



# INTERSTATE TRANSFER OF PRISON INMATES IN THE UNITED STATES

*Special Issues in Corrections*

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## About This Study

The National Institute of Corrections (NIC) has for many years been interested in how corrections agencies mutually assist each other. One example is in states' reciprocal supervision of probationers and parolees, a process defined by an interstate compact and administered by a national commission. The current Interstate Compact on Adult Offender Supervision took effect in June 2002, when the 35th state enacted a bill replacing the 1937 version, and has since been adopted by all 50 states. NIC supported the effort to update the compact by collecting and sharing information on the volume of cases transferred and on the issues that were creating challenges for the participating state agencies.

During that period of study, NIC project staff found very little information about interstate transfer of prison inmates. Aside from statutes defining related interstate compacts, such as the national Interstate Compact for Corrections, there was no literature on how prison inmate transfers are accomplished, the volume of cases involved, or the reasons why these transfers are made.

The NIC Information Center undertook the present study to address this gap, examining state correctional agencies' practices in transferring state-sentenced inmates to secure facilities outside the state in which they were sentenced. To begin the research, NIC contacted departments of correction (DOCs) in the 50 states and invited them to complete a written survey questionnaire. Responses were received from DOCs in 48 states.

**Survey scope.** The first set of survey questions addressed transfers of prison inmates between public state agencies. Questions explored whether state DOCs engage in interstate transfers and their legal authority to do so. Also addressed were compensation of DOCs that house transferred inmates and whether transferred inmates are returned to the sending state when being released from prison. Respondents were also asked to share their views on current systems for interstate transfer of prison inmates.

The second section of the survey examined the use of inmate transfers to both state-run and privately operated facilities, specifically:

- The number of men and women inmates who had been transferred, as of July 1, 2005, to the custody of other state DOCs, the Federal Bureau of Prisons (BOP), and private prisons outside the sending state; and
- Reasons why these inmates were transferred.

**Limitations.** This report does not examine the details of states' individual transfer contracts or the processes DOCs follow to arrange for inmate transfers. Study data do not include transfers to privately operated prisons located within the same state as the sending DOC and therefore do not measure overall use of private prisons. Further, though transfer of inmates to private prisons may be a concern of DOC officials in the destination state who lack notification of these transfers, the nature of such potential concerns was not explored.

## **Key Survey Findings**

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- Nearly every state DOC (46 of the 48 agencies that responded to the survey) does or can transfer inmates to destinations in other states, though the number of inmates transferred is sometimes quite small. As of July 1, 2005, DOCs in at least 43 states had inmates on transferred status in the custody of other public agencies (42 DOCs) and/or private providers outside the state (six [6] DOCs).
- At least 4,900 men and women inmates were on transferred status as of July 1, 2005. Data reported in this survey totalled 2,089 state-sentenced inmates transferred between state prison systems, 345 transferred to the Federal Bureau of Prisons, and 2,466 transferred to privately operated prisons located outside the sending state.
- Inmate protection was the reason for the most transfers of men in 12 state DOCs. “Other” reasons, usually family-related, were behind most transfers in nine (9) DOCs. For both these categories, all transfers were to other public corrections agencies. For women inmates, the small number of transfers did not support any conclusions about the main reasons for transfers.
- The largest number of inmates was transferred in response to crowding (2,610 persons, of whom nearly 95% were transferred to privately operated prisons). Security issues were the cause of the next largest volume of transfers (including transfers to reduce risks posed by or to inmates who are transferred); these transfers were made exclusively to other public corrections agencies. Inmates transferred for “other” reasons also made up a large portion of transfers and were always transferred to public corrections agencies.
- For most transfers to other states’ institutions, inmate day-to-day expenses are covered on a reciprocal basis, without billing or reimbursement of funds. Where transfers are to BOP facilities, however, state DOCs usually pay a per diem fee. Extraordinary expenses are most often reimbursed with prior approval for non-emergency situations

and upon adequate notice and evaluation of reasonableness for emergency situations.

- Inmates transferred to other state DOCs commonly can be released from prison either directly within the receiving state or following their return to custody in the sending state; the development of a sound re-entry plan can support either release location. In about one-third of the responding states, however, inmates must be returned to the sending state for release.
- Feedback was positive on current systems for interstate transfer of inmates, but some respondents voiced support for more standardization of processes for interstate transfers between public agencies.

## **Interstate Compacts Addressing Inmate Transfers**

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An interstate compact is a powerful tool for promoting uniform state procedures for subjects of mutual interest. Compacts constitute enforceable obligations between states just as if the states were private parties to a legally binding contract. Two main factors that must be addressed to enable interstate transfer of prisoners are: 1) the process for shifting institutional and jurisdictional authority over inmates, and 2) the sharing of agencies’ responsibilities and obligations for inmates who are transferred.

**Existing compacts.** Three interstate compacts currently address prison inmate transfers; one is national in scope, and two are regional arrangements between geographically proximal states. (See “Sources” for links to examples of interstate compact statutes.) None of these compacts has a central administrative office or active governing body. A few states are party to both a regional compact and the national compact. Most became party to a regional compact first, before also joining the national compact.

- The national Interstate Compact for Corrections provides for uniform procedures and treatment of prisoners who are transferred from the supervi-

sory agency of one state to that of another. Forty (40) states are party to this compact. Enactments of this compact tend to have been more recent than those of the regional compacts, with most taking place in the 1970s and early 1980s.

- The Western Corrections Compact has 11 signatory states and, according to the Council of State Governments (2003), “provides for the joint use of corrections facilities in the West.” States that are party to this compact include Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Most enactments took place from 1959 through 1971.
- The New England Corrections Compact “provides for cooperation in the confinement, treatment, and rehabilitation of offenders” (*ibid*). Six (6) north-eastern states (Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island) have adopted the New England Interstate Corrections Compact. Most enactments were made from 1958 through 1962.

