

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

DEPARTMENT OF CORRECTIONS

(agency name)

Administrative Order No. 82-12

(1) I, AMOS E. REED, director of

Department of Corrections

do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

New Section 137-66 - Out-of-State Transfer of Inmates - Procedure

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. filed with the code reviser on These rules shall take effect:

- thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
at a later date, such date being

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, Amos E. Reed, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:

A procedure needs to immediately be established to ensure the orderly and uniformed movement of inmates out-of-state, thereby improving the general welfare and safety in institutions.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules fill in statement (a), (b), or (c) as appropriate:

(a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.

(b) This rule is promulgated pursuant to RCW which directs that the

(agency)

has authority to implement the provisions of

(name of act or RCW citation)

(c) This rule is promulgated under the general rule-making authority of the Department of Corrections

(agency)

as authorized in RCW 72.09.050, RCW 72.68 and RCW 72.70

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

APPROVED AND ADOPTED

November 12, 1982

By

Robert E. Trimble, Deputy Secretary

for Amos E. Reed, Secretary

Title

unk wrc

STATE OF WASHINGTON

NOV 13 1982

CODE REVISER'S OFFICE

82-23-046

Chapter 137-66 WAC

OUT-OF-STATE TRANSFER OF INMATES--PROCEDURE

NEW SECTION

WAC 137-66-010 PURPOSE. This chapter recognizes that the out-of-state transfer of certain inmates is a necessary and legitimate classification process of benefit to the state and to the inmate; and recognizes the need for such placement, as well as the inconvenience and loss of privileges which may be attendant to an interstate transfer. This chapter, therefore, sets forth the procedures under which interstate transfers will be accomplished.

NEW SECTION

WAC 137-66-015 DEFINITIONS. (1) "Secretary" is the secretary of the department of corrections or his/her designee.

(2) "Director" is the director of the division of prisons, department of corrections.

(3) "Superintendent" is the superintendent of the correctional facility wherein the inmate to be considered for transfer resides, and includes his/her designee.

(4) "Transfer committee" is a committee established pursuant to WAC 137-66-040 for the purpose of considering out-of-state transfers.

(5) "Correctional facility" is any facility operated by the department of corrections pursuant to RCW 72.01.050(2).

(6) As used herein the words "interstate" and "out-of-state" refer to all states within the United States as well as the federal government.

NEW SECTION

WAC 137-66-020 SCOPE OF THIS CHAPTER. This chapter does not apply to:

(1) The intrastate transfer of inmates of adult correctional facilities.

(2) The movement of inmates among the various institutions of this state.

(3) The reclassification of inmates of adult correctional facilities.

(4) The powers and duties of the state with regard to discipline of inmates.

NEW SECTION

WAC 137-66-030 REFERRAL FOR TRANSFER. An inmate may be referred to the transfer committee for a consideration of transfer by any of the following sources.

- (1) By other correctional facility committees established under the Washington Administrative Code such as the disciplinary committee or the administrative segregation committee.
- (2) By written request of the inmate or the inmate's authorized representative.
- (3) By the board of prison terms and paroles.
- (4) By the superintendent of the facility wherein the inmate resides.
- (5) By the director, division of prisons of the department.
- (6) By the secretary of the department.

NEW SECTION

WAC 137-66-040 TRANSFER COMMITTEE--COMPOSITION. (1) The superintendent of each major adult correctional facility shall establish a transfer committee(s) of three or more persons, the membership of which shall reflect a substantial balance between various departments of the institution with not more than two members being appointed from any one department.

(2) At forestry honor camps and such other smaller adult correctional institutions as may be created from time to time, the transfer committee(s) shall be comprised of three or more staff members designated by the superintendent, none of whom shall be the involved inmate's regular counselor, unless no other satisfactory staff members are available.

(3) The transfer committee shall also include a representative from the central office appointed by the director of the division of prisons. This member shall serve as the chairperson of the transfer committee.

(4) No committee member shall have a personal interest in the transfer being reviewed.

NEW SECTION

WAC 137-66-050 BASIS FOR TRANSFER. The transfer committee shall consider any of the following as grounds for a transfer. A finding of one or more of these grounds does not, however, guarantee or require a transfer.

(1) The inmate requests protective custody status or information exists to suggest a transfer may result in safer and more secure housing for the inmate than is available in the institution or in other state facilities.

(2) The transfer may result in the inmate benefiting from closer family and community ties.

(3) The inmate may be afforded an opportunity for stable adjustment in a setting unbiased by the inmate's prior adjustment record.

(4) The inmate demonstrates an inability/refusal to follow institution rules.

(5) The transfer of the inmate to another institution may enhance the ability of the institution or the division of prisons to maintain security.

(6) The conditions at the institution or in the division of prisons are such that the interests of the administration of the system would best be served by the transfer of the inmate.

(7) The transfer is the only option to ensure the safety of the inmate in an acceptably secure institution.

(8) It is otherwise deemed to be in the best interest of the state, of the inmate or necessary to provide adequate quarters and

care, or desirable in order to provide an appropriate program of rehabilitation or treatment.

