

§ 884.5 Returning members, employees, and dependents from overseas who fail to comply with court orders or custody decrees or who are sought for parental kidnapping.

Persons overseas who are wanted by state or federal authorities are expected to make themselves available to those authorities for proper disposition. If this does not occur, 32 CFR part 146, which implements 10 U.S.C. 814 and Pub. L. 100-456, section 721(a), authorizes and requires commanders to respond promptly to request from civil authorities for assistance in returning members, civilian employees, and dependents from overseas (subpart C of this part).

Subpart B—Requests by Authorities for Military Personnel Stationed Within the United States and its Possessions

§ 884.6 Policy on delivery.

When such authorities request the delivery of service members, it is Air Force policy normally to deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, Rule 4, or when the appropriately identified federal officer represents that such a warrant has been issued (MCM 1984, appendix 3).

§ 884.7 Delivery to Federal authorities.

Persons desired by the federal authorities for trial will be called for, and taken into custody by, a U.S. marshal, deputy marshal, or other officer authorized by law. The officer taking custody must execute a statement in substantially the following form:

A warrant for the arrest of (name, grade, and social security number), hereinafter referred to as the "member," who is charged with (offense), has been issued by (name of issuer), and in execution thereof, I accept his or her custody.

The commander (Unit), will be advised of the disposition of the charges. The member will be immediately returned to the custody of the Air Force at (Air Force activity or recruiting office nearest place of trial) upon completion of the trial if acquitted, upon satisfying the sentence imposed if convicted, or upon other disposition of the case. The member's return will not be required if the member's commander has indicated that re-

turn is not appropriate. Pending disposition of the charges, the member will remain in the custody of (name of agency and location), unless released on bail or the member's own recognizance, in which event (Air Force unit, activity or recruiting office nearest place of trial) will be notified.

§ 884.8 Requests by authorities of the state in which the member requested is located.

(a) *Policy on delivery.* It is Air Force policy normally to turn over to the civilian authorities of the state, upon their request, Air Force members charged with an offense against civil authority. There ordinarily will be required with each request by the state authorities for the surrender of a member of the armed forces, a copy of an indictment, information, or other document used in the state to prefer charges.

(b) *Delivery to state authorities.* Before making delivery to civil authorities of a state, the commander having authority to deliver will obtain from the Governor or other duly authorized officer of such state, a written agreement substantially in the following form:

In consideration of the delivery at (location) of (name, grade, and social security number), hereinafter referred to as the "member," to me (name and capacity), for trial upon the charge of (offense), I, pursuant to the authority vested in me as (position), hereby agree to the following:

The commander, (unit), will be advised of the disposition of the charges. The member will be immediately returned to the custody of the military upon completion of the trial if acquitted, upon satisfying the sentence imposed if convicted, or upon other disposition of the case. The member's return will be to the aforesaid place of delivery, or to such other place as may be designated by the Department of the Air Force. The member's return will not be required if the member's commander has indicated that return is not appropriate. Instead of actual delivery, transportation for the member may be arranged so long as it is without expense to the United States or to the member. Pending disposition of the charges, the member will remain in the custody of (name of agency and location), unless released on bail or the member's own recognizance, in which event (Air Force unit, activity, or recruiting office nearest place of trial) will be notified.

Where, under the laws of the state concerned, no authority exists permitting agreement to one or more of the conditions set

out in the form, the commander may authorize modification. This agreement is substantially complied with when the Air Force authority who delivered the accused is informed of his or her prospective release for return to military authorities, and when the individual is furnished transportation back to his or her station together with necessary funds to cover incidental expenses enroute thereto. Copies of the statement or agreement referenced above, and in §884.7, will be furnished to the civil 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 (§884.3). The commander, who authorized delivery to civil authority or designee, will immediately notify the civil authority if the return of the member to Air Force custody is no longer required (e.g., discharge from the Air Force).

§884.9 Request for delivery by authorities of any state in which the member requested is not located.

This section applies to requested members who are not located overseas. With respect to the extradition process, Air Force ed Force personnel have the same status as persons not in the Armed Forces. Accordingly, if the delivery of a military member is requested by a state other than the state in which the member is located, the requesting state will be required, in the absence of a waiver of extradition process by the member concerned, to use its extradition procedures and to make arrangements to take the individual into custody in the state where he or she is located. It is contrary to Air Force policy to transfer a military member from a base within one state to a base within another state for the purpose of making him or her amenable to prosecution by civil authorities.

Subpart C—Requests for Custody of Members Stationed Outside the United States

§884.10 Air Force policy.

(a) Air Force members are expected to comply with orders issued by a federal or state court of competent jurisdiction unless noncompliance is legally justified. Air Force members who persist in noncompliance are subject to adverse administrative action, includ-

ing separation for cause under AFRs 36-2 and 39-1.² Such action is taken to improve discipline and maintain the standards of conduct expected of Air Force members, but not for the purpose of enforcing private civil obligations.

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

(c) 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/JACM and 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.

(d) When federal, state or local authorities request delivery of an Air Force member who is stationed outside the United States and who is convicted of or is charged by such authorities with a felony or other serious offense punishable by confinement for more than one year under the laws of the requesting jurisdiction, 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, the member normally will be expeditiously returned to the United States for delivery to the requesting authorities. Delivery of the member is not required if the controversy can be resolved without returning the member to the United States, or the request for delivery of the member is denied in accordance with this subpart.

(e) An Air Force member stationed outside the United States ordinarily will not be returned to the United States for delivery to civilian authorities in connection with an offense not enumerated in paragraph (d) of this section, but The Judge Advocate General (TJAG) may direct return in such

²See footnote 1 in §884.3.