

**INFORMATION ABOUT THE
FEDERAL TORT CLAIMS ACT
OR
WHAT TO DO IF YOU MIGHT HAVE A
TORT CASE AGAINST THE FEDERAL
BUREAU OF PRISONS**

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DISCLAIMER: This document is not intended to replace the advice of any attorney. This document does not represent legal advice by the D.C. Prisoners' Project of the Washington Lawyers' Committee, does not create an attorney-client relationship, and should not be relied upon as your sole resource in dealing with the Federal Tort Claims Act.

This booklet explains the **Federal Tort Claims Act** (also called the FTCA). This Act makes it possible to sue the United States for “negligent” or “wrongful acts” that its employees commit while “acting within the scope of their employment.” These phrases are explained more below.

The **Prison Litigation Reform Act** (the PLRA) may mean that you have to complete the internal prison grievance process. Before filing a lawsuit, you should always work your way through the grievance process, including all possible appeals. This is called “exhausting your administrative remedies.”

For claims about injury or death that you file under the FTCA, completing the grievance process is **REQUIRED**.

For claims under the Constitution or any other federal law (5th amendment, 8th amendment, 14th amendment and others), completing the grievance process is **REQUIRED**. These kinds of claims are not discussed in this guide.

We understand that this means you have to fill out a lot of forms and that the prison may not respond. However, you want to make sure that you do everything now that you can so that you do not get a case dismissed from court later. Even if completing the grievance process is not required, it is always good to have a paper trail. You want to show that you did everything you could do to solve the problem.

It is recommended that you follow the grievance procedures **at the same time** as you follow the procedures below. Fill out an Informal Complaint (BP-8) and then continue the process through the Appeal to the General Counsel (BP-11). At the same time, follow the steps in this guide.

WHAT DOES THE FTCA COVER?

You can file a claim under the FTCA under certain circumstances if you were injured or your property was damaged because a federal employee did something wrong “in the course of employment.” People who work at federal BOP prisons are federal employees.

“In the course of employment” means that someone was “on the job.” For example, it may be possible that you were injured when a BOP employee did something that was not part of his or her job and without anyone else’s permission. If what they did was not part of the employee’s job duties, then that employee might not have been “in the course of employment” at the time. If you are not sure, go ahead and follow the procedures below. Be ready to explain why you think the employee was doing something on the job and within their job description.

WHAT THE FTCA DOES NOT COVER?

- Claims for negligent property loss or damage.¹
- Things done by people who are contractors with the BOP. If someone is not directly employed by the BOP, but works for another company who contracts with the BOP, you generally **cannot** file a claim under the FTCA.²
 - It may not be obvious whether someone is directly employed by the BOP or an independent contractor.³ If you are not sure, go ahead and follow the procedures below. Include as much detail as possible about the person’s job, such as their duties, their supervisor(s), what tools or facilities they use, or even who pays their salary and benefits, if known.
- If you are hurt while on a prison work assignment.
- If a BOP employee acts outside of their job: outside “the course of employment.”

¹ In *Ali v. Federal Bureau of Prisons*, 552 U.S. 214 (2008), the Supreme Court held that the FTCA does not apply when property is lost or damaged when it is taken by “any law enforcement officer,” as stated in 28 U.S.C. § 2680(c). This means that you cannot sue the United States for a CO’s negligent loss or damage to your property. Under those circumstances, the Small Claims Act is the only way for you to recover money. See page 7 of this guide for how to file a claim for property loss or damage. However, if a CO or other BOP staff intentionally destroyed your property, you may have an FTCA claim, and you should follow the steps outlined in this handout.

² There are a few situations where a court might consider actions by an independent contractor or non-federal employee to be the responsibility of federal employees. One example is if an independent contractor is directly supervised by federal employees (see footnote below). Another potential exception is the harm occurred in a facility operated by a private prison company but owned by the BOP. See, e.g., *Edison v. United States*, 822 F.3d 510 (9th Cir. 2016).

³ Whether someone is considered a federal employee or independent contractor is often a question for courts to resolve. Most courts hold that the critical factor when assessing whether a defendant is an employee or an independent contractor for the purposes of the FTCA is whether the federal government has authority to supervise their day-to-day operations and “to control the detailed physical performance of the contractor.” See, e.g., *U.S. Tobacco Coop. Inc. v. Big S. Wholesale of Va., LLC*, 899 F.3d 236, 248 (4th Cir. 2018) (quoting *Wood v. Standard Prods. Co.*, 671 F.2d 825, 829 (4th Cir. 1982)) (internal quotation marks omitted).

WHO CAN FILE A CLAIM FOR YOU?

You may follow these procedures yourself or authorize someone to do it for you. If you want someone else to do it, sign a written statement that gives them permission to act for you.

