While We’re Talking About Rape

By Bennett Capers

We have been talking a lot about rape and sexual assault recently. Conversations that were once held behind closed doors between women are now part of the national conversation. As just one example, from the evening news to the halls of Congress, from Facebook posts to the proverbial water cooler, we have been talking about the absurdly low sentence imposed on Brock Allen Turner, the Stanford University student who raped an unconscious woman behind a dumpster—his sentence for three felony sexual assault counts: a mere six months in jail and three years’ probation.

One could even say that conversations about rape and sexual assault have never been so open. And yet there is an entire category of sexual assault that we still don’t talk about, at least not seriously. These rapes and sexual assaults are greeted with a type of willful blindness, a conscious avoidance. That, or they are trivialized, dismissed as justified punishment for abhorrent behavior, treated as nonsexual, or reduced to jokes. The category of rape and sexual assault that is still hidden is male victim rape.

Custodial Male Victim Rape

Consider Johnson v. Johnson, 385 F.3d 503 (5th Cir. 2004), the § 1983 claim brought by Roderick Johnson, a former Navy sailor. Johnson ended up serving an 18-month prison sentence for burglarizing his neighbor. Almost immediately after Johnson arrived in prison to serve his sentence, he found himself at the mercy of a gang called the Gangster Disciples. The Gangster Disciples literally claimed ownership of Johnson, and raped him on almost a daily basis. In addition to raping Johnson themselves, the Gangster Disciples “rented” Johnson out to other inmates, allowing other inmates to rape him at $5 or $10 per encounter depending on the sex act, payable in cash, commissary privileges, or cigarettes. Asked later during Johnson’s § 1983 trial whether Johnson ever consented to sex, the witness, a former member of the Gangster Disciples, smirked, then answered, “You’ll be beaten until you say yes. He’d be beaten, stabbed, whatever.” The witness also made clear what Johnson was to the Gangster Disciples: “property.”

What makes Johnson’s case atypical is that he had the resources to file suit. Unfortunately, the actual situation he found himself in is anything but atypical. In a 2000 study of male inmates at several prisons across four states, 21 percent of the inmates reported pressured or forced sexual contact, and 7 percent of the inmates reported they had been raped. A
study of male inmates in Nebraska revealed similar rates of victimization: 22 percent of the inmates reported pressured or forced sex; of these, over 50 percent reported being the victim of forced anal sex. A study of prisoners in three Midwestern states found that approximately 20 percent of inmates reported pressured or forced sex; 10 percent reported they had been raped. These numbers are consistent with data collected by the U.S. Department of Justice as part of the mostly hortatory Prison Rape Elimination Act of 2003 (PREA). For example in 2007, the Bureau of Justice Statistics found that nationwide, 4.5 percent of surveyed inmates reported being sexually abused in just the previous 12 months, and estimated that more than 60,000 inmates are sexually abused each year. Overall, the numbers collected suggest that more than one in 10 prisoners have been victims of sexual assault. In fact, more recent numbers from the Bureau of Justice indicate that a prisoner is 30 times more likely to be raped or sexually assaulted than a woman outside of prison. And while these numbers are disturbing on their own, the fact is that these numbers alone fail to capture the reality many inmates face.

For many men in prison, rape is not an isolated incident involving a single offender. It is not a one-off. Nor are there support groups or readily available therapy. For many men in custody, rape is a daily occurrence, and being gang-raped is a fact of life.

And yet for the most part, these rapes are absent from the national conversation. It has become quite common to insist that no one deserves to be raped, and yet it seems we apply a different standard when it comes to male prisoners, including men in jail who have yet to be adjudicated guilty of any offense and who may be legally or factually innocent. Our collective response is troubling. Correction officers have been known to “blame the victim” for not being tough enough to defend himself, and even facilitate rapes to punish certain prisoners and reward others. Prison officials are reluctant to report rape for fear of subsequently triggering civil liability under the “deliberate indifference” standard of Farmer v. Brennan, 511 U.S. 825, 847 (1994). And prosecutors rarely devote resources to prosecuting prison violence, let alone prison rape.

