



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: CPD/CPB

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Transfer of Inmates to State Agents For Production on State Writs

/s/

Approved: Charles E. Samuels, Jr.
Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

§ 527.30 Purpose and scope.

The Bureau of Prisons will consider a request made on behalf of a state or local court that an inmate be transferred to the physical custody of state or local agents pursuant to state writ of habeas corpus ad prosequendum or ad testificandum. The Warden at the institution in which the inmate is confined is authorized to approve this transfer in accordance with the provisions of this rule.

State or local law enforcement agents may obtain custody of an inmate pursuant to state writs of habeas corpus *ad prosequendum* or *ad testificandum*, if there is no detainer on file from any jurisdiction in the receiving state.

The Interstate Agreement on Detainers (IAD) was not meant to be the sole means of obtaining an inmate's custody for prosecution. Legislative history suggests the IAD was enacted to provide prisoners with a method of removing detainers lodged against them, not as a means of promoting prosecution.

Federal Regulations from 28 CFR are shown in this type.

Implementing instructions are shown in this type.

In this Program Statement, Correctional Systems staff are referred to as institution staff.

a. **Summary of Changes**

Policy Rescinded

P5875.12 Transfer of Inmates to State Agents for Production on State Writs (7/31/03)

- Eliminated references to Inmate Systems Management and Inmate Systems Officers, replacing them with Correctional Systems (CS) and Correctional Systems Officer (CSO) due to decision to consolidate positions in the department.
- Added use of the Jail and Commitment Corrections System (JACCS) to verify location of inmates while released under provisions of the IAD or on state writ.

b. **Program Objectives.** The expected results of this program are:

- State or local law enforcement agents may be allowed to obtain custody of Federal inmates for both criminal and civil cases.
- State or local authorities will agree to provide the same level of security for each inmate in accordance with Bureau policy.

c. **MCC/MDC/FDC/FTC Procedures.** Procedures in this PS apply to Metropolitan Correctional Centers, Metropolitan Detention Centers, Federal Detention Centers, and Federal Transportation Centers.

d. **Contract Facilities.** Procedures in this PS also apply to Federal inmates housed at contract facilities operated by private organizations.

e. **Institution Supplement.** None required. Should local facilities make any changes outside the required changes in the national policy or establish any additional local procedures to implement the national policy, the local Union may invoke to negotiate procedures or appropriate arrangements.

2. PROCEDURES

§ 527.31 Procedures.

(a) These procedures apply to state and federal inmates serving sentences in federal institutions, and shall be followed prior to an inmate's transfer to state or local agents other than through the Interstate Agreement on Detainers.

A state or local law enforcement agency may, with the Warden's approval, obtain an inmate by means of a writ of habeas corpus *ad prosequendum* without filing a detainer. Writs from Tribal Courts are treated in the same manner as writs from a state or local court. Writs from the District of Columbia Superior Court (civil and criminal) are treated in the same manner as Federal writs (per the All Writs Act, Title 28 U.S.C. § 1651).

The state is bound by the IAD's provisions only when a detainer has been filed. If there is no detainer on file from the jurisdiction where the prisoner is being requested under a writ, but one or more detainers are on file from other jurisdictions in the same state, then the IAD's provisions apply.

Pending arrival at a designated institution, the inmate may be removed via state writ, but not under the IAD. Refer questionable cases to Regional Counsel.

(b) The Warden shall authorize transfer only when satisfied that the inmate's appearance is necessary, that state and local arrangements are satisfactory, that the safety or other interests of the inmate (such as an imminent parole hearing) are not seriously jeopardized, and that federal interests, which include those of the public, will not be interfered with, or harmed. Authorization may not be given where substantial concern exists over any of these considerations.

The Warden personally reviews and makes a decision on any production request, civil or criminal, taking particular care with inmates who have either IN or MAXIMUM custody. This authority may not be delegated below the level of Acting Warden.

The Warden notifies state authorities of any security concerns about a particular inmate regardless of the inmate's custody level. The Warden must receive the state authorities' written agreement that they will provide the same level of security (number of escorts, restraints, etc.) Bureau policy requires. See the Program Statement **Escorted Trips** for more information. Failure of state authorities to agree to these requirements is grounds for denying the request.

When the inmate is a serious custody risk, or when the state refuses to or cannot abide by this PS's requirements, these cases are referred first to Regional Counsel for approval. A decision to the transfer to state agents may be refused in favor of production by the U.S. Marshals Service (USMS).

(c) The request for transfer of custody to state agents shall be made by the prosecutor or other authority who acts on behalf of the court and shall be directed to the Warden of the institution in which the inmate is confined. The request shall be made by letter. The request shall indicate the need for appearance of the inmate, name of the court, nature of the action, date of the requested appearance, name and phone number of the state agency or other organization with responsibility for transporting the inmate, the name and location where the inmate will be confined during legal proceedings, and anticipated date of return. For civil cases, the request shall also indicate the reason that production on writ is necessary and some other alternative is not available. The applying authority shall provide either at the time of application or with the agent assuming custody, a statement signed by an authorized official that state or local officials with custody will provide for the safekeeping, custody, and care of the inmate, will assume full responsibility for that custody, and will return the inmate to Bureau of Prisons' custody promptly on conclusion of the inmate's appearance in the state or local proceedings for which the writ is issued.

Prosecutors are encouraged to use the IAD/State Writ – Prosecutor's Certification (BP-A0565) when requesting custody of an inmate, as it contains all information necessary for transfer. However, if the writ, or letter accompanying the writ, contains all required information, it may be accepted after appropriate verification is made.

