

PS1434.06 JURISDICTION ON ESCAPE RELATED ISSUES-MOU USMS/FBI/BOP



Program Statement

OPI: CPD
NUMBER: 1434.06
DATE: July 25, 1994
SUBJECT: Jurisdiction on Escape Related
Issues - Memorandum of
Understanding USMS/FBI/BOP

1. PURPOSE AND SCOPE. To implement procedures for the new Memorandum of Understanding (MOU) signed on June 26, 1994 between the Federal Bureau of Prisons, Federal Bureau of Investigation, and the U.S. Marshals Service regarding jurisdiction on escape related issues.

2. DIRECTIVES REFERENCED

P.S. 1380.02 Special Investigative Supervisors Manual
(12/02/91)
P.S. 5140.21 Unescorted Transfers and Voluntary Surrenders
(09/24/90)
P.S. 5140.23 Placement of Pregnant Offenders in CCCs
(11/29/91)
P.S. 5550.04 Escape from Extended Limits of Confinement
(07/13/89)
P.S. 5800.07 Inmate Systems Management Manual (12/24/91)

3. STANDARDS REFERENCED. None.

4. MEMORANDUM OF UNDERSTANDING PROVISIONS. On June 26, 1994, the Directors of the Federal Bureau of Prisons (BOP), the Federal Bureau of Investigation (FBI), and the United States Marshals Service (USMS) signed a Memorandum of Understanding Between the Federal Bureau of Investigation, the United States Marshals Service and the Federal Bureau of Prisons on Violations of the Federal Escape and Rescue Statute (Attachment A) that revises and more clearly defines the specific jurisdiction, role, and responsibility of each agency in the event of escape conspiracies and actual escape events. In addition to restructuring the roles of the FBI and USMS, the MOU for the first time clearly defines the investigative jurisdiction of the BOP and also provides details regarding the referral process. Clarification is also provided on the immediate apprehension authority (escape posts, etc.) of BOP staff in the community.

Under the provisions of the MOU, the FBI will have apprehension responsibility and investigative jurisdiction for violations of the Federal Escape and Rescue Statute involving all inmates now in BOP custody who conspire to escape, as well as inmates who have escaped and are a member of an organization which is the subject of an existing FBI National Security, FBI Organized Crime, or FBI Terrorism investigation. The FBI also retains jurisdiction for all pre-sentenced inmates who are the subject of an FBI investigation.

The USMS will have apprehension responsibility and investigative jurisdiction for all actual escapes from BOP custody, with the exception of organized crime, national security, terrorism, and certain pre-sentenced inmates noted above. In the event that an investigation reveals staff collusion has contributed to an actual escape, the FBI will assume joint jurisdiction with the USMS.

In an effort to simplify notification procedures, BOP staff will notify the FBI of all escape issues. If the investigation is to be a USMS case, the FBI will notify the USMS.

In all cases, the BOP will conduct immediate apprehension activities (escape posts, etc.) in the community, until the outside agency having jurisdiction assumes investigative and apprehension responsibilities.

5. IMPLEMENTATION

a. Notifications. In all escape issues, whether an escape conspiracy, or an actual escape event, the institution shall notify the FBI field office having jurisdiction covering the institution involved. The FBI shall in turn immediately notify the USMS in those cases that have not been reserved for FBI jurisdiction.

b. Escape Fliers. Escape fliers shall be immediately faxed to the FBI field office affected, as well as provided in hard copy form to the agency assuming final investigative responsibility.

c. Escape Investigations. The institution shall take immediate steps to preserve the crime scene or evidence of conspiracy to escape. Upon on-site arrival of representatives of the agency assuming primary jurisdiction, the BOP will assume a joint jurisdiction supporting role, and provide full access to the crime scene and all related evidence and record systems. When the designated agency cannot immediately respond, BOP investigative staff will seek a mutual agreement regarding the full processing and release of the crime scene.

d. BOP Immediate Apprehension Activities. In the event of an actual escape, or suspected escape, the BOP will activate stationary escape posts and such roving patrols as necessary to establish an extended perimeter around the BOP facility as may be dictated by local terrain, potential routes of egress, and the proximity of population centers. Such operations will be conducted in accordance with BOP arrest authority as established in 18 U.S.C. § 3050. Active escape apprehension activities in the surrounding area shall continue until such time as the Warden concludes that the fugitive(s) is (are) no longer in the immediate area of the BOP institution and/or, the responding agency has sufficient resources actually in place to assume the immediate apprehension role.

e. Escape Status Closure. When BOP staff captures an escaped inmate, or the inmate is confirmed as being deceased, the institution shall make immediate notification to the FBI field office having jurisdiction, who will in turn notify the USMS.

