

**The Second Report of the Joint Select Committee on the Inquiry into the Practice Whereby Prisoners are Granted Access to Services outside of the Prison Facilities**

- i. As an immediate measure, the Commissioner of Prisons should complete and implement the provisions of the Draft Policy on Inmates Leaving the Prisons in Instances other than Court, Clinic and Programmes at the earliest occasion to prevent recurrence of the incident in question.**

The policy has been operationalised and provides the policy directives to be followed by staff, in all instances when inmates both remanded and convicted are required to leave the prison other than to attend court or to go to clinics or the hospital. The relevant training workshop is being planned so that all Senior Officers whose responsibilities have been defined in the policy are aware of the new protocols and what they are required to do to ensure the policy directives are implemented and practiced. Also, the policy prescriptions are to be communicated via a General Order so that the accountability Framework is ensured.

- ii. Prison Service Rules should include framework policy to allow for access to critically needed external services by prisoners who qualify. Such rules should be in keeping with best practice outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners.**

The Prison Rules which are presently being reviewed are not seen as the appropriate legal framework for ensuring compliance with the policy. Indeed, the Rules Review Committee has been advised of the policy shift however the Rules already allow for the Commissioner of Prisons to apply a discretion when such requests are made.

- iii. Such rules should clearly define the communication protocols that must be followed between the Prison Service and the Trinidad and Tobago Police Service on all such occasions.**

The policy will provide the protocols to be followed and staff are bounded by the policy prescriptions which are embodied in a General Order to ensure compliance. The Commissioner of Prisons advised that the Communication Protocols internally and externally as well as exact spheres of responsibility are clearly defined in the policy. It is noted that the policy is activated upon direct request, at which stage the inmate will be apprised of what is required.

- iv. The safety and protection of citizens should be of paramount importance on all such occasions.**

The Policy outlines the Prison Service's role and responsibility as an agent of the Criminal Justice System of Trinidad and Tobago to protect society by ensuring that all persons sent to its jurisdiction by the courts are kept safely and returned to court as mandated. Every exercise of discretion by the Commissioner of Prison will be undertaken in strict

compliance with this revised policy. Central to the policy is the risk assessment and risk mitigation strategies that are to be employed whilst at the same time striking a balance with the Human Rights entitlements of the individual Offenders.

- v. **Alternative arrangements for access to critically needed services by detainees/inmates in secured locations within prison facilities should also be considered.**
- vi. **The Prison Service should pursue discussions with the relevant agencies/institutions with the aim of establishing the required protocols for the provision for such facilities within the prison facilities for inmates/detainees who do not qualify for external visits.**

Comments to V and VI are considered together. With respect to business transactions, the policy demands that no inmate will be allowed to leave the facility unless the Prison Legal Department has stated in writing that there is no legal avenue i.e. via a Power of Attorney or other Legal mechanisms through which the request can be facilitated. This ensures that no inmate will be allowed to proceed to the risk assessment and risk mitigation stage in circumstances where the business transaction can be completed by someone on the inmate's behalf, without the necessity of him/her leaving the Prison. The Prison has always maintained relations and protocols which allow all Government agencies and private bodies to come into the prison to conduct normative business transactions and this of course will be the preferred option as mandated by the policy prescriptions before the inmate can leave the prison.

A copy of the Policy on Inmates Leaving the Prisons in instances other than Court, Clinic and Programmes, is attached.

# INMATES LEAVING THE PRISON IN INSTANCES OTHER THAN COURT, CLINIC AND PROGRAMMES

## 1.0 NATURE OF THE PROBLEM

The recent public response to an inmate being allowed access to conduct a business transaction outside of the prison, in circumstances where the Prison Rules do not so prohibit; and the further directive of the Joint Select Committee of the Parliament of Trinidad and Tobago, on National Security has given rise to review of existing operating practices on the manner in which inmates – be they remanded or convicted – are allowed to leave the confines of the prison for personal transactions other than instances when they are taken to court, correctional programmes, or for external medical treatment. The Joint Select Committee on National Security calls for the Prison to develop a written policy on the access of prisoners to external services; has highlighted the organisation’s failure to develop said policy over time.