Indeed, the criminal justice system is more than simply indifferent to prison rape. The system takes advantage of it. Law enforcement officers raise the specter of prison rape—somebody named Bubba’s gonna make you his girlfriend—during interrogations to induce suspects to cooperate. The underlying message: cooperate with us, or you’ll be screwed—literally. Former California Attorney General Bill Lockyer made headlines in 2001 when, commenting on the Enron corporate fraud case, he said that he would personally love to escort Enron CEO Kenneth Lay “to an 8-by-10 cell that he could share with a tattooed dude who says, ‘Hi, my name is Spike, honey.’” But the fact is such statements are anything but uncommon. And the public seems to participate. The coverage given to former Subway spokesperson Jared Fogle following his plea of guilty to child pornography charges speaks volumes. The headline from the New York Post: “Subway Jared Underage Sex Shock: Enjoy a Foot Long in Jail.” Elsewhere, the public reduces prison rape to a joke, as can be seen in films from My Cousin Vinny to Naked Gun 33 1/3 to Get Hard. For years, there was even a recurring skit on Saturday Night Live featuring Kenan Thompson as a “scared straight” speaker. Each skit ended with a “humorous” story of prison rape.

And it is not just adult men in custody. Consider one of the many stories from Bryan Stevenson’s Just Mercy, his critically acclaimed book about defending the wrongfully convicted, including men on death row, as well as defending others without resources. One of the latter cases involved Charlie, a 14-year-old kid, just five feet tall and weighing under a 100 pounds. Charlie was arrested and placed in the county jail for adults to await trial. Charlie’s crime: shooting and killing his mother’s violent and abusive boyfriend. Stevenson agrees to take the case and describes Charlie as practically catatonic the first time Stevenson visits him in the county jail. Charlie doesn’t respond to Stevenson’s questions, and simply stares at the wall. After several minutes of silence, Charlie begins trembling, and then crying. This is how Stevenson describes it:

He was sobbing when he finally spoke. It didn’t take me long to realize that he wasn’t talking about what had happened with [his mother’s abusive boyfriend] or with his mom but about what had happened at the jail.

“There were three men who hurt me on the first night. They touched me and made me do things.” Tears were streaming down his face. His voice was high-pitched and strained with anguish.

“They came back the next night and hurt me a lot,” he said, becoming more hysterical with each word. Then he looked in my face for the first time.

“There were so many last night. I don’t know how many there were, but they hurt me.”

He was crying too hard to finish his sentence.

Charlie’s story, like that of Roderick Johnson, is all too common. According to a Department of Justice study released in 2010, approximately 10.8 percent of detained youth reported sexual activity with staff members,
and nearly 3 percent reported being sexually victimized by other detained youth. Of the youths victimized by other youth, 81 percent reported being victimized more than once, 32 percent reported being victimized more than 10 times, and 43 percent reported being victimized by more than one perpetrator. Obviously, the situation is far worse for youth placed in adult facilities.

The simple fact is that the public has been largely indifferent to male victim rape when it comes to men and youth in custody. Indeed, for many, this indifference is understandable: rape becomes an unsaid part of deterrence, of retribution. But this explanation, aside from being wrongheaded, fails to explain the rest of our indifference. It’s not just that society turns a blind eye to the sexual assault of men in custody, including those who have yet to be found guilty of any offense. The public also turns a blind eye to the sexual assault of men outside of prison.

NONCUSTODIAL MALE VICTIM RAPE

We think of it as assault and battery, but downplay the sexual aspect, as we did when police officer Justin Volpe sodomized Abner Louima with a broomstick, or when a few years ago a Bronx gang sodomized a male youth with the wooden handle of a plunger. When it happens on sports teams, or in fraternities—here too there are stories about classmates being raped with pool sticks, with hockey sticks, and with other objects—we dismiss it as youthful hazing. And when it happens elsewhere—in someone’s apartment, or after drinking—we dismiss it as something that only happens to gay men.

