



Program Statement

OPI: CPD/DSC
NUMBER: 5140.35
DATE: 9/12/2001
SUBJECT: Transfer of a Prisoner
to State Custody Prior
to Release from the
Federal Sentence

1. **PURPOSE AND SCOPE.** To establish transfer procedures under Title 18 U.S.C. §§ 4085 and 3623, which authorize the Bureau of Prisons to transfer a prisoner who is wanted by a State authority to that State authority's custody. Ordinarily, such transfers are done within the last 90 days of the inmate's final release from his or her Federal sentence.

a. Title 18 U.S.C. § 4085 authorizes the Bureau to transfer an inmate, who is charged in an indictment or information, or is convicted of a State felony, to an official detention facility prior to the release from his or her Federal sentence. This section specifically applies to offenses committed prior to November 1, 1987.

b. Title 18 U.S.C. § 3623 (Transfer of a Prisoner to State Authority) was enacted as part of the Comprehensive Crime Control Act of 1984 (P.L. 98-473) and became effective on November 1, 1987. A request by a governor, or other executive authority of the State, to transfer a prisoner to a State authority may be accomplished under 18 U.S.C. § 3623 for any inmate whose offense was committed on or after that date.

c. Provisions of the Interstate Agreement on Detainers Act and State Writ do not apply in 18 U.S.C. §§ 4085 and 3623 situations.

2. **PROGRAM OBJECTIVE.** A Federal inmate's sentence may be completed in State custody when an inmate's transfer has been requested by the State and it is in the public interest.

3. **DIRECTIVES AFFECTED**

a. **Directive Rescinded**

PS 5140.30 Transfer of a Prisoner to State Custody Prior
to Release from the Federal Sentence (9/2/97)

b. Directives Referenced

PS 5100.07	Security Designation and Custody Classification System Manual (9/3/99)
PS 5130.06	Detainers and the Interstate Agreement on Detainers (3/1/99)
PS 5141.02	Sex Offender Notification and Registration (12/14/98)
PS 5160.04	State Institution for Service of Federal Sentence, Designation of (4/19/00)
PS 5321.07	Unit Management Manual (9/16/99)
PS 5800.07	Inmate Systems Management Manual (12/24/91)
PS 5875.10	Transfer of Inmates to State Agents for Production on State Writs (3/17/97)
PS 5882.03	Fines and Costs for "Old Law" Inmates (2/4/98)

4. STANDARDS REFERENCED

a. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4093

b. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-1E-02

c. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: 2-CO-1E-04, 2-CO-4B-02

5. DELEGATION OF AUTHORITY

a. The Attorney General has delegated, to the Director, the authority to designate places of imprisonment or confinement where the sentences of prisoners must be served, and to order transfers from one institution to another, whether maintained by the Federal Government or otherwise as set forth at 28 CFR subpart Q, § 0.96(c).

b. The respective Regional Director is the delegated authority to approve transfers to State officials and to designate a State department of corrections as a place of imprisonment where a prisoner will serve a Federal sentence. Any such transfer should occur within a reasonable period of time before the inmate's release from the Federal sentence, ordinarily within the last 90 days.

6. STATE REQUEST FOR TRANSFER TO STATE CUSTODY. When an institution receives a request from a State to transfer an inmate to State custody, the Warden must detail the facts of the State's request in a memorandum to the Regional Director.

a. The memorandum must also address:

- ! whether the transfer would be in the public interest,
- ! whether the transfer is recommended, and
- ! details about how transportation would be accomplished.

b. With the memorandum, the Warden will provide copies of:

- ! the State's request, and
- ! the indictment, information, or judgment of conviction.

c. If the institution does not have a certified copy of the document, (on file as a detainer or elsewhere), the institution must secure a certified copy from the State before processing the request.

d. If there are detainers on file from other jurisdictions, the Inmate Systems Manager (ISM) must contact, by telephone or in writing, those jurisdictions to determine whether any other jurisdiction objects to the transfer.

e. If such objections are made, the Warden must make that fact known to the Regional Director in the memorandum and consider the objection in determining whether the transfer is in the public's best interest. The Regional Director must consider the objection in approving or denying the transfer.

f. If the inmate has an unsatisfied committed fine, the transfer to State authorities will not be considered until the inmate disposes of the fine properly. If the inmate has any type of unsatisfied fine, the ISM must follow the procedures in the Program Statement on Fines and Costs for "Old Law" Inmates.

