

## Custodial Operations Policy and Procedures

# 13.10 Erroneous release and unlawful detention

### Policy summary

State Sentence Administration (SSA) is responsible for ensuring each inmate in Corrective Services NSW (CSNSW) custody is lawfully detained and for maintaining that information in Offender Integrated Management System (OIMS).

If a correctional officer suspects an inmate may have been released in error, or has remained in custody beyond his or her release date, or is detained in a place other than that specified in the warrant or order, then the local SSA unit must be informed immediately.

If SSA confirms that the inmate was released in error or is detained in error, and the error was CSNSW's fault, then the reporting correctional officer must commence serious incident reporting procedures.

SSA will inform Statewide Administration of Sentences and Orders (SASO) of the error. SASO will conduct a review to determine the cause. SASO will provide an incident review and evaluation report to the reporting centre to advise of the cause and any recommended error prevention strategies.

### Management of Public Correctional Centres Service Specifications

Service specification	Professionalism and accountability Safety and security
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## Scope

This section applies to all correctional centres and other facilities administered by or on behalf of CSNSW, and to all CSNSW employees.

For Security & Intelligence (S&I) staff, this policy must be read in conjunction with S&I Local Operating Procedures (LOPs).

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# 1 Legislation

## 1.1 Crimes (Administration of Sentences) Act 1999

Section 8 of the *Crimes (Administration of Sentences) Act 1999* provides for when an inmate may or may not be released from custody at the expiration of a sentence of fulltime detention:

### 8 Release from custody

- (1) Unless sooner released on parole, an inmate who is serving a sentence by way of full-time detention (the **current sentence**) is to be released from custody on the day the sentence expires (the **release date**), as determined in accordance with Division 1 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999* but subject to any variation of the term of that sentence under this or any other Act.
- (2) An inmate may be released from custody:
  - (a) at any time on the release date for the current sentence, or
  - (b) if the release date for the current sentence is a Saturday, Sunday or public holiday and the inmate so requests, at any time during the next day that is not a Saturday, Sunday or public holiday.
- (3) This section does not apply to an inmate who, as at the release date for the current sentence, is subject to another sentence that is being served by way of full-time detention:
  - (a) where the other sentence commenced before, but will not end until after, the release date for the current sentence, or
  - (b) where the other sentence commences immediately after the release date for the current sentence.

## 1.2 Law Enforcement (Powers and Responsibilities) Act 2002

Sections 102 and 103 of the *Law Enforcement (Powers and Responsibilities) Act 2002* ('LEPRA') provides that a police officer may arrest a person who is unlawfully at large and must take the person before an authorised officer (usually a Magistrate) to be dealt with according to law.

### 102 Power to arrest persons who are unlawfully at large

- (1) A police officer may, with or without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person is a person who is unlawfully at large.
- (2) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person, and any property found on the person, before an authorised officer to be dealt with according to law.
- (3) The authorised officer may, by warrant, commit the person to a correctional centre, to be kept in custody under the same authority, and subject to the same conditions and with the benefit of the same privileges and entitlements, as would have applied to the person if the person had not been unlawfully at large.

- (4) In this section, a reference to a person unlawfully at large is a reference to a person who is at large (otherwise than because of escaping from lawful custody) at a time when the person is required by law to be in custody in a correctional centre.

**Note.** Inmates of correctional centres who are unlawfully at large may also be arrested under section 39 of the *Crimes (Administration of Sentences) Act 1999*.

### 103 Warrant for arrest of person unlawfully at large

- (1) A police officer may apply to an authorised officer for a warrant for the arrest of a person if the police officer suspects on reasonable grounds that the person is a person who is unlawfully at large.
- (2) The authorised officer may issue the warrant if satisfied that there are reasonable grounds for doing so.
- (3) The regulations may make provision for or with respect to the form of, and other requirements relating to, a warrant issued under this section.

## 2 Initial reporting of a suspected release or detention error

### 2.1 Notifying the Governor or OIC

The Governor or OIC of a correctional centre must immediately be informed of any suspected erroneous release or unlawful detention of an inmate.

In respect of a Court Escort Security Unit (CESU) operated police or court cell complex, the OIC and General Manager (GM), CESU must be informed immediately.