NEW SECTION

WAC 137-66-060 TRANSFER COMMITTEE--PROCEDURES. In preparation for a hearing regarding the transfer of an inmate, the transfer committee shall take the following steps:

(1) Forty-eight hours prior to the hearing, the transfer committee shall provide the inmate with written notice of the proposed hearing and the basis for the proposed transfer.

(2) Advise the inmate in writing of his/her right, subject to the relevant provisions and limitations of these rules:

(a) To have a hearing.

(b) To remain silent.

(c) To present written witness statements from other inmates, staff, or other persons in his/her behalf. Witnesses, including staff members, other inmates, and other persons may be asked, in the discretion of the committee chairman, to be present for the hearing.

(d) To respond to the transfer committee to information or testimony provided which directly relates to the transfer consideration.

(e) To present documentary and/or other evidence on his/her own behalf at the hearing.

(f) To have a staff advisor to assist in preparation/presentation of case when it is determined that the inmate is unable to adequately represent himself/herself on the basis of literacy or competence and complexity of the issue involved in the hearing.

(g) To have access to the nonconfidential reports and records utilized by the transfer committee during the fact-finding stage. Reports and records containing information, which might reasonably compromise the security and/or safety of the institution or its inmates, shall be specifically identified as confidential and withheld. The contents of any information from an anonymous source shall be shared with the inmate at the meeting to the extent that this may be done without endangering the source of the information. When considering information from an anonymous source, the name of the source and all details of such information shall be given to the transfer committee out of the presence of the inmate, unless the nondisclosure of the name and/or details has been previously approved by a staff member of the rank of captain or above and to whom such name and information has been disclosed. Such approval shall reflect the approving official's verification that the source and information are reliable and are properly considered in deciding whether to transfer the individual.

NEW SECTION

WAC 137-66-070 REPRESENTATION OF INMATE. As provided in WAC 137-66-060, an inmate may select a willing staff member or trained community volunteer approved by the superintendent to assist and advise him/her at the hearing. The advisor may be a staff member not ordinarily assigned responsibility for the inmate.

NEW SECTION

WAC 137-66-080 CONDUCT OF HEARING. (1) The transfer committee shall ensure that the inmate, or his/her lay advisor, understands the issues discussed, the basis of the transfer and the nature of the proceedings. The hearing may be postponed to secure a report on competency of the inmate or to secure an advisor for the inmate if there is a question as to the ability of the inmate to understand the issues and participate in the proceedings. An inmate's competency, lack of ability to understand the issues and/or to participate in the hearing shall not be a bar to the hearing being conducted nor to an inmate's out-of-state transfer.

(2) The inmate shall be present at all stages of the hearing, except during the decisional deliberations and any inquiries into the identity of unidentified witnesses.

(3) The inmate shall be informed of his/her right to remain silent at the time of the hearing.

NEW SECTION

WAC 137-66-090 PROPOSED TRANSFERS. At the time of the hearing on the proposed transfer of an inmate, the committee shall advise the inmate of the following:

(1) That a transfer out of state may result in the loss of the ability to have in-person meetings with the board of prison terms and paroles.

(2) That there may be program modifications at another institution.

(3) That the rights of visitation may be changed or limited.

(4) What, if any, provision is made for access to Washington state courts and legal materials.

NEW SECTION

WAC 137-66-100 DECISION OF TRANSFER COMMITTEE. The transfer committee shall, after review of the information before it, make a written determination as to the advisability of the transfer of the inmate, the facts and other information on which it relies and make a written recommendation to the superintendent. If the superintendent supports the request for transfer, a written recommendation will be forwarded to the director of the division of prisons. Upon receipt, a decision shall be made within fifteen working days by the director or designee. Copies of the recommendation of the transfer committee, the written recommendation of the superintendent, and the decision of the director of the division of prisons shall be provided to the inmate.

NEW SECTION

WAC 137-66-110 APPEAL. (1) Where a transfer has been approved by the director of the division of prisons the inmate shall have a right to appeal the decision of the director of the division of prisons to the secretary of the department of corrections. The appeal must be forwarded to the secretary through the transfer committee or individual designated to receive appeals at the institution, within forty-eight hours after receiving notice of the decision from the

director of the division of prisons. Such appeal shall incorporate any substantial reasons for the denial of the transfer. The secretary shall either affirm, reverse, or modify the decision made regarding the transfer. Pending review by the secretary, the inmate will be retained in a facility within Washington state.

(2) Appeals shall not be available where transfers are, at any stage, disapproved.

NEW SECTION

WAC 137-66-120 TIME LIMITS. The secretary reserves the right to wave the time limits contained in this chapter, and the time limits contained herein shall not be deemed jurisdictional.

NEW SECTION

WAC 137-66-130 EMERGENCY TRANSFER. Whenever, in the judgment of the secretary or his designee, an emergency exists justifying an immediate transfer, the inmate may be transferred prior to a hearing: PROVIDED, That the inmate shall be afforded a hearing within sixty days of such emergency transfer. The institution shall follow such emergency transfer with notice to the transferred inmate of the basis for the emergency transfer and inform the inmate that a hearing will be held pursuant to these rules.