Provisions of the regional compacts are very similar to those of the national compact. However, both include a provision (Article III (b)) authorizing contractual arrangements for enlarging space earmarked for transferees from a party to the compact when the receiving state enlarges its facilities. The provision includes options for reserving a percentage of the new space and also for inclusion of particular equipment or structures. This is an example of interstate cooperation that goes beyond the provisions of the Interstate Corrections Compact to potentially create economic benefits for cooperating states.

#### **Elements of the Interstate Compact for**

**Corrections.** Statutory language for the national compact as enacted in most states includes the following provisions.

- **Article I—Purpose:** To provide for the mutual development and execution of programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

- **Article II—Definitions:** Defines the entities and individuals (inmates) affected by the compact provisions, including the sending state (where conviction was had), the receiving state (state other than the sending state where the inmate is sent for confinement), and the institution (in which the inmate may be confined to serve the sentence imposed by the sending state).
- **Article III—Authority:** Provides the authority of compact states to enter into contracts with each other and sets minimum required provisions for such contracts, including duration of the contract, financial obligations between the states, programs the inmates will participate in, payments or credits flowing to inmates, handling of extraordinary costs incurred on inmates’ behalf, delivery and retaking of inmates and any other issues pertinent to the sending and receiving of inmates between the states. Each contract must be consistent with the provisions of the compact.
- **Article IV—Procedures and Rights:** Specifies rights and obligations of the parties to the compact, for example:
  - ~ Right of sending state to continued jurisdiction over the inmate during the time of the transfer, with receiving state acting as agent of the sending state in handling the inmate;
  - ~ Right of sending state to reasonable access to the receiving institution and the transferred inmate;
  - ~ Right of sending state to periodic reports about the inmate’s condition and progress in the receiving state;
  - ~ Financial obligations of the sending state;
  - ~ Right of the inmate to reasonable and humane treatment, to be treated equally with similar inmates of the receiving state;
  - ~ Right of the inmate to same rights, hearings, and benefits and subject to same obligations as if the inmate had been confined in the sending state;

- ~ Rights of inmates' parents, guardians, and trustees to be the same as if the inmate had been confined in the sending state; and
- ~ Requirement that release of inmates shall be in the sending state unless both states and the inmate agree upon release elsewhere; return to the sending state shall be at the expense of the sending state.

- **Article V—Choice of Law:** Provides that the sending state's decisions are conclusive as to matters within their jurisdiction, while the receiving state has jurisdiction over offenses which might be committed while the inmate is in their institution and can retain the inmate until its proceedings have been completed. In addition, the inmate may be transported through any states that are party to the compact. Also describes a uniform basis for handling escape offenses committed from the institution in the receiving state.
- **Article VI—Federal Aid:** Provides a uniform means of dealing with the use of federal aid for transferred inmates.
- **Articles VII and VIII—Effective Date and Termination:** Articulates standard provisions for when the compact takes effect and procedures for withdrawing from the compact, including the requirement of 1 year's notice of withdrawal and the obligation to return any inmates back to the sending state before the expiration of the 1-year notice period.
- **Articles IX and X—Standard Contract Interpretation Provisions:** Presents contractual boilerplate provisions including retention of rights of either state under other laws or contracts, and a requirement to liberally and severally construe the compact provisions. Article X also authorizes a named official (for example, the Commissioner of Correction) to carry out the provisions of the compact and to delegate such authority as needed.

**Administrative Procedures Under the Interstate Compact.** The terms of the Interstate Compact are quite general, with the states being required to implement it through contracts and pursuant to procedures applicable in their jurisdiction. An example of a state DOC's administrative procedures for implementing compact-sanctioned transfers was provided by the respondent in North Carolina, and its provisions are discussed below. Details on some other states' procedures are noted later in this report where they add to or diverge from the North Carolina example.

- **Signatory State Serves as Either Sending State or Receiving State.** The Interstate Compact is administered by North Carolina's Interstate Compact Administrator, who has overall responsibility for sending and receiving inmates pursuant to the Interstate Compact. The Director of Prisons and the Secretary of Corrections must concur in the approval of all transfers, whether the transfers are out of or into North Carolina prison facilities.
- **Signatory State Serves as Sending State.** In North Carolina, requests for transfers under the Interstate Compact may be made for a fairly broad set of reasons, including protecting the safety of a inmate subject to an identifiable threat of harm, in furtherance of pre-release programs for inmates within 3 years of their anticipated release date, and in the "best interests" of "the state, the Department, the inmate, and criminal justice objectives."

The directive permits requests for transfers to be made by the inmate, an official of the institution, or by "other sources." If the request is approved at the inmate's facility, appropriate documentation is provided to the Director of Prisons and the Secretary of Corrections who must concur in the approval of all transfers.

If a receiving state denies the transfer, the Compact Administrator notifies the inmate of this action. If the transfer is accepted by the receiving state, several procedural steps must be taken by the sending state prior to the transfer, including:

- ~ Holding a parole review, if applicable;

- ~ Notifying the appropriate individuals and institutions concerning the transfer details, such as date of transfer, and notifying the facility in the receiving state that will house the inmate;
  - ~ Obtaining a waiver of extradition from the inmate; and
  - ~ Arranging for transfer of inmate funds and records.
- **Signatory State Serves as a Receiving State.** The Director of Prisons and the Secretary of Corrections must concur in approving inmates for transfer to North Carolina facilities. When a transfer to North Carolina has been accepted, the directive requires appropriate documentation to be provided to North Carolina correction officials and for appropriate identification and classification of the inmate.
  - **Post-Transfer Rights and Responsibilities.** After the transfer has occurred, the Compact Administrator monitors all subsequent transfers of the inmate within the receiving state. The inmate's sentence cannot be altered without prior approval of the sending state. The inmate is required to abide by North Carolina's rules, and North Carolina is to treat the inmate as any other inmate within its prison system. The directive requires North Carolina to conduct hearings upon the request of the sending state (in accordance with the Interstate Compact guarantee of an inmate's rights to all hearings that would have been available in the sending state) and to provide documentation of such hearings as may be held in the receiving state. In addition, North Carolina's policy directives include provisions to protect inmate privacy, authorizing release of an inmate's sentence and similar public record information or information pertaining to an escape only, and limiting the authorization to photograph the inmate to identification purposes only.
  - **Handling Escape Situations.** The directive sets up a procedure for handling escape situations and for notifying the sending state.

