

## 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.



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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.

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## How To Do Time: Part 2

By Alan Ellis and J. Michael Henderson (February 28, 2018, 1:23 PM 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 this 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.

In this installment we cover solving problems, and information for family and friends.

### Solving Problems

**Alan Ellis:** *What if a staff member seems unwilling to be helpful, is less than responsive to a problem, or does not seem open or straightforward in communicating with the inmate?*

J. Michael Henderson: The inmate almost always has a case manager, correctional counselor, and unit manager available to them for assistance. In addition, every day the inmate goes to eat a meal, there are almost always staff members from all institutional departments, including upper management of the institution (associate wardens and the warden) available to them in the dining area. The availability of a wide range of staff members is important because Bureau of Prisons' staff members are human beings, meaning that some will be more effective communicators than others and some will be more thorough and patient than others. So, if an inmate is experiencing difficulty in dealing with a particular staff member, there are multiple other staff members who can address a problem.

**Q:** *So, what if an inmate follows all of the rules and regulations but encounters a situation or has a problem that none of the institution staff, including the warden, can or will resolve?*

A: This is likely to be a rare scenario. Just because an inmate may not receive an answer to a question, or receive a response that is personally favorable, does not mean that staff have not responded and acted within the scope of Bureau of Prisons' policy. Sometimes, inmates mistakenly believe that because they do not receive action or a response they want, somehow the institution staff has mistreated them. This



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usually stems from incomplete or inefficient communication, lack of understanding of Bureau of Prisons' policies and procedures, and inmates not speaking to all appropriate institution staff who could resolve a given dispute. That said, there is a procedure that is available to inmates, known as the administrative remedy procedures, by which an inmate can request reconsideration of staff decisions and/or formal reviews of staff decisions at levels higher than the level at which the decision was made.

***Q: What do the administrative remedy procedures involve?***

A: First, the inmate is required to make a meaningful attempt at informal resolution of a dispute. Then, if unsuccessful, the inmate can file an administrative remedy form, BP-9, to the warden. If this step fails to resolve the issue for the inmate, the inmate can then file an administrative remedy form BP-10, to the regional office for the region in which the inmate is confined. If that process is unsatisfactory, the inmate may then file an administrative remedy form BP-11, to the Bureau of Prisons Central Office in Washington, D.C., for the highest level of formal review. One of the most important things an inmate should consider, both in filing an administrative remedy complaint and reasonably expecting a positive result from the filing, is whether the staff action or decision which is being appealed was made within the authority and parameters of Bureau of Prisons' policies. If it was, there is little a formal review will accomplish, regardless of what other inmates may say. Conversely, review of appeals can involve careful scrutiny by Bureau of Prisons' legal staff as well. So, if a complaint involves a staff decision or action that was not made within the parameters of policy, the action or decision will be rectified for the inmate.

***Q: What can an inmate anticipate in terms of maintaining clear conduct and open communication with staff, as you have stressed?***

A: An inmate who conducts himself in an above-board manner at all times, in terms of both staff interaction and interactions with other inmates with whom they associate, generally will not attract extra scrutiny or suspicion. The inmate likely will receive favorable consideration for security and custody level reductions when eligible, which can result in placement in a less secure setting with less intense staff supervision and participation in community activities, if eligible. Earlier, I referenced that an offender who is initially assigned to a prison farther from their home than might be preferred could receive a future transfer to an institution closer to their home. It must be stressed that clear conduct is required in order for an inmate to receive such a transfer. Disciplinary action, on the other hand, can result in placement in a more restrictive setting, an upgrade in security level and custodial supervision, loss of good time, greater restrictions on visiting, unfavorable consideration for transfer to a prison closer to the inmate's home, not to mention loss of preferred quarters assignment and loss of eligibility for certain programs.

