



COMMITTEE ON CRIMINAL LAW
of the
JUDICIAL CONFERENCE OF THE UNITED STATES
United States District Court
333 Constitution Avenue, N.W., Room 4317
Washington, D.C. 20001

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Honorable Randolph D. Moss, Chair

October 27, 2020

MEMORANDUM

To: Judges, United States District Courts
United States Magistrate Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts of Appeals
Clerks, United States District Courts
Chief Probation Officers
Chief Pretrial Services Officers

From: Honorable Randolph D. Moss

RE: COVID-19 OPERATIONAL STATUS UPDATE FROM THE BUREAU OF PRISONS
(**INFORMATION**)

I am writing to share a letter with you from the Bureau of Prisons (BOP), which provides an additional update on their operational status during the pandemic. The letter includes a description of operations related to court trips, transfer of inmates to BOP custody, movement of inmates within the BOP, social visits, legal access, and medical records.

Since December 2018, the Judiciary-BOP Working Group, which consists of judges and chief probation officers, has met with senior leaders of the BOP to exchange information related

to criminal justice administration. During the COVID-19 pandemic, the Working Group has met on a more frequent basis with the BOP and the Department of Justice (DOJ) to discuss, among other topics, the impact of the pandemic on operations in the BOP and in the probation and pretrial services system.

If you have any questions or comments regarding the Working Group and its discussions with the BOP and the DOJ about criminal justice administration issues, please contact Stephen Vance, Chief, Criminal Law Policy Staff, at Stephen_Vance@ao.uscourts.gov or (202) 502-2636.

Attachment



U.S. Department of Justice

Federal Bureau of Prisons

Office of the General Counsel

Washington, DC 20534

October 13, 2020

Via E-Mail

The Honorable Randolph D. Moss
United States District Court for the District of Columbia

Dear Judge Moss:

Thank you again for continuing meetings between the Bureau of Prisons (BOP) and the Criminal Law Committee of Administrative Office of United States Courts (CLC). As part of our on-going communications concerning the response to the COVID-19 pandemic, I am providing the following updated information concerning BOP operations.

COURT TRIPS:

A number of variables affect the risk of COVID-19 transmission during in-person court appearances and will determine some of the specific management strategies that are needed at each location. The U.S. Marshals Service (USMS) takes responsibility for the inmate once they leave the BOP institution until their return. Each USMS district may have their own procedures. Individual courts may also have different COVID-19 mitigation procedures and requirements. For the BOP, knowing the likelihood of BOP inmates mixing with non-quarantined, non-BOP inmates while in USMS custody during a court visit is essential to determine the risk of COVID-19 exposure. The frequency of an inmate's court appearance and the number of inmates going to a court at any one time are also important factors to consider.

We have asked each BOP detention center to contact the local USMS and court to ascertain their COVID-19 mitigation procedures and consult with Regional Health Services staff on developing an individualized strategy. The following are general mitigation strategies BOP staff will follow:

- Inmates in COVID isolation should not have in-person court appearances unless absolutely necessary. It is strongly recommended that VTC or telephone appearances be used as alternatives.
- Inmates in COVID quarantine (intake/exposure) should delay in-person court appearances until they are COVID tested at the end of quarantine. It is recommended that VTC or telephone appearances be used as alternatives.
- In general, testing an inmate immediately before or after a court visit would have little utility and is not recommended.
- Inmates should wear face coverings and perform hand hygiene just before departure from and upon return to the institution.
- BOP officials should request that BOP inmates be cohorted only within their own housing or quarantine cohort and not be mixed with inmates from other housing units or other institutions, or transported with inmates from other institutions to the extent possible while at court.
- Upon return to the detention center, inmates must be quarantined for 14 days if they were exposed to inmates from other housing units or locations (i.e., county jails).
- Periodic testing of inmates with frequent court appearances should be considered.

In summary, rather than establish a blanket rule that inmates be quarantined after court appearances, the BOP will work with USMS and the courts to mitigate risks and make individualized decisions.

TRANSFER OF INMATES TO BOP CUSTODY:

All BOP institutions, with limited exceptions approved by our Central Office, are able to accept inmates entering our system. We are working closely with the USMS to insure inmate movement continues, consistent with safety protocols. Intake procedures are as follows:

- Institutions are to designate specific quarantine and isolation areas in advance with capacity numbers commensurate with anticipated levels and frequency of incoming inmates. Ideally, inmates should be quarantined or isolated in single-cell, if possible. When cohorting is necessary, the best practice is to keep cohorted inmates together and not add to the cohort when new intakes arrive.
- New intakes should undergo intake screening process with symptom and temperature screening, and will be tested on arrival with an approved viral PCR test from a nasopharyngeal swab.
- Inmates that test positive and/or are symptomatic will be placed immediately in isolation. They will remain in isolation until they meet the CDC test-based strategy criteria for isolation release which includes two negative tests at least 24 hours apart.
- Inmates that are asymptomatic and test negative are placed in quarantine. They will remain in quarantine for at least 14 days, and will be tested via a commercial lab test at the conclusion of the quarantine period. Inmates will remain in quarantine status until test results are complete. If the test is negative, the inmate may be released to a general population unit.
- If an inmate becomes symptomatic during the quarantine period, the individual should be tested (Abbott or commercial) and placed in isolation immediately. Depending on the housing circumstances, potential contacts (e.g. cellmate, cohort, housing unit) will need to reset their quarantine. When risk of exposure and/ or spread of transmission is higher, re-testing of potential contacts could be considered. A testing frequency of every 3 to 4 days is preferred whenever feasible in consultation with Regional Infection Prevention and Control Consultant and the Regional Medical Director.

