

rank, SSN, organization, and other pertinent information to, and request disposition instructions from, the commander who authorized the delivery of the member to civil authorities, with an information copy to the HQ AFMPC assignment office responsible for the member's Air Force Specialty Code (AFSC), as listed in Air Force Regulation 36-20¹ or Air Force Regulation 39-11. If contact with such commander is not feasible, instructions must be obtained from HQ AFMPC/DPMARS or DPMRPP2.

§ 884.4 Placing member under restraint pending delivery.

A member may be placed under restraint (see Manual for Courts-Martial (MCM) 1984, Rule for Court-Martial (R.C.M.) 304, as to types of restraint available) by military authorities pending delivery to state or federal authorities. Such restraint may be imposed upon receipt of information establishing probable cause to believe that the member committed an offense, and upon reasonable belief such restraint is necessary. Such restraint may continue only for such time as is reasonably necessary to effect the delivery to civilian authorities. As to the type of analysis to be undertaken in determining whether probable cause exists and whether a reasonable belief exists that restraint is necessary, see MCM 1984, R.C.M. 305(h)(2)(B), and its following discussion. There is no requirement for the formal review of restraint provided in MCM 1984, R.C.M. 305, Air Force Regulation 111-1.

§ 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 return 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

¹Air Force publications are available through NTIS, 5285 Port Royal Road, Springfield, VA 22161.

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, including 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.

²See footnote 1 in §884.3.