COPP 14.6 – Prisoners Release from Custody

Prison

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| Principles As referenced in the [Guiding Principles for Corrections Australia 2018](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx):  1.1.3 Conditions and penalties imposed by courts and releasing authorities are administered consistently.  1.5.2 Records of sentence details, administration and personal information are maintained, used for legitimate purposes and secured from unauthorised access and use.  5.2.3 Prisoners can access relevant staff, external services/agencies, family and community groups to assist in meeting their reintegration needs. |

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# Scope

This Commissioner’s Operating Policy and Procedure (COPP) applies to all public and private prisons administered by or on behalf of the Department of Justice (the Department).

It also applies to any organisation contracted to the Department for the provision of custodial services[[1]](#footnote-1), to the extent that this COPP informs the development of that organisation’s operating policy and procedures consistent with legislation and contract obligations.

# Policy

Prisoners shall be released from lawful custody at any time during the day that their sentence expires but not earlier than that day unless early release has been authorised[[2]](#footnote-2).

Prisoners shall be released from lawful custody within a reasonable time when the following has occurred:

* their Earliest Date of Release (EDR), Maximum Date (MAX) has been reached; or
* a signed/endorsed release order (ie parole order) received from the relevant releasing authority and no further remand warrant or other order exists; or
* all charges have been dismissed and no further remand warrant or other order exists; or
* bail conditions have been satisfied.

Wherever practicable, prisoners shall be released from the prison closest to the place to which they are returning, particularly where prisoners are being assisted to return to regional or remote locations.

The Superintendent is responsible for the release of prisoners from custody and may establish written release preparation processes within a Standing Order that align with this COPP.

A Bring-Up Order alone cannot maintain the legal custody of a prisoner and shall not prevent a prisoner from being released.

Where a prisoner displays prohibited insignia that may be seen in public the officer in charge should remind the prisoner of their obligations to cover the prohibited insignia[[3]](#footnote-3).

The prison, where appropriate should assist the prisoner by providing options to hide the insignia, such as provision of band-aids or makeup to hide the prohibited insignia where such items cannot be accessed by the prisoner.

# Release Types

### The expiry of a sentence for the purpose of releasing a prisoner is defined in [Appendix A: Expiry of a Sentence](#_Appendix_A:_Expiry). Prisoners may be released from prison, (refer section 6), as follows:

1. release to bail[[4]](#footnote-4)
2. release to home detention bail
3. release on appeal
4. release to parole
5. immigration
6. extradition
7. interstate/international transfers
8. freedom without supervision
9. freedom with supervision
10. release following a period of punishment[[5]](#footnote-5)
11. release of fine defaulters
12. release to police custody
13. release under the *High Risk Serious Offenders Act WA 2020*
14. release under the *Criminal Law (Mentally Impaired Accused) Act 1996*
15. release following court appearance via video link
16. release from external unit
17. release from court
18. hospital order.

# Preparation for the Release of a Prisoner

## General requirements

### Preparation for the release of sentenced prisoners shall occur within 2 weeks prior to their release date, where practicable. The Superintendent shall ensure the following documents are checked to enable verification of a sentenced prisoner’s eligibility and legal entitlement for release:

1. sentence summary sheet
2. hard copies of warrants (warrant file and Total Offender Management Solution (TOMS)).

### The officer authorised by the Superintendent (Authorised Officer) shall confirm the prisoner is the same as indicated on any bail conditions or community orders (ie parole order).

### Outstanding remand warrants should match the information held on TOMS and charge numbers matched with the signed bail documentation (if there are no signed bail papers, the prisoner shall not be released).

### The Authorised Officer shall add prisoners due for release to the Transfer and Discharge (T&D) sheet the day prior to discharge, where possible.

### Prison Health Services and the Mental Health and Other Drugs (MHAOD) shall obtain a copy of the T&D sheet, the day prior to scheduled releases.

### Prison Health Services and MHAOD shall liaise with external agencies, family contacts, medical staff and medical practitioners to ensure a prisoner’s continuity of care upon release.

### The Authorised Officer shall work on a release plan with the prisoner to prepare them for release, and link support services as appropriate, if the release date is known.

### Should a prisoner refuse to sign documents relevant for release, an Authorised Officer shall document this on the relevant document, then sign and date the document. This shall be witnessed by another Authorised Officer who shall also sign and date the document. An offender note shall also be placed on TOMS.

## Transfer and discharge sheet

### Prisoner movements shall be entered on the T&D sheet by 1700 hrs the day prior to the scheduled movement.

### The completed T&D sheet shall be approved during business hours via signature by the Superintendent/Officer in Charge (OIC), prior to the scheduled movement (this duty cannot be delegated). This signature shall be the authorisation for the release of a prisoner.

### If additions or deletions are made after normal business hours, the OIC shall sign a new T&D sheet prior to the commencement of the day’s prisoner movements. The signed copies shall be kept for future records and forwarded to Operational Information Management each week.

### If additions are required after the departure of the Superintendent on the day prior to escort, the Movements/Reception Officers or OIC shall contact the contractor via email in addition to adding the prisoner to the T&D sheet (ie for late returns from court due in court again the following day).

