

# **Proposal for Procedure G: Policy on Transfer and Return of Prisoners to and from Out of State Correctional Facilities: Case Management Plans**

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## **SUMMARY**

The following proposed policy section is intended to provide the following:

1. An explicit policy expressing procedures consistent with existing Maine Department of Corrections policies and the Interstate Compact on Corrections;
2. Retention of the Commissioner's discretion, pursuant to such procedures, to transfer and return Maine prisoners to and from out of state correctional facilities;
3. An interdisciplinary review of all transfer requests, resulting in a recommendation to the Commissioner;
4. Procedures which have the appearance and substance of being fair;
5. Documentation requirements, to support the Commissioner's decision in the face of any challenge to the use of his discretion;
6. Periodic review of Maine prisoners sent out of state, to ensure that Maine residents are presumptively and preferentially treated in Maine facilities;
7. Procedures for emergency transfers.

## **Procedure G: Transfers of Prisoners to Out of State Correctional Facilities; Case Management Plans; Return of Prisoners to Maine**

### **CONTENTS**

1. Policy of the State of Maine
2. Purposes.
3. Interstate Transfer Committee.
4. Standards for Interstate Transfers.
5. Requests for Transfer or Return.
6. The Interstate Transfer Committee: Procedures.
7. The Commissioner's Decision.
8. Interstate Transfer Records.
9. Emergency Transfers.
10. Committee Reviews of Transferred Prisoners.
11. Procedures for Return Transfers.
12. Standards for Return Transfers.
13. Records.
14. Credits for Time Served Out of State.
15. Money Earned while Serving Time Out of State
16. Final Agency Action.

1. **Policies:** It is the policy of the State of Maine:
  - a. to presumptively confine persons who are sentenced to custodial confinement in Maine (prisoners), to appropriate facilities and levels of security in correctional facilities in the State of Maine; and
  - b. to transfer such prisoners to out of state correctional facilities only:
    - i. at the request of the prisoner, to promote family contact and stability, when the prisoner's children or other family members or significant others live outside of the State of Maine; or
    - ii. at the request of the prisoner, for other good cause shown; or
    - iii. to enable the prisoner to obtain indicated medical or psychiatric treatment or rehabilitation, which is not available to the prisoner in the state of Maine; or
    - iv. when the prisoner cannot be safely confined at any level of custody and security, in any correctional facility in the State of Maine; and
  - c. to periodically review and return prisoners involuntarily transferred to out of state correctional facilities, as soon as the basis for their transfer is no longer valid, or the prisoner is experiencing harm in the receiving state; and
  - d. to provide fair procedures for the review of decisions to involuntarily transfer and return prisoners to and from out of state correctional facilities.
  
2. **Purposes:** The purposes of this Policy are:
  - a. to promote family stability;
  - b. to enable prisoners to receive indicated medical or psychiatric treatment, or rehabilitation;
  - c. to protect persons confined or working in state correctional facilities;
  - d. to promote the orderly functions of the state correctional facilities;
  - e. to prove appropriate confinement for a person who cannot be safely confined at any level of custody and security in any Maine correctional facility; and
  - f. to ensure that persons who require involuntary out of state confinement are periodically reviewed and are returned to a Maine facility as soon as the purpose for which the out of state transfer is no longer valid or the prisoner is experiencing harm in the receiving state.
  
3. **Interstate Transfer Committee:** The Commissioner shall designate three persons to serve on an Interstate Transfer Committee (Committee), along with the Interstate Correctional Compact Coordinator and the Director of Classification.
  - a. The three designated persons shall represent custody interests, social service interests and community interests.
  - b. The Commissioner shall designate the Chair of the Committee.

- c. The Committee shall review all interstate transfer and return transfer requests, and make written recommendations regarding transfers, Case Management Plans, and returns, to the Commissioner.