	Procedure	Responsibility
1.	<b>Correctional centres</b> Report a suspected erroneous release or unlawful detention immediately to the Governor or OIC of the correctional centre.	First responding officer
2.	<b>CESU locations only</b> Report a suspected release or detention error immediately to the OIC of the police/court cell complex.	First responding officer
3.	<b>CESU locations only</b> Report the suspected erroneous release or unlawful detention to the GM, CESU.	OIC police or court cell complex

### 2.2 Notifying SSA

On receiving the report, the Governor or OIC must confirm whether the inmate was erroneously released or is unlawfully detained. SSA must be notified immediately and requested to confirm whether the inmate is subject to an active legal detainer.

**SSA business hours:** The local SSA unit.

**After hours:** Silverwater SSA  
**(02) 9289 5258**  
6:00am-10:00pm Monday to Friday  
8:30am-4:30pm weekends and public holidays

**All other times:** The relevant SSA regional manager.

No further action is required if SSA advise that the inmate was correctly released or is lawfully detained.

	<b>Procedure</b>	<b>Responsibility</b>
1.	<b>SSA business hours:</b> Report the suspected erroneous release or unlawful detention immediately by telephone to the local SSA unit. <b>After hours:</b> Report the suspected erroneous release or unlawful detention immediately by telephone to Silverwater SSA or the SSA regional manager.	Governor or OIC
2.	Provide SSA with the following details: <ul style="list-style-type: none"><li>• name of the Governor or OIC</li><li>• name of the correctional centre or police/court cell complex where the suspected error occurred</li><li>• name and Master Index Number (MIN) of the inmate</li><li>• return contact telephone number where the Governor or OIC can be contacted directly.</li></ul>	Governor or OIC

### 3 Immediate actions after confirmation of error

#### 3.1 Reporting error as a serious incident

If SSA advises that the release or detention error was CSNSW fault, serious incident reporting procedures must be commenced (**refer to COPP section 13.1 Serious Incident Reporting**). A local investigation into the incident must be undertaken.

Where SSA advises that the release or detention error was the fault of another agency, then SSA will report the matter to SASO and the appropriate agency. In those circumstances the error does not need to be reported as a serious incident by the correctional centre.

	<b>Procedure</b>	<b>Responsibility</b>
1.	Report a confirmed erroneous release or unlawful detention, which was CSNSW fault, immediately in accordance with serious incident reporting procedures ( <b>refer to COPP section 13.1 <i>Serious Incident Reporting</i></b> ).	Governor or OIC
2.	Conduct local inquiries to establish what occurred at the correctional centre or police/court cell complex which led to the error.	Governor or OIC

### 3.2 Reporting a release error to police

The police must be notified immediately that the inmate was erroneously released and is unlawfully at large. Police must be requested to arrest the inmate and take him or her before an authorised officer. The inmate cannot be returned to CSNSW custody until an authorised officer issues a warrant of commitment. However, CSNSW may receive the inmate into custody from the police as a bail refused person pending their appearance before an authorised officer.

CSNSW must provide police with the inmate's:

- identifying information including most recent photograph;
- a copy of the legal detainer which authorises his or her detention; and
- last known address.

	<b>Procedure</b>	<b>Responsibility</b>
1.	Report the release in error to police immediately and request that the inmate be arrested and taken before an authorised officer.	Governor or OIC
2.	Ensure that police are provided with the inmate's identifying information, most recent photograph, and the legal detainer in force.	Governor or OIC

### 3.3 Releasing an unlawfully detained inmate

An inmate for whom no legal detainer exists which justifies his or her detention must be released from custody in accordance with normal release procedures (**refer to COPP section 23.1 *Releases from police or court cells* and section 23.2 *Releases from Correctional centres***).

### 3.4 Transferring an inmate detained in incorrect place

An inmate who is being detained in a CSNSW place of detention other than that specified in the legal detainer must be transferred to the specified place as soon as practicable.

Where an inmate is required to be in the custody of another authority, e.g. a police officer or immigration officer, then the relevant authority must be requested to take custody of the inmate immediately.

## 4 Incident review

### 4.1 Incident reports and local inquiries

A copy of all incident/witness reports and the discharge checklist must be emailed to the SSA cluster manager or regional manager as soon as possible to assist in the incident review. Local inquiries must be conducted to establish what occurred at the correctional centre or police/court cell complex which led to the error.