## Transport

### Prisons shall assist prisoners to arrange transport if necessary and/or refer the prisoner to the appropriate community agency where applicable.

### The Superintendent or Authorised Officer shall be notified if no transport has been arranged.

### A prisoner approaching scheduled release shall be provided the opportunity to arrange pickup from the prison.

### Prison may provide fares or assistance with transport arrangements (ie non-refundable bus/rail/plane voucher) to assist a prisoner to return to their home, usual place of residence within the State (where available support services have been confirmed) or to the place of their arrest, when released from prison.

### The Superintendent of the releasing prison shall be responsible for the cost of the transport and this shall be recorded on the discharge interview.

### Routine prison transport shall be used where possible to return a prisoner to a prison nearer to the place of residence, prior to their release.

### The Transport Options Program (TOP) is a contracted service provider that may assist prisoners having difficulty returning from a prison or work camp to a remote location.

### Prisoners who are eligible for TOP shall be referred to the Transitional Manager.

## Australian National Child (sex) Offender Register (ANCOR) reporting requirements

### ANCOR is managed by the Sex Offender Management Squad (SOMS), Western Australia Police Force (WAPF).

### ANCOR prisoners are identified on TOMS with an ‘ANCOR’ alert.

### The ANCOR notification and reporting documentation is generated from the report tree in TOMS, printed at the time of the prisoner’s release and added to the T&D sheet.

### If the prisoner is being released from a prison, the Authorised Officer shall:

1. interview the prisoner
2. explain reporting obligations to the prisoner in accordance with the Reportable Offenders brochure (provide a copy on release) and Notifications of Reporting Obligations (P308) on TOMS; and
3. have the prisoner sign all copies of the relevant documentation prior to release. Should the prisoner refuse to sign the P308, the Authorised Officer shall mark the ‘refused to sign’ box.

### If the prisoner is being released from court, the P308 shall be is issued by the bench, prior to the prisoner leaving custody. The Court Officer (Authorised Officer) should explain the reporting obligations and have the prisoner sign all copies of the documentation prior to release. In the absence of the Court Officer undertaking this task, the court custody staff (Authorised Officer) shall explain the reporting obligations and have documentation signed.

### The Authorised Officer completing the P308 shall telephone SOMS on 1800 300 400 (24hr) and advise of the pending release.

### The Authorised Officer shall distribute a copy of the completed P308 to:

1. ANCOR, SOMS Registration and Assessment Team via email: [SOR@police.wa.gov.au](mailto:SOR@police.wa.gov.au) or fax: 08 9267 5678
2. Information Release and Litigation Management via email: [informationrelease@justice.wa.gov.au](mailto:informationrelease@justice.wa.gov.au) or fax: 9481 8504 to update TOMS/CBIS alerts and filing on the Offender in Custody file
3. the prisoner on release.

### The Authorised Officer shall attach a copy of the P308 to the Prisoner’s Release Checklist.

### The Authorised Officer shall file the Department copy into the prisoners Unit File for forwarding to Offender Information Management for archiving.

## Victim Notification Register (VNR) reporting requirements

### VNR is a confidential information service established for victims of crime. The register allows victims to receive information about the perpetrator of the crime against them for as long as that person is under the supervision of Corrective Services.

### If a VNR alert exists, the Authorised Officer shall:

1. advise the VNR via telephone (9425 2870) prior to a prisoner’s release and
2. ensure when a prisoner is released to bail or a community based disposition, ie a Parole Order or a Court Order etc, a confirmation email is also to be sent to [vnr@justice.wa.gov.au](mailto:vnr@justice.wa.gov.au).

### The Authorised Officer shall refer the VNR to the Superintendent for follow-up, if the VNR advise of issues regarding the release of a prisoner.

### The Superintendent shall refer issues of a serious nature, (ie ANCOR, VNR, high media interest) to the Operations Centre (OPCEN) prior to release, who shall consult with the relevant agencies to ascertain how to manage the situation.

## Exit interview

### The Authorised Officer shall complete the following prior to the prisoner’s release:

### discharge offender module on TOMS, to include the exit interview, discharge comment and proposed address (including no fixed address)

### confirm that the proposed address provided by the prisoner is the same as indicated on any bail conditions or community order (ie parole); and

### ensure property is returned and gratuities are paid.

# Actions Prior to Release

## General requirements

### The Authorised Officer when preparing the prisoner for release shall conduct the following:

1. initiate the appropriate Prisoner Release Checklist on TOMS to ensure a lawful release
2. notify the relevant services of the prisoner’s release where required in accordance with this COPP ie:

* VNR – the day prior to release
* Community Offender Management Unit (COMU) – the day prior to release
* Department of Home Affairs (DHA) – the day prior to release
* Department of Communities – Child Protection (DCCP) – the day prior to release
* ANCOR – the day of release
* Prison Health Services – the day of release
* Mental Health and other Drugs (MHAOD) – the day of release
* Western Australia Police Force (WAPF) – the day of release.

### Prior to release, if a prisoner’s own money is insufficient to purchase civilian clothing appropriate to the needs of the prisoner (ie work or casual clothing) the Superintendent/OIC may authorise expenditure (prison finances not exceeding $150.00).

