and removed dependent on future events.





# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## Confinement Preceding Federal Sentencing For Which The Bureau of Prisons Will Limit Award of Prior Custody Credit

Federal Conviction Proceedings Via Federal Writ  
and/or Detainer

State  
Arrest

State  
Sentencing

Satisfaction of  
State Term of  
Imprisonment

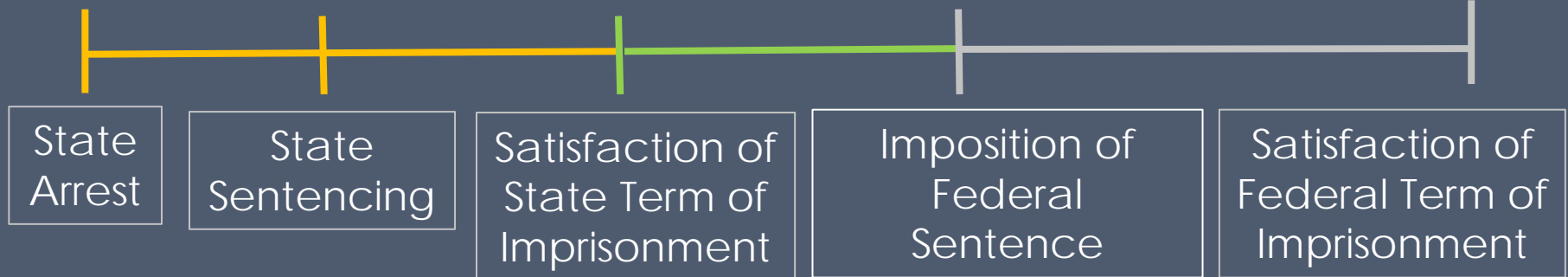
Imposition of  
Federal  
Sentence

Satisfaction of  
Federal Term of  
Imprisonment

# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## Confinement Preceding Federal Sentencing For Which The Bureau of Prisons Will Limit Award of Prior Custody Credit

Federal Conviction Proceedings Via Federal Writ  
and/or Detainer



# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

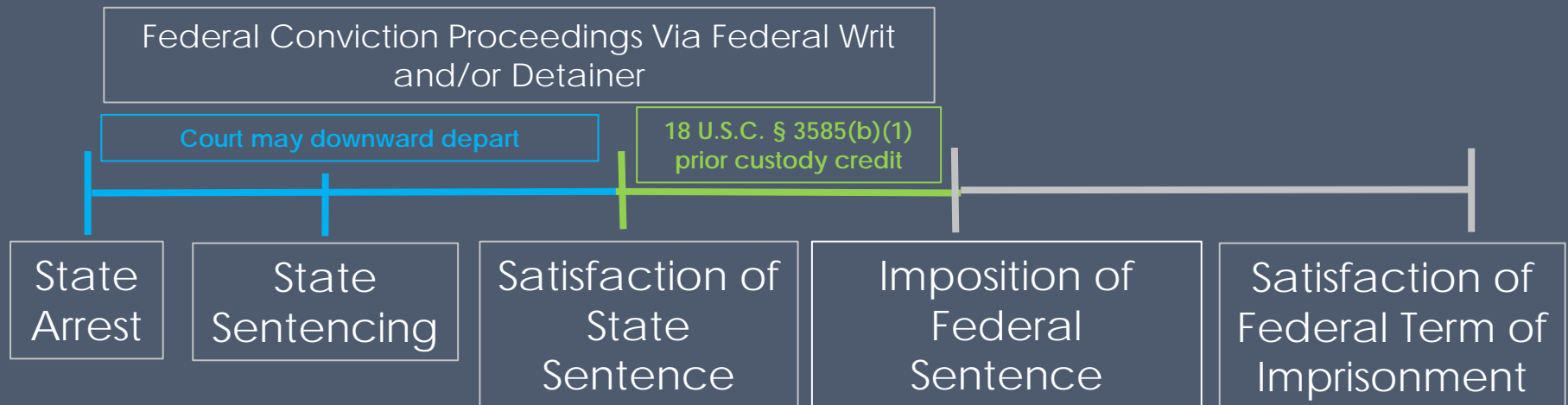
## U.S.S.G. § 5K2.23 – Downward Departure

*“A downward departure may be appropriate if the defendant (1) has **completed serving a term of imprisonment**; and (2) subsection (b) of § 5G1.3 (Imposition of a Sentence on a Defendant Subject to Undischarged Term of Imprisonment or Anticipated Term of Imprisonment) **would have provided an adjustment** had that completed term of imprisonment been undischarged at the time of sentencing for the instant offense. Any such departure should be fashioned to achieve a reasonable punishment for the instant offense.”*

# Sentencing Guideline Provisions for Desired Sentencing Court Consideration

## U.S.S.G. § 5K2.23 – Downward Departure

- Completed Term of Imprisonment and
- If, undischarged, § 5G1.3(b) would have applied
  - Relevant Conduct,
  - Bureau will not apply prior custody credit.



# Scenario Examples

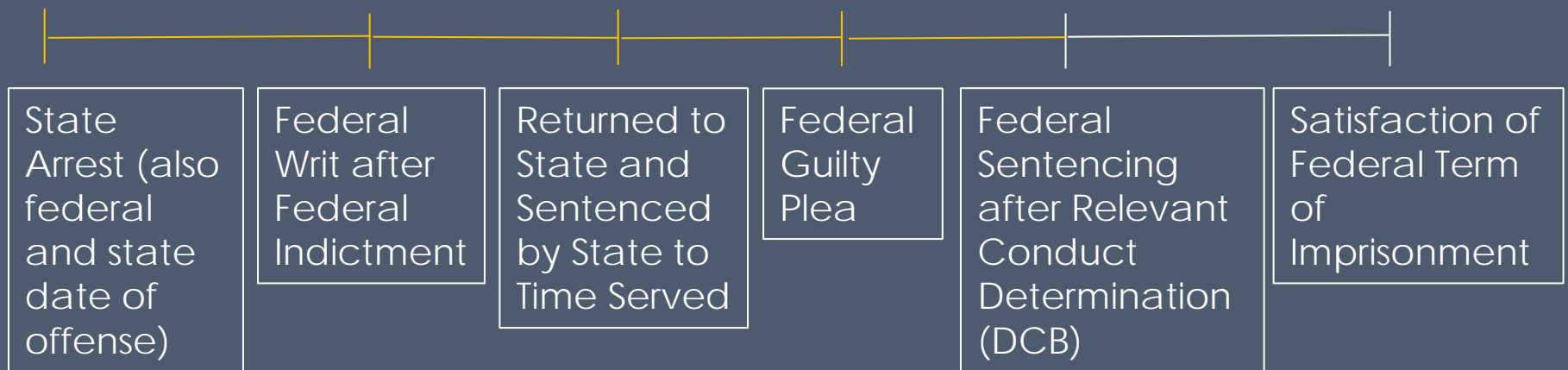


**Hypothetical 1:** Defendant, a convicted felon, commits an aggravated assault with a firearm and is arrested by state law enforcement. Unable to make bond, he is held on the state charge in a local jail. While in state custody, he is indicted by a federal grand jury under 18 U.S.C. § 922(g)(1) for illegally possessing a firearm (i.e., during the aggravated assault described above). He is taken into federal custody pursuant to a *writ of habeas corpus ad prosequendum* and at his initial appearance is ordered detained by a federal magistrate judge. While awaiting trial on the federal charges, he is transported to the state courthouse, where he pleads guilty to the aggravated assault charge and is sentenced to time served, meaning his state sentence is discharged. Months later, still subject to a federal order of detention, he pleads guilty to the federal felon-in-possession charge. At sentencing, the district judge, believing the state aggravated assault charge is “relevant conduct” with respect to the federal felon-in-possession charge, and that the Bureau of Prisons will not give the defendant credit for the time spent in state custody and/or overlapping state/federal custody, wants to make sure the defendant receives credit for that time. What, if anything, can the judge do?



## Hypothetical 1 (continued):

- A. Order the BOP to give the defendant a specified amount of credit for time served, expressly identifying the applicable dates when he was in custody. As long as it is in the judgment, BOP must award that much credit as a matter of law.
- B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody.
- C. Determine how much time he thinks should be credited towards the federal sentence and then depart downwardly under U.S.S.G. § 5K2.23, subtracting that amount of time from the sentence he would otherwise impose and imposing the reduced sentence.
- D. Order that the federal sentence be served concurrently with the state sentence even though the state sentence is already discharged. BOP can sort this out later.
- E. Impose a below-guideline variance under his post-*Booker* authority, identifying the time spent in custody for which BOP likely will not give him credit as part of the "history and characteristics of the defendant" under 18 U.S.C. § 3553(a).



## Hypothetical 1 (continued):

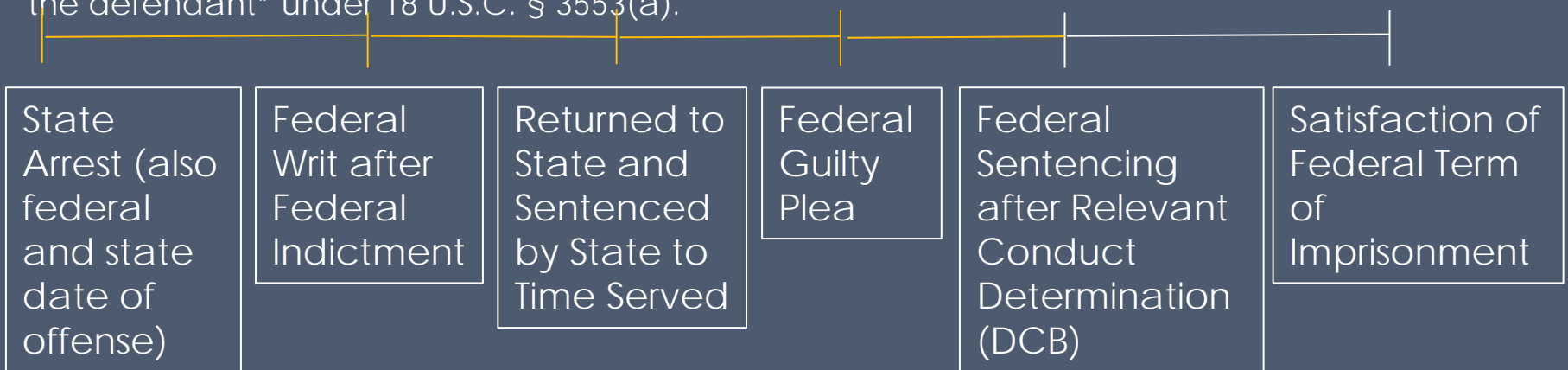
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B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody.

