

Prisoner Transfer Treaties

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Q. IS IT POSSIBLE FOR A PERSON CONVICTED OF A CRIME IN ONE COUNTRY TO BE TRANSFERRED TO HIS/HER HOME COUNTRY WHERE HE/SHE WILL SERVE THE REMAINDER OF HIS/HER SENTENCE?

A. Yes. Under U.S. law ([18 U.S.C. §§ 4100-4115](#)) foreign nationals convicted of a crime in the United States, and United States citizens or nationals convicted of a crime in a foreign country, may apply for a prisoner transfer to their home country **if** a treaty providing for such transfer is in force between the United States and the foreign country involved.

Q. WHO IS THE U.S. CENTRAL AUTHORITY FOR THE PRISONER TRANSFER TREATIES?

A. The U.S. Central Authority is located in the U.S. Department of Justice at the following address: International Prisoner Transfer Unit, U.S. Department Of Justice, Criminal Division, John C. Keeney Building, 12th Floor, Washington, D.C. 20530, **Tel: 202-514-3173. For additional information, see <http://www.usdoj.gov/criminal/oeo/links/intlprisoner/intlprisoner.html>.**

Q. WHAT COUNTRIES DOES THE UNITED STATES HAVE PRISONER TRANSFER TREATIES WITH AT PRESENT?

A. The United States has 12 bilateral prisoner transfer treaties in force in Bolivia, Canada, France, Hong Kong S.A.R., Marshall Islands, Mexico, Micronesia, Palau, Panama, Peru, Thailand and Turkey.

In addition, the United States is a party to two multilateral prisoner transfer treaties.

The [Council of Europe Convention on the Transfer of Sentenced Persons](#) (or *COE Convention*). (European countries refer to it as the *Strasbourg Convention*.)

1. The COE Convention is in force in the following countries: Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belgium, Bosnia and Herzegovina, Bolivia, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia (Former Yugoslav Republic of), Malta, Mauritius, Mexico, Moldova, Montenegro, the Netherlands (including Netherlands Antilles and Aruba), Nicaragua, Norway (including Bouvet Island, Peter I's Island and Queen Maud Land), Panama, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tonga, Trinidad and Tobago, Turkey, Ukraine, the United Kingdom (including Anguilla, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Ducie and Oena Islands, Falkland Islands, Gibraltar, Henderson, Isle Of Man, Montserrat, Pitcairn, St. Helena and Dependencies and the Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus), the

United States and Venezuela.

2. The [Inter-American Convention on Serving Criminal Sentences Abroad](#) (or OAS Convention). The U.S. signed the OAS multilateral prisoner transfer treaty on January 10, 1995. The treaty was submitted to the U.S. Senate for advice and consent to ratification September 30, 1996. On September 27, 2000, the Senate Foreign Relations Committee approved the OAS Prisoner Transfer Treaty. The Treaty was approved by the U.S. Senate on October 18, 2000. The President signed the instruments of accession, and on May 25, 2001 at 11:30 a.m., the U.S. deposited the instruments of accession with the OAS. The Convention entered into force for the U.S on June 24, 2001.

The OAS Convention is in force in the following countries: Belize, Brazil, Canada, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, the United States and Venezuela.

Q. HOW CAN OTHER COUNTRIES ENTER INTO A TREATY RELATIONSHIP WITH THE UNITED STATES TO PERMIT PRISONER TRANSFER?

A. In recent years, it has been the posture of the United States to encourage countries which have approached us to consider acceding to a multilateral convention rather than initiating the lengthy and costly process of negotiating, signing, and ratifying new bilateral treaties. This is an area where a multilateral approach, as exemplified by the Council of Europe Convention, has proven effective in offering an existing mechanism which new states can join, as well as standardizing transfer procedures for current members.

Q. WHAT U.S. LAW GOVERNS THE TRANSFER OF PRISONERS TO AND FROM FOREIGN COUNTRIES?

A. The United States has enacted legislation implementing all prisoner transfer treaties. See [18 USC §§ 4100 et seq.](#) See also [28 CFR 2.62](#) and [7 Foreign Affairs Manual 480](#).