### The Authorised Officer shall record the issuing of liberty clothing for release on TOMS offender notes.

### A minimum security prisoner is eligible to apply for an Absence Permit in accordance with [COPP 8.1 – Prisoner Constructive Activities](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx) and [COPP 14.5 – Authorised Absences and Absence Permits,](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx) to purchase liberty clothing.

### The Superintendent/OIC/Principal Officer, prior to the prisoner being released, shall check and endorse the Prisoner Release Checklist.

### The Authorised Officer prior to escorting the prisoner for release shall:

1. check the prisoner’s identity against the photograph on TOMS;
2. take a digital photograph of the prisoner and update on TOMS, unless the prisoner has been in prison less than 12 months and there are no significant changes;
3. ensure the prisoner has signed their P308, parole, bail paperwork, supervision document (ie Community Based Order, Intensive Supervision Order), or any other relevant instrument permitting the prisoner’s release as applicable;
4. search the prisoner as detailed within the prison’s Standing Order and in accordance with [COPP 11.2 – Searching](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx);
5. search, check, and account for the prisoner’s property in accordance with [COPP 11.2 – Searching](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx) and [COPP 3.1 – Managing Prisoner Property](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx), prior to issuing;
6. provide the following:

* prescribed medication (contact Prison Health Services staff if no medication has been forwarded to reception), where possible; and
* exit kit (containing health information and other items); and

1. complete an exit interview.

### The Authorised Officer shall escort the prisoner to the prison gate and provide the following information to the discharging officer for verification:

1. a copy of the Prisoner Release Checklist;
2. a copy of the prisoner’s Sentence Summary Sheet from TOMS (if sentenced);
3. copies of all Warrants of Commitment relating to the prisoner’s current imprisonment (if sentenced);
4. copies of all completed bail documents, where applicable;
5. copy of Client Identification Details for the prisoner to supply to Centrelink to claim appropriate benefits, where applicable; and
6. any monies due to the prisoner upon release, where applicable.

### The discharging officer releasing the prisoner, shall provide the prisoner with personal cash, transport tickets and vouchers, where possible, at the gate.

### Where applicable, the prisoner should be reminded of their responsibilities relating to prohibited insignia subject to the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021.*

### The discharging officer releasing the prisoner shall only release the prisoner when satisfied all accompanying documentation is complete and legally correct.

# Release from Court

## General Requirements

### The Movements Officer/Reception Officer shall prepare for the possible release of a prisoner with no return order from court custody in accordance with this COPP, [COPP 3.1 – Managing Prisoner Property](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx) and [COPP 12.2 – Coordination of Escorts](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

### In accordance with this COPP and [COPP 2.1 – Reception](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx), the Movements Officer/Reception Officer or other authorised officer shall complete the Prisoner Release from Court Checklist generated from TOMS, prior to the prisoner’s court appearance, ensuring any pre-release paperwork is signed by the prisoner (ie ANCOR reporting etc.).

### Prisoners with a ANCOR TOMS alert, shall have the ANCOR notification and reporting documentation (P308) generated from TOMS; this shall be completed in accordance with this COPP, prior to the prisoner’s attendance at court (with no return order) and held at the prison for action in the event the prisoner is released from court.

### The prisoner shall be supplied the Reportable Offender’s Copy and the Important Information for Reportable Offender the morning of the court appearance.

### A reasonable amount of immediate release property may accompany the prisoner to court for possible release. This property may consist of identification cards, keys, bank cards or similar, sealed and sent in a small clear property bag with the prisoner identification and C220 attached. Immediate release property shall be prepared in accordance with [COPP 3.1 – Managing Prisoner Property](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

### The Contractor shall release a prisoner, where there is no other lawful requirement to detain them, and notify the prison to enable removal from TOMS.

### In circumstances where a remand prisoner has attended court in person with a return order and all matters are dealt with by the court, the court custody officers shall notify the prison requesting authority to release in accordance with [COPP 12.3 – Conducting Escorts](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

# Other Release Considerations

## Bail release

### Remand prisoners may be released on a bail order[[6]](#footnote-6) after confirmation that the conditions relating to release on bail have been satisfied.

### Release on bail is subject to the defendant’s own undertaking and the undertaking of a surety when stipulated by a court.

### In the event of a bail release after hours, requiring a Form 6 to be completed, section 3 of the Prisoner Release Checklist shall be delegated to a Senior Officer, or suitably experienced Prison Officer for completion.

### The Superintendent/OIC (cannot be delegated)[[7]](#footnote-7) shall authorise bail undertakings, by signing the Certificate to Authorise Release Form 6 on TOMS.

## Release to home detention bail

### The electronic monitoring bracelet does not need to be fitted prior to release.

### During office hours, prisoners shall be released in accordance with this COPP and in consultation with the relevant Adult Community Corrections (ACC) centre.

### After office hours, the Superintendent/OIC shall contact the ACC After-Hours Manager (AHM) to:

1. confirm ACC are aware of the prisoner’s release;
2. enquire or clarify any issues with the release documentation;
3. obtain any instructions from the AHM (confirmed by email) that need to be communicated to the prisoner prior to release; and
4. if AHM is not able to provide these instructions by email, record the directions and verbally confirm with the AHM.

### The Superintendent/OIC shall ensure the prison’s after hours contact list reflects the current AHM mobile telephone number as advised.