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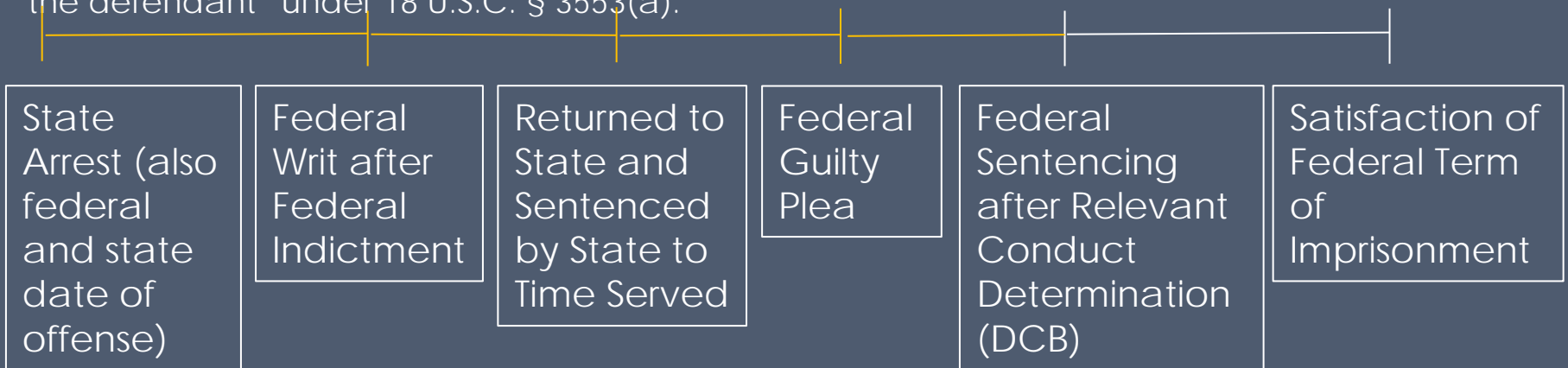
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B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody. Departure Available

C. Determine how much time he thinks should be credited towards the federal sentence and then depart downwardly under U.S.S.G. § 5K2.23, subtracting that amount of time from the sentence he would otherwise impose and imposing the reduced sentence.

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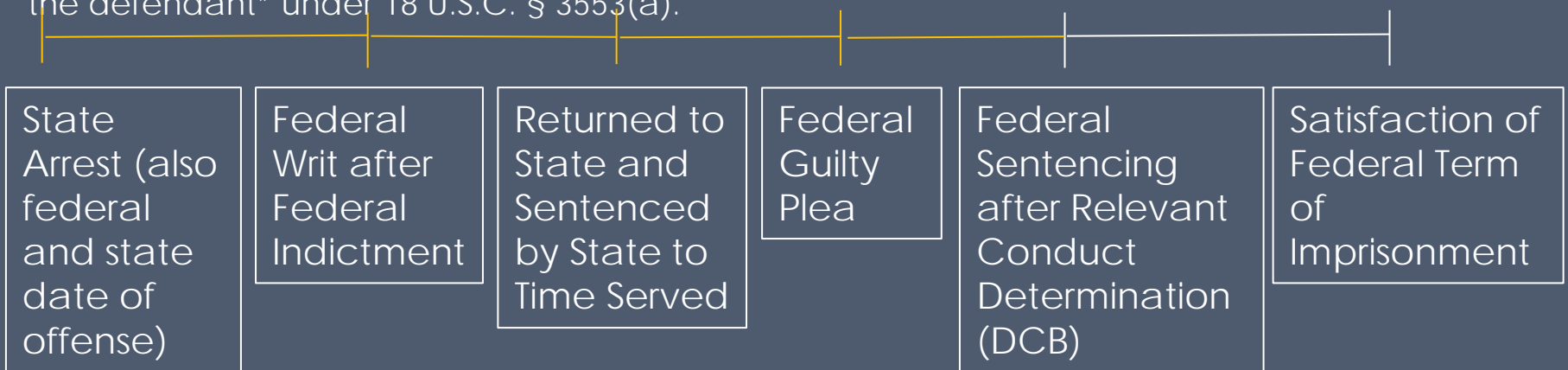
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## Hypothetical 1 (continued):

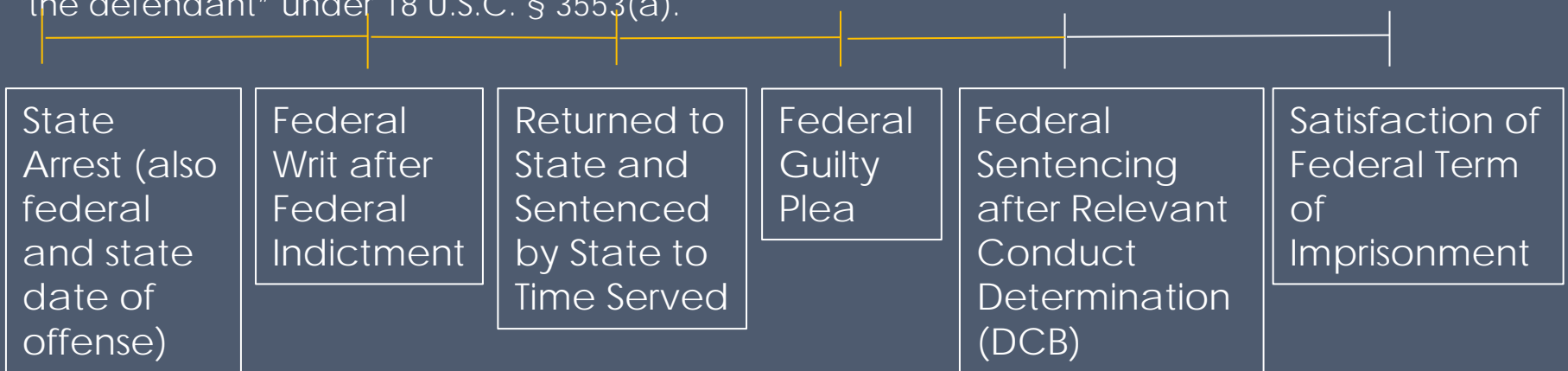
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D. Order that the federal sentence be served concurrently with the state sentence even though the state sentence is already discharged. BOP can sort this out later. Please No!

E. Impose a below-guideline variance under his post-*Booker* authority, identifying the time spent in custody for which BOP likely will not give him credit as part of the “history and characteristics of the defendant” under 18 U.S.C. § 3553(a).



## Hypothetical 1 (continued):

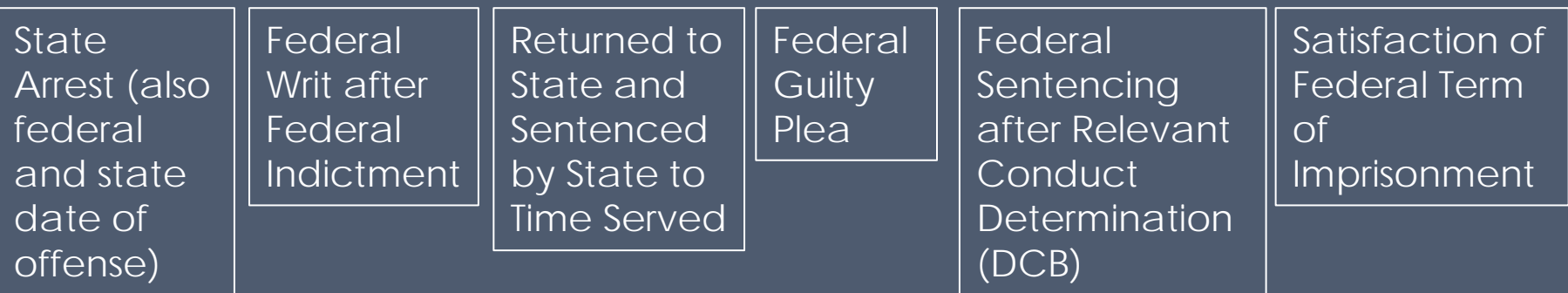
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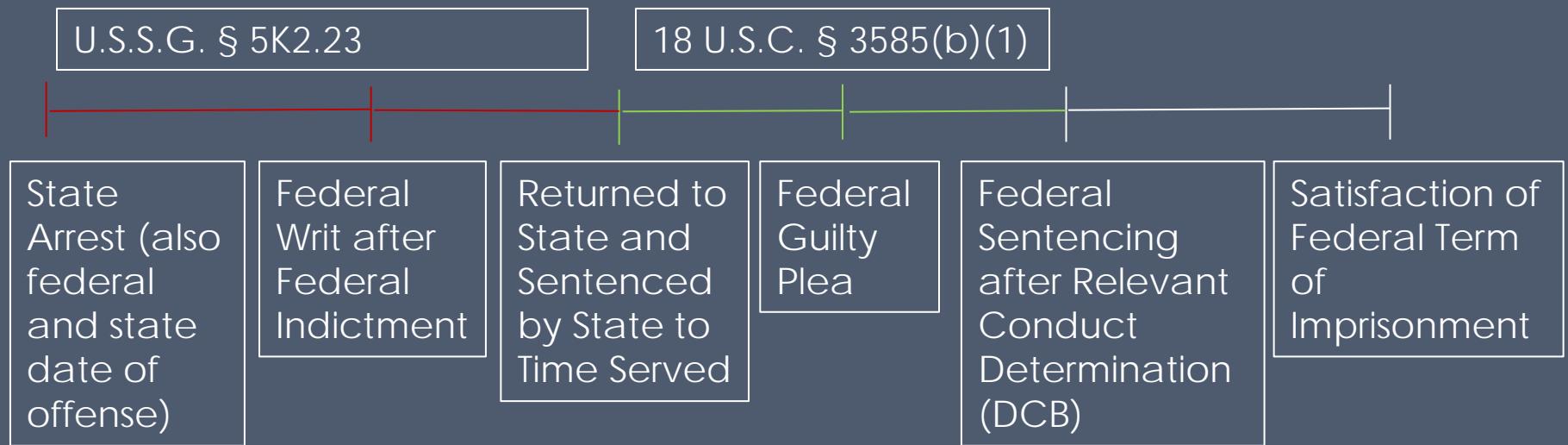
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E. Impose a below-guideline variance under his post-*Booker* authority, identifying the time spent in custody for which BOP likely will not give him credit as part of the "history and characteristics of the defendant" under 18 U.S.C. § 3553(a). Remember my earlier disclaimer

