

- (e) Employees making appearances in their private capacities in proceedings that do not relate to their duties at the Agency, or concern facts or events that are outside of the scope of official business of the Agency, and do not involve professional or consultative services.

TOPICS ADDRESSED

This policy will address legal process regarding subpoenas, garnishment orders, and service of arrest warrants for probationers, parolees and pretrial releasees.

APPLICABLE STATUTE

5 U.S.C. § 301¹

GENERAL POLICY

1. Subpoenas²

Agencies and their employees are periodically served with legal process in the form of subpoenas for the production of witnesses and/or documents regarding the normal course of business of the Agency, court orders, and garnishments. All legal process must be received in the Office of the General Counsel (“OGC”), which is the office of the Agency’s chief legal counsel and advisor. With the exception of unusual requests for information requiring review by OGC, this portion of the policy does not apply to subpoenas received by PSA. Due to the frequency and often immediate need for response to subpoenas and the business records exception of the D.C. Rules of Evidence, PSA will review for legal sufficiency the majority of subpoenas received by its employees during the normal course of business. All legal process that is received by OGC is reviewed for legal sufficiency. If the documents are determined to be legally sufficient, the subpoena will be promptly delivered to the appropriate office for compliance. Agency managers and other officials are responsible for prompt compliance with requirements to produce staff or documents and for informing OGC of the actions taken to comply. The appropriate office will promptly provide the information to OGC. OGC will thereafter review the information and forward it to the requestor.

If an office other than OGC receives legal process, it shall be immediately delivered to OGC. Any staff member who is contacted by a process server shall promptly refer the person to OGC. No employee shall produce documents or disclose any information or produce material as part of the employee’s official status without prior authorization of OGC. The reasons for this policy are:

¹ Title 5 U.S.C. § 301 provides that “the head of an Executive department . . . may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.”

² The regulations prescribing the manner in which subpoenas and other legal processes are to be handled are contained in the appendix to this policy.

- a. To conserve the time of the Agency's employees for conducting official business;
- b. To minimize the possibility of involving the Agency in controversial issues that are not related to the Agency's mission;
- c. To prevent the possibility that the public will misconstrue variances between personal opinions of the Agency employees and Agency policy;
- d. To have a central repository for subpoenas;
- e. To avoid spending Agency money for private purposes; and
- f. To protect confidential and sensitive information.

Except for PSA employees, an Agency employee may not give testimony, produce documents, or answer inquiries from a person not employed by the Agency without the approval of OGC. All inquires for such information shall be referred to OGC. All Agency employees other than PSA staff who are requested to testify in an official proceeding or produce documents concerning information acquired in the course of their employment must seek approval from OGC. CSOSA employees are not required to complete a leave slip in order to comply with a subpoena issued in connection with their official duties.

If OGC determines that the Agency should not comply with the subpoena, OGC will attempt to have the subpoena withdrawn or modified. If OGC is unsuccessful in having the subpoena withdrawn or modified, OGC will obtain representation from the Corporation Counsel of the District of Columbia or the U. S. Department of Justice and move to have the subpoena modified or quashed.

If there is insufficient time for the subpoena to be quashed, the employee, accompanied by an attorney from OGC, should appear at the time and place set forth in the subpoena with all requested documentation and attempt to resolve the matter.

Subpoenas and other process that are required to be served on the Agency should be served as follows:

- (a) If authorized by law to be served by mail, any mailed process should be sent to the Office of the General Counsel, Court Services & Offender Supervision Agency, 633 Indiana Avenue, N.W., Washington, D.C. 20004.
- (b) If served by an individual, the process should be delivered to the staff of the FOIA Control Unit in OGC, or, in the absence of that staff, to any staff member of OGC.

2. Garnishment Orders

All garnishment orders shall be served upon the Office of the General Counsel. All legal process in the nature of a garnishment shall be date and time stamped by OGC upon receipt. OGC will review the document for legal sufficiency, and thereafter forward it for processing to the Associate Director for Human Resources, CSOSA. Garnishments concerning employees in PSA will also be reviewed for legal sufficiency and thereafter be forwarded for processing to the

Deputy Director for Human Resources, PSA. This insures that the garnishment is sufficient as to legal form and contains adequate information for identification of the employee.

Garnishment orders must be accompanied by a court order and sufficient information to allow the prompt identification of the employee and the payments involved. An exact match of both name and social security number is required to permit processing. A garnishment will be returned as insufficient if there is not an exact match of the name and social security number. Garnishments that are insufficient with regard to identifying information will not be held pending receipt of further information and must be served again when the proper information is obtained.

Child support and alimony will be given priority over commercial garnishments. See 5 U.S.C. § 5520a(h)(2).

