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| | | Effective: 12/17/2013 | Reviewed: | |
| | | Distribution: Public | Due for Rev: | 12/2017 |
| Chapter: | Release and Temporary Release | | | |
| Subject: | Transfer of Foreign National Offenders to Treaty Nations | | | |

- I. Authority
In accordance with AS 44.28.030, AS 33.30.011 and 22 AAC 05.155, the Department of Corrections will established and maintain a manual of policies and procedures to interpret and implement the statutory and regulatory duties of the department.
- II. References
Alaska Statute
AS 33:30.291
Treaties
Council of Europe Convention on the Transfer of Sentenced Persons
Inter-American Convention on Serving Criminal Sentences Abroad
Treaty on the Execution of Penal Sentences (United States-Mexico)
United States Code
18 USC 4100 et seq. – Transfer of Offenders to or from Foreign Countries
- III. Purpose
This policy establishes uniform procedures for the transferring of incarcerated foreign nationals to their home countries.
- IV. Application
To all employees and prisoners.
- V. Definitions
A. Consent Verification Hearing
Conducted by a Federal Magistrate Judge as mandated by 18 USC 4107, its purpose is to ensure the prisoner voluntarily consents to the transfer from the United States to the prisoner’s home country
- VI. Policy
The department when practical, and in the absence of countervailing concerns, will take advantage of the provisions of those treaties to which the United States is a signatory for the purpose of the transferring foreign national offenders to their home nation for service of felony sentences that have been imposed in Alaska. The Department shall ensure that foreign national offenders have access to the diplomatic representative of their country of citizenship.
- VII. Procedures
A. Qualifications for transfer to foreign countries:
 1. The prisoner must request consideration.
 2. The prisoner must be a citizen of the receiving country.
 3. The prisoner must not be committed for a political, military or immigration offense, nor be detained for civil contempt.
 4. The prisoner must be convicted, sentenced and have at least nine months remaining to serve. For Mexican nationals, see A 9 c below.
 5. The prisoner must have no pending proceeding by way of appeal or of collateral attack upon the instant conviction, to include post-conviction relief, and may not have an outstanding detainer.
 6. A prisoner with an outstanding financial obligation relative to a conviction, (i.e., fine, court costs or restitution) is not eligible for transfer to a foreign country, with the following exceptions:
 - a. The prisoner is indigent or clearly lacks the funds to make payment or a significant portion of the payment due.
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- b. The commissioner determines the cost to the state would be significantly lower by transferring a prisoner to his or her home nation;
 - c. The commissioner determines it is unlikely a victim will obtain restitution from the prisoner seeking transfer because the prisoner clearly lacks the ability to pay.
 7. The prisoner must be convicted of a crime which is generally punishable as a crime under the laws of the home nation.
 8. The prisoner, the Commissioner of the Department of Corrections, the United States and the receiving country must all consent to the transfer.
 9. Special considerations regarding nationals of Mexico/transfer to Mexico:
 - a. Applicants wanting transfer to Mexico who, prior to arrest, resided within the United States for five years or more with intent to remain permanently, may not be eligible; clarification should be obtained from the Department of Justice on a case-by-case basis.
 - b. A prisoner seeking transfer to Mexico must not be incarcerated solely on an immigration offense.
 - c. A prisoner who is a Mexican national must be convicted, sentenced and have at least 18 months to serve at the time a request for transfer to Mexico is initiated.
- B. Institutional Procedures**
1. A qualified prisoner indicates desire to return to his/her country of citizenship by completing and signing Form 818.11A (Application for Transfer to a Foreign Country) and forwarding it to the Superintendent.
 2. The Superintendent or designee verifies that the prisoner is qualified under Section A above.
 3. The Superintendent or designee notifies sentencing judge and prosecuting attorney of request for transfer, asking for their comments;
 4. After receipt of comments or a lapse of 15 days if no comments received, institutional personnel will prepare a transfer packet in duplicate, which includes the following:
 - a. Prisoner's full name, date of birth and any other elements to aid in identification, i.e., passport number, identification card information and vital statistics, etc.;
 - b. Copy of birth certificate or other legally sufficient documentation attesting to the prisoner's place of birth.
 - c. The country in which the prisoner is a citizen or national and address if any;
 - d. Certified copy of the prisoner's Judgment and Commitment Order and any modification(s) thereof (from the court where judgment was imposed);
 - e. Copy of statute(s) prisoner violated and copy of charging document (i.e., indictment or complaint);
 - f. Current time accounting computation;
 - g. Medical and Mental Health Abstract;
 - h. Copy of Presentence Investigation Report -- if a PSI is not available, a social summary to include a description of the instant offense must be prepared;
 - i. List of immediate family members to include complete address;
 - j. FBI Criminal History (Rap Sheet);
 - k. Fingerprint Card;
 - l. Photograph;
 - m. Comments from sentencing judge and district attorney; and
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- n. Attestation by the Records Officer that the copies of fingerprints, commitments, FBI criminal history, presentence report are true and correct. The attestation must be notarized.
- 5. One packet is to remain in the institution while the second packet is to be sent to the department's Interstate Corrections Compact Administrator.
- 6. If the Commissioner approves the transfer, the Interstate Corrections Compact Administrator will initiate notice to the Office of enforcement Operations, Criminal Division, U.S. Department of Justice, that Alaska is willing to transfer the prisoner.
- 7. The Interstate Corrections Compact Administrator will furnish names of accepted prisoners, date, time and place of verification hearings to the appropriate institutional superintendent.
- 8. The Department of Law may be contacted for assistance in any of the steps set out above.
- C. Physical Transfers Action
 - 1. The Department will ensure that the prisoner is transported to the Consent Verification Hearing and provides security through the hearing, or until the prisoner is transferred to Federal custody, if that occurs.
 - 2. Inventorying and packing each transferee's property in a clearly marked, sealed container with a copy of the inventory affixed to the outside of the container. Canada permits property equal to two standard size suitcases or one duffle bag.
 - 3. The prisoner's account will be closed. Money in the prisoner's account should be sent to the Interstate Corrections Compact Administrator for forwarding to the receiving country.
 - 4. Medication, if applicable, with appropriate instructions, must accompany each prisoner. A ten-day supply of medication will be adequate.
- D. After the prisoner consents to transfer at the Consent Verification Hearing, the prisoner will be placed in Federal custody, and arrangements for the return to the home nation will be made by Federal authorities.

VIII. Implementation

This policy and procedure is effective on the date signed by the Commissioner. Each Manager shall incorporate the contents of this document into local policy and procedure. All local policies and procedures must conform to the contents of this document; any deviation from the contents of this document must be approved in writing by the Division Director.

12/17/2013

SIGNATURE ON FILE

Date

Joseph D. Schmidt, Commissioner
Department of Corrections

Forms Applicable to this Policy & Procedure:
818.11A (Application for Transfer to a Foreign Country)

*Original: 3/13/1987
Revised: 12/1/1990*