- **Premature Return to Sending State.** An inmate might be returned prematurely to the sending state. The directive sets up a 30-day notice for the return and prescribes the conditions for such a return, which include a change in circumstances such that the initial reasons (for example, security concerns) are no longer valid but are broad enough to include any other appropriate reason.
- **Expenses for Sending and Receiving States.** All routine expenses related to inmates in the sending or receiving state are to be reciprocally handled on a bookkeeping-only basis. That is, no funds change hands for day-to-day expenses related to transfers between state systems. For inmates transferred to the BOP, however, per diem expenses are billed and paid. In addition, for BOP transferees, the federal government is responsible for reimbursing the receiving state for costs related to an escape. (See 18 USC Sec. 4007 [01/19/04].)

### **Authority for Interstate Transfer of Prison Inmates**

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Survey respondents were asked what source(s) authorize their agency to transfer prison inmates to the custody of another publicly managed prison system.

- Most of the agencies that transfer inmates to the institutions of other states (45 of 46 DOCs) do so under the authority of an interstate compact statute. Forty (40) states are party to the national Interstate Compact for Corrections. Seventeen (17) states are party to regional interstate compacts for corrections, either as their sole compact (five [5] states) or, more often, in addition to the national compact. Often, compact-defined authority is supplemented by authority provided by other statutes and/or formal DOC policy.
- In 16 states, other statutes define the DOC's authority to engage in inmate transfers. In some states, these statutes stand on their own, but more commonly they supplement the state's separate Interstate Compact legislation.

- Agency policy was cited as a source of authority for inmate transfers by respondents in 13 states.
- Judicial precedent and court orders were cited by respondents in fewer than 5 states as providing authority for interstate transfers of inmates.

**Authority through interstate compacts.** Most of the 46 responding state DOCs that transfer inmates to the institutions of other states do so under the authority of a national or regional interstate compact. In states that are party to one or more interstate compacts and have also enacted statutes or developed official DOC policies that address transfers, the statutes and policies generally implement compact provisions, provide context and conditions for inmate transfers, or provide details of transfer process requirements.

For example, transfer policies in the Connecticut DOC promote intergovernmental and interagency cooperation to improve DOC operations. One section instructs the DOC to cooperate with law enforcement authorities in the implementation of witness protection initiatives through, for example, inmate transfer in accordance with Administrative Directives and/or interstate compact provisions. A further section on interstate compacts and federal treaties specifies that “[t]he Department shall be linked with correctional agencies in other states and the federal government in order to transfer, receive and exchange prisoners within these systems ... Whenever feasible, the Department shall seek to accommodate the needs of other corrections agencies through these compacts and contracts.”

**Authority through other state statute.** In one state (Mississippi), inmate transfers are authorized by statute which is not an interstate compact statute. Respondents in 15 other states indicated that additional statutes exist that supplement the provisions of the state’s compact legislation.

For example, California statutes require that inmate transfer contracts under the interstate compacts to which California is party provide the following additional rights and obligations:

1. For inmates sentenced under California law:
  - a. A prohibition against transfer without the inmate’s written consent.
  - b. The right to counsel concerning inmate rights and obligations under the Compact.
  - c. The right to revoke consent to the transfer after 5 years and to be returned to a California institution in that case within 30 days.
  - d. The right to hearings (standard in the Interstate Compact) within 120 days (not mentioned in the Interstate Compact) of the time required to persons similarly sentenced but confined in institutions in California.
2. Requirement of inspection by the Department of the interstate facility prior to contracting for the transfer and at least annually thereafter to ensure suitability of the receiving state’s facility.
3. Duty to inspect the receiving state’s correctional facility premises specifically includes a duty to ensure nondiscrimination of transferred inmates on the basis of race, religion, color, creed, or national origin.
4. Extension of compact provisions to apply to the transfer of county jail prisoners.
5. Rights to benefits upon release, including money and tools, on the same basis as prisoners released from California.
6. Procedures in cases where transferred inmates are called as witnesses in California proceedings. (This provision protects the rights of defendants on the proceedings in which transferred inmates might be called by requiring notice and opportunity to interview the transferred inmate and has no bearing on an inmate’s duty to testify or be interviewed.)

**Authority through formal DOC policy.** Respondents in 12 states noted that official agency policy provides authority to engage in the interstate transfer of prison inmates. Each of these states also is party to at least one interstate compact for inmate transfers. Policy statements provided by respondents include the

following specific provisions.

- **Alaska.** Alaska is not party to the national Interstate Corrections Compact but is a signatory of the Western Interstate Corrections Compact. Alaska's policy provides for requests initiated by inmates or facilities and specifies considerations for the transfer determination, which include inmate initiation of the request, medical or mental health needs that cannot be met within the Alaska system, length of time left to serve (7.5 years or more), lack of significant family ties to Alaska and more than 2 years of the sentence remaining, need for protective custody for the inmate, or an undue escape risk presented by the inmate. Alaska's policy mandates a non-transfer determination for Alaskan native inmates who have maintained a traditional or rural Alaska lifestyle. Policies also include a requirement that a classification review be completed yearly for all prisoners held out of state.
- **Minnesota.** Formal DOC policy limits inmate transfers to exchanges that do not engender additional costs to either the sending or the receiving state; funds are exchanged only for pre-approved extraordinary medical expenses. When a transfer request is received, staff review the balance of the agency's exchanges with the requested state. A directive details the procedures for interstate transfers, including factors to consider in granting the transfer, management of communication about the transfer, and records that must be provided concerning the inmate. If the transfer request is initiated by the inmate, the directive requires that the inmate meet certain behavioral and sentence-length conditions, and the inmate must pay associated travel costs. If the transfer request is initiated by the facility, security and institutional "best interests" standards apply, and the DOC funds the travel. The directive also addresses return of the inmate, including the reasons for such returns and procedural requirements.
- **Missouri.** The Missouri DOC's institutional services manual includes provisions for mandatory transfer of any former Missouri Department of Corrections (DOC) employees who become

inmates and discretionary transfer for families of former Missouri DOC employees and former law enforcement and justice system personnel. Another provision excuses offenders from sentencing obligations that become impossible to meet by reason of the transfer (such as participating in a particular state-sponsored drug rehabilitation program).

