



**U.S. Department of Justice**  
Federal Bureau of Prisons

**PROGRAM STATEMENT**

OPI: CPD/DSC

NUMBER: 5140.44

DATE: February 16, 2024

## **Transfer of a Prisoner to State Custody Prior to Release from the Federal Sentence**

/s/

*Approved:* Colette S. Peters  
Director, Federal Bureau of Prisons

### **1. PURPOSE AND SCOPE**

To establish transfer procedures under Title 18 U.S.C. § 4085 and 3623, which authorize the Bureau of Prisons (Bureau) to transfer an inmate who is wanted by a state authority to that state authority's custody. Ordinarily, such transfers are done within 90 days of the inmate's final release from their federal sentence.

- Title 18 U.S.C. § 4085, repealed November 1, 1987, authorized the Bureau to transfer an inmate, who is charged in an indictment or information, or is convicted of a state felony, to an official state detention facility prior to the release from their federal sentence.
- 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 an inmate 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.
- Provisions of the Interstate Agreement on Detainers Act and State Writ do not apply in 18 U.S.C. § 4085 and 3623 situations.

#### **a. Summary of Changes.**

##### *Policy Rescinded*

5140.35      Transfer of a Prisoner to State Custody Prior to Release from the Federal Sentence (9/12/2001)

- The Senior Deputy Assistant Director, Designation and Sentence Computation Center (SDAD, DSCC) now has the authority to approve transfers of federal inmates to state officials and to designate a state department of corrections as a place of imprisonment where an inmate will serve a federal sentence.
- Added requirement for review by the Intelligence and Counter Terrorism Branch (ICTB), Central Office, if the state request involves an inmate with a Security Threat Group (STG) assignment of International Terrorist, Domestic Terrorist, or any gang-affiliated STG.
- Regional Inmate Systems Administrator changed to Regional Correctional Programs Office (RCPO).
- Inmate Systems Manager changed to Case Management Coordinator (CMC).
- Community Corrections Manager changed to Residential Reentry Manager (RRM).
- Removed reference to “Old Law” unsatisfied committed fines.

b. **Program Objectives.** 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’s best interest.

**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. DELEGATION OF AUTHORITY

- The Attorney General has delegated, to the Director of the Bureau, the authority to designate places of imprisonment or confinement where the sentences of inmates 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).
- The SDAD, DSCC is the delegated authority to approve transfers to state officials and to designate a state department of corrections as a place of imprisonment where an inmate will serve a federal sentence. Any such transfer should occur within a reasonable period of time before the inmate’s release from a federal sentence, ordinarily within the last 90 days.

### **3. STATE REQUEST FOR TRANSFER TO STATE CUSTODY**

When an institution receives a request from a state authority to transfer an inmate to state custody, the Warden must detail the facts of the state's request in a memorandum to the SDAD, DSCC.

- The memorandum must also address:
  - whether the transfer would be in the public's best interest,
  - whether the transfer is recommended, and
  - details about how transportation would be accomplished.
- With the memorandum, the Warden will provide copies of:
  - the state's request, and
  - the indictment, information, or judgment of conviction.
- If the institution does not have a certified copy of the state's documents on file as a detainer or elsewhere, the institution must secure a certified copy from the state before processing the request.
- If there are detainers on file from other jurisdictions, the Supervisory Correctional Systems Specialist (SCSS) must contact, by telephone or in writing, those jurisdictions to determine whether any other jurisdiction objects to the transfer. The SCSS will then document contact was made with those jurisdictions and save the responses to the inmate's Judgment and Commitment (J&C) file.
- If such objections are made, the Warden must make that fact known to the SDAD, DSCC in the memorandum and consider the objection in determining whether the transfer is in the public's best interest. The SDAD, DSCC must consider the objection in approving or denying the transfer.
- If the state request involves an inmate with an STG assignment of International Terrorist, Domestic Terrorist, or any gang-affiliated STG, the ICTB, Central Office, must be contacted for further review and recommendation.

### **4. DESIGNATION OF PLACE OF CONFINEMENT**

A state facility may be designated only if it is appropriate and suitable as required by 18 U.S.C. § 3621(b). The SDAD, DSCC must notify the Warden by memorandum of the approval or denial.

- **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 Warden will make the necessary transfer arrangements.
- **Transfer Denied.** If the SDAD, DSCC denies the transfer, the Warden must inform the requesting state of the denial and the reason.

## 5. TRANSFER EXPENSES

Title 18 U.S.C. § 3623, requires the requesting state pay for the expenses of a transfer.

