

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS**

HSI Directive 12-03: Escaped Prisoners

Issue Date: November 16, 2012
Effective Date: November 16, 2012
Superseded: U.S. Customs Service (USCS) Office of Investigations (OI) Internal Operating Procedures Notification (IOPN) 00-22 entitled, “Accountability Requirements for Lost/Stolen Evidence, Drugs, Currency and Escaped Prisoners,” dated May 12, 2000, is hereby superseded as it relates to escaped prisoners only. (Note: The rest of IOPN 00-22 was superseded by U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) memorandum entitled, “Updates to IOPN 00-22 – Accountability Requirements for Lost/Stolen Evidence, Drugs, Currency and Escaped Prisoners,” dated January 28, 2011. The above-mentioned HSI memorandum dated January 28, 2011 is not being superseded by this Directive.)
Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** This Directive establishes policy and procedures concerning the escape of certain individuals in U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) custody, and provides guidance on the reporting and tracking of these incidents.
2. **Policy.** When escape incidents occur, the Special Agents involved will notify their supervisor immediately upon occurrence or upon discovery of the escape. Special Agents must make every effort to apprehend these individuals taking into account the safety of the officers involved and the general public. In addition, the affected HSI office must ensure that all appropriate notifications and administrative inquiries are completed in a timely manner.
3. **Definitions.** The following definitions apply for the purposes of this Directive only.
 - 3.1. **Administrative Arrest.** An administrative arrest of an individual may be initiated based on an administrative arrest warrant (DHS Form I-200, “Warrant for Arrest of Alien”) or where there is reason to believe that the individual is in violation of the Immigration and Nationality Act and is likely to escape before a warrant can be obtained. An administrative arrest occurs when the disposition of the case will be sought in administrative court proceedings rather than in criminal court proceedings. (b) (7)(E)

- 3.2. Criminal Arrest.** A criminal arrest is supported by probable cause to believe that the individual arrested has committed a criminal offense. (Note: Probable cause exists when articulable facts and circumstances would lead a reasonably prudent person to believe that a criminal offense has been committed or is being committed by the individual to be arrested. In cases where a criminal arrest warrant has already been issued, probable cause has already been established by the arresting agency to the court that has issued the arrest warrant.)
- 3.3. Custody** means that period of time during which a person has been arrested by HSI under its criminal and/or administrative authorities, is physically present in an HSI-owned, leased, or contracted facility or vehicle pursuant to such authorities, or is being transported by HSI (including for purposes of removal from the United States) pursuant to such authorities. Custody ends when the person is released from HSI's physical confinement or restraint, including upon transfer to Enforcement and Removal Operations (ERO) or another agency for detention under its own legal authorities.
- 3.4. Escape.** An escape is the unauthorized departure from HSI custody of an individual who has been arrested or is in any form of detention.
- 3.5. Escapee.** An escapee is a subject who has escaped from HSI custody at any point subsequent to arrest, and prior to being released from HSI's custody, transported for purposes of removal from the United States, or transferred to the custody of another agency.
- 3.6. Furlough.** According to Title 28, Code of Federal Regulations, Section 570.32, a furlough is an authorized absence from an institution by an inmate who is not under escort of a staff member, U.S. Marshal, or state or federal agents. Inmates who meet certain requirements are temporarily released from custody under carefully prescribed conditions.

(b) (7)(E)

4. Responsibilities.

- 4.1.** The **Executive Associate Director** of HSI is responsible for the oversight of the provisions of this Directive.
- 4.2.** The **Assistant Director, Investigative Programs**, is responsible for the implementation of the provisions of this Directive.
- 4.3.** The **Deputy Assistant Director (DAD), Investigative Services Division (ISD)**, is responsible for ensuring that HSI Special Agents in Charge (SACs) comply with the provisions of this directive.

