



PRISONER OPERATIONS

9.1 Prisoner Custody

PRISONER MARRIAGES

- A. Proponent:** Prisoner Operations Division (POD), 202-307-5100, Fax 202-305-9434.
- B. Purpose:** Prisoners retain the right to marry subject to restrictions as a result of their detention. The United States Marshals Service (USMS) may allow a prisoner in its custody to marry unless the marriage would interfere with the prisoner's judicial proceedings or is inconsistent with USMS and/or detention facility security concerns.
- C. Authority:** The Director's authority to supervise the USMS and issue written directives is set forth in 28 CFR 0.111 and 28 USC 561(g).
- D. Procedure:** If a prisoner requests to be allowed to marry, the United States Marshal (USM) should follow these procedures:
1. Obtain a written request from the prisoner for authorization to be married and such a request should contain the name of the individual they want to marry.
 2. Contact the United States Attorney/Assistant United States Attorney assigned to the case to ascertain whether the marriage would undermine the case.
 3. Ascertain whether the prisoner has been designated for imminent movement from the district. If the prisoner has been scheduled for imminent movement, the USM generally should defer the prisoner's request to be married until after the prisoner has been moved to another facility.
 4. Contact the detention facility in which the prisoner is housed to ascertain whether the facility has policy or procedures regarding inmate marriages. The USM should generally defer to the facility's policy and procedures. The USM, in coordination with the detention facility retains the discretion regarding the time, location, attending guests, etc.
 5. If the facility does not allow inmate marriages, the USM should defer the prisoner's request to be married until after the prisoner completes his or her judicial proceedings and has been moved to another facility for service of sentence.
 6. Should the prisoner attempt to obtain a court order directing the USM to move the prisoner for the purpose of being married, the USM should inform the court of the security risk and cost. If the court nevertheless orders the USM to move the prisoner, the USM should request the court to order the prisoner to pay all actual costs involved.
 7. If a marriage is directed by the court, no guests shall be allowed to be present and the USM shall determine the time, date, and place of the ceremony, based upon security concerns and requirements.
 8. If additional guidance is needed, the USM should contact POD and the Office of General Counsel (OGC).

PRISONER CLOTHING ALLOWANCES

- A. Clothing During Detention:** Each USM is authorized to purchase essential clothing for prisoners to wear while they are held in a detention facility under the following circumstances:

Custody

1. When a detention facility under contract to house federal prisoners does not furnish detention facility clothing (i.e., uniforms).
2. When the prisoner's personal clothes are in such condition they pose a problem in regard to health or personal hygiene.

B. Clothing for Court Appearance: Each USM will ensure all federal prisoners are properly dressed and groomed for court appearances. Each judicial district has unique regulations regarding the appearance of prisoners in court. The USM should be familiar with these regulations. If the situation warrants, the USM has the authority to purchase clothing necessary to comply with regulations. The USM should use discretion in the selection of clothing to keep expenses at a minimum. Clothing purchases will be charged to the Federal Prisoner Detention Account, object class 2614. Clothing purchased may be left with the detention facility or retained by the USM for future use.

C. Clothing for Prisoners on Bond: USMs are not authorized to expend government funds for court clothing for prisoners on bond.

PRISONER DESIGNATION PROCESS OF PRISONERS IN STATE CUSTODY

- A.** The Federal Bureau of Prisons (BOP) allows the designation of prisoners prior to actually taking custody of them from state authorities. The following steps will ensure that the USMS receives prisoners who are legitimately beginning their federal sentences and that the USMS transfers these prisoners without delay.
1. Verify that the detainer filed with the state authorities is still valid.
 2. Do not schedule the federal custody of a prisoner without verification that he or she has finished serving the jurisdiction's sentence. Also verify that any detainers filed against the prisoner are satisfied properly before agreeing to take custody.
 3. Schedule the custody date with local or state authorities no earlier than 30 days prior to a prisoner's release date. A notification and suspense system should be established with the detaining facilities.
 4. Request designation from the BOP Community Corrections Manager (CCM) and simultaneously notify the probation department so that the pre-sentence investigation report is forwarded.

WRITS OF HABEAS CORPUS AND SPECIAL PRODUCTION

A. Writs for Federal Prisoners in USMS Custody: In 1981, the OGC for the Department of Justice issued a ruling on the transfer of Federal prisoners to the physical custody of a state or local agency for production in a state or local court pursuant to a writ of habeas corpus ad prosequendum or ad testificandum. This ruling concluded that jurisdiction is not waived when the Government produces or arranges the production of a Federal prisoner in state court. The ruling also concluded a Federal prisoner transferred to state custody for a state court appearance who escapes or attempts to escape is considered to have escaped from Federal Custody within the meaning of 18 USC 751. Any individual who rescues or attempts to rescue shall be charged under 18 USC 752, 753, or 1072.