If you authorize someone else to act for you, any responses about your claim will go to that person and not to you. If for some reason you get a response instead, you are responsible for forwarding it to the person helping you.

Do not assume that the Washington Lawyers' Committee will file these forms for you! Unless we have told you something differently **in writing**, you are responsible for following these steps yourself.

HOW LONG DO I HAVE TO DO THIS?

You must file an FTCA claim with the agency (here, the Regional Officer where the incident occurred) within **TWO YEARS** of the injury or damage. If you wait longer than the deadline, you will not be able to recover anything.

The date the harm happened: _____

WHAT ARE THE STEPS TO FOLLOW?

STEP 1. Figure out what happened and who did it. Make notes for yourself before you begin to fill out forms.

- When did this incident happen?
- Who was responsible for it?
- Were they acting in the scope of their employment, “on the job”?
- For a personal injury case
 - How were you hurt?
 - Do you have medical records showing your injuries?
- For an intentional damage case
 - What was destroyed?
 - What was it worth?

STEP 2. Get a Claim Form (SF-95)

- There is a blank copy of the Claim Form enclosed at the end of this guide.
- If you need another copy, you should ask for a “Claim for Damage, Injury, or Death and Supplemental Instructions (SF-95)” also known as a Federal Tort Claims Act (FTCA) form.
- Current BOP residents may be able obtain FTCA claim forms from a member of their Unit Team or someone else at the prison. If you are no longer in a federal institution, you can access this form on the internet. If you cannot obtain a form, you may send a letter with all the information that would go into the form (see Step 3). **You must be certain that all the information is in the letter.**

STEP 3. Fill out the form (or write the letter, if you cannot obtain a form). You must include, in the proper spaces on the form if you have one:

- Your name and address
- Whether the person responsible was employed as a military employee or a civilian employee (in most cases, BOP employees are civilian)
- Your date of birth
- Your marital status
- The date of the accident or incident
- The basis of the claim: tell what happened and people involved
- The nature of the injury
- List all witnesses and their addresses
- The specific amount of money you want for your claim in dollars. Be honest. Look at what expenses you actually had to pay to fix the injury. Include any receipts, medical records, or other information that help support your claim. You cannot get punitive damages
- Your signature.

STEP 4. Mail in the form. Send it in to the BOP Regional Office for the place where the incident occurred. The addresses you need are listed on Page 9 of this handout.

STEP 5. Wait for the acknowledgement letter.

- If you have filled out the form correctly, including a specific amount of money you are asking for, you will receive a letter that acknowledges receipt of your claim. Keep track of the date they say they received the claim. That is the **FILING DATE**. You will also receive a **CLAIM NUMBER**. Use this number if you have to write to the agency for anything else about your claim.

The FILING DATE: _____
The CLAIM NUMBER: _____

- You are responsible for notifying the BOP General Counsel's Office if your address changes, if you are transferred, or if you are released. The address is on page 9.
- If you do not receive a decision letter within six months, you should assume your claim has been denied. You can proceed to file a court case (see step 8).

STEP 6. Cooperate with the investigation.

- You must respond to all requests for further information as the BOP investigates your claim. If you do not respond within a reasonable amount of time, your claims may be denied.

STEP 7. If you are satisfied with the settlement offer, accept it!

- If you accept the settlement offer, you give up your right to sue for any more money on this claim. The amount of money you accept is all the money you will get.
 - **Be realistic.** When evaluating the offer, do not forget that you might not win if you go to court. Even if you do win, it will be a long time before your court case is done, and you may have to pay legal costs and attorney's fees to go to court.

BUT . . .

STEP 8. If you are dissatisfied with the settlement offer, file for reconsideration or go to court.

- If you have not received a response with a denial or a settlement offer within six months of the **FILING DATE**, consider your claim denied.
 - In this case, you may proceed file a lawsuit in federal District Court (see below).
- If your claim is denied, or if you are dissatisfied with the amount of money offered to settle your claim, you may request in writing that the BOP reconsider your claim. You should write a letter back to the BOP Counsel's office and includes any further evidence you have that shows why you're right.
- If you have not received a response to your letter for reconsideration within six months of sending it, consider your request denied.
- After a final request for reconsideration is reviewed (accepted, denied, or not answered within six months), you may file a lawsuit asking for damages for personal injury or wrongful death in Federal District Court. You will be responsible for figuring out the proper U.S. District Court in which to file your lawsuit. You must file this lawsuit **within 6 months** of the **DATE OF MAILING** of the final denial of your claim (not when you get it).

The DATE OF MAILING: _____

- If you choose not to file for reconsideration, you must file any lawsuit **within 6 months** of the **DATE OF MAILING** of the original denial.

