

EXTRADITION AND/OR DETENTION FOR OTHER AGENCIES/ARREST OF FOREIGN NATIONALS

Directive: 6.15

A. Military Fugitive Procedure

The Department will accept and detain those persons who are verified to be military fugitives for a maximum of forty-eight (48) hours. The verification is to be made immediately by the House Sergeant or his designee who will ensure that the proper military authority is contacted and advised to respond to Central and take the detainee into custody. If no military authority has responded to take custody of the detainee within sixteen (16) hours, that military authority will again be contacted to verify that arrangements are being made to respond to Wilmington. In circumstances where personnel have placed charges against an individual who is also found to be a fugitive from the military, the officer will complete the required booking procedure, notify the appropriate military authority, and a notation will be made in the arrest book that the subject is to be held for military authorities. If the military fugitive is simply being detained for military authorities, then the officer taking the fugitive into custody (or accepting custody from verified federal authorities, i.e., the FBI) will complete a miscellaneous incident report. In either circumstance the submitted report(s) will show the names of authorities contacted, phone numbers, times of contacts and the attendant circumstances of the detention. Each military fugitive's name will be recorded in by the **House** Sergeant in the rear of the arrest log book, being sure to note each subject's length of detention.

B. Prisoners of Civilian, Federal or State Authorities

The Department will not accept custody of prisoners awaiting arraignment and/or detention solely on federal charges. Civilian federal authorities will make arrangements to transport the arrestee(s) to a facility having a contractual arrangement for the detention of federal prisoners. Federal marshals, when available, may assist in transportation and/or detention of these subjects for federal agents. In circumstances where both State and federal charges have been placed against a subject, the law enforcement personnel involved will determine which charge (i.e. State or federal offense) is to take priority.

If the State charge is prioritized first, then the arrestee may be detained at Central pending action by the Magistrate Court. If prison commitment papers subsequently signed, our personnel are to ensure that transportation arrangements are completed. Under no circumstances will personnel release to any other agency any individual(s) for which we hold commitment orders. Instead, we will ensure that these individuals are transported to the appropriate correctional facility at the earliest feasible time.

Oppositely, if it is decided that the federal charges are given priority, then the arrestee is to be detained by federal authorities. Personnel involved in the arrest will file a detainer against the

arrestee(s). Under no circumstances will any member accept custody of any person(s) for whom there exists signed commitment papers it is the responsibility of the agency having custody to transport the detainee to the appropriate correctional facility.

C. Charges Involving Extradition

1. Extraditions from Delaware to Other States

When detaining a subject who is believed to be a fugitive from another state, the detaining officer(s) must make all practical attempts to verify:

- a. That the subject is the wanted fugitive and is named in an out-of-state warrant,
- b. That the state involved is willing to extradite.
- c. Determine if the defendant is willing to waive extradition.

After confirming the above information, the detaining officer will:

- a. Request that the state from which the subject fled send a teletype immediately so that fugitive warrant can be obtained. Needed in the teletype authorization are the charges (including title and section number) that the subject faces in that state. If the teletype is expected to be delayed, a phone number confirmation will suffice to detain the individual for a short period of time; however, the teletype is still needed.
- b. Request that the state from which the subject fled send the following documents to the Wilmington Police Department, Detective Division/Fugitive Unit, as soon as possible:
 1. Certified copies of the complaint, information, or indictment.
 2. Certified copies of the arrest warrant.
 3. Certified copies of the fingerprint card, photograph, or other evidence showing the identity of the person whose custody is requested.
 4. When the certified copies are received, copies are to be made for the case folder (WPD), while the original certified copies are forwarded to the State Detective's Office.
- c. Notify the requesting state as to the willingness of the defendant to waive extradition, or the fact that the defendant refuses to waive extradition.
- d. When Court #18 (MPCJF) is not in session (██████████) present the teletype information and a copy of the warrant, if available, to the appropriate Magistrate Court either in person or via video-phone. The Judge will issue a fugitive warrant, set sufficient secured bail on the defendant for appearance at Court #18 at ██████████ the same day and/or issue commitment papers. The detaining officer(s) will record on the arrestor

miscellaneous report the details of his investigation, including the names, telephone numbers, other information pertinent to the investigation, and any other subsequent charge placed against the subject.