It must be noted that the identified silence of the Prison Rules on the removal of inmates from the prison to conduct business transactions has been challenged at the High Court, in the case of **Barry Alphonso vs the Commissioner of Prisons and the Attorney General of Trinidad and Tobago**, in which a request was made by this high risk inmate for judicial review of the decision of the Commissioner of Prisons, to deny a request for his attendance at the funeral of his (Alphonso’s) deceased son. Though the visit was eventually granted by consent, the general position of the Court was that the visit should be facilitated as far as was possible: given the inmate’s status as unconvicted and the principle of ‘innocent until proven guilty’; and the further consideration of the finality of death and that he would have no other opportunity to see his loved one/to pay respects. Inherent in this agreement was the fact of the continuing Fundamental Rights of the inmate under Section 4 of the 1976 Republican Constitution and the need of the Trinidad and Tobago Prison Service to balance these rights as against the attendant risks.

In forging a policy the Trinidad and Tobago Prison Service is guided by the Prison Rules (Revised Ordinance 1950), which does not speak specifically to the removal of inmates from the prison to conduct personal transactions. In this regard, the 2002 Cabinet Approved Baptiste Task Force

Report on Prison Reform and Transformation is instructive in procedural developments treating with the management of the needs of all inmates; which have expanded over time. Many of the responsibilities that now fall to the Prison Service are as a result of incessant delays in the judicial process, with the causative outcome of detainees being in custody for more than ten (10) years in some instances, and in a single instance for a period of over (20) twenty years on remand. A research of adult male remanded inmates done in November 2016 indicated that there were 515 inmates who were on remand for 5-9 years and 148 between 10-14 years (as at 08/11/2016).

While the Prison Administration has limited control on length of stay or reception of prisoners/detainees; it does have the delegated authority to manage its system and service in a manner which seeks to protect society and rehabilitate its charges under safe, secure and humane conditions. In so doing, it has recognized the importance of identifying and treating with all contributors to corrective behaviour. As such, the development of a policy on the process by which inmates are granted access to services outside of the prisons is not only timely, but necessary for the way forward in local penal management.

## **2.0 PURPOSE OF THE POLICY ON INMATES LEAVING THE PRISON IN INSTANCES OTHER THAN COURT, CLINIC AND PROGRAMMES**

The purpose of this policy is to provide the legal and operational bases which would guide the procedures related to inmates being allowed to leave the prisons in defined circumstances as identified in the policy. It is to be noted that the policy relies heavily on the Cabinet accepted recommendations of the 2002 Baptiste Task Force Report with specific reference to the introduction of a Restorative Justice Philosophy framework for the Trinidad and Tobago Prison Service, the implementation of a Reintegrative Penal Policy approach and the adoption of the Shared Responsibility Model of corrections. It can be seen therefore, that at the level of the Reintegrative Penal Policy, which is a policy that requires the Trinidad and Tobago Prison Service to engage in positive efforts aimed at protecting the social relations between the inmates, their families and communities – even during incarceration – as well as the provision of post-discharge support when they leave the prison, the Trinidad and Tobago Prison Service’s operational policies are designed to facilitate this level of interaction in addition to bringing about the long term rehabilitation of inmates.

In terms of the Shared Responsibility Model, this policy also seeks to engage all stakeholders in the process of rehabilitation of the inmates. Taken together, these are the major policy frameworks which underpin this operational policy. It is also considered that as we move to a revision of the Prison Rules, the former Ministry of Justice had incorporated these ideas in the Prison Rule policy. It is the intent that the draft Prison Rules will make specific provisions for these visits. Be guided that nothing in these policy provisions takes away from the fundamental role of the Trinidad and Tobago Prison Service, as an arm of the Criminal Justice System of Trinidad and Tobago, to provide for the safety and security of society. In carrying out these operations, the Trinidad and Tobago Prison Service is grounded in risk determination and risk mitigation strategies which are required to ensure that the visits take place, and that public safety and security are not compromised.

