



CHAIRMAN'S MEMORANDUM

NO. 13-2003 SEPTEMBER 16, 2003

TO: SHERIFFS, JAIL ADMINISTRATORS, COUNTY CLERKS, COUNTY ATTORNEYS

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

This memorandum is intended to serve as a reference to all county officers required by New York State Correction Law to participate in the transfer of an inmate from one county jail to another. Prior to any such transfer, Correction Law §504 requires the approval of the State Commission of Correction by a written instrument (commonly referred to as a "Substitute Jail Order", or "SJO") filed with the County Clerk of the original county. The following procedures, as set forth in Correction Law §504 and 9 NYCRR Part 7300, must be followed to apply for an SJO and effectuate such a transfer.

Circumstances for which the Commission will grant an SJO are provided in 9 NYCRR §7300.5(a). Such criteria include overcrowding, inability to maintain proper classification, natural or civil disaster, inmate disturbance, transfer to provide medical or mental health services, and safety and security 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, he or she must first identify a facility willing and able to accept such a transfer. After receiving an assurance from the facility administrator of the receiving facility that a transfer is acceptable, the facility administrator of the sending facility must contact the Commission by telephone to request an SJO. 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 answering service at (518) 485-2466.

Inmates may not 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 transfer, and 2) delivery, to the receiving facility, of the inmate's commitment papers, medical summary, written notification of the reason for transfer, and other useful housing and treatment information.

Additionally, 9 NYCRR §7300.5(b) allows the Commission to issue an “open order,” which thereafter authorizes the facility to transfer any number of a specified classification of inmates (i.e. unsentenced/sentenced males, unsentenced/sentenced females) for overcrowding purposes. If such an open order is granted, the sending facility must only mail or fax the Commission details of the transfer or return 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>.

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. 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 should be made to avoid any unauthorized transfer and detention.

Lastly, I cannot stress enough how important it is to receive Commission approval prior to any transfer of an inmate from one county jail to another, for any reason. Failure to do so results in the unlawful custody and detention of an inmate by the receiving facility. Since such detention is unlawful, an officer’s statutory protection against personal liability, as provided in Correction Law §500-c, may not be applicable. If you have any question 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