- State agents, as approved by the Governor, or other executive authority, may assume custody directly from the federal institution where the inmate is confined, regardless of whether the federal institution is located in that state. The state will be requested to provide the signatures of the agents assuming custody.
- The Warden may request the transfer be completed by the United States Marshals Service (USMS), or that state authorities use their own agents, when the inmate is a serious custody risk (e.g., inmate with Maximum custody).
- To facilitate the transfer of custody, the state may request 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 inmate, and the transfer does not interfere with the routine inmate movement. In such circumstances, the Warden may request that the SDAD, DSCC authorize transfer to an institution consistent with the state where the inmate is housed.
- 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 CMC 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 RCPO of the region consistent with the state where the inmate is housed.

## 6. TRANSFER PROCEDURES

After the SDAD, DSCC approves of the transfer, the Warden will coordinate the inmate's transfer to the state.

- The CMC will provide state authorities with a letter that:

- asserts the inmate may not be released on bail, bond, or their own recognizance as long as the federal sentence is in operation; and
  - requests the appropriate RCPO 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 USMS.
- Inmates transferring to a detaining authority do not require completion of a BP-A0710, Prisoner Release Notification form or a BP-A0648, Sex Offender Registration and Treatment Notification form. For further information refer to the Program Statement **Notification Requirements Upon Release of Sex Offenders, Violent Offenders, and Drug Traffickers.**
  - The SDAD, DSCC is the official transfer authorization that causes the exchange of custody; however, the CMC must secure release paperwork from the unit team.
  - Clearance to transfer a Central Inmate Monitoring case must be obtained from the appropriate office.
  - The CMC will inform the appropriate RCPO and SDAD, DSCC of the impending transfer by electronic mail.
  - When the release occurs, the CMC will forward the J&C file, Inmate Central File, medical file, and all copies of documents pertaining to the transfer to the RCPO in the region where the state institution is located within three working days.
  - The RCPO must retain the J&C and all the inmate files, to be closed out upon the inmate's final release. The RCPO will monitor the sentence in the same manner as they monitor other federal sentences that are being served concurrently with a state sentence at a state institution.
  - Upon initial transfer to state custody, and in preparation for final release from the federal sentence, the RCPO will correspond with the state department of corrections via letter in the same manner as described in the Program Statement **Designation of State Institution for Service of Federal Sentence.**

## 7. NOTIFYING THE UNITED STATES MARSHALS SERVICE

The CMC will send a memorandum to the USMS requesting that a federal detainer be filed for the Bureau. The CMC will make release notification(s) to other appropriate federal agencies in accordance with established procedures.

## **8. DETAINERS AND NOTIFICATIONS**

If the inmate has other detainers or requests for notifications on file, the SCSS must:

- forward a BP-A0394, Detainer Action Letter form to the appropriate state authorities to inform them of the transfer, and
- notify those state authorities their detainers or requests for notifications have been forwarded.

## **9. INMATES HOUSED IN NON-FEDERAL FACILITIES**

RRMs have the same delegated authority regarding the procedures in this Program Statement as a Warden in a Bureau institution.

## **10. SATISFACTION OF FEDERAL SENTENCE**

On the inmate's federal release date, the RCPO is responsible for satisfying and making the computation a prior commitment in the Bureau's Inmate Information System and notifying the USMS to remove the detainer.

## REFERENCES

### *Program Statements*

- 5100.08 <sup>CN-1</sup> Inmate Security Designation and Custody Classification System (9/4/2019)  
5110.17 Notification Requirements Upon Release of Sex Offenders, Violent Offenders,  
and Drug Traffickers (5/16/2014)  
5160.05 Designation of State Institution for Service of Federal Sentence (1/16/2003)  
5321.08 Unit Management Manual (8/10/2017)  
5800.15 <sup>CN-1</sup> Correctional Systems Manual (9/23/2016)  
5875.13 Transfer of Inmates to State Agents for Production on State Writs (2/20/2015)

### *ACA Standards*

American Correctional Association Performance-Based Standards and Expanded Practices for Adult Correctional Institutions (5<sup>th</sup> Edition): None  
American Correctional Association Performance-Based Standards for Adult Local Detention Facilities (4<sup>th</sup> Edition): None  
American Correctional Association Standards for Administration of Correctional Agencies (2<sup>nd</sup> Edition): 2-CO-1E-04, 2-CO-4B-02

### *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 the Bureau's intranet site.