



U.S. Department of Justice

Criminal Division
Office of Enforcement Operations
International Prisoner Transfer Unit

Washington, D.C. 20530

Prisoner Transfer Background Information for Americans Incarcerated Abroad

Introduction:

When an American is arrested abroad the arresting country is obligated to notify United States consular officials. Once the American Embassy or Consulate is notified, a consular official will visit and interview the prisoner. However, before the American consular official can provide consular services he must determine whether the prisoner is a United States citizen. To make this determination, the prisoner needs to provide strong evidence of citizenship such as a passport or an original birth certificate with official identification. If convinced that the prisoner is an American citizen, the consular official will prepare and send an arrest cable that states how the Embassy was notified of the arrest, whether the prisoner has consented to the release of information to others and information about the nature of the offense. In addition, the consular official will provide the prisoner with various types of information including the availability of the international prisoner transfer program.

The International Prisoner Transfer program, which is authorized by federal law and international treaties, is administered by the United States Department of Justice. An American prisoner is not eligible for transfer to the United States until he has been sentenced by the foreign country and that sentence is final (i.e. no pending appeals or other legal challenges to the sentence). Once the sentence is final, the application process can be initiated. Whether the prisoner or the American Embassy makes the formal transfer request to the foreign country will depend upon the terms of the particular treaty governing the transfer.

In addition to the requirement of a final sentence, there are other general requirements that must be satisfied before a transfer can occur. There also must be sufficient time remaining on the sentence for an application to be processed. Normally this period is 6 months but sometimes it is a year. Some foreign governments require the prisoner to pay any fines or restitution that are imposed as part of the sentence before transfer can occur and sometimes even before the approval decision is made. Other treaties prohibit the transfer of certain types of offenses such as immigration, military and political offenses. Finally, the offense committed abroad must also be an offense in the United States. This requirement, called dual criminality, may vary depending on the treaty. Dual criminality exists for the vast majority of offenses.

Determining whether a prisoner transfer is in the prisoner's best interest:

A prisoner who is interested in transferring should contact the Office of Defender Services of the Administrative Office of the U.S. Courts to obtain advice as to whether a transfer would be an appropriate option for the prisoner. Some prisoners decide not to apply for transfer

after consulting with a federal public defender (“FPD”) and learning that they will spend less time in custody if they remain in the foreign country than if they transfer to the United States and have their sentence administered according to United States sentencing provisions.

If the prisoner has questions concerning how his sentence will be administered in the United States, he should write to:

Office of Defender Services
Administrative Office of U.S. Courts
1 Columbus Circle, NE, Suite 4-200
Washington, D.C. 20544
ATTN: Prisoner Transfer Treaty Matters

In this letter, the prisoner should clearly state that he is seeking advice about international prisoner transfer and should provide the following information to allow the FPD to give the best advice possible:

1. Full name and any aliases;
2. Date and place of birth;
3. Date of the offense and date of arrest;
4. Precise offense of conviction including any known statutory citations;
5. Sentence imposed including any fines or restitution;
6. Any projected release dates through parole or other form of early release;
7. Any labor credits or other prison work credits that may be earned;
8. A detailed description of the offense, that includes the foreign government’s version of the offense. This description should include whether a weapon was used or present when the offense was committed. If a drug offense is involved, the offense description should include the type of drugs involved and the quantity;
9. A description of the prisoner’s role in the offense in relation to others who may have participated in the offense;
10. Whether the prisoner cooperated, provided any confession or took any other action showing that he accepted responsibility for his unlawful conduct;
11. An accurate description of his prior misdemeanor or felony record in the United States including prior sentences, whether he was under criminal justice supervision (probation, parole or supervised release) at the time of the offense and whether any outstanding warrants exist against him; and
12. An accurate mailing address where the prisoner can be reached.

Upon receiving this information, the Defender Service Division will assign the matter to a FPD for review and response. If the prisoner has provided all of the information listed above, the FPD should be able to give the prisoner a reasonably informed estimate of how the foreign sentence will be administered in the United States should the prisoner be transferred there. Once the case is assigned, it usually takes 4-8 weeks for the FPD to respond to the prisoner.