## Release on appeal

### On advice from the Supreme Court that a sentenced prisoner has been granted bail or is to be released as a result of an appeal, the Authorised Officer shall request written confirmation from the Court via the Judge’s Associate specifying the conditions, if any.

### The Authorised Officer, on receipt of the signed order or email, shall compare the court reference numbers with the copies of warrants held at the prison and follow up any discrepancies with the court.

### During office hours the Authorised Officer shall confirm the charge numbers with the Sentence Information Unit (SIU). The OIC, in consultation with the Superintendent shall complete this outside of office hours.

### The prisoner may be released following confirmation of:

1. the reference numbers on the appeal documents and existing warrants coincide;
2. no new warrants of commitment exist (ie fines warrants); and
3. bail conditions of any current remand warrants for outstanding charges have been satisfied and the prisoner is not serving a separate term of imprisonment on other charges, where the term has not yet expired.

## Release to parole

### When a prisoner is being released to parole the Authorised Officer shall apply the requirements in accordance with [COPP 14.4 – Parole Applications](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx) and where applicable, in consultation with the relevant ACC centre

## Immigration

### The Authorised Officer shall advise Department of Home Affairs (DHA) at a minimum of two weeks prior to a prisoner’s release, if there is an immigration alert.

### DHA shall arrange with the prison for the collection of prisoners who require deportation or holding in immigration detention on the day of their release.

## Extradition

### Extradition occurs by way of an order from the Magistrates Court.

### Prisons shall ensure there are no outstanding warrants or breaches that shall require the prisoner to remain in custody before extradition occurs.

### The WAPF shall make arrangements regarding escorts and travel for extradited prisoners.

## International or interstate transfers

### For international and interstate transfers of prisoners, refer [to COPP 2.3 – Assessments and Sentence Management](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

## Freedom without supervision

### Prisoners reaching their MAX cannot be held in custody if no other warrants or orders are held by the prison unless they are undergoing punishment[[8]](#footnote-8).

### The Authorised Officer shall conduct a check of the hard copy documents and TOMS to ensure no outstanding warrant(s) or order(s) exist prior to adding the prisoner to the T&D sheet for release.

### Prisoners granted early release shall have their date of release reduced by the number of days approved. Once entered by the SIU, the approved date of release shall be indicated on TOMS as the EDR.

### The Superintendent shall commence a prosecution in a court of summary jurisdiction and deliver the prisoner into the custody of a WA police officer if a charge of an aggravated prison offence[[9]](#footnote-9) is laid against a prisoner due for release.

## Prisoners undergoing punishment

### Prisoners due for release and undergoing punishment shall be managed in accordance with legislation[[10]](#footnote-10) and shall not be released prior to the end of the period of punishment.

### Unpaid restitution at the time of a prisoner’s release shall remain and may be re-instated on any subsequent imprisonment.

## Release of fine defaulters

### A prisoner serving a warrant of commitment or expiation order for fines[[11]](#footnote-11) may have their fines paid to have them released, providing there are no outstanding warrants. Prisons shall manage the payment of fines in accordance with [COPP 12.7 – Warrants](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

### Prisoners who do not arrange to have their fines paid to secure their release shall be managed in accordance with [COPP 12.7 – Warrants](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

## Release to WAPF custody

### The Superintendent/OIC shall approve special prior arrangements to enable WAPF to detain a prisoner on release, undertaken within the legislated police powers of Western Australia and the Commonwealth.

### The Authorised Officer shall handover all release documentation and prisoner property to the prisoner on release.

## *High Risk Serious Offenders Act 2020*

### A prisoner may be released to a community supervision order issued under legislation[[12]](#footnote-12), provided no other imprisonment orders or remand warrants exist.

### The ACC via the COMU shall liaise with the relevant prison for the purpose of organising the prisoner’s release and travel arrangements (telephone: 9264 6419)

## Release following court appearance via video-link

### The release of prisoners following a court appearance via video-link shall be in accordance with this COPP.

## Release from external unit (excluding workcamps)

### The Authorised Officer shall liaise with WAPF or Escorting Officers supervising the prisoner at the relevant police lock-up or medical/mental health facility to ensure all release procedures are followed, when a prisoner is due for release.

### Prior to release the Authorised Officer shall ensure the prisoner signs the relevant release documents, as required, and subsequently provides all relevant documentation to the WAPF or Escorting Officers supervising the prisoner.

# Hospital Orders

## *Criminal Law (Mentally Impaired Accused) Act 1996*

### A hospital order may be made by a court under the Criminal Law (Mentally Impaired Accused) Act[[13]](#footnote-13).

### Prisoners on a hospital order and made an involuntary patient cannot be held in prison if no other warrants or imprisonment orders are held by the prison and shall be discharged off TOMS once the prison has been formally notified of the hospital order by the court in accordance with [COPP 4.7 Mentally impaired accused prisoners](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

### If the prisoner has other remand warrants, is sentenced, or is being held on other orders authorising imprisonment, the prisoner shall remain on TOMS and on the prison’s count.

### Should the prisoner remain on the holding prison’s count, the prison is to send a copy of the prisoner’s Offender Movement Information (OMI), orders authorising imprisonment and EED/EDR if sentenced to the authorised hospital.