***Q: What about problems with other inmates?***

A: If there is a situational conflict or personality clash that is unlikely in the immediate short term to escalate into a physical altercation, then avoidance is always the best practice. For example, if the conflict is with a bunkmate, roommate or co-worker, the inmate should tell the other person that he will request a bed, room or work assignment change, which he can do through the correctional counselor or a work supervisor. It may not seem fair, especially when tempers flare, but it is the best way to conduct one's self above-board and not get into disciplinary trouble. If an inmate encounters a more serious threat or intimidation that is likely to escalate into a serious conflict, or the threat of being hurt, then there are steps that can and should be taken, again, however, with avoidance being the key. As mentioned previously, there are many different staff members with whom an inmate will become familiar and interact on a regular basis. I strongly recommend that an inmate work to develop a positive

and respectful working relationship with as many staff members as possible, though not being overly friendly, which can draw adverse reaction from other inmates. Then, if a potentially violent threat arises, the inmate can and should confide in a staff member that he trusts and who knows him. Such a staff member can be anyone — the unit officer, the case manager, a work supervisor, a lieutenant, a staff teacher, etc. Every staff member in a Federal Bureau of Prisons facility is considered, first and foremost, to be a correctional worker; their primary jobs, regardless of their specialty area of work, is the institution and inmate security.

***Q: Some inmates have court-ordered fines, criminal penalty assessments, or restitution. Will these need to be paid for from the same inmate trust fund account that is used for personal spending in the institution while the offender is confined? If so, what can the new inmate expect?***

A: Possibly, yes. The payment of court-directed fines or fees will be dependent upon how the court order is written. Some fines and/or fees, for example, might be imposed strictly as a condition of the offender's supervised release, after incarceration. Some court orders do not distinguish. The information is contained in the court's judgment and commitment order that is also used to impose sentence, and so it could benefit the offender to review that document closely, and with his or her attorney, for any needed clarification. After arrival at a federal prison, institution staff will review the judgment and commitment order and, if payment is required during confinement, they will discuss payment options with the inmate. When an installment-type of payment plan is needed, the inmate and the unit team can set up a payment schedule, which can involve regular fixed withdrawals from the inmate's trust fund account. The Bureau of Prisons' term for this is the Inmate Financial Responsibility Program, and the new inmate should understand that the Bureau of Prisons is quite serious in its administration of the program, to the point that there can be serious repercussions if prison staff determine that an inmate is not making a meaningful effort at satisfying court-imposed financial obligations. Sanctions that the bureau can impose for failure, which they call refusal, to make measurable progress in a payment plan can include loss of a preferred housing assignment, reduction of pay for an inmate's work assignment, and exclusion from programs for which the inmate may otherwise be qualified, including furloughs and halfway house placement.

## **For Family and Friends**

***Q: What can you tell family members and friends about some prison issues that they might be concerned with? Let's start with visiting.***

A: The new inmate will receive a copy of visiting regulations and forms to send his family and friends, which need to be completed and returned in order to visit. The family and friends must understand that it is imperative for them to answer the questions on the visiting forms accurately and honestly because failure to do so may result in a loss or denial of visiting privileges. For example, a family member or friend who has a prior court conviction of any type, even if given probation, should report it matter-of-factly on the appropriate section of the visiting form. A background check by the Bureau of Prisons will uncover this and if it has been intentionally omitted, may result in denying visiting rights.

New inmates will be given a copy of their approved visiting list, usually by their assigned correctional counselor. Families and friends should ensure that they are approved prior to traveling to the prison to visit. It's helpful if the family or friends can prepare for visiting by viewing a federal prison as a serious and controlled setting, and not a place of emotional warmth. There are no private and/or unsupervised visits with family members or friends in Bureau of Prisons' facilities. However, families and friends can be somewhat relieved in knowing that the majority of visiting rooms are open ones, without the glass



partitions and telephones for communicating so often depicted in television and movie dramas. Inmates are permitted to kiss and embrace at the beginning and conclusion of a visit. Some facilities even provide outdoor visiting areas when the weather permits. Family members and friends should be prepared for being subjected to search procedures and supervision when visiting. Such scrutiny is necessary because, unfortunately, one of the ways illegal drugs and other types of contraband are smuggled into prisons is by visitors, including family and friends. Therefore, it is recommended that friends and family visitors bring very little with them into the prison, giving nothing to their incarcerated loved one other than change, which can be spent on the inmate at the vending machines in the visiting room.