Applying to transfer with both the United States and the foreign government:

If the prisoner wishes to transfer after consulting with the FPD, he should notify the American Consulate of his interest. Application to transfer must be made to both the foreign government and to the International Prisoner Transfer Unit (IPTU) in the Criminal Division of the United States Department of Justice. To apply for transfer with the IPTU, the prisoner should complete a form indicating an interest in transferring and complete an application questionnaire. These documents are available at the nearest American consulate or directly from the IPTU.

It is very important to apply with the foreign government as well, as both governments must approve. The foreign government or the American Consulate (depending on the treaty or local procedures) will assemble the necessary documents regarding the offense and sentence for the application package. This package will include the foreign sentencing documents, a summary and translation of the offense behavior and prisoner information, a copy of the travel document or other proof of U.S. citizenship and information regarding the prisoner classification and conduct. Once the packet is assembled it will be forwarded to the IPTU. It may also contain an approval notice from the foreign government. (In Mexico, the approval of the Mexican government is done centrally shortly before the transfer long after the packet of sentencing information has been assembled and sent to the IPTU).

The IPTU will review the application and decide whether to approve the request examining many factors including the nature of the offense and ties to the United States.

Consent verification hearing:

If both the IPTU and the foreign government approve the request to transfer, the IPTU will make arrangements for a consent verification hearing. A consent verification hearing is required by United States law, 18 U.S.C. § 4108, and is usually conducted at the prison. The hearing is presided over by a federal magistrate judge and a federal public defender will be appointed to represent the prisoner. Because of the logistics of selecting a judge and making travel arrangements, it can take several months to arrange a hearing. At the consent verification hearing a determination is made whether the prisoner understands the legal significance of the transfer and whether he consents to the transfer.

Preparing for transfer:

If the prisoner consents to the transfer, arrangements are made with the Federal Bureau of Prisons (BOP) and the foreign government to transport him back to the United States where he will be incarcerated in a federal prison. The prisoner must maintain good behavior as disruptive prisoners will not be transferred. The BOP may also be interested in a health inventory to determine if any special needs are required for the transfer. All prisoners will have to be tested for tuberculosis prior to transfer.

When the day for the transfer arrives, the prisoner should be prepared. He should have sent home or otherwise disposed of all of his belongings. He will only be allowed to bring the clothes he is wearing and a small amount of personal property. The only property permitted are a wedding band with no stones, prescribed medication, medical devices, eyeglasses, legal material on a current case only, identification cards, religious medal or daily prayer items, and currency or negotiable instruments (preferably in a money order or other negotiable instrument denominated in dollars which will be deposited in a trust fund or inmate account at the institution). No jewelry is permitted including watches, earrings, and necklaces. Hair bands, clasps and braids are also prohibited. Since the prisoner will likely wear leg irons for the transfer, a pair of socks for the day of the transfer is advisable. The prisoner will be subject to a full body search before transfer. A preliminary assessment of the prisoner's health will also be conducted to determine if there are any special needs.

Process following transfer:

The BOP will attempt to place prisoners in suitable prisons nearest the prisoner's home. The prisoner will first be brought to an administrative prison for initial processing. The foreign sentencing documents will be copied and given to a United States Probation Officer. The probation officer will review these documents and then visit the prisoner to collect background information. After a brief investigation, the probation officer will prepare a "post sentence investigation report." This report, which takes about 30-60 days to prepare, will include a recommendation as to the period of confinement and period of supervised release that would apply after considering the relevant United States Sentencing Guidelines. Thereafter, the United States Parole Commission will review the case and decide the length of time the prisoner should remain in prison and the period of supervised release that will apply when the prisoner is released from prison.

More information:

Family members and representatives can obtain additional information from three useful web sites:

http://travel.state.gov/law/legal/treaty/treaty_1989.html

<http://www.justice.gov/criminal/oeo/iptu/>

<http://www.bop.gov>

Prisoners who are applying for transfer may be represented by an attorney but need not be. The overwhelming majority of applicants to the prisoner transfer program are not represented by an attorney. Because of limitations imposed by the Privacy Act, 5 U.S.C. § 552a, the Department of Justice cannot provide information about individual prisoner transfer cases without a signed waiver of confidentiality from the prisoner. This law applies whether the inquiring party is the prisoner's Congressman or family member. A sample Privacy Act waiver form can be found at the Department of Justice website.