But the numbers here suggest male victim sexual assault shouldn’t be so easily ignored. For example, a community-wide study in Los Angeles found that 7.2 percent of the men surveyed reported at least one incident after the age of 15 where they had been sexually assaulted. Studies focusing on cases in hospital emergency rooms and rape crisis centers have found that between 4 percent and 12 percent of sexual assault victims seeking medical treatment are male. Even in the military, where sexual assaults on women have gained much attention, male victimization is significant. In fact, of the 26,000 reports of unwanted sexual assault in the military in 2012, 53 percent involved sexual attacks on men, mostly by other men. As the New York Times has reported, the underappreciated truth is that the “majority of service members who are sexually assaulted each year are men.” And all of these numbers are likely to be conservative for obvious reasons: men who are sexually assaulted by other men often fail to come forward for fear of being perceived as gay, or as appearing weak or not manly enough to defend themselves. As Michael Scarce put it in his book-length exploration of male victim sexual assaults, Male on Male Rape:

We can easily believe that a child might not be able to defend himself against an adult, but the sexual violation of a man may come as something of a shock, for men have traditionally been expected to defend their own boundaries and limits while maintaining control, especially sexual control, of their own bodies. When this does not occur, when men are raped by other men, society tends to silence and erase them rather than acknowledge the vulnerability of masculinity and manhood.

Nationally, prosecutors and defense lawyers, as well as the public, now recognize that rape is rape, whether committed by a stranger or an acquaintance or a spouse, and whether or not it involves force. Accordingly, rape is taken seriously, at least when it comes to victims who fit preexisting rape scripts. But as for other victims, there still remain elements of shame, embarrassment, and denial. And none of this is good for the law of rape, or for reducing the occurrence of rape more generally.

REDEFINING RAPE

The first step is to equalize rape laws. Most rape and sexual assault laws have already taken a step in this direction. Until fairly recently, most states had rape laws that defined rape in gender-specific terms. Some states—Alabama, Georgia, and North Carolina—still do. The Uniform Crime Reporting Program, until very recently, defined rape as requiring a female victim. The Model Penal Code (MPC) still defines rape in gender-specific terms—indeed, the MPC’s rape provision, section 213.1, begins with the line, “A male who has sexual intercourse with a female not his wife . . . .” As previously mentioned, the American Law Institute (ALI) is in the process of a multiyear project to revise article 213 of the MPC. (The ALI approved the project in 2012, and the project has produced several drafts and has been the focus of discussion at several ALI annual meetings.) And for the most part, the revised provisions will be gender neutral.

But even with the proposed revisions, complete gender parity seems aspirational rather than a matter of fact. Just one illustration: the current draft revision to article 213 includes section 213.2, a fourth degree felony, criminalizing sexual penetration without consent where the actor knows or is reckless with respect to whether consent is present, but does so in a way that subtly perpetuates gender imbalance. This is because in the definitions section, section 213.06(6)(a), penetration is defined, in relevant part, as “any act involving penetration, however slight, of the anus or vulva by any object or body part.” A simple example illustrates the gender imbalance here. A man who fondles and digitally masturbates a female (child or adult) without her consent will face a fourth degree felony. A man who fondles and manually masturbates a male (child or adult) without his consent will not. In short, masturbating a female without consent will be treated more harshly than masturbating a male without consent.

BETTER PROSECUTION

Beyond the step of defining rape in gender-neutral terms, there is the issue of enforcement and prosecution. As I have written previously, the “paucity of prosecutions reifies the closet, perpetuates the stigma of male-victim rape, and sends the expressive message that some crimes, because of the sex of the victims, are best kept behind closed doors.” (Bennett Capers, Real Rape Too, 99 Cal. L. Rev. 1259, 1299 (2011).)
We need to take all sexual assault seriously. For example, at least one study has found that police are significantly more likely to treat as unfounded a sexual assault complaint made by a male than by a female. (The study found police recorded 23 percent of the sexual assault allegations made by females as “No Crime.”) By contrast, the police recorded 41 percent of the sexual assault allegations made by males as “No Crime.”

