



CHAIRMAN'S MEMORANDUM

NO. 5-2006

May 12, 2006

TO: Sheriffs, Jail Administrators, County Clerks, County Attorneys

RE: SUBSTITUTE JAIL ORDERS - PROCEDURES FOR TRANSFERRING INMATES FROM ONE COUNTY TO ANOTHER

THIS CHAIRMAN'S MEMORANDUM REPLACES AND SUPERCEDES #2003-13 ISSUED SEPTEMBER 16, 2003.

This memorandum is intended to serve as a reference for all county officials who participate in the custody transfer of inmates from one county jail to another pursuant to New York State Correction Law §504. For any such transfer, Correction Law §504 requires the **advance** approval of the State Commission of Correction, which is usually given verbally. **NO INMATE MAY BE TRANSFERRED ABSENT PRIOR APPROVAL FROM THE COMMISSION.** This is followed upon transfer by a written instrument (commonly referred to as a 'Substitute Jail Order,' or 'SJO') filed with the County Clerk of the sending county. County jail administrations found to be in violation of the advance approval requirement jeopardize their prerogative to transfer inmates. The following procedures, as set forth in Correction Law §504 and 9 NYCRR Part 7300, must be observed to apply for a Substitute Jail Order, and to effectuate an inmate transfer. **These procedures do not represent a change in Commission policy, merely its reiteration.**

Circumstances under which the Commission will grant SJO's are set forth in 9 NYCRR §7300.5(a). Such criteria include overcrowding, inability to maintain proper classification, natural or civil emergency, inmate disturbance, transfer to provide medical or mental health services, and safety, security and essential service delivery concerns for an individual or group of inmates.

When a facility administrator determines that such a condition exists necessitating the transfer of an inmate to another county jail, the administrator must first identify a facility willing to accept such a transfer. After receiving assurance from the facility administrator or designee of the receiving facility that a transfer is acceptable, the facility administrator or designee of the sending facility **must** contact the Commission by telephone to request a Substitute Jail Order. During regular business hours, such requests should be made to Marlene Johnston at (518) 485-2463. At all other times, requests should be made to the Commission's designated officer of the day, who can be contacted through the Commission's answering service at (518) 485-2466. The Commission may deny the use of a facility as a substitute jail, in which case the seeking facility will be responsible for finding another suitable facility that will accept the inmate(s).

Once an order has been authorized by the Commission, it will not be amended, modified or revoked prior to its expiration without good and sufficient cause. Minor disciplinary infractions, routine medical issues (i.e., inmate not in need of hospitalization or continuous medical supervision or treatment) or inmates' resistance to their placement will not, in and of themselves, warrant revocation of a Substitute Jail Order. It is incumbent upon the receiving facility to apply its policies and procedures and enforce its rules and regulations with respect to transferred inmates as with all other inmates.

There are two types of Substitute Jail Orders. **'Closed orders'** are issued for a specific, named inmate, for whom a safety, security or service delivery concern prompts removal from one county jail to another. **'Open orders'** may be issued only for extended crowding conditions, authorizing the facility to transfer a number of inmates of a specified classification (e.g., sentenced males, unsentenced females, etc.).

Closed Orders

Each individual for whom a 'closed' safety order is issued is tracked individually by the Commission. **NO INMATE may be transferred to any other county jail before verbal Commission approval is received by the sending facility.** Upon receiving such verbal approval, the facility administrator of the sending facility must make the necessary arrangements to effectuate the transfer. Pursuant to 9 NYCRR §§7300.7 and 7300.8, such arrangements include:

1. written notification to the inmate giving the reasons for his transfer (this also includes disciplinary dispositions so the receiving facility may complete any sanctions given at a hearing), and
2. delivery, to the receiving facility, a copy of the inmate's commitment papers, medical summary, written notification of the reason for transfer, and other relevant housing and treatment information.

In the event the receiving facility is unable to continue to manage a specific inmate previously transferred via a Substitute Jail Order, advance verbal approval must be sought from the Commission and followed up with a letter to the Commission outlining the reason(s) for the request to revoke or amend the Substitute Jail Order. Beginning with the verbal notification, the Commission will review the reasons set forth in the request and notify the facility of its determination via telephone or fax. Unless the conditions which prompted the issuance of the order no longer exist, such a SJO can only be amended for another facility, not revoked.

Open Orders

After an open order is issued, the sending facility need only mail or fax to the Commission details of transfers or returns on the "Notification of Inmate Transfer" form, which is attached hereto and available on the Commission's website at <http://www/scoc/state/ny/us/nysscoc/notifsjo.pdf>. **Inmates may not be transferred back to a sending facility due solely to minor disciplinary infractions, routine medical issues or resistance to their placement.**

Duty To Safely Keep

Pursuant to Correction Law, when a Substitute Jail Order has been issued by the State Commission of Correction, the Sheriff of the receiving facility is responsible for the inmate as if the inmate had been originally committed to his facility directly by a court.

Filings

Correction Law §504(1) requires the Commission to file any SJO, and any amendment, modification or revocation thereof, with the County Clerk of the sending facility. Correction Law §504(3) thereafter requires the County Clerk to serve a copy of the SJO “on the sheriff and keeper of the jail of the county designated.” Although not required to do so, please be advised that it is Commission policy to additionally send a copy of any SJO to the facility administrator of each facility involved.

Expiration

Unless revoked or otherwise stated within the order, all SJOs expire 90 days after issuance. If a facility anticipates that the reason for the transfer(s) will continue after this 90 period, a timely request for another order **MUST** be made to avoid any unauthorized transfer and detention.

Elective Transfers

The Commission may not authorize elective inmate transfers to offset the costs of necessary transfers. While it may appear reasonable that one county, having sent an inmate to another county, should be able to take an inmate from that county as a ‘swap’ so that neither county incurs boarding costs, this does not comport with the intent of §504 and represents a misuse of the authority conferred by this section of Correction Law.

Transfer Authority

Finally, authority to transfer an inmate from one jurisdiction to another rests **solely** with the Commission. It must be emphasized that the prior approval transfer procedures are **mandatory**. Failure to secure prior approval results in the unlawful incarceration of an inmate by the receiving facility. This in turn may result in restriction of the use of substitute jail orders. Moreover, since such incarceration is unlawful, an officer’s statutory protection against personal liability, as provided for in Correction Law §500-c, may not be applicable.

If you have any questions relative to Substitute Jail Orders or the transfer of an inmate to another county jail, please feel free to call Marlene Johnston at (518) 485-2463.

Alan J. Croce, Chairman/Commissioner

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