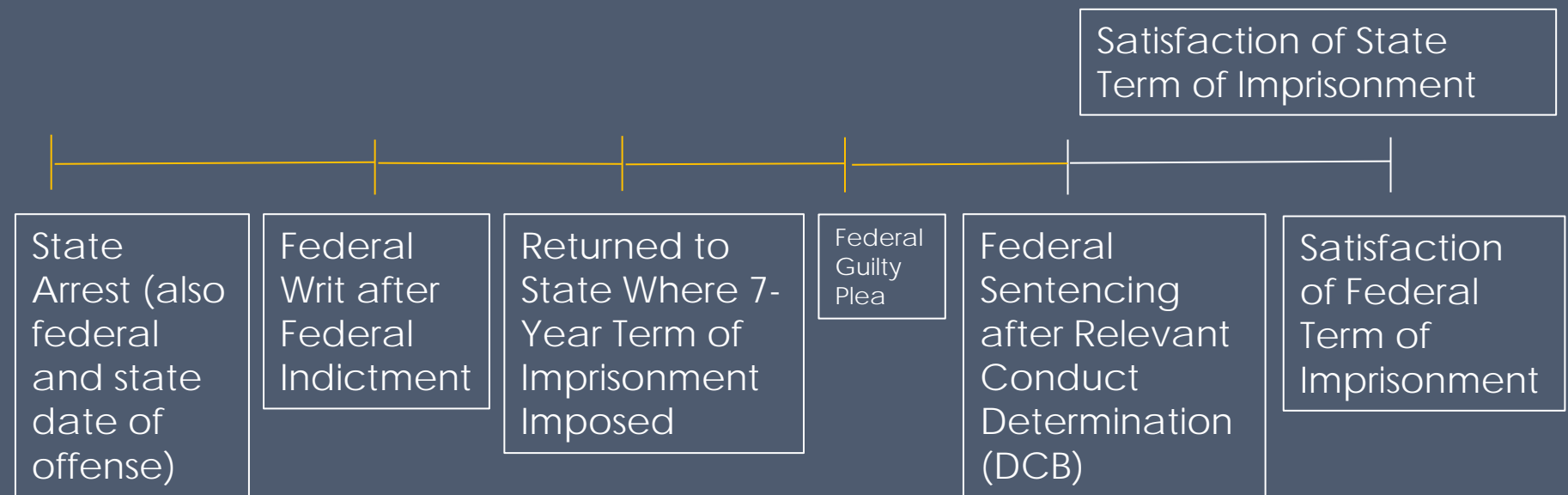


## Hypothetical 1 (continued):

- C. Determine how much time he thinks should be credited towards the federal sentence and then depart downwardly under U.S.S.G. § 5K2.23, subtracting that amount of time from the sentence he would otherwise impose and imposing the reduced sentence.



**Hypothetical 2:** Assume all the facts in Hypothetical 1, except instead of imposing a sentence of time served, the state judge sentences Defendant to 7 years, so that at the time of his federal sentencing, his state sentence is not yet discharged. What can the judge do to make sure the defendant receives credit for time spent in state custody and/or overlapping state/federal custody on the related state and federal charges?



## Hypothetical 2 (continued):

A. Order the BOP to give the defendant a specified amount of credit for time served, expressly identifying the applicable dates when he was in custody. As long as it is in the judgment, BOP must award that much credit as a matter of law.

B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody.

C. Determine how much time he thinks should be credited towards the federal sentence and then adjust the sentence under U.S.S.G. § 5G1.3(b), subtracting the amount of time already served on the undischarged state sentence and then ordering the defendant to serve the instant federal sentence concurrently with the remainder of the undischarged state sentence.

D. Impose a below-guideline variance under his post-*Booker* authority, identifying the time spent in custody for which BOP likely will not give him credit as part of the “history and characteristics of the defendant” under 18 U.S.C. § 3553(a).

Satisfaction of State  
Term of Imprisonment

State  
Arrest (also  
federal  
and state  
date of  
offense)

Federal  
Writ after  
Federal  
Indictment

Returned to  
State Where 7-  
Year Term of  
Imprisonment  
Imposed

Federal  
Guilty  
Plea

Federal  
Sentencing  
after Relevant  
Conduct  
Determination  
(DCB)

Satisfaction  
of Federal  
Term of  
Imprisonment

## Hypothetical 2 (continued):

A. Order the BOP to give the defendant a specified amount of credit for time served, expressly identifying the applicable dates when he was in custody. As long as it is in the judgment, BOP must award that much credit as a matter of law. *In Re Bureau of Prisons*

B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody.

C. Determine how much time he thinks should be credited towards the federal sentence and then adjust the sentence under U.S.S.G. § 5G1.3(b), subtracting the amount of time already served on the undischarged state sentence and then ordering the defendant to serve the instant federal sentence concurrently with the remainder of the undischarged state sentence.

D. Impose a below-guideline variance under his post-*Booker* authority, identifying the time spent in custody for which BOP likely will not give him credit as part of the "history and characteristics of the defendant" under 18 U.S.C. § 3553(a).

Satisfaction of State  
Term of Imprisonment

State  
Arrest (also  
federal  
and state  
date of  
offense)

Federal  
Writ after  
Federal  
Indictment

Returned to  
State Where 7-  
Year Term of  
Imprisonment  
Imposed

Federal  
Guilty  
Plea

Federal  
Sentencing  
after Relevant  
Conduct  
Determination  
(DCB)

Satisfaction  
of Federal  
Term of  
Imprisonment



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A. Order the BOP to give the defendant a specified amount of credit for time served, expressly identifying the applicable dates when he was in custody. As long as it is in the judgment, BOP must award that much credit as a matter of law. *In Re Bureau of Prisons*

B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody. Adjustment Available

C. Determine how much time he thinks should be credited towards the federal sentence and then adjust the sentence under U.S.S.G. § 5G1.3(b), subtracting the amount of time already served on the undischarged state sentence and then ordering the defendant to serve the instant federal sentence concurrently with the remainder of the undischarged state sentence.

D. Impose a below-guideline variance under his post-*Booker* authority, identifying the time spent in custody for which BOP likely will not give him credit as part of the "history and characteristics of the defendant" under 18 U.S.C. § 3553(a).

Satisfaction of State  
Term of Imprisonment

State  
Arrest (also  
federal  
and state  
date of  
offense)

Federal  
Writ after  
Federal  
Indictment

Returned to  
State Where 7-  
Year Term of  
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Federal  
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Satisfaction of State  
Term of Imprisonment

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Satisfaction of State  
Term of Imprisonment

State  
Arrest (also  
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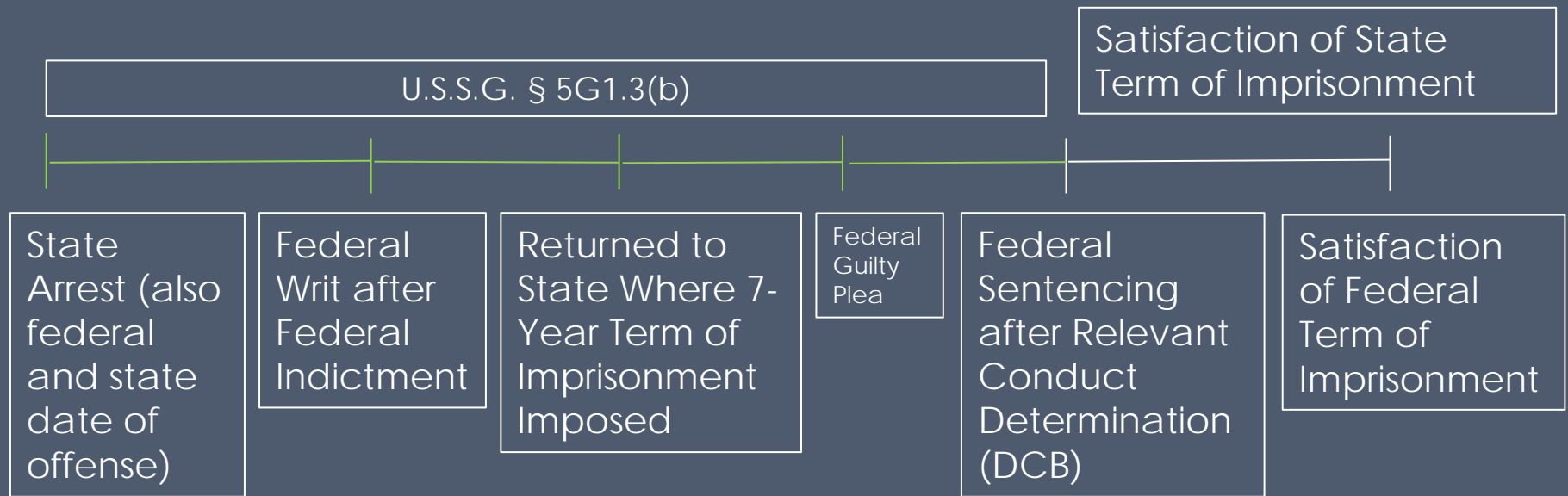
Federal  
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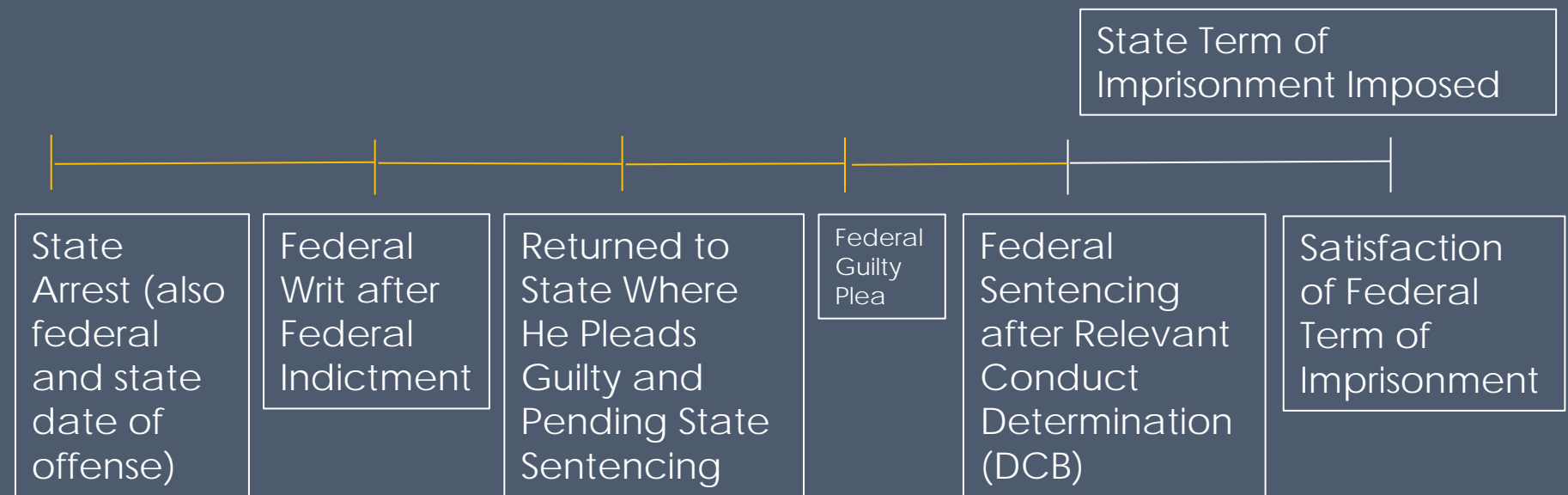
Satisfaction  
of Federal  
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**Hypothetical 3:** Assume all the facts in Hypothetical 1 except as of the time of the federal sentencing, Defendant has pleaded guilty to the state charge but has not yet been sentenced on the state charge. What can the judge do to make sure the defendant receives credit for time spent in state custody and/or overlapping state/federal custody on the related state and federal charges when he does not know how long the state sentence will be?