	Procedure	Responsibility
1.	Email a copy of the IRM and incident/witness reports and discharge checklist to the relevant SSA cluster manager or regional manager.	Governor or OIC
2.	Conduct local inquiries to establish what occurred at the correctional centre or police/court cell complex which led to the error.	Governor or OIC

### 4.2 Review by statewide administration of sentences and orders

The SSA regional manager shall inform the Director, SASO of a release or detention error. In consultation with the reporting centre, SASO will conduct an incident evaluation. As part of that evaluation, correctional officers and/or non-custodial officers may be required to provide statements.

### 4.3 Incident review and evaluation report

After completing the review, SASO will provide an *Incident Review and Evaluation Report* to the reporting centre to advise of the cause and any recommended prevention strategies.

The reporting centre will consider the *Incident Review and Evaluation Report* and append comments and/or recommendations to the report. The appended report must be forwarded to the relevant assistant commissioner and Director Contracted Corrections Compliance and Monitoring (where applicable).

In consultation with SSA, the reporting centre will implement recommended improvements or changes in systems of control for the release of inmates.

	Procedure	Responsibility
1.	Consider the <i>Incident Review and Evaluation Report</i> and append any comments and/or recommendations to the report.	Governor or OIC
2.	<p><b>Correctional centres only</b></p> <p>Submit the <i>Incident Review and Evaluation Report</i> and appended notes to the:</p> <ul style="list-style-type: none"> <li>Assistant Commissioner, Custodial Corrections (all centres) and</li> <li>Director Contracted Corrections Compliance and Monitoring (contract managed centres only).</li> </ul>	Governor or OIC

	Procedure	Responsibility
3.	<b>CESU locations only</b> Submit the <i>Incident Review and Evaluation Report</i> and appended notes to the Assistant Commissioner, Security and Intelligence.	General Manager, CESU
4.	In consultation with the SSA cluster manager or regional manager, implement recommended improvements in systems of control for releasing inmates.	Governor or OIC

## 5 Quick links

- [Related COPP](#)
- [Forms and annexures](#)
- [Related documents](#)

## 6 Definitions

CSNSW	Corrective Services NSW
CESU	Court Escort Security Unit
Correctional centre	Any place of detention including a correctional centre, correctional complex, police or court cell complex or residential facility where inmates are in Corrective Services NSW custody.
Erroneous release	The release of a person from custody despite the existence of a current legal detainer ordering CSNSW to detain the person. A person released in such circumstances is unlawfully at large.
GM	General Manager
Governor	For this policy a Governor includes (unless otherwise stipulated) a General Manager of a contract managed correctional centre or the General Manager, CESU.
Incident review and evaluation	Review conducted by SASO in consultation with the correctional centre to: identify the cause(s) for the error; and recommend strategies to prevent the error reoccurring.
IRM	Incident Reporting Module.
JH&FMHN	Justice Health and Forensic Mental Health Network.
Legal detainer	A warrant, order or direction issued pursuant to a Commonwealth, NSW, ACT or Norfolk Island law which directs CSNSW to detain a person at a correctional centre (e.g. sentence warrant, remand warrant, Norfolk Island warrant, compulsory drug treatment order, immigration detention order, preventative detention order, continuing detention order).
LOPs	Local Operating Procedures

Manager, CQ&CI, SASO	Manager, Compliance, Quality & Continuous Improvement, Statewide Administration of Sentences and Orders.
OIC	Officer in charge: the on-duty ranking correctional officer who is in charge of the correctional centre in the absence of the Governor, e.g. Manager of Security or Night Senior; or for a police/court cell complex, the officer in charge of the complex.
OPRB	Operational Performance Review Branch
S&I	Security and Intelligence, a branch of CSNSW
SSA	State Sentence Administration
SASO	Statewide Administration of Sentences and Orders
Unlawful detention	<p>The detention of a person in:</p> <ul style="list-style-type: none"> <li>(a) the absence of a current legal detainer ordering CSNSW to detain the person; or</li> <li>(b) a place other than the place specified in the legal detainer (i.e. inmate must be detained in a mental health facility or immigration detention centre as stipulated by law) unless the Commissioner or other official has the authority to make an alternative placement (e.g. see section 77C of the <i>Mental Health (Forensic Provisions) Act 1990</i>).</li> </ul>

## 7 Document information

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