- 4.4.** The **Unit Chief, Investigative Support Unit (ISU)**, is responsible for reviewing memoranda from the SACs prior to submitting them to the DAD, ISD. The Unit Chief of ISU will track these incidents and all pertinent information regarding them. The Unit Chief of ISU will also provide the National Firearms and Tactical Training Unit with all necessary information regarding escape incidents in accordance with ICE Directive 19906.1, “Escapes from Custody,” dated August 16, 2012. **(b) (7)(E)**
- 4.5.** **Special Agents in Charge (SACs)** are responsible for ensuring compliance with the provisions of this Directive within their respective areas of responsibility (AORs). SACs are also responsible for assigning a GS-14 level manager to conduct administrative inquiries of escape incidents that occur in their AORs when appropriate.
- 4.6.** **Group Supervisors** are responsible for complying with all the reporting requirements mandated by this Directive.
- 4.7.** **Special Agents** are responsible for complying with the provisions of this Directive. They will make every attempt to apprehend the escapee, taking into account the provisions of the “Interim ICE Use of Force Policy,” dated July 7, 2004, or as updated or superseded, and the safety of the officers involved and the general public.
- 4.8.** **SAC Fugitive Coordinators** will be responsible for ensuring that escapees with criminal or material witness arrest warrants are entered in the **(b) (7)(E)**. In addition, they will ensure that all documents such as the arrest warrant, criminal complaint, and the Fugitive Report (Department of Homeland Security (DHS) Form 59) are also uploaded into ^{(b) (7)(E)}
- 5. Procedures.**
- 5.1. The following procedures apply to escapes by criminal arrestees, material witnesses, or inmates on an HSI-sponsored federal or state furlough.**
- 1) Special Agents shall:
 - a) Notify their Group Supervisor immediately upon the occurrence or upon discovery of the escape incident.
 - b) Notify all applicable state, local, and tribal law enforcement agencies in an effort to apprehend the individual.
 - 2) Group Supervisors shall:
 - a) Contact their chain of command.

- b) Contact the local Office of Professional Responsibility (OPR) or the ICE/U.S. Customs and Border Protection (CBP) Joint Intake Center (JIC) at **(b) (7)(E)** **(b) (7)(E)** of all escape incidents.
 - c) Notify the appropriate Headquarters Operations Manager telephonically.
 - d) Notify the ICE Joint Intelligence Operations Center (JIOC) telephonically at **(b) (7)(E)** **(b) (7)(E)** within 2 hours of the occurrence or as soon as practicable.
 - e) Submit a **(b) (7)(E)** through the **(b) (7)(E)** **(b) (7)(E)** as soon as possible, but no later than 24 hours after the incident.
 - f) Contact the appropriate prosecutor immediately. **(b) (7)(E)**
 - g) **(b) (7)(E)**
- 3) If an escapee is not apprehended within 24 hours and an arrest warrant was previously issued, the Group Supervisor must ensure that information about the escapee is entered in the **(b) (7)(E)** database. The SAC Fugitive Coordinator must complete and submit a Fugitive Report (DHS Form 59) to the Law Enforcement Support Center in ERO. If the escapee did not have a warrant, upon issuance of the warrant, the Group Supervisor must ensure that information about the escapee is entered in **(b) (7)(E)** in accordance with the Fugitives Handbook (OI HB 10-02), dated April 9, 2010, or as updated or superseded.
 - 4) The Group Supervisor must ensure that **(b) (7)(E)** records are entered using the status code **(b) (7)(E)** or “ **(b) (7)(E)** , in accordance with the Fugitives Handbook (OI HB 10-02), dated April 9, 2010, or as updated or superseded.
 - 5) Within 72 hours of the occurrence, the SAC will submit a 16-point memorandum (see Attachment) and forward it to the appropriate Headquarters Operations Manager to inform the Assistant Director (AD), Domestic Operations, and the DAD, ISD, of the incident. The memorandum should be accompanied by the Fugitive Report (DHS Form 59), law enforcement database records checks, including those entered as a result of the incident, along with all other pertinent documentation.