B. Transfer of Custody or Refusal of Writ

1. **General:** Federal prisoners in USMS custody may lawfully be transferred to the custody of a state or local government pursuant to a state writ of ad prosequendum (See 28 USC 2241).
2. **Limitations:** The transfer of federal prisoners under the provisions of this section are intended to expedite local prosecutions at reduced costs to local, state and federal agencies. It applies only to the transfer of prisoners to state or local officials within or near the USMS district where the prisoner is being held. Requests for transfers of prisoners to other states may be submitted to the Assistant Director, POD, Office of Legal Counsel, and the local Assistant United States Attorney, for consideration.
3. **Federal Prisoners in State Civil Cases:** If provided with a properly executed court order, the USM may honor requests for producing federal prisoners in state civil cases. A prisoner plaintiff is responsible for the cost of his or her production. If the prisoner is indigent, the USM will seek to have the state court provide the cost of production from any monetary awards issued to the prisoner from the action. The plaintiff or defendant in a civil action seeking the production of a federal prisoner as a

witness is responsible for the cost of production (See 28 USC 2254).

4. **Discretion in Honoring Writs:** The USM is not required to honor a request for a federal prisoner in his or her custody pursuant to a state or local writ. Generally, the writ is not honored until the completion of the prisoner's sentencing. In honoring a state or local writ, the USM will exercise discretion when a prisoner is a protected witness, has medical problems, or is a high security risk. In these cases, he or she will contact the Assistant Director, POD, for further guidance.
5. **Reimbursement of Costs:** State governments are responsible for all costs and expenses incurred when a federal prisoner must be produced by USMs in state courts under a writ of habeas corpus and subsequently returned to the designated facility by the USMS. The USM producing a federal prisoner in state courts is responsible for ensuring the USMS is fully reimbursed for the deputies' salaries, mileage, per diem, or other expenses incurred.

C. Procedures

1. The local official will determine in writing from the United States Attorney's office whether the prisoner for whom the writ of habeas corpus is issued is scheduled to appear in United States District Court on the day(s) his or her presence is required in local court. Requesting officials will not seek temporary transfer of custody on such days.
2. A certified copy of the local court writ (with the seal of the court) directed to the USM must be received at the district office. The USM or his or her designee will verify the authenticity of the writ by telephoning the clerk of the court who issued the writ.
3. The official or attorney from the requesting local agency will direct his or her request to the USM in the district having custody of the prisoner. All requests will be made by letter and include the following information:
 - a. The prisoner's name and sufficient numeric identifiers.
 - b. A statement indicating the need for appearance, including the charges against the prisoner.
 - c. The name of the court where the prisoner is to appear.
 - d. The name and phone number of the requesting agency with the responsibility for transporting the prisoner.
 - e. The projected date of return.
4. A statement will be in the writ of habeas corpus from the issuing court that the requesting agency will provide for the safekeeping, secure custody, and care of the prisoner at no cost to the federal government and that they will assume full responsibility for custody.
5. A statement will be in the writ of habeas corpus the prisoner will be returned promptly to USMS custody upon the conclusion of the appearance for which the writ was issued or upon the demand of the USM.
6. The USM will contact the United States Attorney's office by telephone or in person to advise them of the writ and to determine whether there are any reasons for not honoring the writ.
7. When a writ of habeas corpus is issued for a prisoner who has not been sentenced and the request is supported in writing by the United States Attorney, the USM or his or her designee will seek written concurrence from the federal trial judge before honoring the writ. A record of the concurrence of the court will be maintained in the prisoner file.
8. The USM or his or her designee will contact the local law enforcement agency that has responsibility for transporting the prisoner to determine the exact date and time for transfer of custody.
9. The USM will notify the sheriff or detention facility administrator housing the federal prisoner that a writ of habeas corpus has been issued. The local sheriff or jail administrator will be provided with a copy of the writ and the date and time the transfer of custody will take place.

D. Federal Prisoners Committed to the BOP

1. The BOP has the authority, in accordance with BOP Policy Statement 5875.3 dated June 1981, entitled "Transfer of Inmates to State Agents for Production on State Writs", to release sentenced federal prisoners to a state agency pursuant to a state writ of habeas corpus or the Interstate Agreement on Detainers.
2. USMS districts will not produce any federal prisoner held in BOP custody sought by states under the Interstate Agreement on Detainers.
3. For processing instructions and requirements, state and local prosecuting attorneys are to be referred to a BOP regional office or institution holding custody of the prisoner sought. Any special requirements or extraordinary cases should be referred to Assistant Director, POD for resolution.

E. Federal Writs for State Prisoners

1. **State Prisoners in Federal Criminal Cases:** The USM will transport, maintain custody, and produce a state prisoner in a federal criminal action. Note that the provisions of the Interstate Agreement on Detainers (18 USC appendix) may require a 30 day waiting period and transfer approval of the governor of the state.
2. **State Prisoners in Federal Civil Cases:** The custodian of the prisoner is responsible for transporting and producing state or local prisoners in a federal civil case. The federal court order should be directed to the state or local authority that has custody of the prisoner. USMs are to maintain necessary levels of courtroom security for the prisoner(s) only when specifically requested by the federal judge hearing the case. When local authorities maintain custody of the prisoner, the USM shall make provisions for the use of holding cells by local authorities.