The purpose of these policy provisions therefore is to facilitate, upon receipt of an inmate's request and after a comprehensive assessment process, an authorised and supervised leave of absence from the prison. Requests can be made on compassionate grounds, such as visiting a terminally ill or incapacitated immediate family member. Requests can also be made for authorization to attend a private funeral/corps viewing, in addition to the participation of prisoners in essential transactions.

### **3.0 DEFINITION OF THE POLICY ON INMATES LEAVING THE PRISON IN INSTANCES OTHER THAN COURT, CLINIC AND PROGRAMMES**

An inmate leaving the Prison subject to the *Jurisdiction of the Prison Authority* is defined respectively as:

- a. A remanded person, escorted for an approved purpose outside of the prison other than for court or clinic;
- b. A convicted person who is escorted for an approved purpose outside of the prison other than for court, clinic or out-gangs.

***Jurisdiction of Prison Authority*** is defined as:

- a. A person convicted who is serving a term of imprisonment without any matters before the courts;
- b. A person remanded by warrant of the court;
- c. A person who is convicted but has matters pending before the courts.

***Approved Purpose*** is defined as:

- a. Any request made by an inmate to be outside of the prison and approved by the Commissioner of Prisons after a comprehensive assessment is completed;
- b. Any rehabilitative programme approved by the Commissioner of Prisons after a comprehensive assessment.

***Comprehensive Assessment*** is defined as:

- a. A systematic process of evaluating the potential risks that may be involved in a projected activity or undertaking inclusive of all reports from the relevant departments.

***Compassionate Grounds*** is defined as:

- a. Any circumstance(s) which involves the death, incapacitation or terminal illness of an immediate family member.

***Business Transaction*** is defined as:

- a. Any essential transaction which cannot be carried out/accomplished without the inmate leaving the prison.

***Miscellaneous Grounds*** is defined as any circumstance listed below:

- a. Any circumstance not listed above, such as Ministerial/Member of Parliament requests which has been investigated and approved by the Commissioner of Prisons.

#### **4.0 POLICY STATEMENT ON INMATES LEAVING THE PRISON IN INSTANCES OTHER THAN COURT, CLINIC AND PROGRAMMES**

This policy seeks to address the instances of inmates leaving the Prison Institution in circumstances other than for the purposes of attending Court, Clinic or Programmes, by providing a detailed standard procedure in keeping with modern restorative justice practices, the incorporation of a re-integrative penal policy approach, the recognition of a Shared Responsibility Model of corrections towards the maintenance of security and improvement in public safety.

#### **5.0 PROCEDURES TO BE ADOPTED WHEN AN INMATE IS REQUIRED TO LEAVE THE PRISON ON COMPASSIONATE GROUNDS**

For the purpose of this policy 'a relative' is defined as Mother, Father, Wife, Husband (including Common Law), Son, Daughter, Brother, Sister, or any person proven upon compelling evidence to have had an important emotional/social relationship with the inmate, as approved by the Superintendent of Prisons after consultation with the Prisons Welfare Officer.

##### **Requests for Visit upon the Death of an Inmate's Relative:**

- a. Upon receipt of the information, verified by the Prisons Welfare Officer, the inmate shall be notified accordingly. Such notification is to be done by the relative of the inmate who conveyed the information of the death, wherever possible. The Prisons Welfare Officer, verifying the information and the Officer in Charge of Visits shall be present at this time.
- b. If however the information has come to the inmate independently of the family, the Prison Welfare Officer shall confirm the death and communicate same to the inmate whereupon the request can then be made.
- c. Requests for inmates to attend private corpse viewing/funeral shall be made on the appropriate request form at least 48 hours prior to the scheduled time for the conducting of the said funeral service/corpse viewing. Where religious customs apply, for e.g. the Islamic practice of burial within 24 hours of death, this deadline may be waived depending on the circumstances of the particular case.

- d. The inmate's request form shall be supported by the following documentation where applicable:
  - I. Copy of Death Certificate of the Decedent
  - II. Proof of relationship between the inmate and the decedent
  - III. Name and address of funeral home where the body is lodged
  - IV. Information on religious service – place, date, time.
  
- e. Where there is an application to attend a funeral service, information must be provided with regard to the religious organization hosting the service and the person officiating.