7. DESIGNATION OF PLACE OF CONFINEMENT. A State facility may be designated only if it is considered to be appropriate and suitable as required by 18 U.S.C. § 3621(b). The Regional Director must notify the Warden by memorandum of the approval or denial and, if approved, attach a copy of the designation.

a. **Transfer Approved**

- ! The facility identified by the State department of corrections will be designated as the place for the inmate to serve the balance of the Federal sentence.

! The Federal Warden will make the necessary transfer arrangements.

b. **Transfer Denied.** If the Regional Director denies the transfer, the Warden must inform the requesting State of the denial and the reason.

8. **TRANSFER EXPENSES.** Title 18 U.S.C. § 3623, requires that the State pay for the expenses of a transfer. Title 18 U.S.C. § 4085 (repealed) requires that the Federal government incur the costs of a transfer.

a. State agents, as approved by the Governor, or other executive authority, may assume custody directly from the Federal institution where the prisoner is confined, regardless of whether that Federal institution is located in that State. The State will be requested to provide the signatures of the agents assuming custody.

b. The Warden may request the transfer be completed by the U.S. Marshals Service, or that State authorities use their own agents, when the inmate is a serious custody risk (inmate with Maximum custody).

c. To facilitate the transfer of custody, the State may request that the inmate be transferred to a Federal institution in that State. The inmate may be transferred only if:

- ! time permits,
- ! the requested institution is suitable for that prisoner, and
- ! the transfer does not interfere with the normal flow of prisoner priority movement.

d. In such circumstances, the Warden may request that the Regional Director authorize transfer to that institution.

Note: If transferred to another Federal institution for the State's convenience, the inmate will be housed as a holdover until the State assumes custody. The ISM at the final holdover institution will execute the transfer order and return it to the sending institution for inclusion in the J&C file. The file will then be forwarded to the RISA.

9. **TRANSFER PROCEDURES.** After the Regional Director's approval of the transfer, the Warden will coordinate the inmate's transfer to the State.

- a. The ISM will provide State authorities with a letter that:
- ! states the inmate may not be released on bail, bond, or his or her own recognizance as long as the Federal sentence is in operation; and
 - ! requests the appropriate Regional Inmate Systems Administrator (RISA) be informed of any escape, death, or other release of the inmate prior to the Federal release date (pending arrival of a formal detainer request from the U.S. Marshals Service).
- b. Inmates releasing to a detaining authority do not require completion of a Sex Offender Release Notification form or a Sex Offender Registration and Treatment Notification form. For further information refer to the Program Statement on Sex Offender Notification and Registration.
- c. Even though the Regional Director's designation is the official transfer authorization that causes the exchange of custody, the ISM must secure a Transfer Order from Unit staff.
- d. Clearance to transfer a Central Inmate Monitoring case must be obtained from the appropriate office.
- e. The ISM will inform the appropriate RISA of the impending transfer by electronic mail.
- f. When the transfer actually occurs, the ISM will forward the Judgment and Commitment (J&C) File, Inmate Central File, Medical File and all copies of documents pertaining to the transfer to the RISA in the region where the State institution is located within three working days.
- g. The RISA must retain the J&C and all the inmate files, to be closed-out upon the inmate's final release. The RISA will monitor the sentence in the same manner as he or she monitors other Federal sentences that are being served concurrently with a State sentence at a State institution.
- h. Upon initial transfer to state custody, and in preparation for final release from the federal sentence, the RISA will correspond with the State department of corrections via letter in the same manner as described in the Program Statement on Designation of State Institution for Service of Federal Sentence.

10. **NOTIFYING THE U.S. MARSHALS SERVICE.** The RISA will send a memorandum to the U.S. Marshals Service requesting that a Federal detainer be placed in favor of the Bureau of Prisons. The RISA will make release notification to other appropriate Federal agencies in accordance with established procedures.

11. **DETAINERS AND NOTIFICATIONS.** If the inmate has other detainers or requests for notifications on file, the RISA must:

- ! forward a "Detainer Action Letter" to the appropriate State authorities to inform them of the transfer, and
- ! notify those State authorities that their detainers or requests for notifications have been forwarded.

12. **INMATES HOUSED IN NON-FEDERAL FACILITIES.** Community Corrections Managers have the same delegated authority regarding the procedures in this Program Statement as a Warden in a Bureau institution.

13. **SATISFACTION OF FEDERAL SENTENCE.** On the inmate's appropriate Federal release date, the RISA is responsible for satisfying the computation in SENTRY and notifying the U.S. Marshals Service to remove the detainer.

/s/
Kathleen Hawk Sawyer
Director