One suspects that a study of prosecutors would reach similar results. This is unacceptable. It’s time, indeed way past time, for defense lawyers to do their jobs.

MORE DILIGENT DEFENSE COUNSEL

Defense lawyers can and should do more as well. Too often, defense lawyers fail to ask incarcerated clients about their experiences in jail or prison. This is no insignificant matter. Courts have long recognized that sexual victimization in prison, including the risk of sexual victimization, is a valid ground for a sentencing departure. (See, e.g., United States v. Gonzalez, 945 F.2d 525 (2d Cir. 1991); United States v. Lara, 905 F.2d 599 (2d Cir. 1990); United States v. Ruff, 998 F. Supp. 1351 (M.D. Ala. 1998); People v. Insignares, 470 N.Y.S.2d 513 (Sup. Ct. 1983).) There are also § 1983 claims that can be brought where prison officials are aware of sexual victimization or the risk of sexual victimization, and yet deliberately disregard the victimization and fail to provide protection.

Beyond the issue of sentencing and § 1983 actions, defense lawyers should be attuned to the language used by prosecutors and law enforcement officers during interrogations. It is surprisingly common for both law enforcement officers and prosecutors to reference prison rape as a way to induce cooperation. Such “trash talk” is so common that it is often viewed as par for the course. In fact, a strong argument could be made that any resulting confession was involuntary. Such practices certainly seem inconsistent with the language of Arizona v. Fulminante, 499 U.S. 279 (1991). There, the Supreme Court ruled that Fulminante’s confession, made after a government agent told Fulminante that other prisoners would victimize him and offered to protect Fulminante from being physically harmed, was involuntary and thus inadmissible. Specifically, the Court held that the invocation of physical harm and concomitant offer to provide protection from harm was sufficiently coercive to violate due process, requiring suppression of Fulminante’s confession. Given how commonplace “cooperate or you’ll be raped” references are in interrogations, it is surprising the defense lawyers have not been diligent in challenging the resulting confessions.

BETTER AWARENESS

Perhaps most importantly, acknowledging that anyone—male or female—can be a victim of sexual assault can redound to everyone’s benefit. Consider just two concrete examples. A recurring hurdle in rape prosecutions is that, even when resistance on the part of the victim is not legally required, jurors have come to expect resistance. Jurors often have difficulty understanding that many women suffer from “frozen fright,” even when presented with expert testimony on the phenomenon. But growing evidence suggests that male victims of sexual assault also suffer from frozen fright. If the public understood—through both public education and actual prosecutions—that men get raped too, and that even “manly” men experience frozen fright, then it is quite likely that the public would be more open to recognizing frozen fright in women, making all rape prosecutions fairer. Turning to policy and rape law reform, an acknowledgment of not only the physical coercion, but also the nonphysical coercion, that occurs in male prisons can help the public and legislators better understand the gravity of the nonphysical coercion many victims face outside of prison.

Even more broadly, recognizing that anyone can be raped might change how we think of rape victims, and might even reduce the frequency of rape itself. For decades, feminists have won changes to rape laws by getting legislators and judges, mostly male, to think of their sisters and daughters and wives. How might rape laws improve if legislators and judges also thought of their sons not just as potential perpetrators, but also as potential victims themselves? How might that strip away the stigma of being a rape victim? Lastly, how might men think differently about sex—and specifically about sex without consent—if they came to realize that one day the shoe might be on the other foot? Certainly these are questions worth asking.