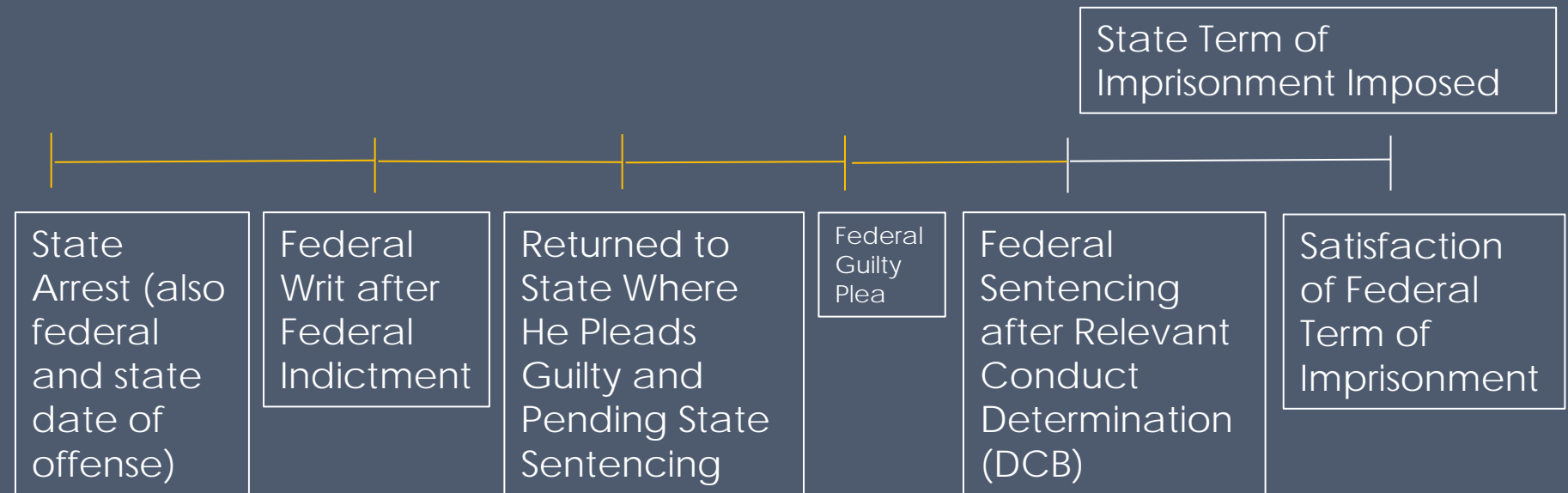
### Hypothetical 3:

A. Order the BOP to give the defendant credit for all time served on whatever state sentence is ultimately imposed. As long as it is in the judgment, BOP must award that much credit as a matter of law.

B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody.

C. Under U.S.S.G. § 5G1.3(c), order that the instant federal sentence be served concurrently with anticipated state sentence, specifying the docket number of the state proceeding.

D. Nothing. A district court has no authority to order that a federal sentence be served concurrently with an anticipated but not-yet-imposed state sentence, and because the district court does not know what the state sentence will be, it cannot do an adjustment or departure.



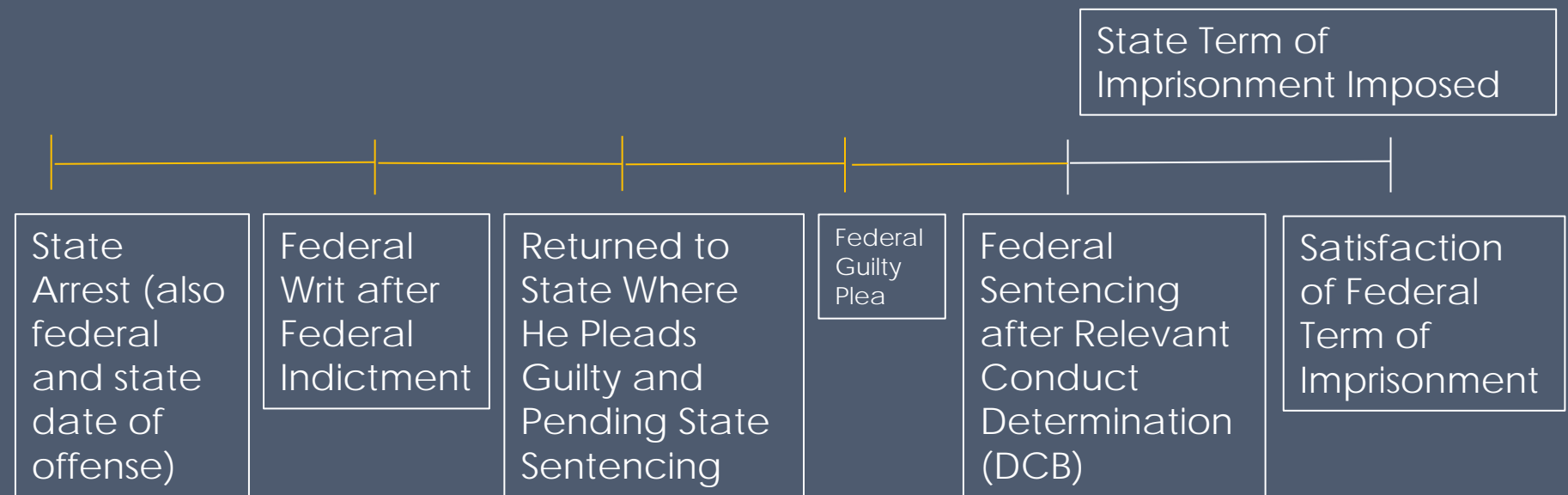
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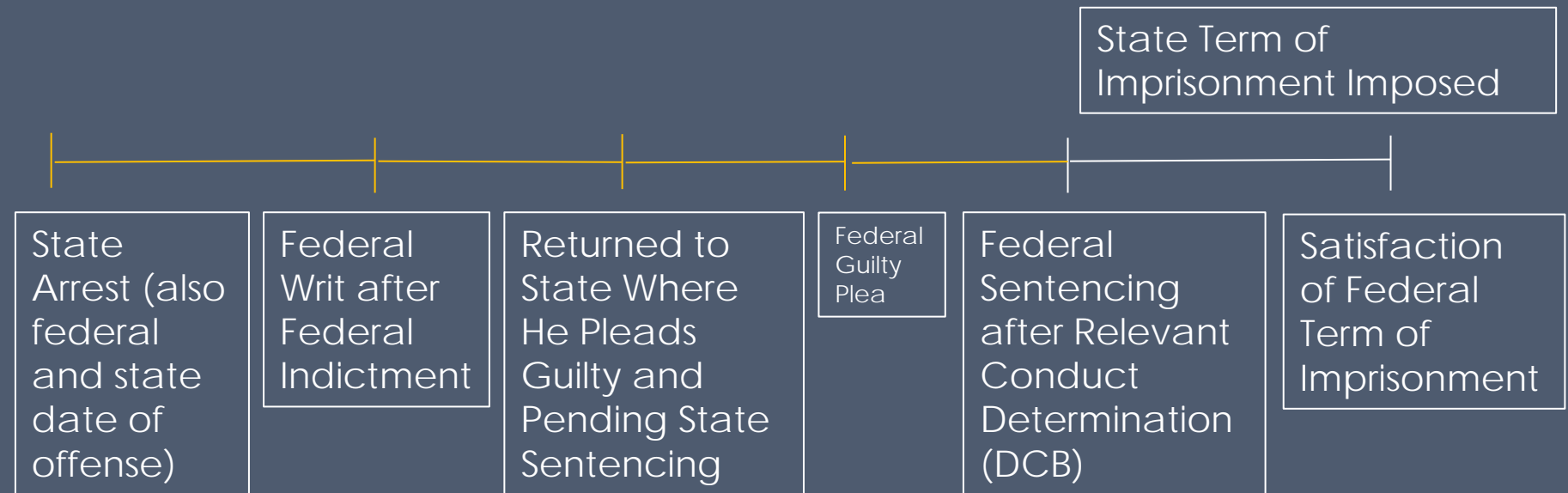
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B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody. BOP designates to state facilities for service of federal term of imprisonment (along with detainer being lodged).

C. Under U.S.S.G. § 5G1.3(c), order that the instant federal sentence be served concurrently with anticipated state sentence, specifying the docket number of the state proceeding.