- e. When Court #18 is in session (usually after [REDACTED]) the subject, along with all available paperwork on hand, will be transported to the judicial body, at which time Court #18 will make the proper notification to the State Detectives relative to the furtherance of the extradition process.
- f. Complete RCS 131-6-76 and forward copies of this and all other pertinent documents to the Detective Division Fugitive Unit.

2. Extraditions from Other States to Delaware

When officers are contacted by the out-of-state agency concerning serious cases such as murder, rape, etc, the chief investigating officer or the responsible supervisor will have a representative from the Attorney General's Office contacted regardless of the hour.

In all cases, officers should be guided by the accepted standard of "reasonable time" in detaining a subject for extradition. The Court has interpreted "reasonable time" as "not exceeding twenty four (24) hours".

Therefore, during late night or early morning hours if an officer is contacted by an out-of-state agency concerning extradition and that agency does not have charges, officers are to request they maintain custody of the subject [REDACTED] when the Attorney General's Office can be contacted.

The member who receives the inquiry will complete a miscellaneous incident report and if the extradition is authorized, Form RCS 131-6-76. The member completing these documents will ensure that copies are forwarded to the Detective Division Fugitive Unit.

3. Detention and Bail Settings of Fugitives

All fugitive warrant arrests will be returned to the appropriate Magistrate Court for bail settings and other court proceedings.

D. Justices of the Peace Capiases

Officers will be guided by the following information in regard to transporting subjects arrested on capiases issued out of Justice of the Peace Courts.

1. Between [REDACTED] (Monday-Friday) person(s) arrested will be brought to Court #20.
2. At all other times attempts will be made to utilize the video-phone system for court hearings.
3. Should the system fail the subjects will be physically taken to Magistrate Court #11, (Rt.273 and Churchmans Road, New Castle, Delaware, 323-4450)

In all cases, the normal procedures will be followed for the proper handling and transporting of prisoners. Upon arrival at any Justice of the Peace Court, the transporting officers will standby with the prisoner until final disposition has been made (bail or commitment).

This standby “courtesy” is for the safety of the court employees, as well as to ensure custody of the arrestee(s). Time devoted to this service will be for “reasonable” amount only and any abuses will be documented by the officers involved on the Departmental Information Report addressed to the Chief of Police. Upon completion of such an assignment, the arresting officers will submit a miscellaneous report (assisting other agency) with the pertinent information.

E. Detention of Subjects While in Transport

There are legitimate circumstances where law enforcement personnel from other jurisdictions request that a prisoner be detained for a period of time so that the personnel may eat and/or sleep. This practice will continue, provided the law enforcement personnel can produce valid identification and updated information confirming that the prisoner(s) involved is/are being legally detained by said personnel. It will be necessary to submit a miscellaneous report in which the detainee will be listed as a victim. This report must include information on the identity of the transporting agent, the proposed length of detention, and where applicable, a local phone number where the agent may be contacted in case of an emergency. Attached to the report will be copies of relevant papers verifying the charge against the detainee. A case number assigned to the miscellaneous report will also be placed in the upper right-hand corner of each copy of all relevant papers. Detainees will not be held for excessive time periods, keeping in mind the actual purpose of detention. Under no circumstances will we detain any prisoner for a bail bondsman.

The above procedures have been outlined in order to standardize our responses to other law enforcement agencies’ needs.

In certain circumstances, it may be necessary to utilize discretion in responding to another agency’s request. In these circumstances, the Duty Officer will be contacted and advised of the circumstances (i.e. heavy snowfall precluding military authorities from responding to Central for a period of time, teletype system malfunctioning, or multiple arrests made with additional arrests being made during an ongoing operation) and will direct Police personnel.