CONCLUSION

When Brock Allen Turner raped his unconscious victim behind the bleachers, he denied the dignity and personhood of his victim, and that was wrong. When Judge Aaron Persky sentenced him to a mere six months in jail, that was wrong too. But what if time could be reversed? Had Brock been brought up to realize that anyone—including himself—could be reversed? Had Brock been brought up to realize that anyone—including himself—could be raped too, that he could one day find himself passed out from drinking and be raped, or find himself spending even just a night in jail and be raped, would he have made the same decision when he saw his victim that night? Of course, one will never know the answer for sure. But for the thousands of men like Brock, it would definitely make a difference for some. So while we’re having this national conversation about rape, let’s add male victim rape to the discussion.
Community corrections grew through the 1970s and 1980s, becoming a standard component of the BOP’s overall range of placement options. Congress expressly provided for the BOP’s use of residential treatment centers as places of imprisonment in 18 U.S.C. § 4082(a) and (c), and reaffirmed the agency’s designation responsibilities in promulgating the Sentencing Reform Act of 1984 (SRA). Through 18 U.S.C. § 3621(b), Congress authorized the BOP to “designate the place of the prisoner’s imprisonment” at “any available penal or correctional facility that meets minimum standards of health and habitability.” In 1985, the BOP’s general counsel issued a legal opinion interpreting the phrase “penal or correctional facility” in § 3621(b) as coincident with “institution or facility” in the former 18 U.S.C. § 4082(a).

In 1990, the statutory definition of “imprisonment” expanded to include home confinement when employed at the end of a prisoner’s sentence. (See 18 U.S.C. § 3624(c).) Shortly after the enactment of § 3624(c), which limits home confinement to the final 10 percent of a prisoner’s sentence, the BOP issued a written policy statement that announced its intention to “promote greater use of community corrections programs for low risk offenders.” The BOP acknowledged that “[t]here is no statutory limit on the amount of time inmates may spend in CCCs [community corrections centers]” and instructed that, “unless the warden determines otherwise, minimum security inmates will ordinarily be referred [for CCC placement at the end of their sentences] for a period of 120 to 180 days.” The Department of Justice’s Office of Legal Counsel (OLC) upheld the bureau’s analysis and flexible use of CCCs in a 1992 legal opinion:

There is . . . no basis in section 3621(b) for distinguishing between residential community facilities and secure facilities. Because the plain language of section 3621(b) allows BOP to designate ‘any available penal or correctional facility,’ we are unwilling to find a limitation on that designation authority based on legislative history. Moreover, the subsequent deletion of the definition of ‘facility’ further undermines the argument that Congress intended to distinguish between residential community facilities and other kinds of facilities.


The BOP discussed its practices in the use of halfway houses in a 1994 report to Congress, explaining that, in keeping with the objective of housing prisoners “in the least restrictive environment consistent with correctional needs,” it had created a two-part community corrections model that differentiated between those designated to halfway houses to serve their entire sentences and those placed there in preparation for reentry. The report explained that a “community corrections component” used for direct commitments (initial designation) was “sufficiently punitive to be a legitimate sanction, meeting...
the needs of the court and society, yet allowing the offender to undertake other responsibilities, such as participation in work, substance abuse education, and community service.” The pre-release component, on the other hand, was for those nearing the ends of their sentences—ordinarily six months or less—to “assist offenders in making the transition from an institutional setting to the community.” The BOP’s view of sanctioned halfway house usage remained constant in all versions of its official written policy statements. The most recent program statement, Program Statement (PS) 7310.04, which was promulgated in 1998, provides: “[T]he Bureau is not restricted by § 3624(c) in designating a CCC for an inmate and may place an inmate in a CCC for more than the ‘last ten per centum of the term,’ or more than six months, if appropriate. Section 3624(c), however, does restrict the Bureau in placing inmates on home confinement . . . .” (emphasis added).

The BOP’s pre-release practices remained relatively constant until December 2002, when, as directed by the Justice Department, it implemented a much more restrictive view including the elimination of the use of direct halfway house placement for the service of one’s sentence. The resultant litigation produced a substantial body of case law declaring the policy change unlawful. (See, e.g., Levine v. Apker, 455 F.3d 71, 77–78 (2d Cir. 2006); Woodall v. Fed. Bureau of Prisons, 432 F.3d 235 (3d Cir. 2005.).) In the midst of the litigation, the BOP began referring to halfway houses as residential reentry centers (RRCs) while making clear that the name change “will not affect existing facilities . . . . [W]e have used the terms halfway house and CCC synonymously for years and now we can add RRC.” (Stuart Rowles, Community Update: Notes to BOP’s Local Partners (May 2006).

