

**CHAPTER 306—TRANSFER TO OR FROM
FOREIGN COUNTRIES**

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AMENDMENTS

1988—Pub. L. 100-690, title VII, §7101(c), Nov. 18, 1988, 102 Stat. 4415, added item 4106A.

§ 4100. Scope and limitation of chapter

(a) The provisions of this chapter relating to the transfer of offenders shall be applicable only when a treaty providing for such a transfer is in force, and shall only be applicable to transfers of offenders to and from a foreign country pursuant to such a treaty. A sentence imposed by a foreign country upon an offender who is subsequently transferred to the United States pursuant to a treaty shall be subject to being fully executed in the United States even though the treaty under which the offender was transferred is no longer in force.

(b) An offender may be transferred from the United States pursuant to this chapter only to a country of which the offender is a citizen or national. Only an offender who is a citizen or national of the United States may be transferred to the United States. An offender may be transferred to or from the United States only with the offender's consent, and only if the offense for which the offender was sentenced satisfies the requirement of double criminality as defined in this chapter. Once an offender's consent to transfer has been verified by a verifying officer, that consent shall be irrevocable. If at the time of transfer the offender is under eighteen years of age, or is deemed by the verifying officer to be mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer, the transfer shall not be accomplished unless consent to the transfer be given by a parent or guardian, guardian ad litem, or by an appropriate court of the sentencing country. The appointment of a guardian ad litem shall be independent of the appointment of counsel under section 4109 of this title.

(c) An offender shall not be transferred to or from the United States if a proceeding by way of appeal or of collateral attack upon the conviction or sentence be pending.

(d) The United States upon receiving notice from the country which imposed the sentence that the offender has been granted a pardon, commutation, or amnesty, or that there has been an ameliorating modification or a revocation of the sentence shall give the offender the benefit of the action taken by the sentencing country.

(Added Pub. L. 95-144, §1, Oct. 28, 1977, 91 Stat. 1212; amended Pub. L. 100-690, title VII, §7101(e), Nov. 18, 1988, 102 Stat. 4416.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100-690 inserted “, or is deemed by the verifying officer to be mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer,” after “under eighteen years of age”, “, guardian ad litem,” after “guardian”, and “The appointment of a guardian ad litem shall be independent of the appointment of counsel under section 4109 of this title.”

AUTHORIZATION OF APPROPRIATIONS

Section 5(a) of Pub. L. 95-144 provided that: “There is authorized to be appropriated such funds as may be required to carry out the purposes of this Act [which enacted this chapter and sections 955 of Title 10, Armed Forces, and 2256 of Title 28, Judiciary and Judicial Procedure, amended section 636 of Title 28, and enacted provisions set out as notes under sections 3006A, 4100, and 4102 of this title]”.

PRISONER TRANSFER TREATIES

Pub. L. 104-208, div. C, title III, §330, Sept. 30, 1996, 110 Stat. 3009-631, provided that:

“(a) NEGOTIATIONS WITH OTHER COUNTRIES.—(1) Congress advises the President to begin to negotiate and renegotiate, not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], bilateral prisoner transfer treaties, providing for the incarceration, in the country of the alien's nationality, of any alien who—

“(A) is a national of a country that is party to such a treaty; and

“(B) has been convicted of a criminal offense under Federal or State law and who—

“(i) is not in lawful immigration status in the United States, or

“(ii) on the basis of conviction for a criminal offense under Federal or State law, or on any other basis, is subject to deportation or removal under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],

for the duration of the prison term to which the alien was sentenced for the offense referred to in subparagraph (B). Any such agreement may provide for the release of such alien pursuant to parole procedures of that country.

“(2) In entering into negotiations under paragraph (1), the President may consider providing for appropriate compensation, subject to the availability of appropriations, in cases where the United States is able to independently verify the adequacy of the sites where aliens will be imprisoned and the length of time the alien is actually incarcerated in the foreign country under such a treaty.