**4. Standards for Interstate Transfers:**

- a. Prisoners may be transferred to out of state correctional facilities only on the following grounds:
  - i. the prisoner cannot be safely confined at any level of custody and security, in any correctional facility in the State of Maine; or
  - ii. the prisoner requires indicated medical or psychiatric treatment or rehabilitation available at the receiving state, which is not available in the state of Maine; or
  - iii. the prisoner has requested the transfer, in order to better maintain contact with his or her children or other family members or significant others living outside of the State of Maine; or
  - iv. the prisoner has requested transfer for other good cause shown;
- b. Prisoners shall be returned from out of state correctional facilities, at any time, when the basis for the transfer no longer holds, pursuant to paragraphs 11 and 12, below.

**5. Requests for Transfer or Return:**

- a. A request for a voluntary or involuntary transfer or return (request) may be initiated by any of the following “parties”:
  - i. a prisoner;
  - ii. the Director of a state correctional facility;
  - iii. a family member or significant other of a prisoner who is not functionally capable of understanding the transfer issue: or
  - iv. an attorney of a prisoner, a designee identified by the prisoner, or a family member or significant other.
- b. The party or parties requesting the transfer or return, including any designee identified by the prisoner, may submit relevant documents with the request for transfer or return.
- c. Requests for transfers or returns of prisoners may be communicated orally or in writing to the Director of a State correctional facility, a member of the Interstate Transfer Committee or the Commissioner.
- d. All requests shall be immediately documented, in writing, by the recipient.
- e. Each documented request shall be communicated, within two working days, to the Chair of the Committee.

**6. The Interstate Transfer Committee: Procedures**

- a. The Chair of the Committee shall document the receipt of all requests for transfers and returns in writing.

- b. The Chair of the Committee shall notify each of the parties of the request, in writing, and shall provide each party with copies of written requests and receipt documentation, and any accompanying documents, within 3 working days of the receipt of the request; provided that documents which are required to be kept confidential, by law, shall be provided to non-DOC parties in redacted form and, unless explicitly prohibited by law, shall be provided to the prisoner's attorney, if any, "for eyes only";
- c. Within 3 working days of the receipt of the request, the Committee shall request that the confining State correctional facility provide relevant specified clinical, administrative and security information to the Committee, within 5 working days of its request for such information.
- d. Each party shall be given the opportunity to submit a response to the request, within 5 working days of receiving notice of the request. Responses shall be in writing and sent to the Committee and the parties, except that a prisoner submitting a request may respond only to the Committee and, in such cases, the Committee shall immediately make his or her response available to the other parties.
- e. The Committee shall review the request within 3 weeks of the initial request, pursuant to the policies and purposes above.
- f. The Committee shall report and make a written recommendation to the Commissioner, with findings of facts and the reasons for its decision, along with a proposed Case Management Plan, within 1 week of the Committee's decision.
- g. The prisoner's Case Management Plan shall clearly identify recommended treatment services and programs, and specific time frames for participation in such services and programs.
- h. Any Committee member may submit a written minority report, with supporting findings and reasons.
- i. The Committee's recommendations to the Commissioner shall be provided to each of the parties.
- j. Each of the parties may provide the Commissioner and the other parties with a written response to the Committee's recommendations, except that a prisoner submitting a request may respond only to the Committee and, in such cases, the Committee shall immediately make his or her response available to the commissioner and the other parties.

**7. The Commissioner's Decision:** The Commissioner may decide to transfer any prisoner to an out of state correctional facility, pursuant to the procedures and policies in this Policy.

- a. The Commissioner shall send a statement of his findings and the reasons for his decision, and a copy of the Case Management Plan he adopts to the parties.

- b. Notice of the out of state transfer of a prisoner shall be given to his designated family members and significant others, within 48 hours of the transfer.

**8. Interstate Transfer Records:** Documents sent to the receiving state:

- a. shall not include information about disciplinary charges which have not been upheld at a Maine prison or in the courts; and
- b. shall include the status of any disciplinary matters which are pending administrative or judicial appeal; and
- c. shall be copied to the prisoner and the prisoner's attorney or designee.