### The Governor may at any time issue an order to release a mentally impaired defendant, usually on the recommendation of the Mentally Impaired Accused Board and subject to legislation[[14]](#footnote-14).

### The prisoner may only be released on the date specified in the order and in accordance with the release order, providing no other warrants or orders exist.

# Early Release

## General requirements

### Legislation[[15]](#footnote-15) provides the Chief Executive Officer (CEO) and Superintendent, the power to discharge a prisoner from custody early.

## Eligibility criteria

### Prisoners must demonstrate satisfactory prison conduct including a respectful attitude to staff and other prisoners, along with positive reports (ie work, education, programs where applicable) to be deemed eligible for early discharge.

### Eligible prisoners may be approved for early discharge up to 30 days immediately prior to the day their sentence is due to expire, permitting the Department to:

1. recognise and reward consistent good prisoner conduct;
2. coordinate state-wide travel arrangements;
3. address an identified compassionate or special welfare need;
4. facilitate the re-integration of a prisoner back into their community
5. safely and responsibly manage the prison population.

### The CEO and/or Superintendent shall ensure prisoners with offences with an identified victim(s) does not increase any risk(s) to the victim if the prisoner is released from custody early.

## Prisoners ineligible for early discharge

### Prisoners shall be deemed ineligible to apply for early discharge for the following reasons:

1. any prisoner imprisoned only on a default of payment of a fine or other monetary penalty[[16]](#footnote-16);
2. any prisoner with current offences identified in [Appendix B: List of Offences which Preclude Suitability for Early Discharge](#_Appendix_B:_List). These prisoners may be assessed for up to 10 days early discharge on the grounds of special welfare or compassionate grounds or to facilitate transportation;
3. any prisoner who has been denied or refused their state parole, these prisoners may be assessed for up to 10 days early discharge on the grounds of special welfare or compassionate grounds or to facilitate transportation;
4. any prisoner who has been denied both State and Federal parole/recognisance;
5. any prisoner where there is an immigration alert;
6. any prisoner who is the subject of a Continuing Detention Order[[17]](#footnote-17); or
7. any prisoner with a conviction[[18]](#footnote-18) for a prison offence in the previous 2 years of the current prison term or a pending charge[[19]](#footnote-19).

## Application process

### Unit officers shall identify, inform, and assist eligible prisoners to lodge an early discharge application.

### Applications for early discharge must be lodged with the Superintendent or OIC 2 months prior to the day the prisoner seeks to be released (except when the granting of early discharge is a matter of urgency).

### Urgent early discharge applications (ie transport logistics or compassionate reasons) may be submitted at any time for approval prior to the day the prisoner’s sentence is due to expire.

### The following processes shall apply for prisoners eligible to apply for early discharge:

1. unit officers shall complete the Application for Early Discharge on TOMS and refer to the Unit Manager for review
2. the Unit Manager shall review the Application for Early Discharge, make a recommendation and then forward to the prison’s Assistant Superintendent Operations (ASO)
3. the ASO shall check the Application for Early Discharge, amend, recommend and forward to the Superintendent or OIC
4. the Superintendent or OIC shall review the completed Application for Early Discharge and via email notify the:

Superintendent Operations; and

Clinical Nurse Manager

1. The Superintendent or OIC shall forward the Application for Early Discharge (TOMS) to the Assistant Commissioner Custodial Services (ACCO) or the Assistant Commissioner Women and Young People (ACWYP) for a decision
2. The ACCO or ACWYP shall forward any approved Early Discharge decisions to the SIU to update the release dates and Date of Release (DOR) on TOMS
3. the Superintendent or OIC shall ensure prisoners are informed of the outcome:

at least 14 days prior to the earliest possible date of early discharge; or

as soon as practicable for urgent applications.

## Appeals process

### The Superintendent/OIC shall forward prisoner appeals, following a decision to reject an application for early discharge to the Deputy Commissioner Adult Male Prisons or Deputy Commissioner Women and Young People, for a final decision.

## Early release on licence

### Early release on licence shall only be available to Federal offenders serving a Federal sentence of imprisonment (with or without a non-parole period) or a recognizance release order.

### Prisoners must demonstrate satisfactory prison conduct including a respectful attitude to staff and other prisoners, along with positive reports (ie work, education, programs where applicable) to assist with eligibility for early release on licence.

### Each application for early release shall be assessed on its own merits by the Federal Attorney-General or their delegate.

### One or more of the following exceptional circumstances shall be met in order for the prisoner to meet the requirements for consideration for early release on licence:

1. medical grounds
2. family hardship
3. cooperation with law enforcement agencies.

### Applications for early release on licence shall be in writing and include the exceptional circumstances, on which the prisoner is relying on, to justify their release.

### The Authorised Officer shall assist eligible prisoners with the preparation of their application and forward to the Commonwealth Parole Office by email or post as follows:

* [cpo@ag.gov.au](mailto:cpo@ag.gov.au)
* Principal Legal Officer   
  Commonwealth Parole Office   
  Attorney General’s Department   
  3-5 National Circuit   
  BARTON ACT 2600.

### A note shall be placed on the offender notes detailing the prisoner’s intent to apply and the method the application has been sent.