**Requests for Visit to a Terminally Ill/Incapacitated Relative:**

- a. The inmate shall make a request to the Superintendent of Prisons via the written request form which shall include ; proof of the relationship as well as other particulars e.g. nature of the ailment; the location of the relative i.e. whether at a private residence, nursing home, home for the aged or hospital.

**GENERAL PROCEDURES**

- a. The Superintendent of Prisons or an Officer delegated by him upon receiving the request shall forward same to the Prisons Welfare Officer allocated to that Prison;
  
- b. The Prisons Welfare Officer shall be required to conduct an interview with the inmate to verify the particular bonafides of the request; to make contact with the family to ensure that the visit will be allowed, and to conduct the necessary evaluation to ensure that the visit will conduce to the better management of the inmate whilst incarcerated. Thus, the major objective of the enquiry of the Prisons Welfare Officer is in relation to a determination as to whether the visit will be desirable in relation to the socialisation needs of the inmate and the family, during incarceration;



- c. The Prisons Welfare Officer upon completion of his/her investigation/enquiry shall submit a written report for the attention of the Chief Prisons Welfare Officer;
- d. The Chief Prisons Welfare Officer shall communicate in writing the findings to the Superintendent of Prisons from whom the request emanated; such findings will include a recommendation as to whether the welfare recommends the visit;
- e. If the visit is not recommended, the Superintendent of Prisons or the Assistant Superintendent of Prisons shall so communicate to the inmate, outlining the reasons for the visit being declined. The report and all other particulars shall be immediately lodged in the inmate's Criminal Record;
- f. If the visit is recommended the Superintendent of Prisons shall make contact with the Prisons Supervisor 'Operations' for a risk assessment to be carried out;
- g. Once the risk assessment is completed and it is determined that the risks can be managed an 'operational plan' shall be submitted to the Senior Superintendent of Prisons 'Operations' for his authorisation, which will then be forwarded to the Deputy Commissioner of Prisons 'Operations', for approval. Such written approval shall then be forwarded to the Prisons Supervisor 'Operations' for the required action;
- h. It shall be the duty of the Prisons Supervisor 'Operations' upon receipt to coordinate all security activities and details related to the visit including ensuring the attendance of the relevant Prisons Welfare Officer at the location prior to the arrival of the inmate, time of the visit; the mode of transport; the security detail; communication with the police as required; communication with the family and briefing of the Officers to carry out the exercise. The Prisons Supervisor 'Operations' shall also be responsible for communicating with the Superintendent of Prisons of the station from which the request emanated, along with providing updates to all senior officers along the 'Operations' chain of command so that they are fully apprised of the particulars relating to the visit;

- i. The Superintendent of Prisons shall communicate with the inmate of the fact of the visit but all other information shall be withheld until the actual visit, for security reasons;
- j. No inmate shall be allowed to proceed on such a visit without the prior approval – verbal or written – of the Deputy Commissioner of Prisons ‘Operations’ or ‘Programmes’;
- k. A verbal report shall be submitted by the Superintendent of Prisons to the Deputy Commissioner of Prisons who had approved the visit as soon as the inmate has returned to the prison;
- l. A final written closing report shall be submitted by the Superintendent of Prisons to the Deputy Commissioner of Prisons who approved the visit no later than three (3) days after the visit has been completed. A copy of such report shall also be forwarded to the Chief Prisons Welfare Officer;
- m. Any deviation from this procedure MUST be approved by the Deputy Commissioner of Prisons ‘Operations’.

**6.0 PROCEDURE TO BE ADOPTED WHEN AN INMATE IS REQUIRED TO LEAVE THE PRISON TO CONDUCT A BUSINESS TRANSACTION.**

- a. Any request made to the Superintendent of Prisons, on the relevant form, by an inmate to leave the prison to conduct a ‘business transaction’ shall forthwith be forwarded to the Prisons Legal Department with despatch for a recommendation as to whether the transaction of necessity requires that the inmate leaves the prison;
- b. Supporting documents establishing the nature of the business transaction shall be supplied for the information of Superintendent at the time the request is made, e.g. for banking transactions – passbook, or bank statement establishing the existence of an account in the inmate’s name;

