
 <p>Corrections and Community Supervision</p> <p>DIRECTIVE</p>	<p>TITLE</p> <p>Marriages During Confinement</p>		<p>NO. 4201</p>
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<p>SUPERSEDES</p> <p>DIR# 4201 Dtd. 03/15/2012</p>	<p>DISTRIBUTION</p> <p>A B</p>	<p>PAGES</p> <p>PAGE 1 OF 5</p>	<p>DATE LAST REVISED</p>
<p>REFERENCES (Include but are not limited to)</p> <p>NY State Law; Domestic Relations Law; 7NYCRR, Section 711.3; Temporary Release Manual of Rules and Regulations</p>		<p>APPROVING AUTHORITY</p> 	

- I. **PURPOSE:** The purpose of this directive is to outline the responsibilities of the incarcerated individual and the intended spouse, as well as the obligations of the Department to ensure that an intended marriage is legally acceptable.
- II. **POLICY:** A major Departmental objective is to foster ties to the community that will help create stability in the incarcerated individual's personal life. The Department recognizes that a marriage can assist in creating that personal stability. Accordingly, the Department will provide appropriate assistance to incarcerated individuals who wish to become married. The Department also recognizes that a person's confinement will, in itself, present impediments and difficulties to the contracting of a marriage during that period of confinement.
- III. **LEGAL PREREQUISITES:** Any incarcerated individual may marry providing there are no legal impediments to the marriage. Legal impediments may fall into the following areas:
 - A. Age: In accordance with New York State Law, all persons making an application for a marriage license must be 18 years of age or older. Those who are under the age of 18, but who are at least 17 years of age, must submit the written consent of both parents, or of one parent if the whereabouts of the other parent has been unknown for a period of one year, or of a legal guardian; and must obtain the written approval of a Justice of the Supreme Court or a Judge of the appropriate Family Court in the town/city where application has been made, as stipulated in Section 15 of the Domestic Relations Law. Any marriage in which either party is under the age of 17 years is prohibited by law.
 - B. Competency: Both parties must be mentally capable of consenting to the marriage.
 - C. Prior Marriages: All prior marriages must be legally dissolved. It is solely the responsibility of the incarcerated individual and the intended spouse to secure documented proof that any prior marriages to which they have been party to have been legally dissolved.

The Superintendent will not permit any marriage to take place until the incarcerated individual and the intended spouse have procured a valid marriage license.
 - D. Incarcerated Individual Status: When two persons are both confined in New York State Correctional Facilities they will not be permitted to marry until at least one of them has been released from such confinement. The assigned Offender Rehabilitation Coordinator (ORC) must notify (via email) the assigned Parole Officer of any parolee that is intending to marry an incarcerated individual.
 - E. Order of Protection: When a valid Order of Protection exists, which instructs the incarcerated individual to "stay away from" the person he or she is seeking to marry, this shall preclude the incarcerated individual and protected person from visiting with each

other and, therefore, preclude marriage for the duration of the Order of Protection. At the time of the initial marriage interview, it is the responsibility of the ORC to verify with both the incarcerated individual and the intended spouse that an Order of Protection, including a “stay away from” order, is not in effect.

If it is learned an Order of Protection is in effect, but not on file with the Department, the ORC is to make all reasonable efforts to obtain a copy of the Order and update the Security Classification Guideline, per established procedures.

IV. ADMINISTRATIVE IMPEDIMENTS

- A. Incarcerated Individual Status: An incarcerated individual may not marry another incarcerated individual.
- B. Disciplinary Status: The Superintendent is authorized to prohibit the marriage of an incarcerated individual during the period that the incarcerated individual is confined pursuant to the disposition of a Superintendent’s or disciplinary hearing.
- C. Threat to Safety and Security: If, in his or her judgment, the Superintendent concludes that a proposed marriage presents a serious threat to the safety and security of the facility, the marriage may be prohibited until such time as the threat is resolved.

V. PROCEDURES

- A. Notice to the Superintendent
 - 1. To ensure mutual agreement, the incarcerated individual and the intended spouse shall write to the Superintendent expressing an intent to marry.
 - 2. The notices are to be recorded and filed in the incarcerated individual’s Guidance file.
 - 3. The Superintendent shall designate an ORC to be responsible for processing the request, interviewing the incarcerated individual and intended spouse, ensuring that the incarcerated individual has a valid marriage license, and that administrative requirements have been fulfilled.
- B. Offender Rehabilitation Coordinator’s Interviews
 - 1. The ORC shall conduct an initial interview with the incarcerated individual to explain the entire marriage procedure, emphasizing that while the Department will assist the incarcerated individual, the primary responsibility for making all arrangements and securing the necessary documents rests with the incarcerated individual and the intended spouse.
 - 2. The Offender Rehabilitation Coordinator shall explain that the Temporary Release Program and the Family Reunion Program operate independently of the marriage process and any applications or arrangements for those programs are likewise the responsibility of the incarcerated individual. An incarcerated individual who wishes to be married while on Temporary Release must conform to the procedures delineated in this directive and also in the Temporary Release Manual of Rules and Regulations.

