

How To Do Time: Part 1

By **Alan Ellis and J. Michael Henderson** (February 7, 2018, 11:10 AM EST)

Most lawyers are understandably unable to advise a first-time federal inmate as to what it will be like in prison. Rarely do they ever get beyond an attorney visiting room. In a four-part series of articles, we, the co-authors of "Federal Prison Guidebook," with the help of Philip S. Wise, retired Bureau of Prisons assistant director of health services, offer answers to many questions attorneys, their clients, and their clients' family and friends may have.

Initial Placement

Alan Ellis: *How does the U.S. Bureau of Prisons decide where to place a sentenced federal defendant?*

J. Michael Henderson: Initial placement of an offender is based upon an initial classification of the individual by the Bureau of Prisons, which is a calculation of the required security considerations, an individual's medical needs, consideration of how crowded some institutions are, the offender's specialized program needs if any, legal residence, and court recommendations. Classification information is obtained from the presentence investigation report (PSR), and so it is essential for the attorney and client to ensure that the information is both accurate and complete as to offenses conduct, prior record, open or pending cases, legal residence, physical and mental health, verifiable education level, and substance abuse, particularly if the offender wants to qualify for the bureau's comprehensive Residential Drug Abuse Program.

Each offender is assigned a security level: minimum, low, medium or high security, based on offense characteristics, sentence length, and any prior criminal history. Each offender is also assigned a medical care level (I, II, III or IV) based on current or anticipated medical requirements, and a mental health care level, (1, 2, 3 or 4). The facility nearest the offender's legal residence as reflected in the PSR, that meets the security, medical and mental health requirements, and that has bed space available, is generally designated for service of sentence. So, if the offender would like to be placed in a minimum-security camp that houses offenders who are considered medically and mentally stable, for example, but is classified by the Bureau of Prisons as low, medium or high security, then the offender would not be initially assigned to a camp.



Alan Ellis



J. Michael
Henderson

Similarly, even if an offender qualifies for a minimum-security camp, but has significant medical and mental health issues, he would not initially be assigned to a camp without the resources to provide for the necessary medical care. Similarly, if an offender knows of a federal prison near their home, the offender will not likely be assigned there if his or her initial security level classification or medical care level determined by the Bureau of Prisons are not the same as the security level and care level of the institution. Finally, every new offender should know that the Bureau of Prisons currently houses a very large number of inmates, and sometimes has extremely limited bed space at some institutions, which can result in an offender's initial placement further from their homes than either they or the Bureau of Prisons would actually prefer. In such cases, a future transfer is a reasonable possibility after 18 months of clear conduct; i.e., no disciplinary infractions, good work evaluations, and participation in the Inmate Financial Responsibility Program (if required).

What to Bring

Q: If an offender is granted self-surrender by the court, what should they take to prison?

A: It is usually best to arrive at a federal prison with as few personal possessions as possible because the offender is leaving his or her regular life and lifestyle for a while. Also, minimizing what one brings will lessen the possibility of confiscation by prison staff of unauthorized items, and reduce the amount of personal belongings that are returned or mailed back to the next of kin. That said, the individual should bring no single item worth over \$100, meaning no expensive jewelry or wristwatch. A wedding band, if married, is fine, as well as a relatively inexpensive wristwatch and religious medal, if worn. The personal clothing the offender wears when reporting will be returned to the family or friends or attorney.

I recommend that the offender report with only a relatively modest amount of money, no more than \$320. Such an amount will permit some discretionary spending at the institution commissary and establishing a TRUFONE account to call home, thereby freeing the new inmate from having to rely on, or falling into debt to, other inmates. Caution should always be the watchword, should the new inmate encounter another "more experienced" inmate who "offers" to help purchase or buy something for the new inmate before the new inmate can shop at the commissary or buy something the new inmate cannot otherwise afford. Similarly, the new inmate should shun any offer to use another inmate's access to outside telephone calls before the new inmate's account and telephone list have been set up. Such offers can have illicit payment return terms that the new inmate is not prepared for, and besides being prohibited by prison rules can be dangerous! Similarly, if a new inmate arrives with a lot of money, other curious inmates can quickly become aware of it, which may result in the new inmate becoming a "target" by other inmates who would like little more than to get some of the new inmate's money.