### The Authorised Officer, on receipt of the licence, shall notify the Superintendent, ASO, Principal Officer or OIC in order for the conditions of the licence to be explained to the prisoner.

### The Authorised Officer shall return the licence to the Commonwealth Parole Office, once the conditions have been understood and the prisoner has signed the licence.

### The Authorised Officer shall notify the SIU of the accepted licence and the change of release date.

### A signed copy of the licence shall be stored in the prisoner’s Unit File and a copy provided to the prisoner on release.

# Permission for a Prisoner to Remain Overnight

### A Superintendent, delegated by the CEO[[20]](#footnote-20) may permit a prisoner, if requested in writing, to remain in the prison overnight until the morning following the due date of release (one night in total), for one or more of the following reasons:

1. the prisoner is unable to make travel/transport arrangements on the due release date
2. due to weekend or public holiday restrictions on travel, banking, shopping etc.
3. compassionate or other welfare related needs.

### The Superintendent, delegated by the CEO, may permit a prisoner who is seriously ill on their release date to remain in the prison until suitable arrangements are made for their appropriate release[[21]](#footnote-21).

### The Superintendent, in considering a prisoner to remain overnight, shall take into account whether the prisoner has been convicted of a prison offence and their good conduct.

### The Superintendent on granting permission for a prisoner to remain in prison overnight, shall:

1. ensure the prisoner signs the [Release and Indemnity by a Prisoner permitted to remain Overnight in Prison](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/copp-forms.aspx) Form.
2. ensure the SIU is notified via email
3. forward the [Release and Indemnity by a Prisoner permitted to remain Overnight in Prison](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/copp-forms.aspx) Form to the SIU and Operational Records and
4. records the details of any permit granted on offender notes.

# Prisoner Released in Error

### The Superintendent shall ensure all critical incident reporting requirements are completed in accordance with [COPP 13.1 – Incident Notifications, Reporting and Communications](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

### The Superintendent shall notify the SIU if a sentenced prisoner has been released in error.

### The Superintendent shall ensure the OPCEN is informed if there is a legal warrant or custody order in existence and a prisoner has been released in error.

### The Commissioner delegated by the CEO is authorised to issue an arrest warrant[[22]](#footnote-22) for the arrest and return of the prisoner following a release in error.

### The relevant Superintendent shall ensure that notification of a prisoner released in error has been provided to Knowledge Management via email [litigation@justice.wa.gov.au](mailto:litigation@justice.wa.gov.au).

# Prisoner Detained in Error

### The Superintendent shall be informed immediately if a prisoner is detained in error and there is no legal remand warrant, warrant of commitment or other custody order in existence.

### The Superintendent shall notify the OPCEN and ensure steps are taken to release the prisoner as soon as possible.

### The Superintendent shall ensure all critical incident reporting requirements are completed in accordance with [COPP 13.1 – Incident Notifications, Reporting and Communications](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

### Where a prisoner has been detained in error, the Superintendent shall ensure the prisoner has been advised of their rights to seek legal advice regarding their unlawful detention, and this shall be documented in accordance with [COPP 13.1 – Incident Notifications, Reporting and Communications](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx).

### The OPCEN shall notify the Commissioner advising that the prisoner has been detained in error.

### The relevant Superintendent shall ensure that notification of a prisoner detained in error has been provided to Knowledge Management via email [litigation@justice.wa.gov.au](mailto:litigation@justice.wa.gov.au).

# Annexures

## Related COPPS and documents

**COPPS**

* [COPP 3.1 – Managing Prisoner Property](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)
* [COPP 8.1 – Prisoner Constructive Activities](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)
* [COPP 8.3 – Prisoner Libraries](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)
* [COPP 11.2 – Searching](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)
* [COPP 12.2 – Coordinating Escorts](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)
* [COPP 12.7 – Warrants](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)
* [COPP 13.1 – Incident Notifications, Reporting and Communications](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)
* [COPP 14.3 – Parole Applications](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx)

**Documents**

* [At-Risk Management System Manual](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/arms.aspx)
* [PM09 – Clinical Discharge Process Prior to Planned Release to Freedom](https://dojwa.sharepoint.com/sites/health-services/Pages/Policies-and-Guidelines.aspx)