Missouri's formal policy specifically prevents using the Interstate Compact to sidestep extradition procedures by prohibiting transfer of an inmate to a jurisdiction in which the inmate is subject to criminal prosecution. It also prohibits consideration of Interstate Compact offenders for placement in private, leased prison beds.

The Missouri policy offers protections of inmate property, money, and privacy, expressing particular consideration for the inmates who are transferred for their own protection. The policy also requires sending state approval for any actions by the receiving state which would result in work-release participation or early release of the Missouri offender. The Missouri policy requires semi-annual program reports on transferred inmates, which is more specific than the Interstate Compact's non-time-limited requirement for reporting.

- **Ohio.** Formal DOC policy in Ohio includes several provisions addressing the need for privacy and confidentiality surrounding the transfer. For example, the agency maintains dual files for the transferred inmates it receives. (One file includes the inmate's state of origin, and the other is free of such references.) The inmate's file is hand-carried to the sending state.

Like Missouri, Ohio requires semi-annual reporting of the inmates' progress, but the DOC also requires notification upon the occurrence of incidents involving Interstate Compact transferees, such as serious medical issues and escape attempts. Ohio's regulations are very specific in terms of the records incident to interstate transfers. The Ohio policy also includes provisions concerning inmate property, limiting the items an

inmate can physically take to the receiving state and requiring compliance with property rules in the receiving state.

- **Rhode Island.** The survey respondent provided a copy of the DOC's standard Interstate Compact contract. Of note is a somewhat broadened definition of "institution" to include sending state facilities "whether or not such facilities are owned, operated or under the exclusive control of the respective state agency." Like California, Rhode Island also includes a provision that protects its inmates from discrimination on the basis of race, religion, color, creed, or national origin while in the receiving state.
- **South Dakota.** South Dakota policy defines an accounting system for reciprocal inmate transfers based upon "Man Day" credits and debits. A man-day credit is the "total number of inmate days that another correctional system owes to the State of South Dakota," and a debit is "the total number of inmate days owed to another correctional system by the State of South Dakota." The balance in these accounts is a factor in determining whether or not to approve a transfer. If it prevents a request from being approved, relaxed time limits apply to subsequent requests for transfer.

The South Dakota policy also provides for teleconferenced parole hearings that may be conducted in the receiving state to avoid transportation costs that would otherwise be involved. Several forms were also attached to the South Dakota survey response:

1. Inmate Interstate Compact Request
2. Inmate Interstate Compact Transfer Request Response
3. Application for Transfer Pursuant to the Interstate Corrections Compact
4. Acknowledgement of Parole Hearing Process and Waiver of Personal Appearance
5. Interstate Compact Medical Review
6. Interstate Compact Transfer Review.

- **Utah.** The Utah DOC policy addresses the process, but not the factual considerations, for compassionate transfers. Under this policy, the inmate is responsible for travel costs. The policy sets up a procedure for timely payment, failing which the transfer is denied and the inmate becomes ineligible for transfer for a period of 2 years. Inmates awaiting execution for capital offenses and sex offenders who have no parole date are ineligible for compassionate transfers.

**Other authority for interstate transfers.** Court cases were cited by two (2) survey respondents as providing a basis for interstate transfers of inmates. In West Virginia, as previously noted, court precedent has been interpreted to prohibit interstate transfers. In California, court precedent was cited as requiring transfer to the BOP of an inmate convicted in California, in order to preserve the state judgment prescribing that the California sentence run concurrent with the federal sentence. Without this transfer, the sentences would have been consecutive (and substantially longer) (*In re Stoliker*, 29 Cal. 2d. 75 [1957]). The Texas respondent noted that interstate transfers have been initiated in response to court order.

Other respondents indicated that specific authority for transfers is made through intergovernmental agreements, memoranda of understanding, and contracts.

### **Administration of Inmate Transfers**

Among the various operational issues that relate to interstate transfers of inmates, the current study focused on two aspects: compensation of receiving states, and requirements to return inmates to the sending state at the conclusion of the prison sentence.

**Compensation for general costs to house inmates.** Requirements to compensate receiving states are not specified in the Interstate Compact for Corrections. In practice, compensation to the receiving state for day-to-day inmate expenses is usually achieved through reciprocal transfers of inmates between state agencies. This minimizes the need for accounting and budgeting efforts and is an important and positive result of inter-

state cooperation in the corrections arena.

- All but three (3) responding DOCs indicated that they regularly handle ordinary inmate expenses on a reciprocal basis.
- Of these agencies, 11 indicated that compensation for transfers on a per diem basis also takes place. Some respondents noted that their per diem compensation is related specifically to transfers to the BOP, which does not accept reciprocity for expenses related to transfers. Some per diem payments are also made in relation to state-to-state transfers.
- A few other states noted that compensation is arranged on a case-by-case basis or negotiated per contract.

**Compensation for extraordinary expenses.** In general, services that are routinely provided at the receiving state's correctional facility are considered ordinary expenses and are covered by the receiving state. Other costs for special inmate management situations or health care are considered extraordinary, as defined by individual agencies, and the sending state can be compensated for these expenses.