We recommend that an offender take a one-month supply of any prescription medication. In all probability, the Bureau of Prisons will have the necessary medications on hand, and your supply will not be required, but if you take a medicine that is not currently routinely used or authorized by the Bureau of Prisons, your supply may be authorized in some cases to get necessary approvals and/or pharmacy stock. Understand that any medications you take with you will likely be held for you in the health services department, and dispensed from the pharmacy at "pill line."

Q: Many new offenders ask about how much money they will be able to have in their prison accounts, how much they can spend, and how they can receive money and other materials from their friends and families while they are confined. What is your response and/or advice?

A: The money new inmates bring with them to prison, as referenced above, will be used to open an

inmate trust fund (commissary) account for them, from which they will be required to pay for their personal telephone calls, postage stamps and items from the commissary (personal hygiene items, snacks, etc.) that they might want to purchase. This really is the only preliminary information that a new offender needs prior to entering prison. Immediately after their arrival, as noted in the intake process remarks, inmates will have all of the answers governing procedural regulations given them in the prison's "Admission and Orientation Inmate Manual." Also, as noted in the remarks about orientation, the new inmate will receive all pertinent information directly from a staff member from the institution business office and/or commissary. Once armed with not only written information but information from a correctional counselor and prison staff members who run the inmate trust fund accounts, the new inmate, within only one week or so after arriving, will have all the information needed regarding receiving funds, how they can be spent, and what restrictions and approvals are in place regarding receipt of anything from family or friends.

Q: How about medications?

A: The Bureau of Prisons typically prescribes medication via its formulary, which can be accessed via its website. New inmates can bring prescription (not over-the counter) medicine when reporting to serve a sentence, though it should be understood that all medication will be checked by institution medical staff and confiscated. If a particular medication is in the formulary, new medication will likely be issued to replace it. If medication is not in the formulary, it will be confiscated, and the new inmate will have to see medical staff concerning whether a substitute medication can or will be prescribed. To minimize the risk of disruption in receiving necessary medications, it is highly recommended that individuals with conditions managed by medication, particularly opiate-based medications, which the BOP is generally disinclined to prescribe, provide a copy of the BOP formulary to their prescribing physician(s) well in advance of sentencing to assess the suitability of substituting formulary medications for their existing medications. To the extent a medication can be substituted, it should be before an individual is placed in BOP custody. Similarly, where a formulary medication is not suitable substitution (e.g., due to side effects, interaction with other medications), a letter should be obtained from the prescribing physician, attesting to that fact and efforts that were taken. It is important that an individual's PSR contain accurate information concerning name, purpose and dosage amounts of prescribed medications. In addition to prescription medication, the institution commissary is required to carry a minimum of 25 over-the-counter medical products for inmate purchase.

Arrival

Q: What can a new inmate expect from staff upon arrival at a federal prison?

A: Upon arrival, the offender will be met by either a correctional officer or member of the receiving and discharge department (R & D). A strip search, issue of institutional clothing, photograph, fingerprinting, and inventory of personal property will subsequently be performed in the R & D department. If the offender arrives after normal working hours or when the R & D department is not staffed, he or she will be taken to an area where a strip search will be conducted, issued institutional clothing, and likely placed in a secure cell until being processed for intake through R & D.

This process, as well as the R & D process, will be conducted in a very business-like manner, which for new inmates can seem impersonal. However, this is a good time for the new inmate to simply watch, listen, and learn about the staff and what they do.

Intake and Orientation

Q: Who are these staff, and what do they do during the intake process?

A: The R & D staff are those who perform the search, fingerprinting, and personal property inventory of the new arrival. A correctional counselor or a case manager will conduct a brief private interview. A medical staff member, usually a physician's assistant, will conduct a medical screening, primarily to screen for communicable diseases, but at which time the new inmate should report any and all health-related issues or concerns for the record, to better ensure proper future treatment if needed while incarcerated.

Q: What is most important for the inmate at this initial intake phase?