Q. WHO MUST AUTHORIZE THE TRANSFER OF THE PRISONER?

A. The consent of (1) the U.S. Government, (2) the foreign government and (3) the prisoner is required for each transfer. If the person was convicted of a crime by a state in the United States, and is serving a sentence in a state facility, consent of the state is also required. The decision to transfer a prisoner is a discretionary decision to be made by each country. See the [Department of Justice International Prisoner Transfer](#) web site for further information.

Q. WHO IS ELIGIBLE TO APPLY FOR TRANSFER?

A. A prisoner may apply for transfer to a country of which he/she is a citizen or national in accordance with the provisions of the governing treaty. However, a prisoner is not eligible for transfer until the judgment and sentence in his case is final; that is, when no appeals or collateral attacks are pending. Some prisoner transfer treaties require that fines imposed as part of the criminal sentence be paid prior to transfer. Depending on the provisions of the governing treaty, prisoners who are convicted of certain types of crimes (such as military offenses and political offenses) or who have less than a specified amount of time remaining on their sentences (normally six months or a year, depending on the treaty involved), are not eligible for transfer.

Q. HOW DOES A PRISONER APPLY FOR TRANSFER?

A. The transfer process for a U.S. citizen incarcerated abroad usually begins with the prisoner notifying the U.S. Embassy that he/she wishes to be transferred under the treaty. Thereafter, the U.S. Department of Justice, in its discretion, determines whether a prisoner can transfer to the United States, pursuant to internal [Guidelines for Evaluation of Prisoner Transfer Applications](#). If the U.S. Department of Justice concurs, the U.S. Embassy will contact the foreign ministry. The U.S. Embassy will also assist the prisoner in transmitting

the necessary paperwork to the appropriate government authorities, normally the respective Attorney Generals' offices. Should the prisoner's request for transfer be approved by both governments, a consent verification hearing (CVH) will be held, and arrangements will be made between the two governments for the prisoner's transfer to be effected at a time mutually agreeable to the governments.

The transfer of foreign prisoners incarcerated in the United States follows a similar process. Additional information about the transfer of foreign prisoners can be found in the [Federal Bureau of Prisons' Program Statement on International Prisoner Transfer](#) (search for Program Statement 5140.29 - Treaty Transfer of Offenders To or From Foreign Countries).

Q. WHAT DOCUMENTATION IS REQUIRED TO APPLY FOR A TRANSFER?

A. Documents required for prisoner transfer applications vary depending on the treaty and the laws or procedures of the country in which a prisoner is incarcerated. United States citizens or nationals incarcerated abroad should contact U.S. consular authorities at the U.S. embassy or consulate, who will assist inmates in obtaining the necessary documents and completing any required forms.

Foreign nationals incarcerated in the United States should consult prison authorities about their interest in transfer. In the case of foreign nationals in federal prisons, prison authorities will arrange for submission of the necessary documents to the United States Department of Justice, which serves as the Central Authority for international prisoner transfer. Documentation provided to the Department of Justice generally includes:

- Form or letter signed by prisoner indicating interest in transfer

- Birth certificate or passport

- Judgment or sentence

- Pre-sentence report

- Fingerprints and photograph

- Sentence calculation

- Prison progress report (security level, disciplinary reports, prison jobs, program participation, psychological evaluation, current medical condition)

- Immigration status

- Family and residence information

Q. WHAT HAPPENS ONCE A TRANSFER REQUEST HAS BEEN APPROVED BY THE UNITED STATES AND THE FOREIGN COUNTRY?

A. Arrangements are made to conduct a consent verification hearing for the prisoner.

Q. WHAT IS A CONSENT VERIFICATION HEARING?

A. United States law ([18 U.S.C. § 4108](#)) requires that a prisoner transferring into or out of the United States give his/her consent before being transferred. This is done at a hearing called a consent verification hearing (CVH). For prisoners transferring from foreign countries to the United States the CVH is normally conducted by a United States magistrate judge in the foreign country prior to the transfer date. This hearing may occur anywhere from a day or two before transfer to as much as two months before transfer. Some countries are sensitive to the idea of a United States magistrate conducting a CVH in the host country. If this poses a serious problem, another U.S. official, such as a consular officer, can be commissioned to act as the hearing officer. Prisoners seeking transfer to the United States have the right to consult an attorney, at their expense, if they wish. If they cannot afford an attorney, they may request that they be represented by a United States Public Defender. If they make such a request, the U.S. Public Defender will be appointed and will travel to the foreign country to discuss with the prisoner the effects of transferring. If the prisoner still wishes to transfer,