Most examples of extraordinary expenses relate to medical care. Items specified by respondents include surgery, MRI, and prostheses (Alabama); radiation and chemotherapy for cancer patients, HIV and hepatitis treatment, and major surgery (Oklahoma); and kidney transplant and burial expenses for an inmate leaving no next-of-kin (Virginia).

A small number of jurisdictions include as extraordinary expenses the transportation costs incurred to return the inmate to the sending state, whether for release or for hearings. New Jersey includes costs of extradition if the offender escapes to a third jurisdiction, expenses related to death of an offender, clothing and transportation upon release of the offender, and legal costs incurred in defending challenges to the legality of confinement while the offender is housed outside the sending state.

Most respondents indicated that their agencies cover extraordinary costs incurred in relation to transferred inmates. In some jurisdictions, however, extraordinary costs are divided into emergency and non-emergency categories, which have different requirements for compensation. Non-emergency expenses must usually be approved in advance for compensation to be provided, while emergency costs generally require notice and approval after the fact. No respondent cited any difficulties in obtaining reimbursement.

Respondents in four (4) state DOCs indicated their agencies do not cover extraordinary costs. One state seems to carve out a pre-existing condition exception and does not pay extraordinary costs incurred as a result of medical issues that develop after the transfer or "due to an incident at the receiving agency." Another state does not permit transfers of inmates with known "medical issues," and one state often returns a transferred inmate who requires extraordinary medical care back to the sending state.

**Return of transferred inmates for release from prison sentence.** The provisions of the Interstate Compact for Corrections require that the transferred inmate be returned to the sending state unless there is agreement to the contrary among the sending state, the receiving state, and the inmate. The survey asked about agencies' actual practices in this regard.

- Eighteen (18) state DOCs require that inmates whom they transfer to other situations be returned to the sending state for release. One state's respondent noted that the DOC is required by statute to return inmates to their state for release.
- In three (3) states, however, inmates are typically released in the receiving state rather than being returned to the sending state prior to release.
- In the majority of states (27 DOCs), the site of release varies between the sending state and the receiving state. Some of these DOCs noted that they generally bring the transferred inmate back prior to release but have discretion to approve release from the receiving state. Savings in transportation costs were cited as one advantage of

release from the receiving state; other respondents noted that they approve release in the receiving state if family ties are still maintained there.

Among the DOCs which permit release in the receiving states, this most commonly occurs under the following conditions:

- ~ Release in receiving state is appropriate to the reason for the transfer (for example, if an inmate was transferred to preserve family ties and family ties have been maintained);
- ~ Family ties or a permanent residence have been maintained in the receiving state;
- ~ There is an approved parole compact case or approved release plan in the receiving state;
- ~ The inmate is being released to a halfway house in the receiving state pursuant to a pre-release plan;
- ~ The inmate initiates a request that is granted after appropriate review;
- ~ Request by receiving state (without reference to inmate's position on the request although inmate request may be implied);
- ~ After maximum sentence served, receiving state grants approval; or
- ~ Decision is made within the discretion of the parole board.

Among these "variable return" states, inmates are returned to the sending state under the following conditions:

- ~ Additional sentence or parole violation pending;
- ~ Inmate request to transfer is revoked after a 5-year time limit imposed by DOC policy;
- ~ Discretionary parole is granted prior to the original release date;
- ~ Inmate is to serve a consecutive sentence or a concurrent sentence that is longer than the sentence under which the inmate was trans-

ferred, subject to requests to continue the transferred status;

- ~ Receiving state prohibits release there;
- ~ There is a local community supervision requirement in the release plan;
- ~ The inmate is being released from federal status with an open warrant in the sending state;
- ~ The offender has no funds or family/friends to provide transportation; or
- ~ The sending state funds transportation to its diagnostic center for release.

Finally, one jurisdiction specifically permits release to states other than the sending state or the receiving state, provided the receiving state concurs and an appropriate transportation plan and parole plan are in place.

### **Incidence of Interstate Inmate Transfers**

Most of the responding state DOCs indicated that they can and do engage in interstate transfers of prison inmates. As defined in this survey question, these transfers excluded temporary transfers for brief legal proceedings, medical treatment, or other short-term purposes as well as transitional transfers to work release, halfway houses, or other similar programs or facilities. Transfers could be to other state DOCs, to the BOP, or to private providers located in states other than that of the sending DOC. Agencies were asked to provide data on cases that were on transferred status as of July 1, 2005.

- Of the 48 state DOCs that responded to the survey, 46 confirmed that they engage in long-term transfers of inmates to the custody of other publicly-managed prison systems. Among these state systems, however, three (3) DOCs had no cases on active transfer status as of the survey date. Five (5) agencies reported having fewer than five inmates on transferred status.

- DOCs in the 43 states with active transfers on July 1, 2005, had transferred a total of 4,900 inmates to other jurisdictions. This includes 4,275 men and 499 women, plus 126 inmates for whom data were not available by sex. One other DOC provided data for a broader reporting period, and their figures are not included in this total.
- DOCs in nine (9) states had men, but no women, currently transferred to other jurisdictions.
- Only two (2) responding state DOCs indicated that they do not engage in long-term interstate transfers. Louisiana's survey response gave no explanation for this position. The West Virginia respondent cited a judicial interpretation of a state constitutional "prohibition against banishment" as precluding such transfers.

**Location of transferred inmates.** Table 1 summarizes reported data on where men and women inmates had been transferred as of July 1, 2005, and gives the approximate percentages of the male and female

prison population represented by these transfers. Percentage figures are based on a total prison population on December 31, 2004, of 1,316,301 inmates (U.S. Bureau of Justice Statistics, 2005), comprising 1,223,617 men and 92,684 women.