3. Policy on Service of Open Arrest Warrants for Community Supervision Services Offenders
 - (a) If an offender with an open warrant reports to or enters the Community Supervision Services office, the immediate supervisor or the supervisor's designee is to be contacted immediately. Care is to be taken to ensure that the offender does not become alarmed or suspicious.
 - (b) Staff shall instead the offender to be seated in the waiting room, without giving an explanation for the delay in seeing the offender.
 - (c) No action, confrontation, or any type of contact either verbal or physical is to be engaged with the offender that could have the potential to endanger any staff person or visitors to the office.
 - (d) The assigned Community Supervision Officer ("CSO") or another staff person will contact the appropriate law enforcement agency. The call to the law enforcement agency is to be made outside of the hearing range of the offender and other persons in the waiting room area.
 - (e) The CSO or staff person shall verify that the warrant is still open (active) with the appropriate law enforcement official.
 - (f) The law enforcement official shall be advised that the offender is in the agency's waiting area, and a request for warrant service by the law enforcement official of the open warrant shall be made.
 - (g) Upon arrival of the law enforcement official, the supervising officer or staff person is to identify the offender to the law enforcement officer(s). The offender is to be instructed to resume reporting to the assigned CSO if later released on the warrant.

- (h) Under no circumstances is staff to attempt to restrain the offender by any physical measures if the offender decides to leave the office prior to the arrival of the law enforcement officer(s), or to assist law enforcement in any way in making the arrest.
- (i) If the offender does leave prior to law enforcement's arrival, the CSO is to provide a physical description of the offender, the direction that the offender was headed after exiting the building, and the license plate number, and description of vehicle, if appropriate.
- (j) Office managers are to review these arrest procedures regularly with staff.
- (k) Community Supervision staff are prohibited from transporting an offender with an open warrant to the local law enforcement station.
- (l) While conducting accountability tours with law enforcement, if an offender in a case with an open warrant is sighted, Community Supervision staff are prohibited from participating in the arrest of the offender.
- (m) The policy shall also apply to warrants issued by other jurisdictions, including but not limited to cases being supervised in the District of Columbia under the Interstate Compact.
- (n) Agency staff are prohibited by the federal regulations governing the confidentiality of drug and alcohol treatment status and records from disclosing to law enforcement or to members of the public that an offender is in treatment. (42 C.F.R. Part 2.) Any questions concerning these situations should be immediately referred to OGC.

4. Policy on Service of Open Warrants for PSA Clients

- (a) If a defendant with an open warrant reports or enters a PSA office, the immediate supervisor or the supervisor's designee shall be contacted immediately.
- (b) The supervisor or the supervisor's designee shall inform the defendant of the open warrant, that either the supervisor has a duty to notify the appropriate law enforcement agency and that it is in the best interest of the defendant to remain in the office until arrangements for surrender have been made, or that the defendant should self-surrender to the appropriate law enforcement agency.
- (c) The supervisor or supervisor's designee shall determine from the defendant whether the defendant prefers having PSA contact the appropriate law enforcement agency or self-surrender.
- (d) If the defendant wishes to have PSA contact the appropriate law enforcement agency, the assigned PSA staff or another staff person shall contact the appropriate law enforcement agency and shall verify that the warrant is still open (active) with the appropriate law enforcement official.

- (e) If the defendant wishes to have PSA contact the appropriate law enforcement agency, the law enforcement official shall be notified that PSA has a defendant with an open warrant. Arrangements for the time and location of the defendant's arrest shall be made with the appropriate law enforcement official.
- (f) If the defendant wishes to self-surrender, the assigned PSA staff or another staff person shall direct the defendant to the appropriate law enforcement agency to facilitate the process. No calls to the law enforcement agency need be made.
- (g) In all cases, where practicable, no arrests of a PSA defendant shall be effectuated on PSA premises. Instead, a defendant should be escorted by PSA staff to a pre-arranged location proximate to PSA offices for arrest by the appropriate law enforcement official.
- (h) If the defendant has a pending case with contact conditions, the defendant is to be instructed to resume reporting to the assigned PSA staff upon later release on the warrant.
- (i) Under no circumstances should staff attempt to either restrain the defendant by any physical measures if the defendant decides to leave, or to assist law enforcement in any way in making the arrest.
- (j) Office supervisors are to review these arrest procedures regularly with staff.
- (k) PSA staff is prohibited from transporting a defendant with an open warrant to any law enforcement station.
- (l) This policy shall apply to all local warrants and warrants issued by other jurisdictions. This policy is not intended to affect the standard operations of the Failure to Appear (FTA) Unit.
- (m) Handling of any warrants pursuant to this and any other policy must be documented and logged into the appropriate database.

5. Service of Process for CSOSA and PSA Staff

- (a) OGC will immediately inform the director of PSA and the Offices of Human Resources ("OHR") in CSOSA and PSA of any legal process of a personal nature (civil or criminal) regarding an employee of the respective agency.
- (b) Except for emergency situations, law enforcement personnel executing arrest warrants shall do so in a pre-arranged private setting (e.g., the supervisor's office). Law enforcement officials arriving at Agency offices to execute arrests in non-emergency situations shall be referred to OGC. The Directors of CSOSA and PSA,

CSOSA's Associate Director for Legislative, Intergovernmental & Public Affairs and the Directors of OHR for CSOSA and PSA shall be notified as soon as possible.

- (c) The Directors of CSOSA and PSA and the Directors of OHR for CSOSA and PSA shall be promptly notified of any legal process received by OGC concerning personnel/EEO litigation or administrative proceedings brought by an Agency employee or labor organization.