CLAIMS FOR PROPERTY LOSS OR DAMAGE

After *Ali v. Federal Bureau of Prisons*, you can no longer bring an FTCA claim about a claim for property loss or damage that occurs in the regular course of operation of the BOP—like in the course of a transfer between facilities. **If your property was damaged as the result of an intentional destruction by BOP staff, you should consult an attorney before proceeding.**

For other damage or loss, you can ask the BOP to pay for what an employee lost or damaged by filling out an SF-95, or writing a letter with the information on the form if you cannot get one.

When you ask the BOP to pay for what was lost or damaged, the Small Claims Act allows them to pay you. The Small Claims Act applies to claims for property less than \$1,000 and must be filed within **ONE YEAR** of the property loss or damage.

The date the harm happened: _____

This is an administrative remedy only. The BOP (or other agency) is allowed to settle your claim, but if they don't offer you enough, you can't take your claim to court. This means that the settlement offer you get from the BOP is the only chance you have to get money for your lost or damaged property.

To ask for money from the BOP for property loss or damage, follow these steps.

STEP 1. Get a Claim Form (SF-95)

- There is a blank copy of the Claim Form enclosed at the end of this guide.
- If you need another, you should ask for a “Claim for Damage, Injury, or Death and Supplemental Instructions (SF-95)”.
- Current federal inmates may be able obtain claim forms from a member of their Unit Team or someone else at the prison. If you are no longer in a federal institution, or you

cannot obtain a form, you may write a letter with all the information that would go on the form (see Step 2). **You must be certain that all the information is in the letter.**

STEP 2. Fill out the form (or write the letter, if you cannot obtain a form). You must include, in the proper spaces on the form if you have one:

- Your name and address
- Whether the responsible party was employed as a military employee or a civilian employee (in most cases, BOP employees are civilian)
- Your date of birth
- Your marital status
- The day and date of the incident
- The basis of the claim. Tell what happened and people and property involved. Include:
 - What was damaged or lost
 - What was it worth
 - Any property lists or receipts showing that you owned it
- List the owner of the property if it's not you
- Describe the property, what happened and where it is for them to view (if you have it)
- List all witnesses and their addresses
- The specific amount of money you want for your claim, in dollars. Be honest. Look at what expenses you actually had to pay to fix or replace the property. Remember that after things get used, they aren't worth as much as you paid for them. Be sensible. Include any receipts or other information that help support your claim. You cannot get punitive damages.
- If you happen to have insurance on the item, say that too.
- Your signature.

STEP 3. Send in the form. Send it in to the BOP Regional Office for the place where the incident occurred. The addresses you need are listed on Page 9 of this handout.

- You are responsible for notifying the BOP General Counsel's Office if your address changes, if you are transferred, or if you are released. The address is also on page 9.

STEP 4. Wait for a settlement offer. If you are offered money, you should accept it. This is your only opportunity to recover money. You cannot take your case to court.

BOP Addresses

Office of the General Counsel
BOP Central Office
320 First Street, NW
Washington DC, 20534

Mid-Atlantic Regional Office*
RO Mid-Atlantic
Regional Office
302 Sentinel Drive, Suite 200
Annapolis Junction, MD 20701

*RO Mid-Atlantic includes Delaware, District of Columbia, Kentucky, Maryland, North Carolina, Tennessee, Virginia, & West Virginia

North Central Regional Office*
RO North Central
Regional Office
400 State Avenue, Suite 800
Kansas City, KS 66101

*RO North Central includes Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin

Northeast Regional Office*
RO Northeast
Regional Office
U.S. Custom House, 7th Floor
200 Chestnut Street
Philadelphia PA, 19106

*RO Northeast includes Connecticut, New Hampshire, New Jersey, New York, Maine, Massachusetts, Ohio, Pennsylvania, Rhode Island, Vermont

South Central Regional Office*
RO South Central
Regional Office
US Armed Forces Reserve CMPL
344 Marine Forces Dr.
Grand Prairie, TX 75051

*RO South Central includes Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Southeast Regional Office*

RO Southeast
Regional Office
3800 Camp Creek Pk SW, Building 2000
Atlanta GA, 30331

*RO Southeast includes Alabama, Florida, Georgia, Puerto Rico, Mississippi, South Carolina

Western Regional Office*

RO Western
Regional Office
7338 Shoreline Drive
Stockton CA, 95219

*RO Western includes Alaska, Arizona, California, Idaho, Hawaii, Montana, Nevada, Oregon, Utah, Washington, Wyoming

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For additional information, you can reference the following statutes:

Governing Federal Statutes

Title 28 U.S.C. § 2671 – § 2680 – Tort Claims Procedure

Title 28 U.S.C. § 2401 – Statutes of Limitation

Title 31 U.S.C. § 3723 – Small Claims Act

General Federal Regulations for the FTCA

Title 28 C.F.R. § 14.1 – § 14.11

Federal Regulations for the BOP

Title 28 C.F.R. § 543.30 – § 543.32