

PS 5326.04 MARRIAGES OF INMATES



Change Notice

DIRECTIVE AFFECTED: 5326.04
CHANGE NOTICE NUMBER: 5326.04
DATE: 12/17/98

1. PURPOSE AND SCOPE. To update the Program Statement, Marriages of Inmates.
2. SUMMARY OF CHANGES. The Program Statement has been updated to incorporate procedures relating to pretrial and holdover inmates as well as detainees and to include a Program Objective.
3. ACTION. File this Change Notice in front of the Program Statement, Marriages of Inmates.

/s/
Kathleen Hawk Sawyer
Director



Program Statement

OPI: CPD
NUMBER: 5326.04
DATE: 12/17/98
SUBJECT: Marriages of Inmates

1. PURPOSE AND SCOPE §551.10. The Warden shall approve an inmate's request to marry except where a legal restriction to the marriage exists, or where the proposed marriage presents a threat to the security or good order of the institution, or to the protection of the public.

The Warden may approve the use of institution facilities for an inmate's marriage ceremony. If a marriage ceremony poses a threat to the security or good order of the institution, the Warden may disapprove a marriage ceremony in the institution.]

2. PROGRAM OBJECTIVE. The expected result of this program is:

Inmate marriages will be requested, approved, and conducted in accordance with all applicable laws, rules, and regulations.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 5326.03 Marriage of Inmates (10/29/93)

b. Directives Referenced

PS 5280.08 Furloughs (2/4/98)

PS 1330.13 Administrative Remedy Program (12/22/95)

c. Rules cited in this Program Statement are contained in 28 CFR §551.10-16.

4. STANDARDS REFERENCED. None.

[Bracketed Bold - Rules]

Regular Type - Implementing Information

5. PRETRIAL/HOLDOVER/AND OR DETAINEE PROCEDURES. Procedures specified in this Program Statement apply to all Bureau holdover, pretrial, detainee and designated inmates. U.S. Marshals' holdovers and Immigration and Naturalization Service (INS) holdovers housed in Bureau custody shall be referred to those agencies for marriage consideration.

6. [AUTHORITY TO APPROVE A MARRIAGE §551.11

a. The Warden may approve the marriage of a federal inmate confined in a federal institution. This authority may not be delegated below the level of Acting Warden.

b. The appropriate Community Corrections Manager may approve the request to marry of a federal inmate who is not confined in a federal institution (for example, a federal inmate who is in a community corrections center, in home confinement, in state custody, or in a local detention facility).]

7. [ELIGIBILITY TO MARRY §551.12. An inmate's request to marry shall be approved provided:

a. The inmate is legally eligible to marry;

b. The inmate is mentally competent;

c. The intended spouse has verified, ordinarily in writing, an intention to marry the inmate; and

d. The marriage poses no threat to institution security or good order, or to the protection of the public.]

For example, staff shall review closely the marriage request of all inmates housed in Medium, High, and Administrative Security Level institutions.

This scrutiny is to ensure the request is not made to circumvent existing Bureau visiting policy, thereby posing a threat to institution security or good order.

8. [APPLICATION TO MARRY §551.13

a. A federal inmate confined in a Bureau institution who wants to get married shall submit a request to marry to the inmate's unit team. The unit team shall evaluate the request based on the criteria identified in §551.12. A written report of the unit

team's findings, and its recommendation, shall be forwarded to the Warden for a final decision.]

The unit team shall base its recommendation on the criteria found in Section 7. When relevant, a unit team representative may request information from the U.S. Probation Officer, the intended spouse's family (for example, where there is a question about the age of the intended spouse), or other appropriate source(s).

(1) Information on the inmate's legal eligibility to marry is determined through conversation with the inmate and by reviewing the Inmate Central File, including the Pre-Sentence Investigation Report.

Indication of a present or prior marriage, including a common-law marriage, requires written verification that the marriage is legally dissolved. The status of a common-law marriage, and its dissolution, are determined under the law of the state where the marriage occurred.

Questions on an inmate's legal eligibility to marry shall be referred to the Regional Counsel.

(2) Information on an inmate's mental competence may be obtained by reviewing mental health reports prepared on the inmate prior to and/or during the present period of confinement.

A mental competency examination should not be conducted specifically to determine the inmate's mental competence to marry.

(3) A unit team representative should contact, and request a written statement from, the intended spouse to verify that party's interest in marrying the inmate. If requested, the staff member may reveal public record information from the inmate's file, but this contact shall not include a specific discussion of the inmate's personal history, or suitability for marriage.

An intended spouse who requests this information shall be advised to discuss these issues with the inmate, or, if preferred, to write the Warden.

(4) The unit team shall assess whether the marriage poses a threat to institution security or good order, or to public protection. As part of their review, the unit team shall consult with the Captain for his or her assessment.