- Privately operated prisons received the largest number of transferred inmates, but relatively few DOCs made these transfers. DOCs in just six (6) states had transferred a total of 2,466 men and women inmates to the custody of private facilities located in other states.
- Many more state DOCs transferred inmates to other state systems, but they transferred fewer individuals. DOCs in 40 states had transferred a total of 2,089 men and women to prisons operated by other states.
- The BOP was housing 345 state-sentenced inmates at the request of 28 sending state DOCs. All but 12 of these transfers involved male inmates. While more than half of the responding

**Table 1. Active Interstate Transfers of Prison Inmates as of July 1, 2005**

Transfers to Other State DOCs		
	<b>Transfers of men:</b>	Number of responding agencies with male inmates housed by other state DOCs: 40 Total men held in other state DOCs: 1,863 (0.15% of U.S. male prison population)
	<b>Transfers of women:</b>	Number of responding agencies with women inmates housed by other state DOCs: 29 Total women held in other state DOCs: 101 (0.11% of U.S. female prison population)
Transfers to Federal Bureau of Prisons		
	<b>Transfers of men:</b>	Number of responding agencies with male inmates housed by BOP: 27 Total state-sentenced men housed by BOP: 332 (0.03% of U.S. male prison population)
	<b>Transfers of women:</b>	Number of responding agencies with women inmates housed by BOP: 4 Total state-sentenced women housed by BOP: 12 (0.01% of U.S. female prison population)
Transfers to Private, Out-of-State Facilities		
	<b>Transfers of men:</b>	Number of responding DOCs with men housed in out-of-state, privately operated facilities: 6 Total men housed at these facilities: 2,080 (0.17% of U.S. male prison population)
	<b>Transfers of women:</b>	Number of responding DOCs with women housed in out-of-state, privately operated facilities: 2 Total women housed at these facilities: 386 (0.42% of U.S. female prison population)

\* Numbers on this table do not include 126 inmates for whom data are not available by sex. All 126 inmates were transferred to other states, except for one (1) case transferred to the BOP.

agencies had at least one inmate being held in BOP custody, in most of these states the number of cases transferred to the BOP was very small.

Table 2, page 13, presents state-by-state data on the number of men and women inmates who were transferred to other states, the BOP, and out-of-state private prisons as of July 1, 2005.

**Methods used for formal transfer of custody.** Most interstate inmate transfers (75% of state-to-state transfers) are formalized through contracts pursuant to interstate compacts. However, some transfers between state agencies were described as having been made outside the auspices of a compact.

Table 3, page 14, presents a breakdown of the mechanisms used to formalize inmate transfers between state DOCs.

- Transfers pursuant to interstate compacts totalled 1,587 inmates who were transferred out from 39 DOCs.
- Five (5) DOCs reported that they transferred 502 inmates through non-compact processes.
- Four (4) DOCs accomplished some state-to-state transfers through both compact and non-compact methods.

Transfers to BOP facilities (345 inmates) and privately-owned prison facilities (2,466 inmates) were handled outside of interstate compact auspices.

### **Why Prison Inmates Are Transferred**

Also of interest in this study were reasons why inmates are transferred from the state DOC where they were sentenced to secure facilities in other states. Inmate transfers occur for a fairly limited number of reasons. The survey instrument asked for data on men and women inmates who were transferred in six pre-defined categories and an open-ended “other” category to be explained by respondents.

Survey categories were:

- Facility crowding;
- Special program needs;
- Special custody or security needs for inmates who may pose a danger within the sending DOC (i.e., inmates who pose actual or potential danger to themselves, staff, or other inmates);
- Special custody or security needs for inmates who may be in danger within the sending DOC (i.e., inmates who are in danger of being victimized by other inmates).
- Post-incident or disturbance cool-down;
- Adjudication pending or inmate is serving sentence imposed by another jurisdiction; and
- Other reasons. (As defined by survey respondents, “other” reasons for inmate transfers center mainly on compassionate and/or family-related purposes, though some other purposes were also noted. This is discussed in more detail on page 15.)

Table 4, page 14, provides a count of state DOCs that transferred men and women inmates for each of the reasons identified in the survey. Note that these counts are for states reporting *any* transfers in these categories, even if only one inmate was transferred for that reason.

On this basis, state DOCs were most likely to transfer inmates when necessary to reduce the risk they pose to the safety and security of their facility operations (33 DOCs for men and 16 for women). Following closely were the numbers of DOCs making transfers to protect the transferred inmate (31 DOCs for men and 13 for women) and transfers for “other” reasons (27 DOCs for men and 15 for women).

When focusing on the numbers of inmates transferred, however, a different picture emerges. As shown in Table 5, page 15, the largest numbers of men and women inmates were transferred because of facility crowding. Following next for both men and women