he/she would then appear before the hearing officer at the CVH and give his/her consent to the transfer. Special arrangements are made for handling cases involving minors or the mentally ill ([18 U.S.C. § 4102\(8\) and \(9\)](#)).

Q. AFTER THE CONSENT OF A PRISONER SEEKING TRANSFER TO THE UNITED STATES HAS BEEN VERIFIED, HOW IS THE PHYSICAL TRANSFER OF THAT PRISONER BACK TO THE UNITED STATES ACCOMPLISHED?

A. Officials of the Federal Bureau of Prisons travel to the foreign country to escort the prisoner to the United States. The transferee returns to the United States in the custody of these officials and is placed in a federal prison. Because of security concerns, information about specific dates and timing of a transfer are not provided to the prisoner, family or other persons until the actual transfer has occurred as a matter of security policy of the Federal Bureau of Prisons.

Q. ONCE A U.S. CITIZEN HAS BEEN TRANSFERRED TO THE UNITED STATES, HOW IS HIS/HER FOREIGN SENTENCE ADMINISTERED?

A. At the outset it is important to recognize that a transferred prisoner has no right to appeal, modify, set aside, or otherwise challenge his/her foreign conviction in a United States court or administrative agency after being transferred back to the United States. (18 U.S.C. § 3244(1)) Such authority remains with the courts in the sentencing country. However, the United States must execute the sentence imposed by the foreign country. To do so it must go through a careful analysis to determine how a comparable crime would be punished in the United States and then determine a release date for such an offense. The responsibility for determining the release date, as well as any period of supervised release and conditions that will apply, has been given to the United States Parole Commission, an administrative agency within the United States Department of Justice. **See** [18 U.S.C. § 4106A](#) (for offenses committed on or after November 1, 1987); [18 U.S.C. § 4106](#) (for offenses committed before November 1, 1987).

The process for determining the release date for the transferred prisoner begins shortly after the prisoner enters the United States. Following the prisoner's return to the United States, the Federal Bureau of Prisons designates an appropriate federal institution for service of the sentence after considering a number of factors, including the nature of the offense, the sentence imposed, prior history of the prisoner, and the prisoner's home area. Next, a United States probation officer, who is located near the institution in which the prisoner is incarcerated, reviews the documents submitted by the sentencing country which describe the offense committed by the prisoner. After reviewing these materials, the probation officer interviews the prisoner and prepares a post-sentence report. The Parole Commission then schedules a special transferee hearing. Prior to this hearing, the transferred prisoner is provided with an opportunity to be represented by counsel.

At the hearing, the Parole Commission is presented with information and arguments regarding the appropriate period of imprisonment. Following the hearing, the Parole Commission deliberates and determines the date on which the prisoner will be released on supervised release. It also determines the length of the supervised release period and the conditions of supervised release. While on supervised release, the prisoner is supervised in the community for a specified period of time by a probation officer. An offender on supervised release must abide by certain terms and conditions. A violation of the conditions of supervised release could result in the revocation of the supervised release and a return to prison.

In determining an appropriate release date and the length of the supervised release period, the Parole Commission considers many factors, including the nature of the offense, whether the prisoner has accepted responsibility for his actions, and the sentence that would be applied for a comparable federal offense under the United States Sentencing Guidelines. It is important to stress that, in determining a suitable release date from the foreign sentence, the Parole Commission cannot overturn the prisoner's conviction, reduce or modify the original sentence, or make findings of fact that are inconsistent with the findings of the foreign court. Although the release date determined by the Parole Commission may sometimes be less than the duration of the sentence imposed by the foreign country, it can never be greater than the foreign sentence. [18 U.S.C. §](#)

[4106A\(b\)\(1\)\(C\)](#). A transferred prisoner who is dissatisfied with the decision of the Parole Commission may appeal the decision to the United States Court of Appeals.

