

§ 884.5 Requests under the interstate agreement on Detainer's Act.

When either the prisoner or state authorities make a request under the Detainer's Act, follow the procedures in Title 18 U.S.C. App. Section 1, *et seq.* The Act applies only to a person who has entered upon a term of imprisonment in a penal or correctional institution and is, therefore inapplicable to members in pretrial confinement.

§ 884.6 Requests by Federal authorities for military personnel stationed within the United States and its possessions.

(a) When Federal authorities request the delivery of service members, the Air Force will normally deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, rule 4, or when a properly identified Federal officer represents that such a warrant has been issued.

(b) A U.S. marshal, deputy marshal, or other officer authorized by law will call for and take into custody persons desired by Federal authorities for trial. The officer taking custody must execute a statement in substantially the form set out in § 884.18.

§ 884.7 Requests by state and local authorities when the requested member is located in that state.

(a) The Air Force normally will turn over to the civilian authorities of the state, upon their request. Air Force members charged with an offense against state or local law. Each request by such civilian authorities for the surrender of a member of the Air Force should normally be accompanied by a copy of an indictment, information, or other document used in the state to prefer charges, or a warrant that reflects the charges and is issued by a court of competent jurisdiction.

(b) Before making delivery to civilian authorities of a state, the commander having authority to deliver will obtain a written agreement, substantially in the form of § 884.18, from a duly authorized officer of the state.

(c) Where the state authority cannot agree to one or more of the conditions set out in the form, the commander may authorize modification. The re-

quirements of the agreement are substantially met when the state authority informs the accused's commander of the accused's prospective release for return to military authorities and when the state furnishes the accused transportation back to his or her station, together with necessary funds to cover incidental expenses en route. The accused's commander provides copies of the statement or agreement of this section and in § 884.6(b) to the civilian authority to whom the member was delivered and to the Air Force unit, activity, or recruiting office nearest to the place of trial designated in the agreement as the point of contact in the event of release on bail or on recognizance (see § 884.4). The accused's commander immediately notifies the civilian authority if the member has been discharged from the Air Force.

§ 884.8 Request for delivery by state authorities when the member is located in a different state.

(a) This part applies to members who are located in the United States. With respect to the extradition process, Air Force personnel have the same status as persons not in the Armed Forces. Accordingly, if a state other than the state in which the member is located requests the delivery of a military member, in the absence of a waiver of extradition process by the member concerned, that state must use its normal extradition procedures to make arrangements to take the individual into custody in the state where he or she is located.

(b) The Air Force will not transfer a military member from a base within one state to a base within another state for the purpose of making the member amenable to prosecution by civilian authorities.

§ 884.9 Requests for custody of members stationed outside the United States.

(a) Authority. This section implements Pub. L. 100-456, section 721(a), and DoD Directive 5525.9, December 27, 1988.

(b) The Air Force expects members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally

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justified. Air Force members who persist in noncompliance are subject to adverse administrative action, including separation for cause under AFI 36-3206, Administrative Discharge Procedures, and AFI 36-3208, Administrative Separation of Airmen.

(c) Air Force officials will ensure that members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

(d) Noncompliance with a court order may be legally justified when the individual can adequately demonstrate that the conduct, which is the subject of the complaint or request, was sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good faith legal efforts to resist the request, or other reasons. HQ USAF/JAG, HQ AFLSA/JACA, and Air Force legal offices in the jurisdiction concerned will provide legal support to servicing staff judge advocates who request assistance in reviewing these issues.

(e) When Federal, state, or local authorities request delivery of an Air Force member stationed outside the United States who is convicted of or charged with a felony or other serious offense or who is sought by such authorities in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or from the lawful custody of another person, the member's commander will normally expeditiously return the member to the United States for delivery to the requesting authorities.

(1) A serious offense is defined as one punishable by confinement for more than 1 year under the laws of the requesting jurisdiction.

(2) Delivery of the member is not required if the controversy can be resolved without returning the member to the United States or if the request for delivery of the member is denied in accordance with this instruction.

(f) Ordinarily, do not return an Air Force member stationed outside the United States to the United States for delivery to civilian authorities if the offense is not specified in paragraph (e) of this section. TJAG may direct return when deemed appropriate under

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the facts and circumstances of the particular case.

(g) Before taking action under this section, give the member the opportunity to provide evidence of legal efforts to resist the court order or process sought to be enforced or otherwise to show legitimate cause for non-compliance.⁴

§ 884.10 Returning members, employees, and family members from overseas.

The Air Force expects persons overseas wanted by Federal or state authorities to make themselves available to those authorities for disposition. If they do not, DoD Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, 10 U.S.C. 814, and Pub. L. 100-456, section 721(a), authorize and require commanders to respond promptly to requests from civilian authorities for assistance in returning members, civilian employees, and family members from overseas.

§ 884.11 Procedures for return of an Air Force member to the United States.

(a) Include the following information in a request for return of an Air Force member to the United States for delivery to civilian authorities.

(1) Fully identify the member sought by providing the member's name, grade, SSN, and unit of assignment, to the extent the information is known.

(2) Specify the offense for which the member is sought. If the member is charged with a crime, specify the maximum punishment under the laws of the requesting jurisdiction. Specify whether the member is sought in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or the lawful custody of another.

(3) Include copies of all relevant requests for assistance, indictments, information, or other instruments used to bring charges, all relevant court orders or decrees, and all arrest warrants, writs of attachment or capias (writs authorizing arrests), or other

⁴See footnote in § 884.1