“(b) SENSE OF CONGRESS.—It is the sense of the Congress that—

“(1) the focus of negotiations for such agreements should be—

“(A) to expedite the transfer of aliens unlawfully in the United States who are (or are about to be) incarcerated in United States prisons,

“(B) to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts,

“(C) to eliminate any requirement of prisoner consent to such a transfer, and

“(D) to allow the Federal Government or the States to keep their original prison sentences in force so that transferred prisoners who return to the United States prior to the completion of their original United States sentences can be returned to custody for the balance of their prisons [sic] sentences;

“(2) the Secretary of State should give priority to concluding an agreement with any country for which the President determines that the number of aliens described in subsection (a) who are nationals of that country in the United States represents a significant percentage of all such aliens in the United States; and

“(3) no new treaty providing for the transfer of aliens from Federal, State, or local incarceration facilities to a foreign incarceration facility should permit the alien to refuse the transfer.

“(c) PRISONER CONSENT.—Notwithstanding any other provision of law, except as required by treaty, the transfer of an alien from a Federal, State, or local incarceration facility under an agreement of the type referred to in subsection (a) shall not require consent of the alien.

“(d) ANNUAL REPORT.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], and annually thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate stating whether each prisoner transfer treaty to which the United States is a party has been effective in the preceding 12 months in bringing about the return of deportable incarcerated aliens to the country of which they are nationals and in ensuring that they serve the balance of their sentences.

“(e) TRAINING FOREIGN LAW ENFORCEMENT PERSONNEL.—(1) Subject to paragraph (2), the President shall direct the Border Patrol Academy and the Customs Service Academy to enroll for training an appropriate number of foreign law enforcement personnel, and shall make appointments of foreign law enforcement personnel to such academies, as necessary to further the following United States law enforcement goals:

“(A) Preventing of drug smuggling and other cross-border criminal activity.

“(B) Preventing illegal immigration.

“(C) Preventing the illegal entry of goods into the United States (including goods the sale of which is illegal in the United States, the entry of which would cause a quota to be exceeded, or the appropriate duty or tariff for which has not been paid).

“(2) The appointments described in paragraph (1) shall be made only to the extent there is capacity in such academies beyond what is required to train United States citizens needed in the Border Patrol and Customs Service, and only of personnel from a country with which the prisoner transfer treaty has been stated to be effective in the most recent report referred to in subsection (d).

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

[For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(l), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§ 4101. Definitions

As used in this chapter the term—

(a) “double criminality” means that at the time of transfer of an offender the offense for which he has been sentenced is still an offense in the transferring country and is also an of-

fense in the receiving country. With regard to a country which has a federal form of government, an act shall be deemed to be an offense in that country if it is an offense under the federal laws or the laws of any state or province thereof;

(b) “imprisonment” means a penalty imposed by a court under which the individual is confined to an institution;

(c) “juvenile” means—

(1) a person who is under eighteen years of age; or

(2) for the purpose of proceedings and disposition under chapter 403 of this title because of an act of juvenile delinquency, a person who is under twenty-one years of age;

(d) “juvenile delinquency” means—

(1) a violation of the laws of the United States or a State thereof or of a foreign country committed by a juvenile which would have been a crime if committed by an adult; or

(2) noncriminal acts committed by a juvenile for which supervision or treatment by juvenile authorities of the United States, a State thereof, or of the foreign country concerned is authorized;

(e) “offender” means a person who has been convicted of an offense or who has been adjudged to have committed an act of juvenile delinquency;

(f) “parole” means any form of release of an offender from imprisonment to the community by a releasing authority prior to the expiration of his sentence, subject to conditions imposed by the releasing authority and to its supervision, including a term of supervised release pursuant to section 3583;

(g) “probation” means any form of a sentence under which the offender is permitted to remain at liberty under supervision and subject to conditions for the breach of which a penalty of imprisonment may be ordered executed;

(h) “sentence” means not only the penalty imposed but also the judgment of conviction in a criminal case or a judgment of acquittal in the same proceeding, or the adjudication of delinquency in a juvenile delinquency proceeding or dismissal of allegations of delinquency in the same proceedings;

(i) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(j) “transfer” means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the courts of another country; and

(k) “treaty” means a treaty under which an offender sentenced in the courts of one country may be transferred to the country of which he is a citizen or national for the purpose of serving the sentence.

(Added Pub. L. 95-144, §1, Oct. 28, 1977, 91 Stat. 1213; amended Pub. L. 98-473, title II, §223(m)(1), Oct. 12, 1984, 98 Stat. 2029.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-473 inserted “including a term of supervised release pursuant to section 3583” after “supervision”.