MOVEMENT OF INMATES WITHIN THE BOP:

The first step in ensuring safe inmate movement is a 14-day quarantine of transferring inmates prior to transport, with the appropriate testing. If an inmate develops symptoms and/or tests positive, they will not be permitted to travel until they

have met the CDC test-based criteria for test-based release from isolation.

On rare occasions, there may be exceptions where an inmate must travel prior to the completion of this process or even with a positive result (e.g. court ordered transfer). In these cases, the transfer must be discussed and approved by local executive staff from the institutions and regions involved with input from health services staff, as needed.

To the extent possible, manifests will be generated that allow for appropriate social distancing during transport (e.g. loading a bus/ plane at 50% capacity). In addition, movement should be coordinated in a manner that has limited stops, minimizes the amount of time inmates are in transit, and avoids mixing of inmate groups as much as possible. Transferred inmates will undergo the same process as a new intake, to include intake screen and temperature check, COVID-19 testing and isolation.

SOCIAL VISITS

Social visiting resumed in a limited capacity on Saturday, October 3, 2020. For institutions that are able to offer social visiting, certain protocols must be observed, e.g.:

- Visitation will be non-contact only. Use of Plexiglas or a similar barrier between inmate and visitors will prevent any contact. In the alternative, if a barrier is not present, social distancing (i.e., 6 feet apart) must be used.
- The number of visitors allowed in the visiting room will be based on the size of the available space.
- Visiting appointments and/or adjusting visiting times may be necessary. Consideration should also be given to the time needed to clean between visitor groups. Tables, chairs, and other high-touch surfaces should be disinfected between visitation periods.
- Visiting must be conducted as a cohort, e.g. from one housing unit, rather than from all over the institution, to limit potential exposure.

- Inmates in quarantine or isolation will not participate in social visiting.
- Visitors must be symptom screened and temperature checked upon entry into the facility. Visitors who are sick or symptomatic will not be allowed to visit.
- Both inmates and visitors must wear face coverings at all times and perform hand hygiene just before and after the visit.
- There will be no physical contact of any kind, to include an embrace at the beginning and end of the visit as previously permitted.

LEGAL ACCESS

Institutions have been made aware that as courts begin to hold more criminal and civil proceedings, inmates will need increased access to counsel and legal materials, and to make accommodations to support judicial proceedings. Specifically:

- Telephone calls and/or video conferencing with outside counsel should be accommodated to the extent possible. Institutions have been instructed to maintain and expand remote access to attorneys whenever possible.
- In person legal visits should be accommodated upon request. Outside attorneys should undergo screening procedures used for staff, and face coverings are required. The visits should be accommodated based on local resources, allowing for social distancing, non-contact visits, and/or other appropriate measures to mitigate risk of transmission.
- Inmates will continue to be permitted access to the Electronic Law Library (ELL) under conditions determined by the Warden at each facility to account for safety protocols (e.g. social distancing, cleaning schedules, etc.).
- Similarly, inmates will need access to discovery materials relevant to pending cases, beyond those which are maintained by the inmate in his or her cell. Institutions

were asked to establish a schedule to permit fair and timely access to discovery materials.

Institution legal staff, or the Regional Counsels Offices can assist with any issues that may arise concerning legal access. Please see the attached list with points of contact for each Regional Office.

MEDICAL RECORDS

The BOP has increased the number of staff working on requests for medical records from U.S. Attorneys' Offices and defense counsel, relevant to Reduction in Sentence (RIS) motions and other issues related to the pandemic.

Attorneys in the community should first use regular procedures to obtain medical records (e.g. obtain inmate consent; contact the legal staff at local institution). If the institution has not responded in a reasonable amount of time, the attorney can contact my office for assistance by sending an e-mail to:

BOP-OGC/ExecAssistant~@bop.gov

It will assist us in responding if the subject line of the e-mail is "Medical Records-[inmate name- register number]"

We request that, given the demand on staff and resources, requests for medical records be prioritized for cases where inmates meet the current RIS criteria (e.g. terminal, debilitated, elderly with medical conditions, etc.) and would be especially vulnerable to COVID-19 under CDC guidelines.

CONCLUSION

Again, we appreciate the opportunity to continue dialogue concerning these issues. If you have any questions prior to our next meeting, please let me know.

Sincerely,



Ken Hyle
Assistant Director/General Counsel
Federal Bureau of Prisons

Attachment - Regional Counsel for Federal Bureau of Prisons, October, 2020

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