If the request for transfer of custody to state agents concerns a Witness Security inmate, forward it to the Inmate Monitoring Section, Central Office.

(d) A certified copy of the writ (one with the Seal of the Court) must be received at the institution prior to release of the inmate. Institution staff shall verify the authenticity of the writ.

Verification is obtained by telephoning the Clerk of the Court that issued the writ. Verification is noted on the writ to include:

- Name of verifying court official.
- His/her title.
- Phone number.
- Bureau staff member's name and title.
- Date.

The Court's seal may be electronic or manual.

(e) Institution staff shall maintain contact with the state or local law enforcement agency with responsibility for transfer of the inmate to determine the exact date and time for transfer of custody. If the inmate is awaiting federal trial or has federal civil proceedings pending, staff must clear the transfer through the U.S. Attorney.

(f) Institution staff shall determine from the state or local agency the names of the agents assuming custody. Staff must carefully examine the credentials of the agents assuming custody. In any doubtful case, verification should be sought.

Verification is obtained by phoning the state agency. When a private carrier or contractor is transporting the inmate for the state, institution staff may request in advance the names of individuals who will assume custody.

(g) Transfers in civil cases pursuant to a writ of habeas corpus ad testificandum must be cleared through both the Regional Counsel and the Warden. Transfer ordinarily shall be recommended only if the case is substantial, where testimony cannot be obtained through alternative means such as depositions or interrogatories, and where security arrangements permit. Postponement of the production until after the inmate's release from federal custody will always be considered, particularly if release is within twelve months.

The Warden must obtain Regional Counsel's clearance before releasing an inmate on a state civil writ. It is recommended that Regional Counsel be used for all contacts and discussions with attorneys or court officials, or with respect to legal considerations affecting the production decision. There is no presumption that an inmate must be released in state civil cases.

Regional Counsel, before notifying the Warden that the release is recommended, consults with the U.S. Attorney from the district in which the inmate was prosecuted to ensure there are no

facts about the inmate, bearing on the decision to authorize transfer, which are not known to Bureau staff.

(h) Release of inmates classified as Central Inmate Monitoring Cases requires review with and/or coordination by appropriate authorities in accordance with the provisions of 28 CFR part 524, subpart F.

28 CFR part 524, subpart F, refers to the Program Statement **Central Inmate Monitoring System**.

3. RELEASE PROCEDURES

CS staff follow the procedures in the Program Statement **Correctional Systems Manual** for releasing inmates on writ. Also refer to the Program Statement **Escorted Trips** for information regarding escorts and security levels. The Release Authorization (BP-A0392) serves as the receipt of the official taking custody of an inmate released on writ. The receiving state agent's name must be obtained on the Release Authorization.

CS staff present and explain the IAD/State Writ – Acknowledgment form (BP-A0567) to the inmate before release on state writ. If the inmate is released improperly to the community by local authorities, or improperly transferred to a non-Federal facility or agency while on state writ, this form requires the inmate to call the person designated on the BP-A0567 immediately (collect or through any other communication system available), or upon the release or transfer.

CS staff have the inmate sign the BP-A0567 before release to state agents. If the inmate refuses to sign, staff advise him/her of the form's contents and document the refusal to sign. The Warden designates the contact person to be listed on the BP-A0567.

CS staff provide a copy of the BP-A0567 to the Control Center and Operations Lieutenant. This form provides the basis for accepting an inmate's collect call. If the inmate is released to the community improperly, the contact person instructs him/her to surrender to the nearest USMS Office.

Information that must be given to the state agent to accompany the inmate is contained in the Program Statement **Receiving and Discharge Manual**.

Inmates released on writ remain in custody and are returned to the sending institution when court proceedings are completed. At 60 calendar day intervals, CS staff will contact custodial authorities to determine the inmate's status.

Document all contacts in the Inmate Remand or Judgment & Commitment File. Each institution documents the:

- Date.
- Phone number.
- Name of person contacted.
- Inmate's current location.
- Inmate's current status.
- Name of staff member making contact.

If the inmate is housed in a Federal institution, SENTRY may be used to verify his/her custody. CS staff document where the inmate is currently housed and that the information was verified by SENTRY. Upon the inmate's return to the parent institution, this documentation may be discarded. See the **Correctional Systems Manual** for more information.

JACCS may be used to verify the necessary information for an inmate housed with the District of Columbia Department of Corrections. CS staff note the date, institution where the inmate is currently housed, and that the information was verified by JACCS, with documentation discarded once the inmate is returned to the institution at the discretion of the local manager.

4. ASSISTANCE

Refer questions on these procedures to the Correctional Programs Branch, Central Office: 202-307-0222.

5. AGENCY ACA ACCREDITATION PROVISIONS

- Standards for Adult Correctional Institutions, 4th Edition: None.
- Performance -Based Standards for Adult Local Detention Facilities, 4th Edition: None.
- Standards for Administration of Correctional Agencies, 2nd Edition: 2-CO-4B-02.

REFERENCES

Program Statements

- P5180.05 Central Inmate Monitoring System (12/31/07)
- P5538.06 Escorted Trips (08/29/14)
- P5800.12 Receiving and Discharge Manual (8/12/14)
- P5800.15 Correctional Systems Manual (1/1/09)

Federal Regulations

Federal Regulations cited in this Program Statement are contained in 28 CFR 527.30-31.

Records Retention Requirements

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.