After being cleared into the visiting room, family and or friend visitors will be expected to conduct themselves appropriately, meaning they should avoid any conduct which might make correctional staff suspicious, especially excessive physical contact. It is important to understand and appreciate the fact that a prison visiting room is a serious setting.

Another important factor that family and friends should be prepared for is the possibility of early termination of their visit, should the visiting room become crowded. This can and does happen to enable other inmates to receive visits. This can be an emotionally difficult situation for both the inmate and the family/friends, so it's important to remember that early visit termination due to crowding will be an impartial and necessary decision by prison staff. Arguing with prison staff will not improve or change the decision. In fact, in order to maintain visiting privileges, all visitors are expected to comply with prison staff at all times. The Bureau of Prisons holds the inmate accountable if a visitor fails to follow regulations or comply with staff instructions.

Finally, the family and friends should know that while their loved one is serving a sentence in a federal prison, misconduct that results in the receipt of a written incident report may be sanctioned by the loss of visitation privileges, even if the misconduct was not related to visiting. The reason for this is because the Bureau of Prisons expects clear conduct, if the inmate is to be permitted full privileges, and because receiving visits is meant to be a motivating factor to help an inmate maintain clear conduct. With this understanding, the family and/or friends can reiterate the importance of visiting to the inmate. Should the inmate incur misconduct sanctions that include a temporary loss of visitation, rather than being angry at the Bureau of Prisons, the family and friends will be better served by helping their loved one understand that visitation is a priority and worth clear conduct behavior.

***Q: Are family members and friends also subjected to security measures regarding written correspondence and telephone calls?***

A: Family members and friends should clearly understand that telephone calls and emails they receive from an inmate are subject to monitoring and recording for security, and that the inmates' incoming postal mail will be opened and screened. Therefore, what they say and what they write should always be above board and appropriate. Further, family and friends also need to know that an inmate is prohibited under Bureau of Prisons' regulations from conducting a business while confined. So, telephone, email and written correspondence must not involve such prohibited conduct. Finally, the family and friends should be strongly cautioned against making three-way, or third-party calls, after the inmate has connected with them telephonically, because this, too, is prohibited by the Bureau of Prisons. Such calls are generally viewed by the bureau as circumventing telephone regulations, which are reasonable, since inmates are allowed a large number of people on their authorized telephone lists, which can be frequently modified.

***Q: Since you earlier referenced the disciplinary process, what should the family and friends know about the prison disciplinary process?***

A: As already mentioned, the new inmate will receive a full and comprehensive list of Bureau of Prisons' rules and regulations, which includes all prohibited acts, immediately upon arrival at a federal prison. Therefore, the family and friends should understand that there is usually very little excuse for an offender's claim that they may not have known they were violating a rule. Also, the family and friends should understand that Bureau of Prisons' staff is generally much too busy with daily routines to write disciplinary reports against an inmate simply because the staff member "dislikes" the inmate. In fact, the formal disciplinary process requires an eyewitness staff account of an inmate's prohibited conduct, further investigation by a correctional supervisor, and then review with the inmate in person by a unit team staff member and, later, if referred by the unit team, by a disciplinary hearing officer. The process leaves very little room for the personal likes or dislikes of a single staff member. The family should realize that the institution's disciplinary hearing officer is virtually autonomous as an independent department within the institution. Finally, even if found guilty of an act, the inmate has an appeal process whereby all disciplinary proceedings are reviewed at administrative levels higher than the institution's.

This next article in this series will address BOP health care.

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