F. Federal Prisoners Testifying on Behalf of Private Litigants

1. **Responsibility for Costs of Prisoner Movements in Support of Private Litigants:** All expenses associated with the production of a federal prisoner in a United States Court on behalf of a private litigant (including testifying for a defendant in a criminal case) will be paid by the litigant. Prior written approval for transfer of sentenced prisoners must be obtained from BOP by the litigant's attorney.
2. **Advance Deposit for Prisoner Movement Costs:** The USM in the district where the writ originated will require, in advance, a sufficient deposit from the litigant to cover all expenses incident to the production and return of the prisoner.

G. United States Attorney Requests for Production: The United States Attorney may direct that prisoners in USMS custody be produced through the issuance of form USA-475.

VOLUNTARY SURRENDER COMMITMENTS

- A. The federal court may direct a prisoner to report, unescorted, by a specific date and time to an institution for the service of sentence. The BOP formally designates the institution for service of sentence. The USM is responsible for notifying BOP of a voluntary surrender commitment and for forwarding required commitment records to the receiving institutions. Authority for voluntary commitment is contained in 18 USC 3621(b).
- B. **Procedures:** Upon the sentencing of a prisoner who is ordered by the court to report unescorted for service of sentence, the procedures listed below should be followed:
 1. **Prepare Form BP-Record-385:** Following sentencing, the USMS is to complete form BP-Record-385 *Authorized Unescorted Commitments and Transfers* which requires a front photograph and thumb print of the sentenced prisoner.
 2. **Request for Designation:** A request for designation is to be submitted to the appropriate BOP Community Corrections Manager. The designation request is to note that the prisoner is a self-surrender, the court directed date and time of commitment, and the institution recommended by the court for service of sentence.
 3. **Forward Records to Designated Institution:** The USMS, after receipt of designation, is to forward the following records to the receiving institution by certified mail (return receipt requested):

- a. **Judgment and Commitment:** Two certified copies are to be sent. The institution will execute and return one certified copy of the Judgment and Commitment to the USM upon receipt of the prisoner.
 - b. **Form BP-Record-385:** This form will enable the institution to make positive identification of the self-commitment.
 - c. **Designation Message:** One copy of the designation message which serves as the BOP authorization record to receive the prisoner.
 - d. **Form USM-312, *Personal History of Defendant*:** If available.
 - e. **Pre-sentence Report:** If available.
 - f. **Fingerprint Record:** If available.
 - g. **Prisoner Tracking System (PTS) form USM-129, *Prisoner Custody, Detention and Disposition Record*:** Send to the designated institution to enable the BOP to calculate the time remaining to be served based on the commitment data on the PTS form USM-129. If the prisoner is to serve the sentence in a contract detention facility, a copy of PTS form USM-129 should be sent to the appropriate BOP Community Corrections Manager.
- C. Requests for Delays in Reporting or Failure to Report:** Any requests from prisoners for an extension to the reporting time and date are to be referred to the sentencing judge. Any reported failures to arrive at the designated institution are to be brought to the attention of the court prior to taking actions to apprehend the prisoner.
- D. Payments for Travel of Voluntary Surrender:** The court, upon determination of the indigence of a prisoner, may order the USM to pay the reasonable expenses for travel and subsistence of a person directed to voluntarily surrender to an institution. Payments for travel are to be made in accordance with Department of Justice order 2200.11 (Travel Regulations). Travel expenses are charged to the Salaries and Expenses, USMs appropriation, object class 2208. Subsistence expenses are charged to the Federal Prisoner Detention Account, Object Class 2522.

RELEASE GRATUITIES FOR FEDERAL PRISONERS

- A. Sentenced Prisoners:** The USM may, in unusual situations and upon receipt two weeks in advance of a written request of the BOP CCM, provide a release gratuity as specified by the CCM. The release gratuity may include suitable clothing, and transportation expenses for a sentenced prisoner to be released from a contract facility. When such payments are made, the USM will immediately prepare and submit an SF-1080 (Voucher for Transfer Between Appropriations and/or Funds) reimbursement request to the CCM for certification and payment by the BOP Regional Office. Specific dollar amounts to be paid must be directed by the CCM in writing and not by the USM. Release payments for sentenced federal prisoners released from federal institutions, however, are the sole responsibility of the warden.
- B. Unsentenced Prisoners:** When an unsentenced federal prisoner is released from USMS custody following the dismissal of charges, the USM may be directed by an order of the court to provide the released prisoner with transportation and subsistence to the place of arrest, or, at his/her election, to the place of his/her bona fide residence, if such cost is not greater than to the place of arrest, (see 18 USC 4282).
- C. Other:** Requirements for gratuities in unusual circumstances should be referred to POD.

Note: Minor changes -

- 1) Updated object class codes; reworded sentences without changing content to improve clarity/consistency; and formatted policy to conform to current reorganization and policy style. Changes approved by AD, POD on 11/30/09 per USM-98 form. Archived Policy: Custody 120309.