If you have any questions concerning this directive, please contact any attorney in OGC for advice and guidance at 220-5355.

APPENDIX
DRAFT REGULATIONS

When approved, these regulations will be codified in
Title 28 of the Code of Federal Regulations

PART 802 - DISCLOSURE OF RECORDS

Subpart D - Production or Disclosure in Federal and State Proceedings

§ 802.24 Purpose and scope.

(a) These regulations state the procedures which the Court Services and Offender Supervision Agency ("CSOSA" or "Agency") and the District of Columbia Pretrial Services Agency ("PSA" or "Agency") follow in response to a demand from a court or other non-congressional authority for the production and disclosure of material in connection with a proceeding to which the Agency is not a party. These procedures will be followed in all federal and state proceedings in which the United States is a party and in all federal and state proceedings in which the United States is not a party.

(b) These regulations do not apply to congressional requests. Neither do these regulations apply in the case of an employee making an appearance solely in his or her private capacity in judicial or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents, domestic relations, etc.).

(c) This part is not intended and does not create and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States or specifically CSOSA or PSA.

§ 802.25 Definitions.

"Demand" means a request, order, or subpoena for testimony or documents to use in a legal proceeding.

"Employee" includes a person employed in any capacity by CSOSA or PSA, currently or in the past; any person appointed by, or subject to the supervision, jurisdiction, or control of the head of the Agency, or any Agency official, currently or in the past. A person who is subject to the Agency's jurisdiction or control includes any person who hired as a contractor by the agency, any person performing services for the agency under an agreement, and any consultant, contractor, or subcontractor of such person. A former employee is also considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at the Agency, or where the matter concerns official information that the employee acquired

while working at the Agency, such as sensitive or confidential agency information.

"Legal Proceeding" includes any pretrial, trial, and post-trial state of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. Legal proceeding also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony made by an attorney or other person, or a request for documents gathered or drafted by an employee.

§ 802.26 Receipt of demand.

If, in connection with a proceeding to which the Agency is not a party, an employee receives a demand from a court or other authority for material contained in the Agency's files, any information relating to material contained in the Agency's files, or any information or material acquired by an employee as a part of the performance of that person's official duties or because of that person's official status, the employee must:

(a) Immediately notify the Office of the General Counsel and forward the demand to the General Counsel if the demand pertains to CSOSA; or

(b) Immediately notify the Deputy Director of PSA and forward the demand to the Deputy Director if the demand pertains to PSA.

§ 802.27 Compliance/noncompliance.

The General Counsel is responsible for determining if CSOSA should comply or not comply with the demand, and the Deputy Director of PSA is responsible for determining if PSA should comply with the demand.

(a) *May an employee respond without authorization from the General Counsel or the Deputy Director?* No, an employee may not produce any documents, or provide testimony regarding any information relating to, or based upon Agency documents, or disclose any information or produce materials acquired as part of the performance of that employee's official duties, or because of that employee's official status without prior authorization from the General Counsel or Deputy Director. The reasons for this policy are as follows:

(1) To conserve the time of the agency for conducting official business;

(2) To minimize the possibility of involving the agency in controversial issues that are not related to the agency's mission;

(3) To prevent the possibility that the public will misconstrue variances between personal opinions of agency employees and agency policies;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process; and

(6) To protect confidential, sensitive information and the deliberative process of the agency.

(b) *What if a response to the demand is required before instructions are received from the General Counsel or Deputy Director?* An attorney from the Office of the General Counsel shall appear with any CSOSA employee upon whom the demand has been made (and with any PSA employee if so requested by the Deputy Director), and shall provide the court or other authority with a copy of the regulations contained in this part. The attorney shall also inform the court or authority that the demand has been or is being referred for prompt consideration by the General Counsel or Deputy Director. The court or other authority will be requested respectfully to stay the demand pending receipt of the requested instructions from the General Counsel or Deputy Director.

(c) *What if the court does not stay the proceedings?* If the court or other authority declines to stay the effect of the demand pending receipt of instructions from the General Counsel or Deputy Director, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel or Deputy Director not to produce the material or disclose the information sought, the employee upon whom the demand was made shall respectfully decline to produce the information under United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). In this case, the Supreme Court held that a government employee could not be held in contempt for following an agency regulation requiring agency approval before producing government information in response to a court order.

(d) *What factors are considered in determining whether production or disclosure should be made pursuant to a demand?* The agency will consider the following factors in determining whether a demand should be complied with:

(1) The Privacy Act, 5 U.S.C. 522a;

(2) Department of Health and Human Services statute and regulations concerning drug and alcohol treatment programs found at 42 U.S.C. 290dd and 42 CFR 2.1 *et seq.*;

(3) The Victims Rights Act, 42 U.S.C. 10606(b);

(4) D.C. statutes and regulations;

(5) Any other state or federal statute or regulation;

(6) Whether disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose;

(7) Whether disclosure is appropriate under the relevant substantive law concerning privilege;

(8) Whether disclosure would reveal a confidential source or informant, unless the investigative agency and the source or informant have no objection;

(9) Whether disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.