- c. Supporting documents shall be brought to the Prison by a relative or, where there is no relative, the Prison Welfare Department shall communicate with the Institution in order to obtain the information to proceed with the request;
- d. If the Legal Officer is of the view that the objective for which the inmate is requesting to leave the prison can be accomplished by any other legal means i.e. power of attorney, he will so advise the Superintendent of Prisons in writing;
- e. The Superintendent of Prisons upon receiving the written recommendation of the Prison Legal Officer, shall then conduct an interview with the inmate advising him of the alternative mechanism to have the business conducted, and informing the inmate that his/her request to leave the prison is not approved;
- f. Under NO circumstances shall any inmate be allowed to leave the prison to conduct a 'business transaction' unless the Prison Legal Officer expressly recommends this course of action in writing, with appropriate justifications;
- g. The Superintendent of Prisons shall then prepare a report on the denied request for the information of the Deputy Commissioner of Prisons 'Programmes'; outlining all the circumstances of the denied request, including the report of the Prison Legal Officer. This report is to be made in duplicate and shall be placed on the inmate's Criminal Record;
- h. In any instance when the Prison Legal Officer has recommended that the 'business transaction' of necessity requires that the inmate leave the prison, the Superintendent of Prisons upon receipt of this recommendation shall forward this request to the Prisons Welfare Officer at the prison establishment, who will have responsibility to contact the agency or agent which will facilitate the transaction;

- i. Once these arrangements are confirmed the Prisons Welfare Officer shall prepare a report in writing to the Chief Prisons Welfare Officer who shall so certify and forward same to the Superintendent of Prisons from where the request emanated;
- j. When the Superintendent of Prisons receives the report of the Chief Prisons Welfare Officer confirming that the transaction has been approved by the external agency/agent the Superintendent of Prisons, upon receipt of the certification of the Chief Prisons Welfare Officer, shall endorse and forward to the Prisons Supervisor 'Operations' for a risk assessment to be carried out;
- k. Upon receipt of the request it shall be the responsibility of the Prisons Supervisor 'Operations' to coordinate the transaction, conduct the appropriate risk assessment and submit a report. Such coordination and risk assessment report is to include all aspects of the operations including attendance of the Prisons Welfare Officer at the relevant time; an appropriate date and time consistent with better security management of the 'transaction'; the security protocols that are to be put in place for the exercise; information on specific communication made with the police/external security agencies to mitigate risk, contingency and transport arrangements;
- l. This report shall be forwarded to the Deputy Commissioner of Prisons 'Operations' through the offices of the Assistant Commissioner of Prisons and Senior Superintendent of Prisons 'Operations' for approval. Once approved it shall be returned to the Superintendent of Prisons who will communicate accordingly with the Prisons Welfare Officer and the Inmate in relation to the specifics of the visit. The inmate shall also be advised of the conditions upon which the transaction is approved and of the circumstances which will bring the transaction to an immediate end and swift return to the prison;
- m. Once approved the operation shall be coordinated by the Prisons Supervisor 'Operations' who shall have operational responsibility for the exercise;
- n. Upon completion of the 'business transaction' and return to the Prison, the Superintendent of Prisons shall prepare a completion report for the information of the Deputy Commissioner of

Prisons ‘Operations’, such report shall include the respective reports of the Prison Supervisor ‘Operations’ and the Prisons Welfare Officer;

- o. A copy of this completion report shall be placed on the inmate’s Criminal Record; one forwarded to the Chief Prisons Welfare Officer and one forwarded to the Senior Superintendent ‘Operations’ for careful filing.

**6.0 FURTHER INFORMATION**

The Prison Service Policy Committee ‘Secretariat’ - Prison Administrative Office – Golden Grove, the Tribunal Clerk and the Supervisor ‘Discipline’.

**7.0 REFERENCES**

Government of Western Australia Department of Corrective Services. (2016). *Leave for Prisoners*. Government of Western Australia.

Ryan, C. L. (2016). *Escorted Inmate Leave for Family Serious Illness or Funeral*. Arizona Department of Corrections.

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**Commissioner of Prisons**

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**Date**