**Table 2. Active Transfers of Men and Women Inmates on July 1, 2005, by Receiving Agency**

	Men Transferred			Women Transferred		
	To other states' prisons	To the Federal Bureau of Prisons	To private prisons in other states	To other states' prisons	To the Federal Bureau of Prisons	To private prisons in other states
Alabama	9	0	4	0	0	299
Alaska	4	11	756	2	0	0
Arizona	106	0	0	0	0	0
Arkansas	32	0	0	2	0	0
California	360	167	0	22	8	0
Colorado	(Data not available by sex; 125 inmates transferred to other states and 1 transferred to BOP)					
Connecticut	51	8	0	2	0	0
Delaware	19	0	0	3	0	0
Florida	14	0	0	2	0	0
Georgia	0	1	0	0	0	0
Hawaii	(No survey response)					
Idaho	14	0	0	1	0	0
Illinois	(No survey response)					
Indiana	(DOC had no active inmate transfers as of survey date)					
Iowa	31	7	0	3	0	0
Kansas	73	1	0	2	0	0
Kentucky	18	0	0	3	0	0
Louisiana	(DOC does not engage in interstate transfers of inmates)					
Maine	18	22	0	4	2	0
Maryland	2	0	0	0	0	0
Massachusetts	64	6	0	2	0	0
Michigan	0	27	0	0	1	0
Minnesota	73	5	0	7	0	0
Mississippi	(DOC had no active inmate transfers as of survey date)					
Missouri	52	2	0	1	0	0
Montana	23	2	0	2	0	0
Nebraska	25	1	0	3	0	0
Nevada	169	0	0	6	0	0
New Hampshire	(DOC had no active inmate transfers as of survey date)					
New Jersey	60	3	0	4	0	0
New Mexico	81	0	0	0	0	0
New York	1	2	0	0	0	0
North Carolina	(Data provided for a broader reporting period)					
North Dakota	7	7	57	2	0	0
Ohio	20	11	0	2	0	0
Oklahoma	74	1	0	5	0	0
Oregon	62	1	0	2	0	0
Pennsylvania	22	12	0	9	0	0
Rhode Island	45	5	0	3	0	0
South Carolina	4	0	0	0	0	0
South Dakota	24	0	0	0	0	0
Tennessee	2	0	0	2	0	0
Texas	10	4	0	0	0	0
Utah	36	2	0	0	0	0
Vermont	15	4	373	1	0	0
Virginia	3	0	0	1	0	0
Washington	181	6	406	1	0	0
West Virginia	(DOC does not engage in interstate transfers of inmates)					
Wisconsin	32	12	0	2	0	0
Wyoming	27	2	484	0	1	87
<b>TOTALS</b>	1,863	332	2,080	101	12	386

**Table 3. Mechanisms Used for State-to-State Transfers**

	No. of DOCs Using This Method	No. of inmates transferred
Transfers Via Interstate Compacts	39	1,587
Non-Compact Transfers	5	502

are “other” reasons. Next highest are the two security-related categories: transfers for inmate protection, and transfers to preserve safe facility operations. These are reversed for male and female inmates, with movements of inmates in danger being more numerous among male prisoners, and movements of inmates posing danger being more numerous among female prisoners. Special program needs, pending adjudications, and “cool-down” transfers after an incident each were the reason behind fewer than 5% of reported transfers.

Reported data on the number of men and women transferred were studied to compare the primary reason for these transfers as it differed from state to state.

- Protection of inmates was the reason for most transfers of men in 12 state DOCs. “Other” reasons were the main reason for men’s transfers in nine (9) DOCs. Crowding was the primary reason for transfers of men in six (6) DOCs. In only four (4) DOCs were men most likely to have been transferred for reasons of preserving safety and security in the sending state’s prisons.
- For women inmates, it was difficult to rank the reasons for transfer due to the very low number of women transferred from any one state. Crowding and “other” reasons were the primary factor in one state each, but in other states the small numbers did not support any conclusions.

**Table 4. DOCs’ Reasons for Interstate Transfers of Men and Women Inmates**

	No. of DOCs That Transferred Men	No. of DOCs That Transferred Women
Special Custody: Inmates Posing Danger	33	16
Special Custody: Inmates Needing Protection	31	13
Special Program Needs	9	5
Facility Crowding	7	4
Adjudication Pending	5	1
Post-Incident Cool Down	5	0
Other	27	15

**Inmate transfers by reason and recipient agency.**

The data sets presented as Table 6, page 16, give details on the numbers of inmates who were sent to the three types of out-of-state placements and the reasons for these transfers.

- Transfers to states were most often made for reasons of custody (risk control or protection) or “other” reasons (mainly family-related).
- Transfers to the BOP were made for generally similar reasons as transfers to other state DOCs.
- Transfers to private prisons were made almost exclusively in response to facility crowding, except for a few transfers of men and women to accommodate special program needs.
- The largest group of women inmates transferred out of state were moved to private facilities in response to facility crowding in the home agency. These transfers involved only a few state DOCs.

**Table 5. Numbers of Interstate Transfers of Men and Women Inmates, by Reason for Transfer**

	Men Transferred	Women Transferred
Facility Crowding	2,228 (52%)	382 (77%)
Special Custody: Inmates Needing Protection	608 (14%)	24 (5%)
Special Custody: Inmates Posing Danger	422 (10%)	31 (6%)
Special Program Needs	161 (4%)	18 (4%)
Adjudication Pending	127 (3%)	2 (0.4%)
Post-Incident Cool Down	20 (0.5%)	0
Other	709 (17%)	42 (8%)

\* Numbers on this table do not include 126 inmates for whom data are not available by sex. Percentages are calculated against the total number of reported transfers of men and women inmates, less these 126 inmates.

**“Other” reasons for inmate transfer.** Respondents volunteered information on several other reasons for inmate transfers, which totalled 751 men and women.

- The largest number of “other” transfers is attributed to a peculiarity of California law (the In re Stoliker precedent, discussed on page 8), dealing with serving consecutive and concurrent sentences in two jurisdictions. This exception applies to 401 transfers made between California and other state DOCs.
- Two-thirds of the remaining 351 “other” transfers (237 inmates) were described by respondents as approved for family or compassionate reasons. These transfers were made to jurisdictions where inmates’ family members reside and serve to

avoid undue hardship on visitors while helping inmates maintain family ties. The respondent in one DOC noted that these transfers often take place as inmates approach the end of their sentences. Altogether, respondents in 19 state DOCs noted that transfers had been made for family and/or compassionate reasons.

- Another type of transfer reported as “other” was for inmates who had testified for the state or were former staff of law enforcement agencies or DOCs (61 inmates). Such transfers could have been reported in the inmate protection category.

Other reasons for transfers cited in the “other” category affected relatively few inmates:

- To allow inmates to maintain a Kosher diet;
- To manage high profile cases (another example related to security);
- To respond to inmate management issues and to provide for separation of inmates (also related to security);
- To manage cases of conflict between staff and inmates;
- To provide for an equitable “exchange” of prisoners; and
- To respond to court orders.