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Kathleen M. Hawk
Director

MEMORANDUM OF UNDERSTANDING BETWEEN
THE FEDERAL BUREAU OF INVESTIGATION,
THE UNITED STATES MARSHALS SERVICE AND
THE FEDERAL BUREAU OF PRISONS
ON VIOLATIONS OF THE FEDERAL ESCAPE AND RESCUE STATUTE

I. PURPOSE: This Memorandum of Understanding (MOU) between the Federal Bureau of Investigation, hereinafter referred to as the FBI, the United States Marshals Service, hereinafter referred to as the USMS, and the Federal Bureau of Prisons, hereinafter referred to as the BOP, sets forth the responsibilities of each agency with regard to the apprehensions and investigations under the Federal Escape and Rescue Statutes (18 USC Sections 751 through 757).

II. GOALS: It is mutually agreed that a MOU should be established on the Federal Escape and Rescue Statute to ensure an effective and efficient Federal response to escape incidents and to clarify Section D of the 1988 Attorney General "Policy on Fugitive Apprehension in Federal Bureau of Investigation and Drug Enforcement Administration Cases."

It is mutually agreed that each participant in this MOU will coordinate, as appropriate, and fully share information and the fruits of their respective investigations to assist each in fulfilling its own mission and responsibilities concerning violations of the Federal Escape and Rescue Statute.

III. IMPLEMENTATION: The FBI, the USMS, and the BOP will develop and exchange such additional instructions and operating procedures as are deemed necessary to the continued implementation of the is MOU with the goal of a coordinated, efficient, and effective interagency response to escape violations.

In accordance with the terms of this MOU, in those locations in which a Federal correctional institution is situated, a single operational plan will be prepared by the three agencies which will address those issues unique to that location regarding resources, manpower, notification, etc. It will be prepared by and for the benefit of the affected personnel in each location who will be directly involved in any situation covered by this MOU. This operational plan will in no way circumvent or oppose the letter and spirit of this MOU.

IV. RESPONSIBILITIES:

Federal Bureau of Investigation:

A. The FBI will have apprehension responsibility and investigative jurisdiction for all violations of the Federal Escape and Rescue Statute (18 USC Sections 751-757), involving subjects of FBI investigations, up to and including the time of sentencing. The FBI will coordinate this apprehension and investigative responsibility with the USMS and the BOP, as appropriate.

B. The FBI will maintain investigative responsibility for all violations encompassing conspiracies to violate the Federal Escape and Rescue Statute or the conspiracy statutes (18 USC Sections 371-373) covering escape/attempted escape as they concern Federal Penal Institutions and Detention Centers.

It is therefore understood that the FBI shall:

1. Assume apprehension responsibility for an escaped Federal prisoner, from any facility, at any stage up to and including sentencing, who is the subject of an FBI substantive investigation, and/or the subject or member of an organization which is the subject of an existing FBI National Security, FBI Organized Crime, or FBI Terrorism Investigation.

2. Maintain investigative jurisdiction over all conspiracy, rescue, facilitation, incitement, or aid to escape or attempt to escape, where the escape or attempt occurs within/from a Federal Penal Institution/Detention Center.

3. The FBI will be immediately notified by the BOP and/or the USMS whenever an escape occurs from a Federal facility and circumstances arise indicating a conspiracy to escape/attempted escape; the introduction of a firearm/contraband into a Federal facility; corruption and/or collusion of correctional facility personnel; acts of riot or mutiny; or acts of violence, death or serious bodily injury. Coordination will be implemented and maintained with the USMS, who will exercise apprehension responsibility for non-FBI subjects, and the BOP, as appropriate. Joint FBI and USMS/BOP investigation will be viewed as the optimum objective.

4. The FBI will assume investigative responsibility for conspiracy, rescue, facilitation, incitement, or aid to escape or attempt to escape, in violation of the Federal Escape and Rescue Statute (18 USC Section 751-757) when the escape occurs within/from a non-Federal institution and involves riot, hostage taking or loss of life. Coordination will be implemented and maintained with the USMS and BOP. Joint FBI and USMS investigation will be viewed as the optimum objective.

5. Facilitate USMS participation in, and joint investigation of, escape and conspiracy to escape cases where the FBI has investigative jurisdiction and the USMS has prisoner, transport, or Court security responsibilities.

6. Establish and maintain investigative liaison with the USMS, the BOP and other Federal and local law enforcement agencies as appropriate.

7. Establish and maintain coordination with the USMS when an escaped Federal prisoner becomes the subject of an Unlawful Flight to Avoid Prosecution (UFAP) request to the FBI. The FBI will not seek a UFAP warrant against any fugitive sought by the USMS pursuant to the Federal Escape and Rescue Statute and will notify the requesting state or local authority of the USMS's interest.

