



Commission of Correction

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Chairman

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Commissioner

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Commissioner

CHAIRMAN'S MEMORANDUM

NO: 4-2015

DATE: April 8, 2015

TO: SHERIFFS, COMMISSIONERS OF CORRECTION, JAIL ADMINISTRATORS,
NEW YORK CITY WARDENS

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

THIS CHAIRMAN'S MEMORANDUM REPLACES
AND SUPERCEDES #5-2006, ISSUED MAY 12, 2006

This memorandum is intended to serve as a reference for all county and city officials who participate in the custody transfer of inmates from one local correctional facility to another, pursuant to New York State Correction Law §504. For any such transfer, Correction Law §504 requires the **advance verbal** approval of the Commission of Correction, followed by written instrument (commonly referred to as a "Substitute Jail Order" or "SJO") filed with the County Clerk of the sending county. **NO INMATE MAY BE TRANSFERRED ABSENT PRIOR APPROVAL FROM THE COMMISSION.** The following procedures, as set forth in Correction Law §504 and 9 NYCRR Part 7300, must be observed to apply for a SJO, and to lawfully effectuate an inmate transfer.

Circumstances under which the Commission will grant a SJO are set forth in Correction Law §504 and 9 NYCRR §7300.5(a) Permissible 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 a condition exists necessitating the transfer of an inmate, the administrator must first identify another local correctional facility willing to accept such a transfer. After obtaining assurance from the receiving facility's administrator or designee that the transfer is acceptable, the facility administrator or designee of the sending facility **must** contact the Commission by telephone to request a SJO. During regular business hours, such requests should be made to Anne Smigel at (518) 485-2464. 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 transfer to a facility it considers inappropriate, in which case the seeking facility will be responsible for finding another 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 an inmate's resistance to his or her placement will not 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.

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 for extended overcrowding 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' order is issued is tracked individually by the Commission. **NO INMATE may be transferred to another 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/her 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, of 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 itself becomes unfit or unsafe for the continued confinement of a transferred inmate, the receiving facility must, before returning the inmate to his or her original facility, obtain verbal approval of the Commission to revoke the SJO. Following verbal approval, if granted, the Commission will file a written order with the County Clerk revoking the previously issued SJO.

Open Orders

After an open order is verbally approved and issued by the Commission, the sending facility need only **e-mail** details of transfers or returns to the Commission. This information shall include the inmate's name, sex, if inmate was sentenced or unsentenced, and reason for the transfer. This information shall be emailed to sjo@scoc.ny.gov. Although the Commission previously accepted this information via fax, please be advised that, **effective May 1, 2015, the Commission will only accept open order SJO information via e-mail.**

Duty to Safely Keep

Pursuant to Correction Law §500-c, when a SJO has been issued by the Commission of Correction, the Sheriff/Commissioner of the receiving facility accepts responsibility for the inmate as if the inmate had been originally committed to the facility by a court. Consequently,

the receiving jurisdiction shall not relinquish custody of a transferred inmate until the SJO is revoked by the Commission, or the underlying court securing order is vacated or expired.

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 the Commission's 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 day period, a timely request for another order **MUST** be made to avoid any unlawful release and detention. **It is the sending facility's responsibility to contact the Commission to request an extension.** Failure to have an order extended constitutes an unauthorized release by the sending facility and an unlawful incarceration by the receiving facility. In such an instance of unlawful incarceration, an officer's statutory protection against personal liability, as provided for in Correction Law §500-c, may not be applicable.

Elective Transfers

Pursuant to Correction Law §504, the Commission may issue a SJO only where a facility "becomes unfit or unsafe" for the confinement of an inmate. Consequently, the Commission may not authorize elective inmate transfers ("swaps") to offset the costs of necessary transfers.

Transfer Authority

Finally, the authority to transfer a committed inmate from one local correctional facility to another rests **solely** with the Commission. It must be emphasized that the prior approval transfer procedures are **mandatory**. As cited above, the failure to secure prior approval constitutes an unauthorized release by the sending facility and an unlawful incarceration by the receiving facility. In such an instance of unlawful incarceration, 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 Anne Smigel at (518) 485-2464.



Thomas A. Beilein, Chairman