Through the Second Chance Act of 2007 (Pub. L. No. 110-199, 122 Stat. 657 (2008)), Congress restored and expanded historic norms. Congress directed the BOP to ensure that each federal prisoner serve a portion of his or her term of imprisonment, not to exceed one year, “under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.” (18 U.S.C. § 3624(c)(1).) The act also restores the use of a halfway house for the service of an inmate’s entire sentence.

**PRE-RELEASE FOLLOWING THE SECOND CHANCE ACT**

Section 3621(b) requires the BOP to consider certain factors when making any designation decision, including pre-release placement. The factors include offender-specific variables such as “the history and characteristics of the prisoner,” “the nature and circumstances of the offense,” and the sentencing court’s statements concerning a sentence’s purpose or facility recommendations. In addition to these statutory factors, BOP personnel must also account for the controlling program statement (PS 7310.04) and operations memoranda. (See Memorandum from D. Scott Doedrill, Assistant Dir., Corr. Programs Div., Revised Guidance for Residential Reentry Center (RRC) Placements (June 24, 2010) (setting forth guiding criteria).) Other factors include available contract halfway house bed space, which is usually at a premium; the length of time an individual has served, with a presumption that individuals serving longer sentences have greater need given the amount of time they have been away from the community; the nature and quality of family and community ties, with stronger ties indicating less need; and an inmate’s conduct during confinement. In short, pre-release placement, and the programming and community access it provides, is intended to reduce the risk of recidivism, meaning that priority is given to those inmates who pose a greater risk to reoffend upon completion of their sentences.

There are some offenders who, because of the crime they committed, will be excluded from pre-release placement. However, most prisoners will receive the benefit of some pre-release placement (RRC and/or home confinement), though not likely the full year that Congress contemplated. The BOP has tended to limit placements to the final six months of a prisoner’s sentence, with a growing emphasis on maximizing home confinement for those prisoners lacking transitional need (i.e., those with a home, financial resources, and/or awaiting job). One suggested method to assist a client in receiving the maximum allowable pre-release placement time is to have the court expressly recommend it in the judgment order.

BOP staff are to begin release planning at an inmate’s initial classification meeting with the unit team (unit manager, case manager, and correctional counselor). Usually at a prisoner’s periodic program review, staff will address pre-release considerations, including release residence, employment opportunities, community support, assistance programs, identification, financial support, and any goals toward reaching a viable release plan. Not every inmate will have a residence to go to, or financial and community support. Most do not, which is why planning as early as possible for release is essential. Inmates are required to participate in the BOP’s Release Preparation Program (RPP), as early as 30 months prior to their projected release date. Inmates serving sentences of 30 months or less should consider immediate enrollment.

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**ALAN ELLIS** is a regular columnist for Criminal Justice magazine and past president of the NACDL. He practices in the areas of federal sentencing, prison matters, postconviction remedies, and international criminal law, with offices in San Francisco and New York. Contact him at AElaw1@alanellis.com or go to www.alanellis.com.

**J. MICHAEL HENDERSON** is a retired Federal Prison official who had oversight responsibility and expertise in the areas of inmate classification and appropriate prison placement of federal offenders, and inmate programs. He is a federal prison consultant to the Law Offices of Alan Ellis. This article derives, in part, from Ellis’s Federal Prison Guidebook (2015–2017), principally authored by Henderson, a BOP consultant to the firm; Todd Bussert, Peter Goldberger, and Mary Price, “New Limits on Federal Halfway Houses,” Criminal Justice (Spring 2006); and Todd Bussert and Henry Martin, “The Federal Bureau of Prisons” in Defending a Federal Criminal Case (Sarah Gannett ed., 2010).
There are six core courses presented during RPP:
1. Health and nutrition;
2. Employment;
3. Personal finance/consumer skills;
4. Information/community resources;
5. Release requirements and procedures; and
6. Personal growth and development.