**9. Emergency Transfers:**

- a. A prisoner may be transferred out of state in an emergency, in which he or she must be moved immediately:
  - i. to provide necessary medical care, which must be provided before the procedures in this Policy can be implemented; or
  - ii. to allow the prisoner to move to a state in which a child or other immediate family member is critically ill; or
  - iii. to protect the prisoner or others from imminent harm, which cannot be alleviated by any level of confinement in any Maine correctional facility.
- b. Written notice of the basis for the emergency, including findings and reasons for the transfer, shall be noticed to all parties, within 72 hours of the transfer; and
- c. The Interstate Transfer Committee shall review the matter within 10 working days of the transfer, as provided in paragraphs 4, 6, 7 and 8, above.

**10. Committee Reviews of Transferred Prisoners:** All prisoners involuntarily transferred out of state shall be reviewed by the Interstate Transfer Committee every three months, for the first year of the transfer, and then every six months thereafter, with a written report and recommendations sent to the Commissioner and the parties.

- a. The purpose of these reviews shall be to determine whether the prisoner shall be returned to Maine, whether the receiving state is providing the services and programs in the Case Management Plan, the prisoner's condition, conduct and circumstances, and whether the receiving state is complying with Maine policies in its treatment of the prisoner.
- b. The Committee's report and recommendations shall include findings and the reasons for its recommendations.
- c. Any of the parties may send a response to the Committee's report and recommendations.

- d. The Commissioner shall issue a written decision, in response to the Committee's report and recommendation, as in paragraph 7b, above.

**11. Procedures for Return Transfers:**

- a. Any of the parties may request the return of the prisoner to Maine, 30 days after transfer and any time thereafter; provided that non-emergency requests may not be made more frequently than every 3 months.
- b. Requests for return to Maine shall be processed in the same manner as requests for transfers out of state, pursuant to the procedures in paragraphs 5-7, above.
- c. In an emergency, any party may make a direct request to the Commissioner for a return transfer, and in an emergency, the Commissioner may agree to the return, and shall provide a written report to the parties containing findings and the basis for his decision, as in paragraph 7b, above.

**12. Standards for Return Transfers:** When the Committee reviews an out of state transfer, it shall recommend that the prisoner be returned to Maine if it finds that:

- a. the prisoner's children or family members or significant others are no longer residing in the receiving state; or
- b. the medical or psychiatric treatment or rehabilitation, which was the reason for the transfer, has been provided; or
- c. the prisoner has complied with the provisions of the Case Management Plan, or the receiving state has not made the recommended treatment services and programs available to the prisoner, or is not confining the appropriately, in consideration of his condition, conduct and circumstances; or
- d. there has been a change of circumstances, which warrants consideration of whether the transfer is still justified under the standards in paragraph 4 of this Policy; or
- e. the prisoner has demonstrated that he or she no longer poses the presenting threat to self or others or the orderly functions of the facility, in consideration of the his or her condition, conduct, circumstances and participation in programs and services in the receiving state.; or
- f. the receiving state is not complying with the requirements of Maine law: or
- g. the prisoner is being harmed in the receiving state.

**13. Records:** All interstate transfer documents prepared pursuant to this policy shall become a permanent part of the prisoner's record and shall be maintained in the permanent records of the Interstate Transfer Committee.

14. **Credits for Time Served Out of State:** Credits afforded prisoners under Maine law for conduct, including but not limited to working or participating in programs and services, or for good conduct, shall be granted to prisoners out of state for such documented conduct while serving time in an out of state correctional facility.
15. **Money Earned while Serving Time Out of State:** Money documented as earned by a prisoner while in an out of state correctional facility shall, subject to expenses owed to that facility, be transferred to the prisoner's account at the Maine correctional facility upon his or her return.
16. **Final Agency Actions:** Transfer and return decisions of the Commissioner pursuant to this policy shall be final agency actions of the Department of Corrections as defined in Maine's Administrative Procedures Act.

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