The Federal Bureau of Prisons will compute the sentence. The prisoner will receive credit for all the time spent in custody from the day of arrest. Additionally, the release date set by the Parole Commission may be reduced by any foreign labor and good time credits earned prior to the transfer. The prisoner will also received good time credits earned in the United States. [18 U.S.C. § 4105](#). (A transferred prisoner, like all regular federal prisoners, is expected to abide by prison rules and, if he fails to do so, he/she risks losing good conduct time credits.)

After a prisoner is released from the custody of the Bureau of Prisons, a probation officer, usually from the prisoner's home district, will be responsible for supervising the prisoner during any period of supervised release that has been imposed. During this period the offender must report regularly to the probation officer and must abide by all of the conditions that have been imposed in connection with the term of supervised release. Failure to do so could result in a United States court revoking the supervised release and returning the offender to prison to serve the remainder of the sentence.

Additional questions regarding this subject should be directed to the United States parole Commission. For additional information see the [United States Parole Commission](#) web site.

Q. WHEN A FOREIGN NATIONAL WHO IS SERVING A SENTENCE IN A STATE FACILITY IN THE UNITED STATES WISHES TO APPLY FOR A TRANSFER, WHAT PROCEDURES APPLY?

A. There is a distinction between prisoners serving sentences in State or local facilities and prisoners convicted in federal courts serving sentences in federal facilities in the United States. See the [Department of Justice International Prisoner Transfer web site](#). Some states in the United States lack enthusiasm for prisoner transfer treaties and some have indicated an unwillingness to participate in such transfers. All the states, Puerto Rico and the Commonwealth of the Northern Mariana Islands have enacted implementing legislation. A state prisoner must first apply to the appropriate state authority and be approved for transfer before the Department of Justice will review the request. The relevant state authorities and applicable state statutes can be found on the Department of Justice website. As previously noted, prisoner transfer treaties require the consent of three parties: (1) the transferring State; (2) the receiving state and (3) the prisoner, before a transfer can take place. In addition, a prisoner incarcerated in a state institution must obtain the consent of the state's authorities as well in order to transfer pursuant to a treaty ([18 U.S.C. § 4102 \(6\)](#)).

Q. ARE U.S. MILITARY PERSONNEL GOVERNED BY PRISONER TRANSFER TREATIES?

A. Yes. [10 U.S.C. § 955](#) provides that prisoner transfer treaties do apply to U.S. military personnel.

Q. WHAT CAN PRISONERS AND FAMILIES DO PENDING APPROVAL OF AN APPLICATION?

A. See the [Department of Justice International Prisoner Transfer web site](#) for information about what prisoners and families can do.

Q. WHERE CAN I ADDRESS QUESTIONS ABOUT PRISONER TRANSFER?

A. Questions about individual arrest cases of U.S. citizens abroad should be addressed to the Office of American Citizens Services and Crisis Management, Overseas Citizens Services, SA-29, Department Of State, 2201 C Street N.W., Washington, D.C. 20520.

Questions about U.S. Review Of Application For Transfer should be addressed to the U.S. Central Authority, the Office of Enforcement Operations, Prisoner Transfer Unit, Criminal Division, U.S. Department Of Justice, John C. Keeney Building, 12th Floor, Washington, D.C. 20530.

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Questions about the background on negotiation or implementation of prisoner transfer treaties should be addressed to the Office Of Policy Review and Interagency Liaison, Overseas Citizens Services, (CA/OCS/PRI), SA-29, Department of State, 2201 C Street N.W., Washington, D.C. 20520 (ASKPRI@state.gov).

Questions regarding the administration of prisoner sentences in the U.S. should be addressed to Chief, Defender Services Division, Administrative Office of the U.S. Courts, Washington, D.C. 20544.

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