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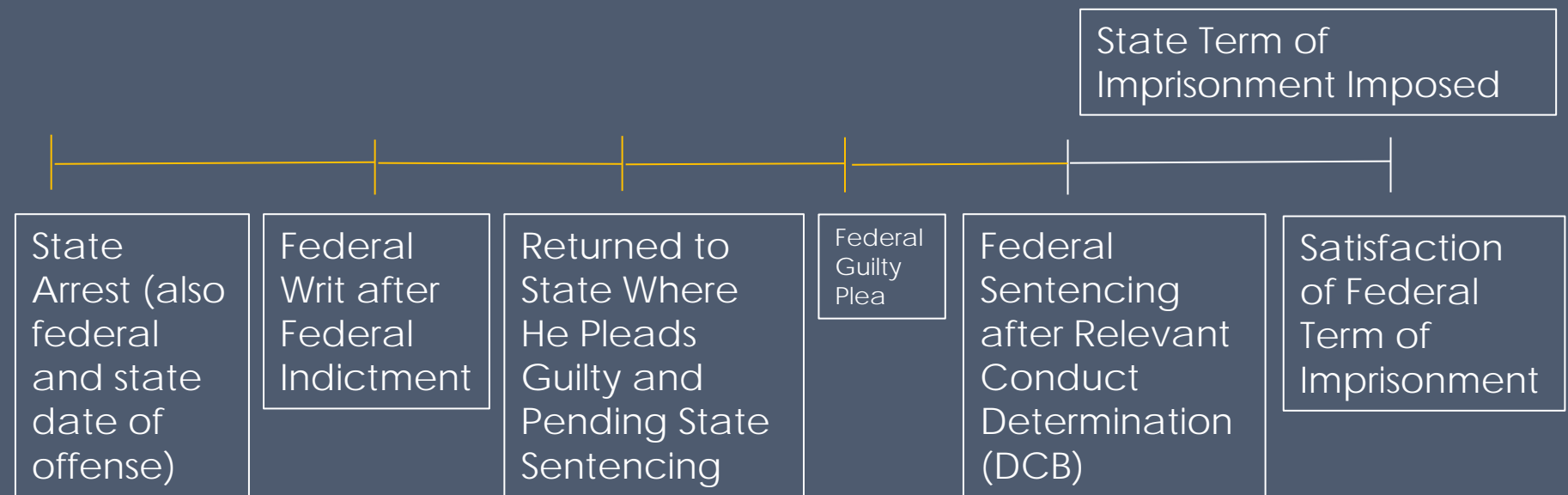
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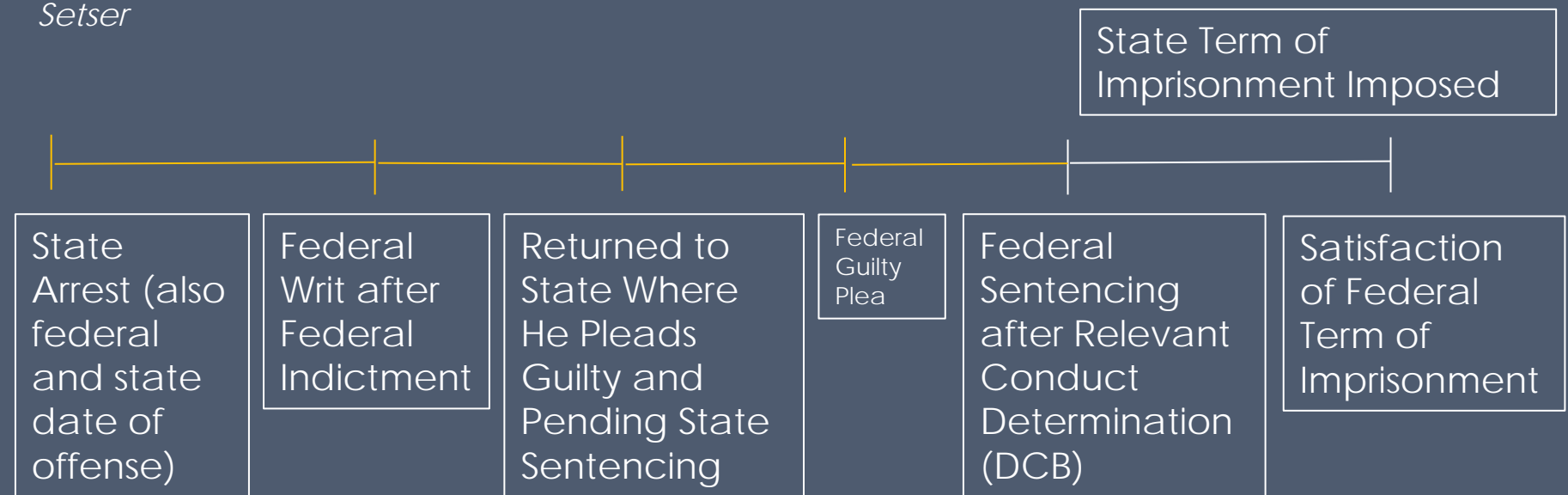
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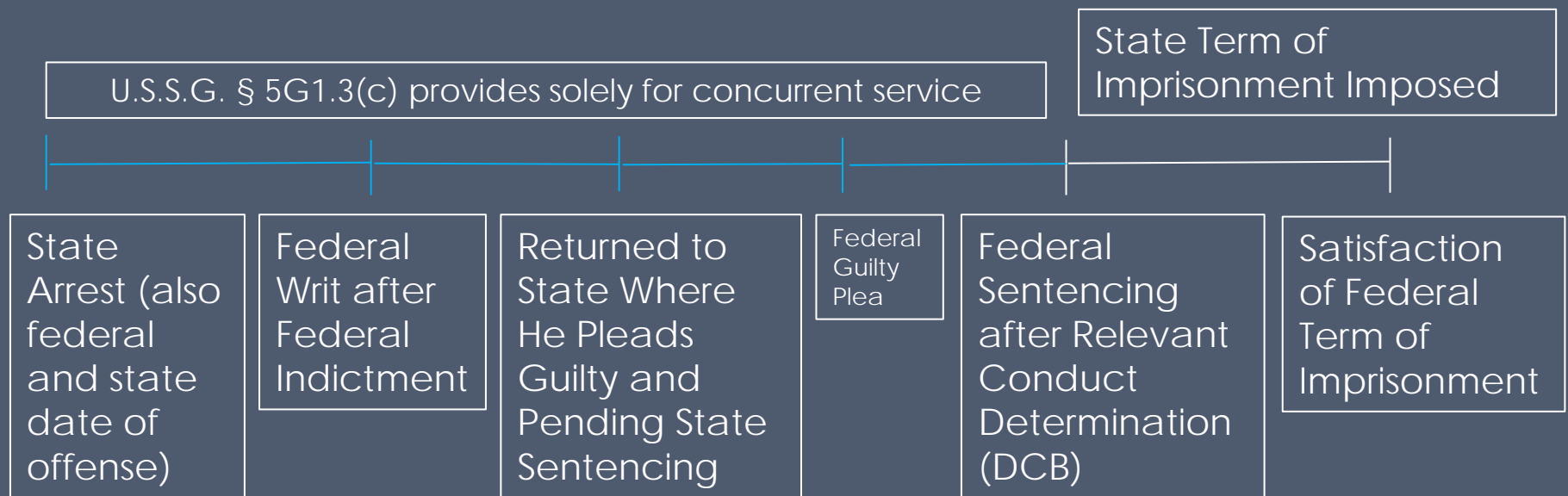
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*Setser*

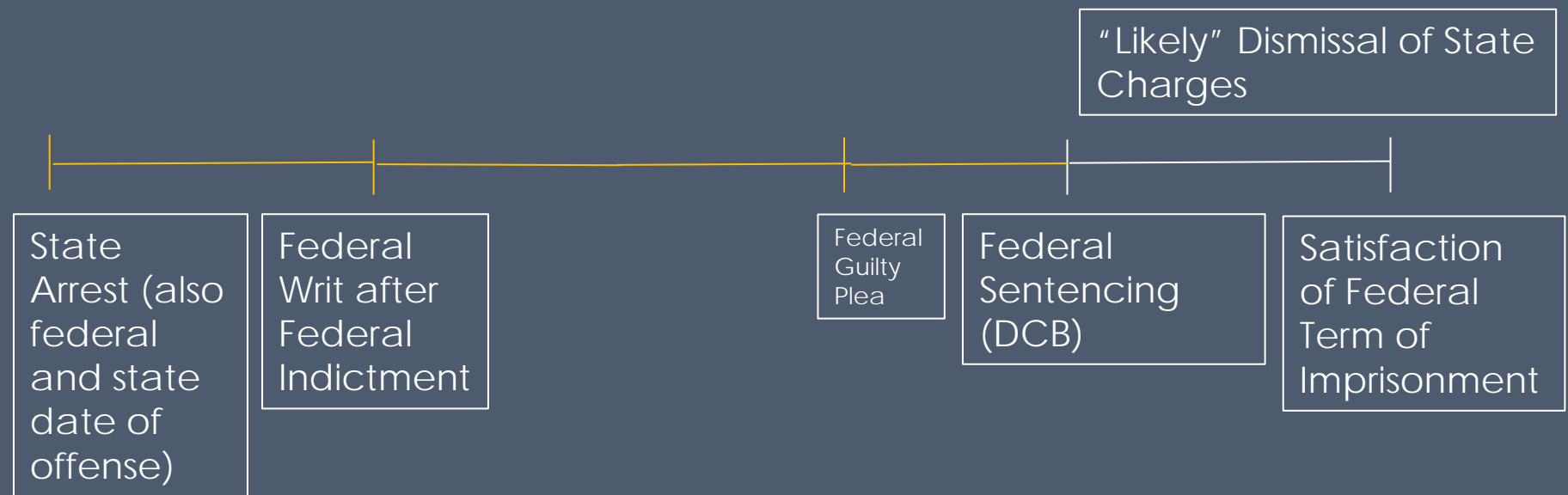


## Hypothetical 3:

C. Under U.S.S.G. § 5G1.3(c), order that the instant federal sentence be served concurrently with anticipated state sentence, specifying the docket number of the state proceeding.



**Hypothetical 4:** Assume all the facts in Hypothetical 1, except at the time of the federal sentencing, the defendant has not yet pleaded guilty in state court, and the AUSA advises the court that, while he “cannot make any promises,” the state will “most likely” dismiss its charges if it is satisfied with the federal sentence. Unsure as to whether there will ever be a state sentence but willing to try to give the defendant credit for time spent in state or overlapping state/federal custody if one is ultimately imposed, what, if anything, can the federal judge do?



### Hypothetical 4 (continued):

A. Order the BOP to give the defendant a specified amount of credit for time served, expressly identifying the applicable dates when he was in custody. As long as it is in the judgment, BOP must award that much credit as a matter of law.