**Agencies’ views on the benefits of interstate inmate transfers.** Survey respondents noted that having the ability to transfer inmates to other jurisdictions offers many advantages. Some benefits mentioned include:

- The ability to address problems such as cool-down for inmates following a disturbance and provision of dialysis treatment that could not be provided onsite in the sending state, at a savings of considerable transportation costs;
- Enhancement of inmates’ family relationships;

**Table 6. Outside Placements Receiving Inmates Transferred Out of State, by Reason for Transfer**

**a) Facility Crowding**

	Men Transferred	Women Transferred
Transfers to Other State DOCs	152	1
Transfers to the Federal Bureau of Prisons	0	0
Transfers to Privately Operated Prisons in Other States	2,076	381

**e) Special Program Needs**

	Men Transferred	Women Transferred
Transfers to Other State DOCs	157	13
Transfers to the Federal Bureau of Prisons	0	0
Transfers to Privately Operated Prisons in Other States	4	5

**b) Custody Needs: Inmates in Danger**

	Men Transferred	Women Transferred
Transfers to Other State DOCs	547	22
Transfers to the Federal Bureau of Prisons	61	2

**f) Post-Incident/Disturbance Cool-Down**

	Men Transferred	Women Transferred
Transfers to Other State DOCs	17	0
Transfers to the Federal Bureau of Prisons	3	0

**c) Custody Needs: Inmates Posing Danger**

	Men Transferred	Women Transferred
Transfers to Other State DOCs	347	28
Transfers to the Federal Bureau of Prisons	75	3

**g) Adjudication Pending**

	Men Transferred	Women Transferred
Transfers to Other State DOCs	125	2
Transfers to the Federal Bureau of Prisons	2	0

**d) Other Reasons**

	Men Transferred	Women Transferred
Transfers to Other State DOCs	518	35
Transfers to the Federal Bureau of Prisons	191	7

*\* Numbers in Table 6 do not include 126 inmates for whom data are not available by sex.*

- Management of inmates who are gang members by moving them to regions where their power base can be neutralized;
- Overall enhancement of the security at and orderly operation of the sending state's facilities;
- Increasing program opportunities for inmates;
- Means of accommodating what would be high profile prisoners in the sending state; and
- Separating inmates who create security or management problems.

### **Agencies' Satisfaction with Processes for Interstate Transfer of Inmates**

The general response to a survey question concerning effectiveness of current systems was favorable. One respondent indicated that the interstate transfer process was "simple and easy to use" and another that "the interstate officers of other states have been very helpful and cooperative." One western state respondent expressed a great deal of satisfaction with the system which had served that agency's needs particularly well and often. Another respondent commended the system specifically for the flexibility exhibited by Interstate Compact coordinators in the face of differing policies, procedures and laws in their respective jurisdictions.

Respondents also identified some problem areas that could be addressed to improve interstate transfer procedures:

- The need to accommodate differences in sentencing structures across states;
- Gaps in notification procedures to track inmate movement following hearings in the sending state and in the event of the receiving state's need to move the inmate within the receiving state after the initial placement;

- Difficulties in obtaining required documentation from the receiving state in time for duly scheduled parole hearings in the sending state;
- Preserving the rights of transferred inmates when these rights differ from those of inmates in the receiving state;
- The need for consistent reporting systems;
- An overall lack of timeliness in the exchange of information;
- A lack of reciprocity in accepting inmates, which could disturb the balance of costs to house inmates exchanged between state systems; and
- A lack of effectiveness of the Interstate Compact between states located beyond a 1-day's drive from each other.

Respondents provided a number of suggestions for system improvement.

- **Standardization.** A number of respondents voiced interest in the benefits that could result from further standardization in procedures, forms, and sharing information common to the majority of Interstate Compact transfers. Examples include:
  - ~ Medical expenses compensation;
  - ~ Information included in transfer referral packets;
  - ~ Review and information-sharing on gang-related activity;
  - ~ Position of officials who are responsible for transporting inmates;
  - ~ Specifications for what property can accompany the inmate to the receiving state (e.g., medications);
  - ~ Inmate privacy rights, especially as related to transfers for an inmates' own protection;
  - ~ Sharing of transportation costs when significant numbers of inmates are being transferred at the same time;

- ~ Access to legal materials specific to the sending state;
- ~ Development of an inmate handbook to discuss issues that commonly affect inmates who are transferred, such as requests to return to the sending state, help in maintaining secrecy as to the identity of the sending state, sentencing information and good time calculation, and choice of law for classification, inmate property ownership, release programs, and grievances.

■ **National organization.** One respondent called for the creation of a national organization of compact states to achieve streamlining and standardization goals. Models could be found in the Interstate Commission for Adult Offender Supervision, supporting the supervision of offenders on parole and probation through the Interstate Compact for Adult Offender Supervision, or the National Association of Extradition Officials. This respondent noted that more standardization has been provided for the parties to the New England Interstate Corrections Compact, a concept which could provide additional benefit if extended beyond the New England states.

## **Conclusions**

The results of this survey have been summed up by one respondent, who commented:

*Each state operates in a different manner, using different rules and procedures as well as using a variety of forms and language. It is important that we remain flexible and willing to take a number of extra steps to assist the transfers. I have been extremely pleased with how well the coordinators work together.*

Survey findings create a strong impression of a system that operates to the mutual benefit of many states. While the numbers may not be particularly large for any one state, corrections officials are clearly using interstate transfers of prison inmates to accom-

modate both institutional inmate management issues and some very important inmate concerns for safety and family. From the perspective of the facility staff and operational security, the problems that the transfers alleviate are significant and often life-threatening.

State DOC staff who responded to the survey generally are satisfied with current systems for interstate transfers of inmates. It is commendable that agencies have formed workable methods for cooperating to make these transfers an effective tool for those who manage America's prisons. ■

## **Sources**

Council of State Governments, National Center for Interstate Compacts. Web site: <http://www.csg.org/CSG/Programs/National+Center+for+Interstate+Compacts/default.htm>. To view examples of interstate compacts cited in this report, click on "statutes" link.

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