- 6) The Group Supervisor will ensure that the SAC Fugitive Coordinators is provided with all necessary documentation regarding the escapees with criminal or material witness arrest warrants to create a record in the FTS.
- 7) HSI may delegate the primary apprehension responsibility to United States Marshals Service by submitting a written request, subject to certain conditions. For further guidance, see the “Memorandum of Understanding between U.S. Immigration and Customs Enforcement, Homeland Security Investigations and the U.S. Marshals Service regarding the Apprehension of Fugitives,” dated March 22, 2012, or as updated or superseded.

5.2. Procedures for escapees who were arrested administratively who have been fully identified.

In many cases, Special Agents are able to fully identify aliens in custody. These aliens may be aggravated felons, absconders, previously deported or removed aliens, or aliens who entered the United States without inspection.

The following procedures apply to alien escapees when they have been fully identified:

- 1) Special Agents shall:
 - a) Notify their Group Supervisor immediately upon the occurrence, or discovery of the occurrence of an escape incident.
 - b) Notify ERO and all applicable state, local, and tribal law enforcement agencies in an effort to apprehend the individual.
- 2) Group Supervisors shall:
 - a) Contact their chain of command.
 - b) Contact the local OPR or the ICE/CBP JIC at (b) (7)(E) of all escape incidents.
 - c) Notify the appropriate Headquarters Operations Manager telephonically.
 - d) Notify the ICE JIOC telephonically at (b) (7)(E) within 2 hours of the occurrence or as soon as practical.
 - e) Submit a SIR through the (b) (7)(E) system as soon as possible, but no later than 24 hours after the incident.
 - f) Contact the United States Attorney’s Office to explore the possibility of criminal charges if appropriate. If criminal charges are pursued and an arrest warrant is

issued, information about the escapee must be entered into NCIC and other law enforcement databases, as appropriate.

- g) Contact ERO to determine if the case can be referred to the local ERO Fugitive Operations Unit.

In many cases these individuals may already have subject records entered in law enforcement databases such as

(b) (7)(E)

(successor of

(b) (7)(E)

)). Group Supervisors must ensure

that all the appropriate databases have been queried and subject records have been entered when appropriate.

- 3) Within 72 hours of the occurrence, the SAC will submit a 16-point memorandum (see Attachment) and forward it to the appropriate Headquarters Operations Manager to inform the AD, Domestic Operations, and the DAD, ISD, of the incident.

5.3. The following procedures apply to escapees arrested criminally/administratively who have not been fully identified.

- 1) Special Agents shall:
 - a) Notify their Group Supervisor immediately upon the occurrence, or upon discovery of the occurrence of an escape incident.
 - b) Notify all applicable federal, state, local, and tribal law enforcement agencies in an effort to apprehend the individual.
- 2) Group Supervisors shall:
 - a) Contact their chain of command.
 - b) Contact the local OPR or the ICE/CBP JIC at (b) (7)(E) of all escape incidents.
 - c) Ensure that the appropriate Headquarters Operations Manager is notified telephonically.
 - d) Notify the ICE JIOC telephonically at (b) (7)(E) within 2 hours of the occurrence or as soon as practicable.
 - e) Submit a SIR through the (b) (7)(E) system as soon as possible, but no later than 24 hours after the incident.

In cases where an individual has not been positively identified or the information obtained about the escapee is incomplete or questionable, the entry of subject records

into law enforcement databases such as (b) (7)(E) (successor of (b) (7)(E)) is not recommended, unless it is determined by the Special Agent, Group Supervisor, or officers in their chain of command that doing so would assist in the apprehension of the individual.

- 3) Within 72 hours of the occurrence, the SAC will submit a 16-point memorandum (see Attachment) and forward it to the appropriate Headquarters Operations Manager to inform the AD, Domestic Operations, and the DAD, ISD, of the incident. When an escapee has not been fully identified and law enforcement database records have not been entered due to lack of information or questionable information, this will be noted in the memorandum.