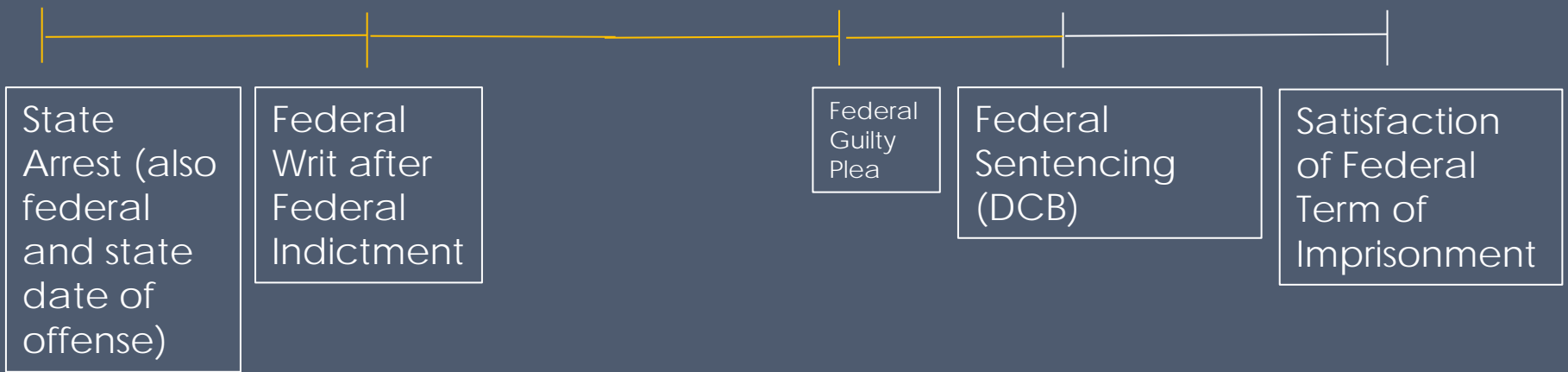
B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody.

C. Under U.S.S.G. § 5G1.3(b), order that the instant federal sentence be served concurrently with any state sentence that might possibly be imposed by the state court.

D. Nothing. A district court has no authority to order that a federal sentence be served concurrently with a potential, but not-yet-imposed, state sentence.

E. Nothing and rely on BOP's application of 18 U.S.C. § 3585(b).

"Likely" Dismissal of State Charges



### Hypothetical 4 (continued):

A. Order the BOP to give the defendant a specified amount of credit for time served, expressly identifying the applicable dates when he was in custody. As long as it is in the judgment, BOP must award that much credit as a matter of law. *In Re Bureau of Prisons*

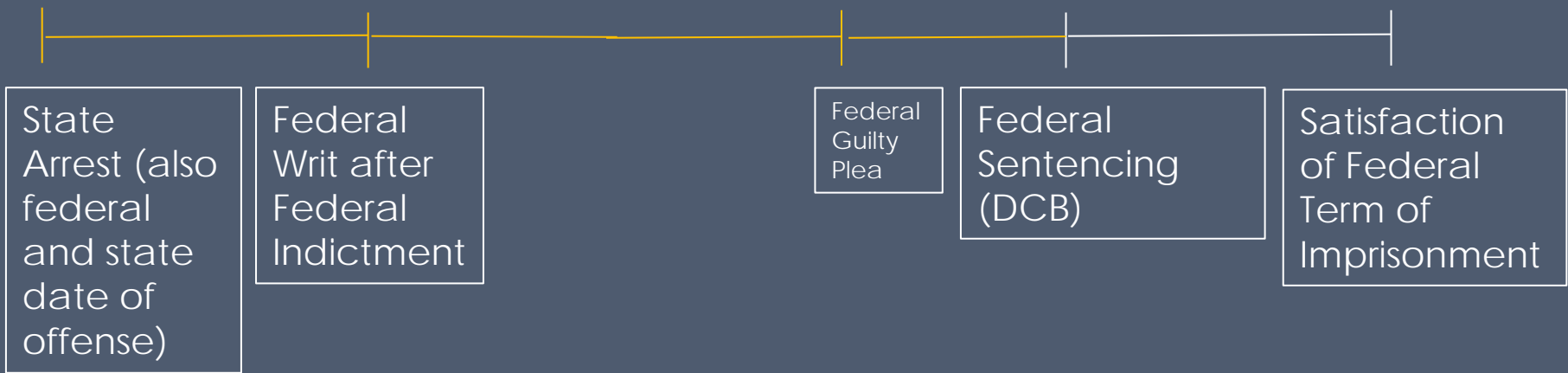
B. Nothing. Under *Wilson*, only the BOP can determine credit for time served, and that determination can only be done when the defendant enters BOP custody. BOP designates to state facilities for service of federal term of imprisonment (along with detainer being lodged).

C. Under U.S.S.G. § 5G1.3(b), order that the instant federal sentence be served concurrently with any state sentence that might possibly be imposed by the state court. No state term exists.

D. Nothing. A district court has no authority to order that a federal sentence be served concurrently with a potential, but not-yet-imposed, state sentence. *Setser*

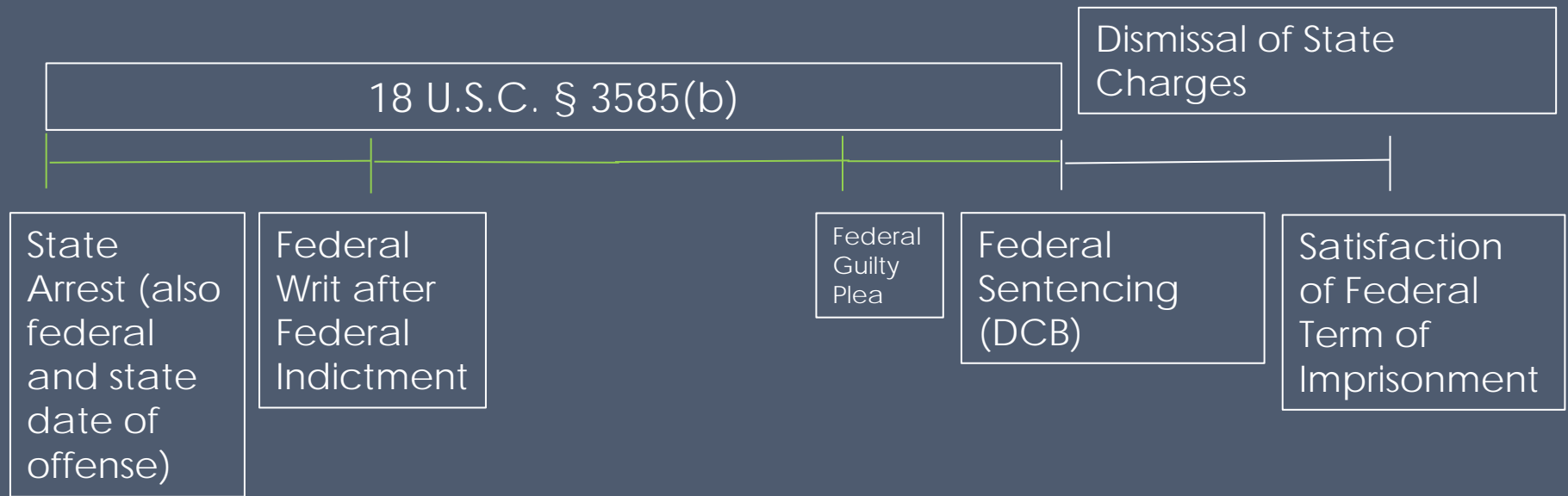
E. Nothing and rely on BOP's application of 18 U.S.C. § 3585(b).

"Likely" Dismissal of State Charges



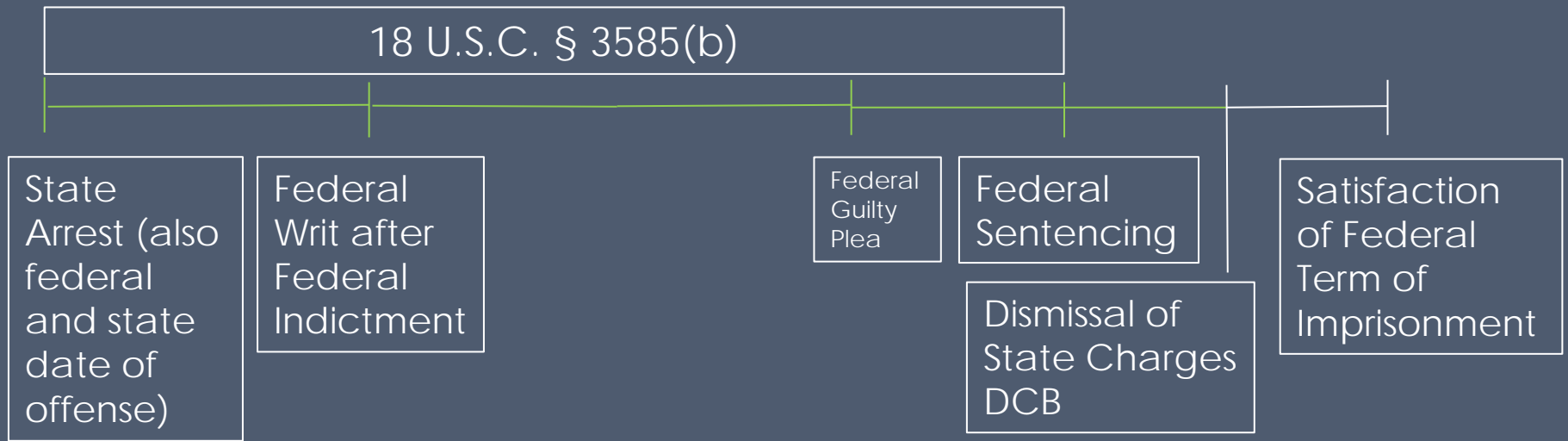
Hypothetical 4 (continued):

E. Nothing and rely on BOP's application of 18 U.S.C. § 3585(b). If U.S.S.G § 5G1.3(c) is applied, or the sentence is other made concurrent with the "yet to be imposed term," BOP will designate the state facility for service of the federal term of imprisonment and award prior custody until period of confinement in question has been credited against another sentence.



Hypothetical 4 (continued):

E. Nothing and rely on BOP's application of 18 U.S.C. § 3585(b). The same practical result will follow if consecutive, but DCB will be delayed by the same duration of time as additional prior custody credit.





**Hypothetical 5:** Assume all the facts in Hypothetical 1, except instead of *wanting* the defendant to receive credit for a certain time spent in state or overlapping state/federal custody, the district court wants to *prevent* him from receiving any credit, believing such credit will produce a sentence that is too lenient. What, if anything, can the court do?