United States Marshals Service:

A. Pursuant to 28 C.F.R. 0.111(q), which delegates to the USMS the power and authority vested in the Attorney General to conduct and investigate fugitive matters, domestic and foreign, involving escaped federal prisoners, the USMS will maintain investigative jurisdiction for all violations of the Federal Escape and Rescue Statute (18 U.S.C. Sections 751-757).

It is therefore understood that the USMS shall:

1. The USMS and the FBI agree that the FBI will have investigative and apprehension responsibility with regard to violations of the Federal Escape and Rescue Statute involving subjects of FBI Investigations, up to and including the time of sentencing, or persons who are the subject of or were members of an organization which is the subject of an existing FBI National Security, Organized Crime or Terrorism investigation.

2. If the USMS's investigation reveals a possible escape conspiracy or systemic corruption on the part of Federal personnel, concerning a Federal Penal Institution or an FBI subject, that information will be shared with the FBI for their investigation of the conspiracy or irregularities matter.

3. The USMS will have investigative and apprehension responsibility for all violations of the Federal Escape and Rescue Statute within/from state, county or city (contract) facilities in all cases other than presentenced FBI prisoners. In the event of a violation of the Escape and Rescue Statute within/from a state, county or city (contract) facility, the facility will immediately notify the USMS. The USMS will then notify the FBI if the escape or attempted escape involved a presentenced FBI prisoner or if the incident involves riotous behavior, hostage taking or loss of life.

4. Inasmuch as the USMS and the FBI agree that a full sharing of information and the fruits of investigations benefit each agency in fulfilling its missions and responsibilities, the USMS and FBI will coordinate and bring to bear the two agencies' combined expertise and investigative resources upon escaped Federal prisoners and their conspirators.

Bureau of Prisons:

A. The BOP will have investigative responsibility for all escape issues until the agency (FBI or USMS), having been notified in accordance with provisions set forth in this agreement, has arrived on site and is prepared to assume the investigative role.

B. In that the BOP will ordinarily be the agency which will first discover indications of an escape conspiracy or actual escape event, the BOP recognizes the obligation to take initial steps to manage the crime scene appropriately and to make immediate notifications to the agency assuming the lead investigative role.

It is therefore understood that the BOP shall:

1. Take immediate steps to preserve the crime scene, as well as any related audit trails, record systems, and other forms of evidence as appropriate. Upon on-site arrival of representatives of the agency assuming jurisdiction, the BOP will assume a joint-jurisdiction supporting role, and provide full access to the crime scene and all related evidence and records systems. In the event the designated agency cannot immediately respond, a mutual agreement will be sought regarding the full processing and release of the crime scene by BOP investigative staff.

2. In the event of an actual escape, or suspected escape, the BOP will activate stationary escape posts, roving patrols, and special response units as necessary to establish an extended perimeter around the BOP facility as may be dictated by local terrain, potential routes of egress, and the proximity of population centers. Active immediate apprehension activities in the surrounding area shall continue until such time as the BOP Warden or CEO concludes that the fugitive(s) is(are) no longer in the immediate area of the BOP facility, and/or the responding agency has sufficient resources actually in place to assume the immediate apprehension role. The BOP will provide the responding agency with appropriate information regarding the nature and location of BOP immediate apprehension activities.

3. In those cases where an escape conspiracy is identified by BOP staff, prompt notification shall be made to the FBI, and a joint-investigative plan shall be developed, with the

FBI assuming lead role as appropriate. BOP investigative staff shall provide full access to evidence, record systems, and audit trails as appropriate to facilitate the investigative process.

4. In all escape investigations that involve inmate telephone monitoring tapes, investigative access shall be provided in strict accordance with procedures established by the Department of Justice, Office of Enforcement Operations, as implemented by BOP policy.

V. PROTOCOL: It is agreed that the contents of this MOU will be provided to all agencies involved in this agreement, as well as the Executive Office of the United States Attorney, so as to fully coordinate notification procedures, points of contact to facilitate liaison, crime-scene management procedures, and development of the criminal investigation.

VI. STANDARD PROCEDURES:

A. Initial Notification

1. The BOP will immediately notify the FBI in the event of any incident involving a violation of the Federal Escape and Rescue Statute.

2. The FBI will immediately notify the USMS of any escape from a Federal facility, pursuant to the USMS' apprehension responsibilities as stated in this MOU. The FBI will coordinate, as appropriate, with the USMS and BOP pursuant to this MOU.

3. The USMS will immediately advise the nearest FBI office of escape incidents involving non-Federal penal institutions where the escapee is an FBI subject or aggravated circumstances exist as described in USMS paragraph 3.

B. Point of Contact

1. The USMS, FBI, and the BOP shall each designate a point of contact to facilitate liaison and implementation of this MOU.

2. Points of contact will be established with other involved Federal agencies where appropriate.

