

## LEXSTAT 18 USC 4002

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TITLE 18. CRIMES AND CRIMINAL PROCEDURE  
PART III. PRISONS AND PRISONERS  
CHAPTER 301. GENERAL PROVISIONS

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18 USCS § 4002 (2003)

§ 4002. Federal prisoners in State institutions; employment

For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Attorney General may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

Such Federal prisoners shall be employed only in the manufacture of articles for, the production of supplies for, the construction of public works for, and the maintenance and care of the institutions of, the State or political subdivision in which they are imprisoned.

The rates to be paid for the care and custody of said persons shall take into consideration the character of the quarters furnished, sanitary conditions, and quality of subsistence and may be such as will permit and encourage the proper authorities to provide reasonably decent, sanitary, and healthful quarters and subsistence for such persons.

HISTORY: (June 25, 1948, ch 645, § 1, 62 Stat. 847; Nov. 9, 1978, P.L. 95-624, § 8, 92 Stat. 3463.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Based on title 18, U.S.C., 1940 ed., § 753b, (May 14, 1930, ch. 274, § 3, 46 Stat. 325).

Changes were made in phraseology. The first sentence was incorporated in section 4042 of this title.

Amendments:

1978. Act Nov. 9, 1978, in the first paragraph, substituted "Attorney General" for "Director of the Bureau of Prisons".

NOTES:

CODE OF FEDERAL REGULATIONS

Department of Justice—Implementation of death sentences in Federal cases, 28 CFR Part 26.

CROSS REFERENCES

Bureau of Prisons, 18 USCS §§ 4041 et seq.

Employment in federal prisons, 18 USCS §§ 4121 et seq.

RESEARCH GUIDE

Am Jur:

60 Am Jur 2d, Penal and Correctional Institutions §§ 12, 180.

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## I. IN GENERAL

## 1. Generally

Prisoner of United States could not object to his detention by state officers in state prison, under sentence of federal court. *Ex parte Karstendick (1876) 93 US 396, 3 Otto 396, 23 L Ed 889.*

Prisoner convicted of violation of federal law and sentenced to term of 30 months could be confined in county jail pursuant to federal law and state statute authorizing the use of county jails for confinement of federal prisoners. *Rena v United States (1932, CA5 Miss) 58 F2d 624.*

18 USCS § 4002 was not enacted for special benefit of prisoners; underlying legislative scheme is aimed at providing suitable quarters for prisoners as well as creating workable administrative network for operation of federal prisons. *Owens v Haas (1979, CA2 NY) 601 F2d 1242, cert den (1979) 444 US 980, 62 L Ed 2d 407, 100 S Ct 483.*

Imprisonment, if for more than one year, may be in state penitentiary, and when so imprisoned convicted person is subject to same discipline and treatment as those sentenced by state court. *Fields v United States (1906) 27 App DC 433.*

Even though state legislature has not expressly authorized detention of federal prisoners in state penitentiary, such authorization may be understood to exist from general law to which state has acquiesced, and in any event, only state, and not prisoner, may raise objection. *Ex parte Geary (1871, CC III) 10 F Cas No 5293.*

## II. RESPONSIBILITIES OF FEDERAL AND STATE AUTHORITIES

## 2. Generally

Federal prisoners, confined in state prisons, were amenable to rules of prison; but this did not prevent Attorney General from consenting to removal of such a prisoner for purpose of trial in state court. *Ponzi v Fessenden (1922) 258 US 254, 66 L Ed 607, 42 S Ct 309, 22 ALR 879.*

Under 18 USCS § 4002, it is contemplated that day-to-day operations of contractor's facilities are to be in hands of contractor, with federal government's role limited to payment of sufficiently high rates to induce contractor to do good job, and contract entered into between federal government and county reflected similar division of responsibility by giving United States no authority to physically supervise conduct of jail's employees and by reserving to United States only right to enter jail at reasonable hours for purpose of inspecting jail and determining conditions under which federal offenders are housed. *Logue v United States (1973) 412 US 521, 37 L Ed 2d 121, 93 S Ct 2215.*

18 USCS § 4002 does not require written agreement between federal and local officials regarding use of local jails to house illegal aliens, thus, illegal aliens housed in city jail could not use § 4002 to require written agreements that presumably would detail duties of both federal and local officials. *Ortega v Rowe (1986, CA5 Tex) 796 F2d 765, reh den, en banc (1986, CA5 Tex) 803 F2d 717 and cert den (1987) 481 US 1013, 95 L Ed 2d 495, 107 S Ct 1887.*

Federal marshal, rather than state jailer, had duty to bring in convicts for examination on application for release from prison, since jailer is not officer of United States. *Saunders v United States (1896, CCD Me) 73 F 782.*

## 3. State official's failure to perform

Superintendent of county jail could be held in contempt for failing to confine federal prisoner, even though county

sheriff, his superior, ordered otherwise; superintendent's duty was to the people, not sheriff. *Westbrook v United States* (1926, CA7 Ill) 13 F2d 280.