## Definitions and acronyms

|  |  |
| --- | --- |
| Term | Definition |
| ACC | Adult Community Corrections |
| ACC After-Hours Manager (AHM) | Adult Community Corrections After-Hours Manager |
| Australian National Child (sex) Offender Register (ANCOR) | Subject to the *Community Protections (Offender Reporting) Act 2004*, offenders convicted of sexual or certain violent crimes against children may be registered with the Australian National Child (Sex) Offender Register. ANCOR is managed by the Western Australian Police Force. |
| Authorised Officer | An officer authorised by the Superintendent to conduct a function / or activity from this COPP. This authorisation will be made in writing and recorded. |
| At-Risk Management System (ARMS) | The At-Risk Management System is the Department’s multi-disciplinary suicide prevention strategy for offenders. The tri-level system includes:  Primary prevention – strategies to create physical and social environments in the detention centre that limits stress on detainees.  Secondary prevention – strategies to support detainees at statistically higher risk of self-harm or suicide.  Tertiary prevention – strategies aimed directly at individuals identified as at risk of self-harm or suicide |
| Chief Executive Officer (CEO) | Director General of the Department of Justice |
| Commissioner’s Operating Policy and Procedure (COPP) | Operational instruments that provide instructions to staff as to how the relevant legislative requirements are implemented. |
| Community Offender Monitoring Unit (COMU) | The COMU is a centralised unit within Adult Community Corrections (ACC) that coordinates the case management of high risk offenders in custody and the community. The primary functions of the COMU include:  case management of select High Risk Offenders  electronic monitoring (GPS tracking and Radio Frequency)  co-ordination, consultation and support services to internal and external stakeholders for the effective management of select High Risk Offenders. |
| Contractor | The organisation engaged to provide prisoner transport services under the *Court Security and Custodial Services Act 1999*. |
| Detained in Error | When a prisoner/detainee has been held in custody beyond the date they were lawfully entitled to be released. |
| EED | Earliest Eligibility Date |
| EDR | Earliest Date of Release |
| Escorting Officers | A Prison Officer, Officer employed under the Court Security & Custodial Services Contract, or an Officer employed by a private prison contractor who is trained to conduct prisoner escorts |
| Fine Expiation Order | A fine expiation order is an order enabling an offender who is in custody, or has been in custody, to discharge the offender’s liability to pay the amount owed in respect of a fine. Refer to *Fines Penalties and Infringment Notices Enforcement Act 1994*. |
| Guiding Principles for Corrections in Australia, 2018 | The guidelines and the accompanying principles constitute outcomes or goals to be achieved, rather than a set of absolute standards or laws to be enforced. They represent a statement of intent that each Australian State and Territory can use to develop their own range of relevant legislative policy and performance standards to reflect best practice and community demands. |
| Max | Maximum date |
| Movements Officer | The Officer responsible for preparing and providing prisoner movements information for prisoners based at the prison. This includes completing and collation of the paperwork and associated TOMS records necessary to facilitate the transfer, movement and release of prisoners |
| Officer in Charge (OIC) | As defined in s. 3(1) of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html)and refers to either the designated Superintendent or the officer in charge of a prison at a particular time.  Also includes any contract worker authorised by the Commissioner in accordance with s. 15I (1) (a) of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html)to perform the functions of a superintendent in a privately operated prison. |
| Prisoner | Any person in lawful custody and referred to as a prisoner in s. 3 of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html); also includes a person not yet in the custody of a prison, but in the custody of a Contractor under the court security and custodial services contract |
| Prisoners Review Board | The Board established under s 102 of the [*Sentence Administration Act 2003*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_887_homepage.html) and the authority responsible for determining release to state parole. |
| Reception Officer | Prison Officer(s) undertaking any reception processes upon the receipt, transfer or discharge of a prisoner and does not refer only to those officers designated as Reception Officers. |
| Released in Error | When a prisoner/detainee is released from custody before the date they are lawfully entitled to be released, including being released without signing relevant papers. |
| Superintendent | The Superintendent as defined in s 36 of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html) includes any reference to the position responsible for the management of a private prison under Part IIIA of the [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html). Does not extend to the Officer in Charge of a Prison |
| Senior Work Camp Officer (SWCO) | Senior Prison Officer(s) undertaking any duties at a prison Work Camp. |
| T&D sheet | Transfer and Discharge sheet produced through TOMS |
| Total Offender Management System (TOMS) | The computer application used by the Department of Justice for the management of prisoners in custody. |
| Unlawful Consorting Notice | Unlawful Consorting Notice issued under the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021* |
| Victim Notification Register (VNR) | Victim Notification Register (VNR) is an information service for victims of crime. |
| Warrant | A written order of a judicial body, including a Bring Up Order (includes courts, tribunals, Royal Commission, Corruption and Crime Commission. |
| Warrant of Commitment | Issued under s52S(4) of the *Fines, Penalties and Infringment Notices Enforcement Act 1994,* in relation to a fine is issued by the court to commit the offender to be imprisoned for a period of time. |

## Related legislation

* *Bail Act 1982*
* *Criminal Law (Mentally Impaired Accused) Act 1996*
* *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021*
* *High Risk Serious Offenders Act 2020*
* *Fines, Penalties and Infringement Notices Enforcement Act 1994*
* *Prisons Act 1981*
* *Prisons Regulations 1982*
* *Prisoners (Interstate Transfer) Act 1983*
* *Prisoners (International Transfer) Act 2000*
* *Sentencing Act 1995*
* *Sentence Administration Act 2003*
* *Transfer of Prisoners Act 1983*

# Assurance

It is expected that:

Prisons will undertake local compliance in accordance with the [Compliance Manual](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/monitoring.aspx).

* The relevant Deputy Commissioner within Head Office will undertake management oversight as required.
* Operational Compliance Branch will undertake checks in accordance with the [Operational Compliance Framework](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/monitoring.aspx).
* Independent oversight will be undertaken as required.