It is up to the individual instructor(s) of each course to determine the length and amount of participation. For example, the employment course may include a mock job fair with prerequisite classes in interview skills, resume writing, etc. Some courses may have an outside guest speaker for a one-hour program. Refusal to participate in the RPP will usually preclude an inmate from pre-release placement in a halfway house. A final and specific release plan, including a staff decision regarding halfway house referral, is to be made no later than 11 to 13 months prior to the inmate’s projected release date.

It is a prisoner’s unit team that prepares his or her release plan and pre-release referral, the latter being sent to the BOP residential reentry manager (RRM), who oversees contract halfway houses in the judicial district to which the prisoner is being referred, for final approval. For instance, where the unit team recommends a period of pre-release confinement, usually a range of days, the RRM is most familiar with available bed space and the transitional needs with which other potential halfway house residents present, meaning the RRM may authorize less time than the institution believes appropriate. Also, issues that can delay the referral and transfer process include the receiving district’s probation office’s inspection of the release residence, the inability to secure a promise to pay for medical care for those inmates lacking health insurance, and resolution of outstanding charges. Once notified of a placement date, travel planning and release procedures begin.

Every halfway house resident is required to maintain gainful employment and to contribute a percentage of his or her earnings toward the cost of his or her bed. To the extent that a halfway house permits residents to drive their own motor vehicles to work (subject to RRM approval), the resident must be prepared and able to provide a copy of a valid driver’s license, automobile registration, and an insurance certificate indicating the resident as a named insured. Similarly, where a cell phone is a necessary tool of employment, the RRM can authorize use, upon receipt of a letter from the employer establishing the need. RRC residents cannot be self-employed nor can they work for family-owned businesses. The strong preference is for residents to work for a business with a permanent location, with a manager amenable to responding to inquiries from the halfway house operator concerning the resident (for example, worksite visits, random phone calls).

As time progresses and a resident develops a track record with the halfway house operator, he or she may gain great privileges. Most notably, usually after providing the RRC with two pay stubs (which indicates the importance of finding an employer who pays weekly), a resident will be granted a “day pass” permitting travel home during daylight hours on a Saturday or Sunday. Assuming all continues to go well, thereafter the resident can expect to begin receiving “weekend passes” that allow for release from the halfway house from Friday evening to late Sunday afternoon.

For those inmates who do not need the services of a halfway house (i.e., inmates unlikely to be employed in the community, due to factors like retirement or disability), direct commitment to home confinement is authorized for up to 10 percent of one’s sentence, not to exceed six months. While policy does permit direct placement on home confinement, the BOP typically requires that prisoners transition through a halfway house, which can last from a few hours to several days depending on the district and the halfway house. This type of home confinement, unlike home confinement as a condition of presentence release, does not include electronic monitoring. (18 U.S.C. § 3624(c).)

While viewed by many as an early-out option (i.e., the end of one’s term of imprisonment), pre-release placement is restrictive, program-oriented, and subject to the same disciplinary rules and regulations as an institution. Violations of pre-release rules most often result in immediate placement in the local federal pretrial holding facility, the loss of good conduct time credits, and, depending on the amount of time remaining to serve, transfer back to the correctional institution from which the prisoner was referred.

A listing and a map of RRCs contracted with the BOP can be found at http://tinyurl.com/ohz65z3.

**RELOCATION**

When an inmate who will have a period of post-release supervision wishes to be released to a district other than the one in which he or she was sentenced, the inmate must initiate a request for supervision relocation through his or her case manager. The request should provide:

- the specific rationale for wanting to release to the proposed district;
- the family and community ties the inmate has in the proposed release area;
- how and where the inmate could secure residence in the release district; and
- what employment opportunities and/or job skills the inmate has.

If some transitional assistance through pre-release placement in an RRC (halfway house) will be needed, the case manager should include such information in the relocation request. The request for relocation of supervision is sent to the U.S. probation office in the district where relocation is being requested, and that office will investigate the proposed release plan. If the requesting inmate has indicated an available residence upon release, the U.S. probation office can be expected to conduct a home visit at the proposed address. Upon completion of its review and investigation, the U.S. probation office will either approve or deny the request. It is important that this process be completed in time to be taken under consideration before the unit staff prepare a final RRC placement referral.