When federal prisoners are committed to state jails, jailer becomes a jailer of United States and federal court has power to compel jailer to perform duty and could penalize jailer for inflicting cruel and inhuman punishment on prisoner by chaining him to cell. *In re Birdsong* (1889, DC Ga) 39 F 599.

Sheriff of county jail will be adjudged guilty of contempt for refusing to detain a prisoner committed to his charge by order of federal court. *Ex parte Shores* (1912, DC Iowa) 195 F 627; *United States v Hoffman* (1925, DC Ill) 13 F2d 269, affd (1926, CA7 Ill) 13 F2d 278, cert dismd (1926) 296 US 666, 89 L Ed 2008, 57 S Ct 755 and affd (1926, CA7 Ill) 13 F2d 280.

#### 4. Release of prisoners by state officials

State authorities had no power to parole federal prisoner incarcerated in state prison. *Harrison v Snook* (1927, DC Ga) 22 F2d 169.

Writ of state court could not effect release of prisoner of United States incarcerated in state reformatory. *In re Johnson* (1891, CCD Mass) 46 F 477.

### III. PAYMENT TO STATES FOR CARE OF FEDERAL PRISONERS

#### 5. Generally

Payments under 18 USCS § 4002 are for use of such county or state providing such service. *County of Los Angeles v Cline* (1921) 185 Cal 299, 197 P 67.

Sheriff in contracting with United States was not accountable to county for amount received in excess of allowance for board of state prisoners. *Bay County v Marvin* (1929) 247 Mich 529, 226 NW 247.

#### 6. Rate

Under state statute sheriff was required to receive and keep federal prisoners in county jail where provision was made by United States for their support at same rate as state prisoners, which was presumed to be reasonable compensation therefor. *In re Kays* (1888, DC Cal) 35 F 288.

In cases of necessity, where jail which has not been previously approved is used temporarily by United States for the confinement of persons taken into its custody, United States pays the reasonable value of the use of such jail for such confinement. *In re Morgan* (1948, DC Iowa) 80 F Supp 810.

#### 7. Per agreement

It was not contemplated that any state or territory by statute could dictate to United States what it should pay for rent of any county jail, as this had to be determined by contract. *Lewis & Clarke County v United States* (1896, DC Mont) 77 F 732.

Where United States did not possess any places of imprisonment within state its use of state prisons was on agreed conditions for indemnification of states, which was payable to them, although they could so employ federal prisoners as to receive returns from their labor, and such compensation was payable to any lawfully appointed agent of state for such state. (1857) 8 Op Atty Gen 289.

Where no provision was made by statutes for payment to sheriff for caring for federal prisoners, payment of claim for such service was unauthorized, as compensation provided by law for him was conclusive and he could not recover more than contracts of Attorney General for their subsistence provide. *Avery v Pima County* (1900) 7 Ariz 26, 60 P 702.

### IV. ACTIONS AGAINST FEDERAL OR STATE PRISON AUTHORITIES

#### 8. Generally

United States Marshal was not liable for escape of federal judgment debtor from state prison; even though prisoner was in custody of marshal, he was not liable for acts of state jailers. *Randolph v Donaldson* (1815) 13 US 76, 9 Cranch 76, 3 L Ed 662.

Although 18 USCS § 4042 imposes duty on Bureau of Prisons to provide for safekeeping, care, and subsistence of all persons charged with offenses against United States, county employee responsible for safekeeping of federal prisoner confined in county jail pending trial is not "employee of the Government" for whose negligence United States may be held liable under Federal Tort Claims Act (28 USCS §§ 1346(b), 2671 et seq.), since (1) under 18 USCS § 4002, it is contemplated that day-to-day operations of contractor's facilities are to be in hands of contractor, with federal government's role limited to payment of sufficiently high rates to induce contractor to do good job, and where (2) contract entered into between federal government and county reflects similar division of responsibility by giving United States no authority to

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physically supervise conduct of jail's employees and by reserving to United States only right to enter jail at reasonable hours for purpose of inspecting jail and determining conditions under which federal offenders are housed. *Logue v United States* (1973) 412 US 521, 37 L Ed 2d 121, 93 S Ct 2215.