# Document Version History

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Version no | Primary author(s) | Description of version | Date completed | Effective date |
| 1.0 | Operational Policy | Approved by the Project Steering Committee | 2 March 2020 | n/a |
| 2.0 | Operational Policy | Approved by Commissioner | 16 December 2021 | 24 January 2022 |
| 3.0 | Operational Policy | Approved by the Commissioner | 31 August 2022 | 9 September 2022 |
| 4.0 | Operational Policy | Amendments based on feedback from Adult Male Prisons | 2 December 2022 | 9 December 2022 |
| 5.0 | Operational Policy | Approved by the Commissioner  CM: S23/112765 | 4 December 2023 | 12 December 2023 |

Appendix A: Expiry of a Sentence

|  |  |  |
| --- | --- | --- |
| Jurisdiction | Sentence | Authority |
| Western Australia | Finite term (without parole) | None required. Release on EDR  Re-entry release order provisions.  Eligible for early discharge prior to sentence expiry (MAX) |
|  | Parole term | Release can only be granted by a Parole order or re-entry release order issued by the Prisoners Review Board. Prisoners must be released on expiration of term if there is no other order for release issued before that date.  Where parole has been denied, prisoner is not eligible for early discharge\*. |
|  | Fixed term 6 months and eligible for Short Term parole | Release on Short Term parole if parole granted  If prisoner is denied Short Term parole they must be released at expiration of term.  Where parole has been denied, prisoner is not eligible for early discharge\*. |
| Federal | Parole | Commonwealth parole order.  If not released on parole or re-entry release, must be released on expiration of term  Where Commonwealth parole has been denied, prisoner is not eligible for early discharge.  (Ensure the prisoner is not also serving a State sentence, requiring a State parole order) |
|  | Recognisance | Must have a signed recognisance order by prisoner.  If not released on Recognisance or re-entry release, must be released on expiration of term |
| Joint Federal and State | Parole/recognisance | 1. Must have both relevant orders. |
| Interstate |  | Upon transfer, interstate sentence is deemed to have been imposed by a WA Court. Therefore, the WA conditions set out above apply. |

Expiration of term means Earliest Date of Release (EDR), Maximum (MAX) date or EXP (juvenile) as applicable.

\* These prisoners may be assessed for up to 10 days early discharge on the grounds of special welfare or compassionate grounds or to facilitate transportation.

Appendix B: List of Offences which Preclude Eligibility for Early Discharge

1. Murder
2. Manslaughter
3. Unlawful assault causing death
4. Attempted murder
5. Unlawful wounding
6. Grievous bodily harm
7. Assault occasioning bodily harm
8. Assault with intent to commit or facilitate a crime
9. Assault with intent to do grievous bodily harm
10. Serious assaults[[23]](#footnote-23)
11. Indecent assaults
12. Aggravated indecent assault
13. Sexual penetration without consent
14. Aggravated sexual penetration without consent
15. Kidnapping
16. Deprivation of liberty
17. Dangerous driving causing death/injury
18. Dangerous driving causing bodily harm
19. Stalking
20. Robbery
21. Assault with intent to rob
22. Wilfully lighting a fire or causing a fire to be lit under such circumstances as to be likely to injure or damage a person or property
23. Breach of a violence restraining order

\* These prisoners may be assessed for up to 10 days early discharge on the grounds of special welfare or compassionate grounds or to facilitate transportation.

1. *Court Security and Custodial Services Act 1999* (Part 2, Division 2, Section 18) [↑](#footnote-ref-1)
2. s. 31 *Prisons Act 1981* [↑](#footnote-ref-2)
3. Part 3 *Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021* [↑](#footnote-ref-3)
4. *Bail Act 1982* [↑](#footnote-ref-4)
5. s. 32 *Prisons Act 1981* [↑](#footnote-ref-5)
6. *Bail Act 1982* [↑](#footnote-ref-6)
7. s. 29 B*ail Act 1982* [↑](#footnote-ref-7)
8. s. 32 *Prisons Act 1981* [↑](#footnote-ref-8)
9. s. 32(2) *Prisons Act 1981* [↑](#footnote-ref-9)
10. s. 32 *Prisons Act 1981* [↑](#footnote-ref-10)
11. s. 52 *Fines, Penalties and Infringement Notices Enforcement Act 1994* and s59 *Sentencing Act 1995* [↑](#footnote-ref-11)
12. *High Risk Serious Offenders Act 2020* [↑](#footnote-ref-12)
13. s. 5.14 *Criminal Law (mentally Impaired Accused) Act 1996* [↑](#footnote-ref-13)
14. *Criminal Law (Mentally Impaired Accused) Act 1996* [↑](#footnote-ref-14)
15. s. 31 (1)(2) Prisons Act 1981 [↑](#footnote-ref-15)
16. s. 31(3) *Prisons Act 1981* [↑](#footnote-ref-16)
17. *High Risk Serious Offenders Act 2020* [↑](#footnote-ref-17)
18. s. 69 or s. 70 *Prisons Act 1981* [↑](#footnote-ref-18)
19. s. 69 or s. 70 *Prisons Act 1981* [↑](#footnote-ref-19)
20. r42 Prisons Regulations 1982 [↑](#footnote-ref-20)
21. r42(2) Prison Regulations 1982 [↑](#footnote-ref-21)
22. s. *116 Sentence Administration Act 2003* [↑](#footnote-ref-22)
23. s. 318 *Criminal Code 1913* [↑](#footnote-ref-23)