A: It is important for the inmate to understand that this is the business of incarceration, and to understand that prison staff members are not trying to be demeaning, but rather are performing very routine duties. It is also wise for the new arrival to listen carefully to any and all questions that the staff members ask, and to answer those questions honestly. If the new inmate does not understand a question, it is entirely appropriate to ask for clarification or meaning. Similarly, the new inmate should read and fully understand any and all forms that are provided, some for the inmate's signature. A failure in this early communication process could lead to potential difficulties at some future point of incarceration. Forms and information relative to telephone use, mail correspondence and visiting are provided.

Q: Will the new inmate receive written rules and guidance before being placed in the general inmate population?

A: Yes. Upon arrival, each new inmate is given an admission and orientation handbook, for which they must sign. I cannot overstate the importance of this document and the inmate's receipt of it with signature, because from that moment forward, the inmate will be held responsible for knowing and complying with all of the Bureau of Prisons' institutional rules outlined in it. The handbook is thorough and describes the various institutional departments and staff, schedules for the inmate to follow within the institution, and visiting and correspondence information. The smartest action that a new inmate can take with respect to the handbook is to read it, cover to cover, as soon as possible, and to keep it at hand for future reference.

Q: When does a new arrival enter the general inmate population?

A: Upon successful completion of the intake process. Successful completion means that the institution has received all necessary official documentation from the sentencing court, and from the respective U.S. marshals and U.S. probation offices. Such documentation includes the judgment order, the presentence investigation report, and appropriate U.S. marshals documents. If such documentation is lacking or incomplete, it may not be possible for staff to allow the inmate to enter the general inmate population. The attorney and/or client should contact the inmate systems management department (records office) at the facility designated prior to arrival to determine if the necessary documentation has been received. Similarly, if during the intake screening process some interviewing staff members identify a potential concern for the new inmate's health or safety, then the individual may not be put in the general inmate population. Finally, in situations where bed space at an institution to which an individual has been designated is very limited, there have been instances requiring that a new arrival be temporarily housed in administrative detention status, in the restricted special housing unit of the institution, until bed space in the open inmate population becomes available.

Q: What is important for the inmate to know if not placed in the general inmate population, and what, if anything, will they be told?

A: It is important that the new arrival understand that most federal prisons do not lock their general inmate population up in isolated cells 24 hours per day, which means simply that inmates in that population are moving about. Given that fact, Bureau of Prisons' staff who are charged with ensuring an inmate's safety cannot and should not place a new arrival in the open inmate population, unless and until they have complete case documentation that, in conjunction with the intake interviews, provides reasonable assurance that the new inmate will not encounter an identifiable and undue risk if housed with the other inmates.

Also, the new arrival's health can be a concern. If, during the intake screening process, medical staff determine that the inmate may have a contagious disease, such as measles, chicken pox or tuberculosis, that individual will likely be placed in medical isolation until necessary steps to protect him and the other inmates and staff have been completed.

If the new arrival cannot be placed in the institution's general inmate population because of insufficient or unreceived documentation, or for health reasons, he or she will be so informed. If a potential security risk to his or her safety or to the safety of others is identified by staff during the intake process, the new arrival may be given only limited information because such information cannot divulge sensitive or investigative details that the staff has or which the staff may need to pursue.

Part two of this article will cover solving problems and information for family and friends.

Alan Ellis, a past president of the National Association of Criminal Defense Lawyers, is a criminal defense lawyer with offices in San Francisco and New York. He practices in the areas of federal sentencing and prison matters, and was awarded a Fulbright Senior Specialist Award by the U.S. State Department in 2007 to conduct lectures in China on American criminal law and its constitutional protections. He is the co-author of "Federal Prison Guidebook: Sentencing and Post Conviction Remedies."

J. Michael Henderson, a federal prison consultant to the Law Offices of Alan Ellis, has over 23 years of experience working with the Bureau of Prisons. He served as the regional designator for the western region of the United States in the early '90s and again from 1997 until his retirement in 2000. Awards include an annual award from the inmate branch of the NAACP at FPC Allenwood, Pennsylvania, and the Bureau of Prisons' National Stanford Bates Award for outstanding contributions to improved Case Management. He is the co-author of "Federal Prison Guidebook" and "The U.S. Bureau of Prisons' Pre-Release Program: Getting Out Early."

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.