5.4. Juveniles.

When a juvenile is arrested, the arresting officer shall notify the juvenile's parent or legal guardian of the nature of the charges and the juvenile's rights. If the juvenile is an alien, the appropriate consulate must also be notified in accordance with Section 6.14.2 of the "Arrest Procedures Handbook" (OI HB 07-02), dated October 4, 2007, or as updated or superseded. If a juvenile escapes HSI custody, the parents or legal guardians will be notified if the notification will not hamper efforts to apprehend the juvenile escapee. If the juvenile escapee is an alien, the local ERO office will be notified at the earliest opportunity for further coordination.

5.5. Consular Notification.

In some cases where an alien is arrested, the arresting officer must notify the appropriate consulate of the arrest. If an alien escapes HSI custody, the local ERO office will be notified at the earliest opportunity for further coordination and the consulate will be notified of the escape as appropriate.

5.6. Administrative Inquiry.

If OPR determines that the escape incident does not warrant its continued involvement and refers the case to the SAC, the SAC will assign a GS-14 level manager to conduct an internal inquiry of the escape. The GS-14 level manager will submit a report of the findings within 30 days. This report will then be forwarded to the Unit Chief of ISU for Headquarters review to examine potential causes, corrective action, and inclusion in the Headquarters file. The SAC will determine if any disciplinary action is warranted.

5.7. Apprehension of Escapees.

If an escapee is apprehended, the Group Supervisor must submit a SIR through the (b) (7)(E) system as soon as possible but no later than 24 hours after the incident. In addition, the Group Supervisor must ensure that a memorandum notifying the Unit Chief of ISU is submitted within 72 hours of the arrest. The case agent should ensure that the appropriate prosecutor is consulted regarding the possibility of charging the escapee with 18 U.S.C.

§ 751, Prisoners in Custody of Institution or Officer, and/or 18 U.S.C. § 111, Assaulting, Resisting, or Impeding Certain Officers, as appropriate.

Any law enforcement agencies that were notified of the escape should also be notified of the apprehension so as to eliminate unnecessary expenditure of time or resources.

6. Escapes Occurring in a Foreign Location

When an escape from HSI custody occurs in a foreign AOR, the appropriate HSI Attaché will ensure that the procedures outlined in Section 5 of this Directive are followed and that the appropriate foreign entity is notified. In addition, HSI Attachés will follow the established reporting requirements of the Department of State and comply with 22 U.S.C. § 3927, “Chief of Mission” (COM) which states in part that any executive branch agency having employees in a foreign country shall keep the COM to that country fully and currently informed of all activities and operations of its employees in that country.

7. Authorities/References.

- 7.1.** 18 U.S.C. § 751, Prisoners in Custody of Institution or Officer.
- 7.2.** 18 U.S.C. § 111, Assaulting, Resisting, or Impeding Certain Officers or Employees.
- 7.3.** 22 U.S.C. § 3927, Chief of Mission.
- 7.4.** 28 C.F.R. § 570.32, Types of Furloughs.
- 7.5.** Memorandum of Understanding between U.S. Immigration and Customs Enforcement, Homeland Security Investigations and the U.S. Marshals Service regarding the Apprehension of Fugitives, dated March 22, 2012.
- 7.6.** ICE Directive 19006.1, Escapes from Custody, dated August 16, 2012, or as updated or superseded.
- 7.7.** Fugitives Handbook (OI HB 10-02), dated April 9, 2010, or as updated or superseded.
- 7.8.** Arrest Procedures Handbook (OI HB 07-02), dated October 4, 2007, or as updated or superseded.
- 8. Attachment.** Escapee Notification Memorandum Template (commonly referred to as the “16-Point Memorandum”).
- 9. No Private Rights.** This Directive is an internal policy statement of HSI. It is not intended to, does not, and may not be relied upon to create any right or benefit,

substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



For James A. Dinkins
Executive Associate Director
Homeland Security Investigations



**Homeland
Security**

Attachment

MEMORANDUM FOR: Name
Executive Associate Director
Homeland Security Investigations

THROUGH: Name
Deputy Assistant Director
Investigative Services

FROM: Name
Special Agent in Charge
City, State

SUBJECT: Escape of [Name of Escapee]

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(b) (7) (E)