- A. Order the BOP *not* to give the defendant any credit for time served. As long as it is in the judgment, BOP must honor it as a matter of law.
- B. Nothing. Under *Wilson* and *In re Bureau of Prisons*, only the BOP can determine credit for time served, and the court has no authority to prevent BOP from making that determination.
- C. Determine how much credit for time served BOP will likely award the defendant, and deviate upwardly to offset that award.

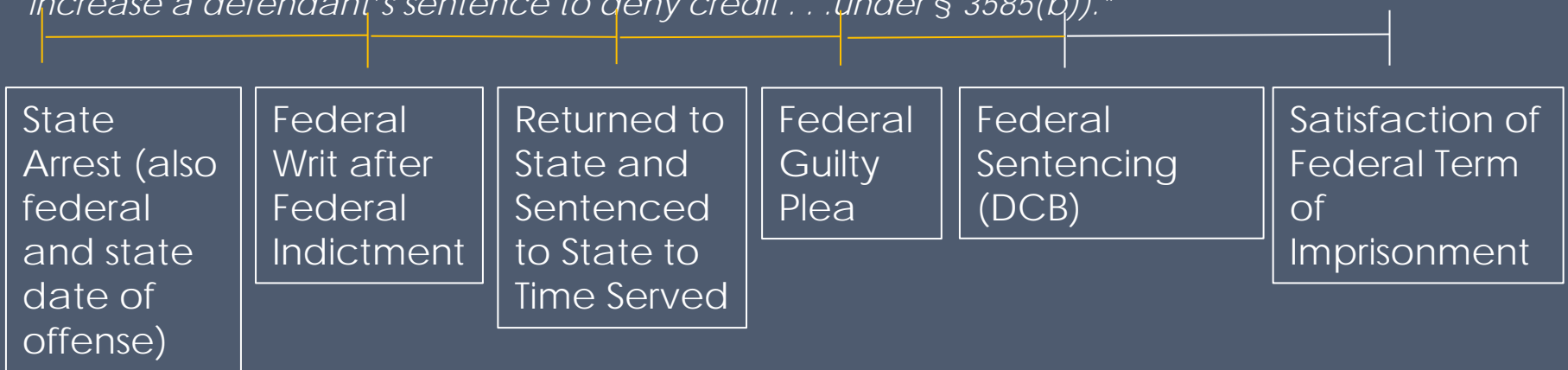


**Hypothetical 5:** Assume all the facts in Hypothetical 1, except instead of *wanting* the defendant to receive credit for a certain time spent in state or overlapping state/federal custody, the district court wants to *prevent* him from receiving any credit, believing such credit will produce a sentence that is too lenient. What, if anything, can the court do?

A. Order the BOP *not* to give the defendant any credit for time served. As long as it is in the judgment, BOP must honor it as a matter of law. *In Re Bureau of Prisons* (citing *Mehta v. Wigen*, (3<sup>rd</sup> Cir. 2015) (holding that the BOP erred in denying credit under 18 U.S.C. § 3585(b) based on sentencing court's intent)).

B. Nothing. Under *Wilson* and *In re Bureau of Prisons*, only the BOP can determine credit for time served, and the court has no authority to prevent BOP from making that determination.

C. Determine how much credit for time served BOP will likely award the defendant, and deviate upwardly to offset that award. Disclaimer, but consideration may want to be given to *In Re Bureau of Prisons* (recognizing neither U.S.S.G. § 5G1.3 nor 5K2.23 authorize a "district court to increase a defendant's sentence to deny credit . . . under § 3585(b))."



## Hypothetical 5 continued:

B. Nothing. Under *Wilson* and *In re Bureau of Prisons*, only the BOP can determine credit for time served, and the court has no authority to prevent BOP from making that determination.

18 U.S.C. § 3585(b) prohibits prior custody credit and U.S.S.G. § 5K2.23 states any departure "should be fashioned to achieve a reasonable punishment for the instant offense."

BOP must award prior custody credit 18 U.S.C. § 3585(b)

State Arrest (also federal and state date of offense)

Federal Writ after Federal Indictment

Returned to State and Sentenced by State to Time Served

Federal Guilty Plea

Federal Sentencing (DCB)

Satisfaction of Federal Term of Imprisonment

# Recourse Avenues for Inmates Dissatisfied with Bureau Sentence Computation



# Recourse Avenues for Inmates Dissatisfied with Bureau Sentence Computation

## ➤ The Administrative Remedy Program

- Three Formal Tiered System
  - ✓ Responses from Warden, Regional Office, and Central Office
- 28 C.F.R. 542.10-19 / Program Statement 1330.18

## ➤ Judicial Review Via 28 U.S.C. § 2241

- After exhaustion of the Administrative Remedy Program
- Authority for a district court to consider challenge to sentence computation properly conditioned on claim first being presented to the Bureau of Prison. *U.S. v. Iverson*, 90 F.2d 1340, 1344 (8<sup>th</sup> Cir. 1996).

U.S. Department of Justice  
Bureau of Prisons  
Regional Administrative Remedy Appeal

Form B-100 (Rev. 10/01) - 10/01

Part A - REASON FOR APPEAL

Part B - RESPONSE

Part C - RECEIPT

INMATE: \_\_\_\_\_ CORRECTIONAL INSTITUTION: \_\_\_\_\_  
CASE NUMBER: \_\_\_\_\_ DATE: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_

If quarantined with this response, you may request to the General Counsel. This appeal must be received in the General Counsel's Office within 30 calendar days of the date of this notice.

ORIGINAL RETURN TO INMATE

Part C - RECEIPT

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

# Drug Treatment



# Drug Treatment



## **The BOP offers several drug treatment programs**

- Drug Abuse Education Course
  - Offered at every facility
- Non-Residential Drug Abuse Program
  - Offered at every facility
- Residential Drug Abuse Program (RDAP)
  - Offered at every security level
  - Spanish speaking communities
  - Dual diagnosis programs

# Requirements for RDAP Participation



- Requisite history of substance associated with clinical assessment and diagnosis
  - ✦ In assessing substance abuse, drug treatment staff look back up to one year from date of arrest
  - ✦ Presentence Report critical document for assessment of substance use
    - Absent PSR support, contemporaneous treatment documentation necessary
  - ✦ DSM 5 TR
- Must be able to complete all phases of the program
  - ✦ RDAP Participation requires 18-24 months yet-to-serve
  - ✦ Once part of a community, responsible for decision-making
    - Inmate Financial Responsibility Program



# RDAP Early Release Incentive



- RDAP – 18 U.S.C. 3621(e)(2)(B)
- Non-violent offenders who successfully complete program may, at the discretion of the Director, be eligible for early release of up to 12 months.
- Eligibility for early release consideration is unrelated to eligibility for RDAP participation
  - ✦ Currently, 20% percent of inmates completing RDAP do not receive early release.

# RDAP Early Release Incentive



- RDAP early release eligibility requires review of current and prior offenses
  - Current offenses
    - 28 CFR 550.55(b)(5) & (b)(6)
    - PS 5162.05, Categorization of Offenses
  - Prior offenses
    - 28 C.F.R. 550.55(b)(4) & (b)(6)
      - For prior offenses, looking back 10 years from date of sentencing for current commitment

# Drug Treatment / Program Information Resources



- UNICOR – One of BOP’s most successful reentry programs
  - ✦ Fiscal challenges inherent with prison industries
- [www.bop.gov](http://www.bop.gov) contains a wealth of other programming information

# Forensic Evaluations



# Forensic Evaluations

- Competency and other examinations completed at forensic sites.
  - Forensic psychologists employed for this purpose.
    - ✦ Psychiatrists available to consult
  - Federal Medical Centers for restorations and care of designated inmates
- Forensic Sites:
    - FCI & FMC Butner,
    - MCC Chicago,
    - FMC Carswell (females only),
    - FMC Devens,
    - FMC Ft. Worth,
    - FDC Houston,
    - FMC Lexington,
    - MDC Los Angeles,
    - FDC Miami,
    - MCC New York,
    - MCC San Diego,
    - FDC SeaTac,
    - FCI Englewood, and
    - MCFP Springfield.

# Forensic Evaluations



- BOP psychiatrists are tasked with treating our sentenced, mentally ill inmates and, consequently, are located at FMCs.
- Designation discretion left to BOP. Desired language is for commitment to the custody of the Attorney General for placement in a “suitable facility.”
  - ✦ Strive to honor judicial recommendations
  - ✦ Bed space and security needs are paramount

# Forensic Evaluations



- Identified statutory basis in orders important
- Cannot conduct 4241(b) and 4241(d) together
- Reach out if you have a concern or might see a problem
  - ✦ Language barrier cases
  - ✦ Timeliness of reports
- BOP Forensic Psychologists work for the court

# Forensic Evaluations



## **Need for 18 U.S.C. § 4241(d) Competency Restorations for male defendants is exceeding available resources.**

- Currently competency restorations for these individuals occur at:
  - ✦ FMC Butner, NC
  - ✦ FMC Devens, MA
  - ✦ U.S. Medical Center for Federal Prisoners Springfield, MO
- Bed space allotted based on date of the court order
  - ✦ Relatively new practice
- National Forensic Evaluations Coordinator evaluates cases where the USMS reports the prisoner is experiencing severe decompensation that housing facility is unable to manage.