[b. The Warden shall notify the inmate in writing whether the inmate's request to marry is approved or disapproved. A copy of this notification shall be placed in the inmate's central file. When the Warden's decision is to disapprove the inmate's request, the notification to the inmate shall include a statement of reason(s) for that action. The Warden shall advise the inmate that the decision may be appealed through the Administrative Remedy Procedure.

c. All expenses of the marriage (for example, a marriage license) shall be paid by the inmate, the inmate's intended spouse, the inmate's family, or other appropriate source approved by the Warden. The Warden may not permit appropriated funds to be used for an inmate marriage.]

9. [SPECIAL CIRCUMSTANCES §551.14

a. Detainers and Pending Charges. Staff review of a marriage request from an inmate who has a detainer(s) and/or a pending charge(s) shall include an assessment of the legal effects of the marriage on these actions. For example, an inmate could request to marry a potential witness in litigation pending against that inmate. Approving this marriage could affect the status of this litigation.]

Another example might be an inmate with a deportation detainer who may request permission to marry to avoid deportation. When warranted, and prior to the unit team's report being forwarded to the Warden, a unit team representative shall contact the U.S. Attorney, the INS, or other appropriate authorities for their comments.

[b. Pretrial Inmates. A pretrial inmate may request permission to marry in accordance with the provisions of this rule. Staff shall contact the court, U.S. Attorney, and in the case of an alien, the Immigration and Naturalization Service, to advise of the marriage request of the pretrial inmate and to request their comments.]

Comments received should be specifically mentioned, and considered, in the unit team's report to the Warden.

[c. Federal Inmates Not in Federal Institutions. A federal inmate who is not confined in a federal institution who wants to get married shall submit a request to the appropriate Community Corrections Manager. Prior to making a decision on the inmate's

request, the Community Corrections Manager shall advise the confining authority of the inmate's request and ask that information on the criteria identified in § 551.12 be furnished.]

Section 551.12. refers to Section 7 of this Program Statement.

10. [FURLOUGHS §551.15. An inmate whose request to marry is approved, and who also meets the Bureau's criteria for furlough (see part 570, subpart C), may be considered for a furlough for the purpose of getting married.]

See the Program Statement on Furloughs for further information.

11. [MARRIAGE CEREMONY IN THE INSTITUTION §551.16

a. The Warden may approve the use of institution facilities for an inmate's marriage ceremony. If a marriage ceremony poses a threat to the security or good order of the institution, the Warden may disapprove a marriage ceremony in the institution. The Warden may not delegate the authority to approve or to disapprove a marriage ceremony in the institution below the level of Acting Warden.]

A marriage ceremony in the institution shall not be denied because it may inconvenience the institution. Ordinarily, if there is concern about institution security or good order, the matter can be resolved by controlling the place, time, and number of participants for the ceremony, or by placing conditions or restrictions on the ceremony. When the Warden approves an inmate's application to marry, but denies the use of institution facilities for the marriage ceremony, the Warden shall document the reasons for this disapproval.

[b. Expenses for a marriage ceremony in the institution shall be paid by the inmate, the inmate's intended spouse, the inmate's family, or other appropriate source approved by the Warden. The Warden may not permit appropriated funds to be used for the marriage ceremony, except for those inherent in providing the place and supervision for the event. Upon request of the inmate, Bureau of Prisons or community clergy, or a justice of the peace may be authorized to assist in a marriage ceremony at the institution.

(1) The marriage ceremony may be performed by Bureau of Prisons or community clergy, or by a justice of the peace.]

The institution chaplain must confirm that a community person requested to perform the marriage ceremony is either a member of the clergy or a justice of the peace.

[(2) Because of ecclesiastical constraints, Bureau of Prisons chaplains may decline to perform the marriage ceremony. Upon request of the inmate, a Bureau chaplain will assist that inmate in preparing for an approved marriage; for example, by providing, or arranging for an inmate to receive, prenuptial marriage counseling.

c. The Warden shall require that a marriage ceremony at the institution be a private ceremony conducted without media publicity.]

The Warden shall notify the Regional Director and the Assistant Director, Correctional Programs Division, Central Office, of the proposed marriage of an inmate whose marriage might attract national attention, or significant local or regional attention.

12. TRAINING RESPONSIBILITY. The Case Management Coordinator shall include marriage procedures as part of regularly scheduled case management training. This training should also be provided to other departments as needed.

13. INSTITUTION SUPPLEMENT. Each Warden shall develop an Institution Supplement establishing local procedures to implement this Program Statement. It should include, but not be limited to, information on the local marriage laws and processing procedures (for example, marriage license requirements, blood tests). A copy shall be forwarded to the Regional Correctional Programs Administrator.

/s/

Kathleen Hawk Sawyer
Director