NOTE: For Family Reunion Program purposes, legal spouses must be married for at least 6 months prior to submitting a Family Reunion Program application; and both parties cannot be residents of a New York State Correctional Facility.

3. The ORC shall examine the incarcerated individual's entire Guidance file, including the Pre-Sentence Report, paying particular attention to information that may present legal impediments to a marriage (e.g., the existence of a previous marriage or a valid Order of Protection).
If it becomes known that the intended spouse is the incarcerated individual's victim in the instant or prior offenses, the facility executive team must conduct a special review. Once completed at the facility level, the application must be sent to the Director of Ministerial, Family and Volunteer Services for further review.
4. Subsequently, the ORC shall interview the intended spouse, at the facility, to explain the marriage process and the complications imposed by the incarcerated individual's confinement in a correctional facility. In the course of this interview, the ORC should advise the intended spouse to discuss with the incarcerated individual the circumstances surrounding his or her incarceration. The Offender Rehabilitation Coordinator shall inform the intended spouse of the incarcerated individual's parole eligibility date, conditional release date, and maximum expiration of sentence date.
5. If the intended spouse refuses to participate in the ORC's interview, the ORC shall explain that the interview is a part of the total procedure for processing marriage requests.
The participation of the intended spouse shall be encouraged; however, a refusal to participate shall not be grounds for disallowing the marriage.

C. Application for Marriage License

1. The incarcerated individual and the intended spouse must appear before a Town, City, or County Clerk to apply for a marriage license. A marriage license is valid for 60 days from its date of validation.
2. In some facilities, an official at the facility is designated a Town Clerk. In such cases, this person shall receive the application for the marriage license.
3. At other facilities, the ORC or Head Clerk shall make every effort to get the local Town, City, or County Clerk to either visit the facility, or to designate a deputy in the (facility) community for the completion of the license application form.
4. An incarcerated individual may choose to coordinate the application for a marriage license with a scheduled Temporary Release Application if eligible under the guidelines of the Temporary Release Program. However, the incarcerated individual must conform to all the requirements of this directive, including, but not limited to, prior notification to the Superintendent and participation in counseling (Sections V-A and B).
5. Under no circumstances will an incarcerated individual be allowed to proceed to the Town, City, or County Clerk's Office under escort by Department personnel.
6. The responsibility to determine whether a marriage can be contracted under the law rests with the Town, City, or County Clerk. The license issuing agency reviews competency and questions both parties regarding the legal dissolution of prior marriages.

D. Solemnization of the Marriage

1. A marriage, whether it takes place in the facility or in the community, must be solemnized by either:
 - a. A clergy person or minister of any religion, or a leader of the Society for Ethical Culture licensed to perform marriages in New York State;
 - b. A justice or judge of a court of record or of a municipal court, or a police justice of a village or town; or
 - c. Others as indicated in the Domestic Relations Law (Sections 11, 11a).
2. If the marriage ceremony takes place within the facility, the incarcerated individual and the intended spouse may select two individuals to serve as witnesses (e.g., employees who are willing, incarcerated individuals [not in disciplinary confinement or confined to any specialized unit where that incarcerated individual is serving a confinement sanction], relatives, and friends). Ceremonies held in the facility will only be allowed to take place in an area designated by the Superintendent.
3. The ceremony will be limited to the participating partners, the officiant, and two witnesses, as referenced in V-D-2, who may be selected according to the incarcerated individual's wishes.
4. If the marriage is to be solemnized in the facility by someone other than the Facility Chaplain, the assigned ORC should assist the incarcerated individual in recruiting the clergy person, minister, or civil official chosen to perform the ceremony.
5. If a Facility Chaplain officiates at the ceremony, he or she may not accept any fee or honorarium.
6. There must be an interval of 24 hours between the date that the marriage license is issued and the date of the marriage ceremony. (Domestic Relations Law, Section 13-b).

- E. Responsibility for Expenses Incurred: The marriage license fee and other expenses incurred for solemnization of the marriage shall be the responsibility of the incarcerated individual and the intended spouse.
- F. The ORC assigned will notify the Superintendent, in writing, upon completion of the solemnization of the marriage providing the information required in Section G below.
- G. Notification of Marriage to Central Office: The Director of MFVS shall be notified in writing by the Superintendent, or designee at a grade 22 or above, of the various facts concerning the marriage ceremony (e.g., names and addresses of partners; date of ceremony; name and address of the place where the ceremony occurred; witnesses; and officiating Chaplain, clergy person, or civil official). This notification must be submitted by Monday of the last full week of each month. Facilities are required to maintain a log of all incarcerated individual marriages. The log must, at a minimum, include the names and addresses of the partners, including DIN; date of ceremony; name and address of the place where the ceremony occurred; witnesses; and officiating Chaplain, clergy person, or civil official.
- H. After the solemnization of the marriage, the original Marriage Certificate must be mailed to the facility and maintained in the incarcerated individual's personal property folder in

the Inmate Records Office. A photocopy will be maintained in the incarcerated individual's Guidance folder.