It should be noted that all abuses of the procedures outlines herein are to be promptly reporting in writing to the Chief of Police.

F. Procedure when arresting foreign nationals

The United States has entered into bilateral and multilateral treaties with other countries (also referred to in the treaties as states), which provided consular access to foreign nationals of those countries. The treaties are equal to federal laws pursuant to the Supremacy Clause of Article VI, of the Constitution of the United States. The U.S. State Department requires the assistance of

state and local law enforcement authorities in carrying out the international obligations of the United States concerning the arrest or detention of foreign nationals of those countries that are party to the bilateral agreements and/or the multinational treaty of the Vienna Convention on Consular Relations.

1. Whenever a state or local authority arrests, imprisons or otherwise detains an individual known or suspected of being a foreign national, such authority must promptly inform the detainee of his right to have the nearest consulate of his country informed of such event.
2. If the detainee asks to exercise this right, the detaining authority should inform the appropriate foreign consulate or embassy without delay and make written record of such notification. ***A standard fax form is acceptable as a written record. The form should be placed in the files after proper verification has been received. A standard fax form*** along with a current list of telephone and fax numbers for all foreign consulates and embassies are available in the House Sergeant's Office, and the Communities Center.

Note: Relations between our country and Taiwan are conducted on an unofficial basis and because of this; Taiwan is represented only by an unofficial organization, the Coordination Committee for North American Affairs (CCNAA). When a Taiwanese national is arrested or detained, the officers should immediately inform the nearest officer of the CCNAA. CCNAA officials have the same rights as foreign consular officers to visit the arrestee/detainee.

3. Subject to local laws and regulations regarding access to detained persons, consular officers have the right to visit their nationals who are in prison, custody or detention, to converse and correspond with them and to arrange for their legal representation. ***Consular accesses to detained foreign national are subject to local laws and regulations regarding access to detained persons, to the extent they do not they do not unreasonably interfere with consular access.***
4. ***Consular notification must be given "without delay." However, the right to consular notification is not a "Miranda Right." A detained foreign national can be interrogated before or after consular notification is given.***
5. While the above requirements are university applicable, law enforcement personnel must be aware that there are bilateral agreements with certain countries which MANDATE notifications when nationals of those states are confined or detained. In these cases, the foreign national has NO choice regarding notification, and law enforcement authorities **MUST** notify the consulate or the embassy of the situation without delay. The foreign national should be advised that his consul has been notified. The United States has these special agreements with the following states:

Albania*
Antigua
Bahamas
Barbados
Belize

Bulgaria
China**
Costa Rica
Cyprus
Czechoslovakia

Dominica	St. Vincent & Grenadines
Fiji	Seychelles
The Gambia	Sierra Leone
Ghana	Singapore
Grenada	South Korea
Guyana	Tanzania
Hungary	Tonga
Jamaica	Trinidad & Tobago
Kiribati	Tuvalu
Kuwait	Former U.S.S.R***
Malta	United Kingdom
Mauritius	(includes:)
Mongolia*	Anguilla
Nigeria	British Virgin Islands
Philippines	Hong Kong
Poland	Bermuda
Romania	Montserrat
St. Kitts & Nevis	Turks & Caicos
St. Lucia	Zambia

- * The United States does not have a formal agreement with Albania and Mongolia mandating notification. We have informally agreed to notify the responsible representative within 72 hours of the arrest or detention of their nationals.
- ** When Taiwan nationals (who carry “Republic of China” passports) are detained, the nearest CCNAA office should be contacted.
- *** Should an arrest of a national from a former member of the U.S.S.R. take place, the arresting officer can still use the phone number for the Soviet Embassy.
6. Officers should telephone the U.S. Department of State immediately concerning any questions that arise in connection with the foregoing procedures at (202) 647-4415. Any normal business hours, call (202) 663-0812.