# **Inmate Designations . . . With Heavy Focus on Medical Considerations**



# Inmate Designations Are Multifaceted:



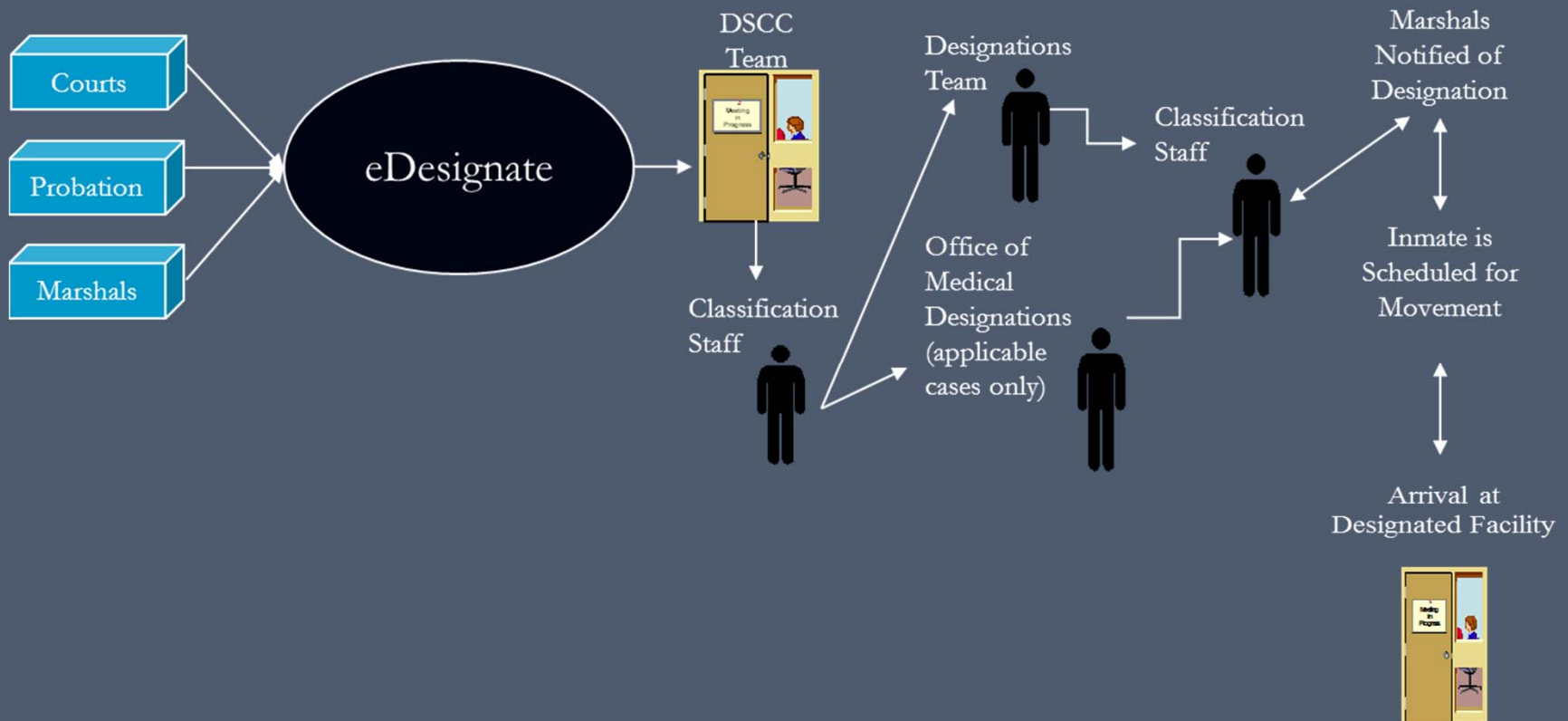
- Security Level
  - ✦ High
  - ✦ Medium
  - ✦ Low
  - ✦ Minimum
- Medical Care Level
  - ✦ Care Levels 1-4
- Psychology Care Level
  - ✦ Care Levels 1-4

# Inmate Designations Are Multifaceted:



- Release residence
- Programming needs
- Bed space availability
- Alien status
- Background of aggressive sexual behavior
- Central Inmate Monitoring
- Gang affiliation/ties to terrorist groups/activities

# Process from Sentencing to Designation



# Primary Factors



Severity of  
Current Offense

Detainer

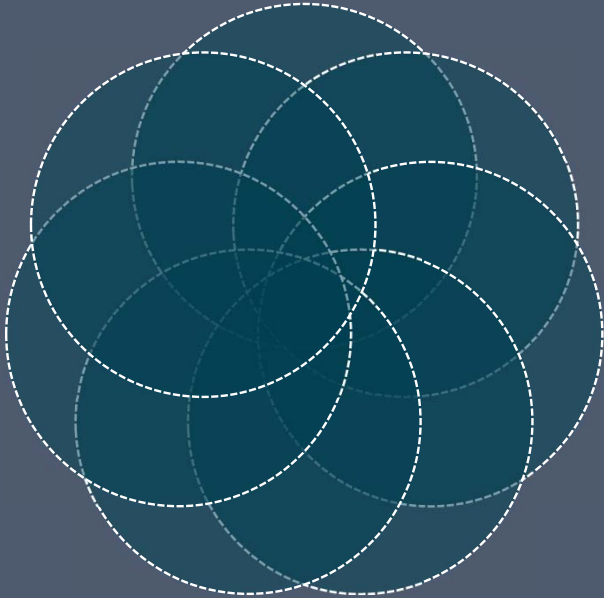
Defendant's  
Age/Education

Drug/Alcohol  
Treatment Needs

Release Date

Judicial  
Recommendation

Criminal,  
Violence, and  
Escape History



# Judicial Recommendations



- The BOP is committed to following judicial recommendations when consistent with BOP policy and correctional judgment.
- Most common recommendations concern place of confinement and programming.
- 84% of WD/AR judicial recommendations regarding designations followed in last 12 months.

# Medical Care Levels



- Care Level 1 – Healthy/simple chronic care
- Care Level 2 – Stable, chronic care
- Care Level 3 – Unstable, complex chronic care
- Care Level 4 – Medical referral center (aka FMCs) care required



# Medical Centers (Care Level 4)



- FMC Butner, North Carolina
- FMC Carswell, Texas
- FMC Devens, Massachusetts
- FMC Fort Worth, Texas
- FMC Lexington, Kentucky
- FMC Rochester, Minnesota
- MCFP Springfield, Missouri



# BOP “Tidbits”



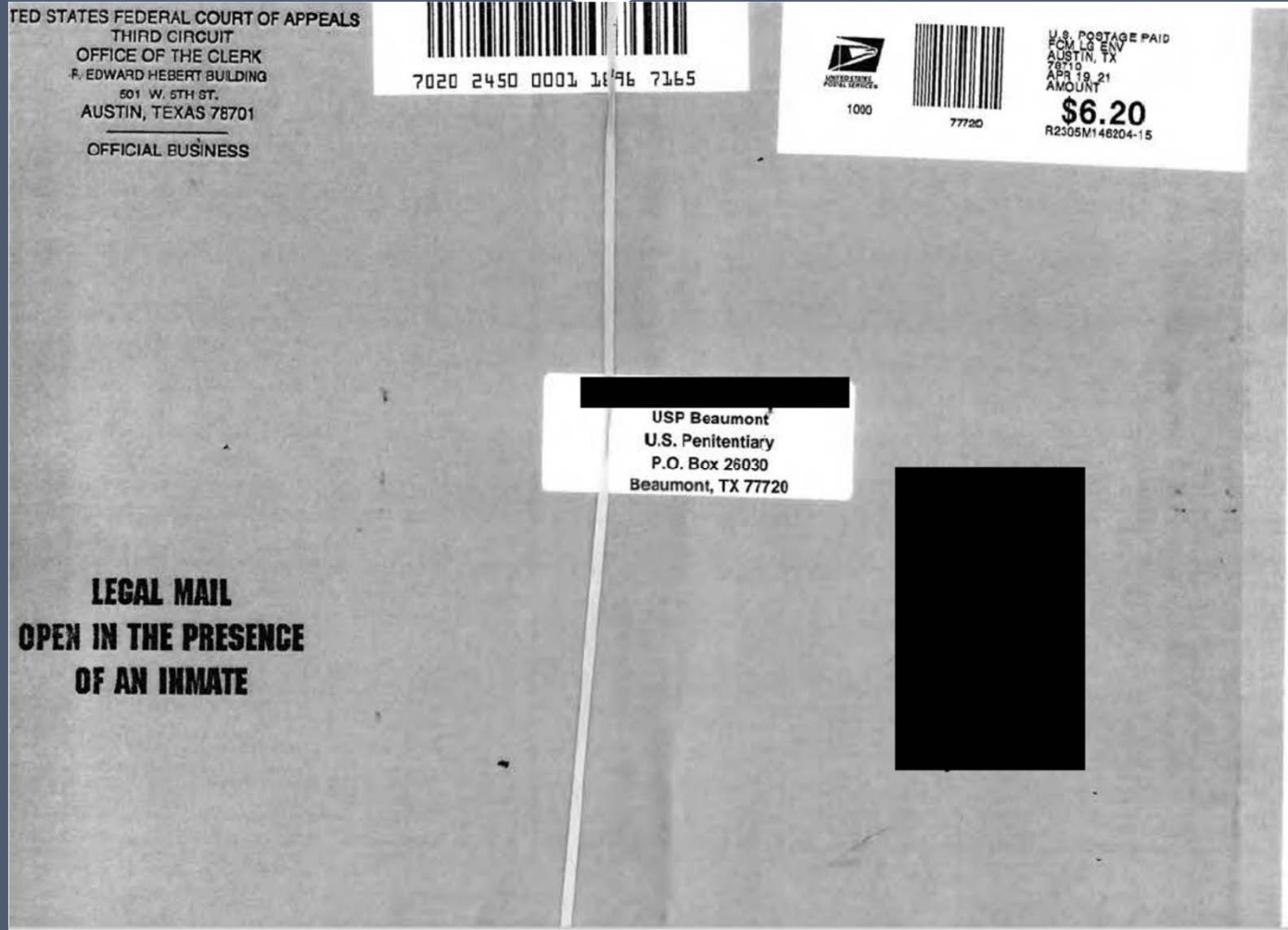
# Monumental Security Challenges



- Synthetic Drugs
- Drones
- Cellular Phones



# What is Wrong with this Picture?



# What is Wrong with this Picture?



UNITED STATES FEDERAL COURT OF APPEALS  
THIRD CIRCUIT  
OFFICE OF THE CLERK  
F. EDWARD HEBERT BUILDING  
601 W. 5TH ST.  
AUSTIN, TEXAS 78701  
OFFICIAL BUSINESS

**LEGAL MAIL  
OPEN IN THE PRESENCE  
OF AN INMATE**

# Sealed Rule 35 /Sentence Reduction Orders



- BOP is unable to act without the order or knowledge of it.

## Sealed Rule 35 /Sentence Reduction Orders



- BOP is unable to act without the order or knowledge of it.
- Agency does not receive normally sentencing transcripts.

# Unmasked Questions (Other BOP Topics of Interest)



# CONTACT INFORMATION

**Jason A. Sickler**  
**Regional Counsel**  
**South Central Region**  
**972-730-8920**



[www.bop.gov](http://www.bop.gov)

- Policy
  - Inmate Location
  - Facilities
  - Statistics
  - Resources
    - Interaction of Federal and State Sentences When the Federal Defendant is Under Primary State Jurisdiction
- [www.bop.gov/resources/pdfs/ifss.pdf](http://www.bop.gov/resources/pdfs/ifss.pdf)