## 9. Relation to Federal Tort Claims Act

Only cause of action under 18 USCS § 4042 is against United States under Federal Tort Claims Act, and not against employees of state prison having custody of federal prisoner. *Williams v United States* (1969, CA9 Cal) 405 F2d 951.

Federal government could be held liable for injuries suffered by federal prisoner detained in state jail on theory that government negligently breached duty to exercise reasonable care for providing for inmate's safety by placing him in facility that it knew or reasonably should have known was so inadequate that prisoner could not be adequately protected from foreseeable risk of assaults by fellow prisoners; on remand, District Court must also determine effect of discretionary function exception to Federal Tort Claims Act [28 USCS § 2680] and whether the negligence of federal government was so remote as to negate proximate cause. *Brown v United States* (1973, CA8 Ark) 486 F2d 284.

Federal prisoner injured while incarcerated in county jail could not recover under Federal Tort Claims Act [28 USCS §§ 1346, 2671 et seq.] on theories that federal officers failed to inspect state facility or supervise jail for safety or competency of county officials; since county was independent contractor, its negligence could not be imputed to federal government, and inspection theory failed because day to day operations were duty of county, with federal government's only duty to pay sufficiently high rates to induce good job. *Harper v United States* (1975, CA5 Ga) 515 F2d 576.

Government may not escape liability by invoking doctrine of "discretionary function" where federal prisoner has alleged violation of 18 USCS § 4002 and 18 USCS § 4042 when prisoner was confined in county jail and physically assaulted and injured to some extent by other inmates of common cell in which he and they were confined. *Brown v United States* (1974, ED Ark) 374 F Supp 723.

## 10. Private right of action

Although federal prisoner had been lodged in state institution without formal arrangements with local officials permitted by 18 USCS § 4002 he still had right to challenge conduct of his keepers in suit under 42 USCS § 1983 for alleged deprivation of adequate medical care during his stay. *Henderson v Thrower* (1974, CA5 Ala) 497 F2d 125.

18 USCS § 4002 and regulations implementing it, under which government can contract with states and municipalities for care and custody of federal prisoners, does not give prisoner, incarcerated in municipal prison under such agreement, cause of action as third party beneficiary to agreement, in either federal or state court, against prison officials for injuries allegedly received as result of officials' failure to protect him from other inmates. *Hampton v Holmesburg Prison Officials* (1976, CA3 Pa) 546 F2d 1077.

18 USCS § 4002 provides no implicit private cause of action since there is no indication in language or legislative history of § 4002 that Congress intended to provide private cause of action for prisoners or detainees, and no indication that Congress enacted § 4002 for benefit of prisoners, thus, illegal aliens could not use § 4002 as basis for cause of action against federal or local officials in order to require them to write written agreement regarding use of local jails to house illegal aliens. *Ortega v Rowe* (1986, CA5 Tex) 796 F2d 765, reh den, en banc (1986, CA5 Tex) 803 F2d 717 and cert den (1987) 481 US 1013, 95 L Ed 2d 495, 107 S Ct 1887.

18 USCS § 4002 does not provide private civil remedy so that federal prisoner's claim that city had breached contract regarding use of city jail for imprisonment of federal prisoners and that prisoner was entitled to damages as third party beneficiary, did not state claim upon which relief could be granted. *Johnson v Lark* (1973, ED Mo) 365 F Supp 289.

Federal prisoner housed in local jail under agreement pursuant to 18 USCS § 4002 cannot recover for injuries allegedly inflicted by corrections officers of county on theory that agreement between United States and county created third-party beneficiary relationship with prisoner; 18 USCS § 4002 does not itself imply any private right of action and contract between United States and county cannot be read to infer third-party beneficiary claim. *Owens v Haas* (1978, ED NY) 456 F Supp 1009, revd on other grounds (1979, CA2 NY) 601 F2d 1242, cert den (1979) 444 US 980, 62 L Ed 2d 407, 100 S Ct 483.