

§ 720.12

the employee has a right to have a bargaining unit representative present during the interview.

§ 720.12 Request for delivery of members serving sentence of court-martial.

(a) *General.* Article 14, UCMJ (10 U.S.C. 814), provides authority to honor requests for delivery of members serving a sentence of a court-martial. Although seldom utilized, additional authority and mandatory obligation to deliver such members are provided by the Interstate Agreement on Detainers Act (18 U.S.C. app. 9, hereinafter “the Act”), which applies to the Federal agency holding the prisoner. The Department of the Navy, as an agency of the Federal Government, shall comply with the Act. The Act is designed to avoid speedy-trial issues and to aid in rehabilitation efforts by securing a greater degree of certainty about a prisoner’s future. The Act provides a way for a prisoner to be tried on charges pending before State courts, either at the request of the State where the charges are pending or the prisoner’s request. When refusal of delivery under Article 14, UCMJ, is intended, comply with § 720.9(d).

(b) *Interstate Agreement on Detainers Act.* Upon request under the Act by either State authorities or the prisoner, the cognizant Navy or Marine Corps staff judge advocate, as appropriate, shall communicate with the appropriate State officials, and monitor and ensure that the cognizant commander acts on all such requests. The Act provides that court-martial sentences continue to run during temporary custody. This section does not cover requests between Federal authorities. The procedure set forth in § 720.12(c) shall be applied in such cases.

(1) *State request.* State officials may request delivery of prisoners in military custody under section 2, Article IV, of the Act. Where a detainer has been lodged against the prisoner, and the prisoner is serving a sentence (regardless of whether an appeal is in process), delivery is mandatory unless the request is disapproved by the Director of the Bureau of Prisons, Washington, DC, 20537 as the designee of the Attorney General for this purpose. 28

32 CFR Ch. VI (7–1–12 Edition)

CFR 0.96(n). There has been no further delegation to military authority. The prisoner should be informed that he may request the Director of the Bureau of Prisons, Washington, DC 20537, within 30 days after such request is received, to deny the request. Upon the expiration of such 30-day period or upon the Director of the Bureau of Prisons’ denial of the prisoner’s request, whichever occurs first, the prisoner shall be delivered to the requesting authority.

(2) *Prisoner request.* The obligation to grant temporary custody under the Act also applies to prisoners’ requests to be delivered to State authority. Section 2, Article III(c) of the Act requires the custodial official to inform the prisoner of the existence of any detainer and of the prisoner’s right to request disposition. The prisoner’s request is directed to the custodial official who must forward it to the appropriate prosecuting official and court, with a certificate of prisoner status as provided by Article III of the Act.

(c) *Article 14, UCMJ.* When a request for custody does not invoke the Interstate Agreement on Detainers Act, delivery of custody shall be governed by Article 14, UCMJ, and §§ 720.2 through 720.9. The request shall be honored unless, in the exercise of discretion, there is an overriding reason for retaining the accused in military custody, e.g., additional courts-martial are to be convened or the delivery would severely prejudice the prisoner’s appellate rights. Execution of the agreement discussed in § 720.6 is a condition precedent to delivery to State authorities. It is not required before delivery to Federal authorities. See § 720.7. Unlike delivery under the Act, delivery of custody pursuant to Article 14, UCMJ, interrupts execution of the court-martial sentence.

§ 720.13 Request for delivery of members serving sentence of a State court.

(a) *General.* Ordinarily, members serving protracted sentences resulting from a State criminal conviction will be processed for administrative discharge by reason of misconduct. It may, however, be in the best interest of the Naval Service to retain a member

Department of the Navy, DoD

§ 720.20

charged with a serious offense, subject to military jurisdiction, to try the member by court-martial. The Navy may obtain temporary custody of incarcerated members for prosecution with a request to the State under the Interstate Agreement on Detainers Act, 18 U.S.C. app. 9. The Department of the Navy may use the Act in the same manner in which State authorities may request members pursuant to § 720.12.

(b) *Interstate Agreement on Detainers Act.* Military authorities may use the Act to obtain temporary custody of a member incarcerated in a State institution, pursuant to conviction by a State court, to resolve criminal charges against the member before a court-martial.

(1) *Detainer.* If a command requests temporary custody under the Act, the commanding officer of the cognizant naval legal service office or the Marine Corps staff judge advocate, shall file a detainer with the warden, commissioner of corrections, or other State official having custody of the member. The detainer shall identify the member with particularity, enumerate the military charges pending, and request the command be notified in advance of any intention to release the member from confinement.

(2) *Request for delivery.* As soon as practical after filing the detainer, the commanding officer of the cognizant naval legal service office or the Marine Corps staff judge advocate, shall prepare a written request for temporary custody of the member addressed to the State official charged with administration of the State penal system. The request shall designate the person(s) to whom the member is to be delivered and shall be transmitted via the military judge to whom the member's case has been assigned. If the request is properly prepared, the military judge shall approve, record, and transmit the request to the addressee official. The Act provides the State with a 30-day period after receipt of the request before the request is to be honored. Within that period of time, the governor of the State may disapprove the request, either unilaterally or upon the prisoner's request. If the governor disapproves the request, the command

should coordinate any further action with the Judge Advocate General.

(3) *Responsibilities.* The cognizant command shall ensure that the responsibilities of a receiving jurisdiction, delineated in section 2, Article IV of the Act, are discharged. In particular, the Act requires that the receiving jurisdiction:

(i) Commence the prisoner's trial within 120 days of the prisoner's arrival, unless the court, for good cause shown during an Article 39(a), UCMJ, session, grants a continuance necessary or reasonable to promote the ends of justice;

(ii) Hold the prisoner in a suitable jail or other facility regularly used for persons awaiting prosecution, except for periods during which the prisoner attends court or travels to or from any place at which his presence may be required;

(iii) Return the prisoner to the sending jurisdiction at the earliest practical time, but not before the charges that underlie the request have been resolved (prematurely returning the prisoner will result in dismissal of the charges); and

(iv) Pay all costs of transporting, caring for, keeping, and returning the prisoner to the sending jurisdiction, unless the command and the State agree on some other allocation of the costs or responsibilities.

§§ 720.14–720.19 [Reserved]

Subpart B—Service of Process and Subpoenas Upon Personnel

SOURCE: 57 FR 5232, Feb. 13, 1992, unless otherwise noted.

§ 720.20 Service of process upon personnel.

(a) *General.* Commanding officers afloat and ashore may permit service of process of Federal or State courts upon members, civilian employees, dependents, or contractors residing at or located on a naval installation, if located within their commands. Service will not be made within the command without the commanding officer's consent. The intent of this provision is to protect against interference with mission accomplishment and to preserve