

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 753f, 762 (Mar. 2, 1895, ch. 189, § 1, 28 Stat. 957; June 10, 1896, ch. 400, § 1, 29 Stat. 380; May 14, 1930, ch. 274, § 7, 46 Stat. 326; June 14, 1941, ch. 204, 55 Stat. 252; Oct. 21, 1941, ch. 453, 55 Stat. 743).

Said section 762 was condensed and simplified and extended to all penitentiaries instead of to Leavenworth only, since the section is merely declaratory of existing law. (See section 1 of this title classifying offenses and notes thereunder.)

The second paragraph is derived from said section 753f of title 18, U.S.C., 1940 ed.

Minor changes of phraseology were made.

Editorial Notes

AMENDMENTS

1959—Pub. L. 86-256 substituted “punishable by imprisonment for” for “and sentenced to terms of imprisonment of” in first sentence.

[§§ 4084, 4085. Repealed. Pub. L. 98-473, title II, § 218(a)(3), Oct. 12, 1984, 98 Stat. 2027]

Section 4084, act June 25, 1948, ch. 645, 62 Stat. 850, related to delivery of prisoner with copy of commitment.

Section 4085, act June 25, 1948, ch. 645, 62 Stat. 850, related to authority, expense, etc., respecting transfer of Federal prisoner for State offense.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

§ 4086. Temporary safe-keeping of federal offenders by marshals

United States marshals shall provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution.

(June 25, 1948, ch. 645, 62 Stat. 851.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., §§ 691, 692, (R.S. §§ 5537, 5538).

Said section 691 of title 18, U.S.C., 1940 ed., is superseded by sections 753b and 753c of title 18, U.S.C., 1940 ed., which are incorporated in sections 4002, 4003 and 4042 of this title.

This section is rewritten to retain the intent of section 692 of title 18, U.S.C., 1940 ed., which was to insure a safekeeping of United States prisoners until their commitment or confinement in Federal penal institutions. The language conforms with that of said sections 692 and 753b.

Minor changes were made in phraseology.

CHAPTER 306—TRANSFER TO OR FROM FOREIGN COUNTRIES

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Editorial Notes

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.)

Editorial Notes**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.”

Statutory Notes and Related Subsidiaries**AUTHORIZATION OF APPROPRIATIONS**

Pub. L. 95-144, §5(a), Oct. 28, 1977, 91 Stat. 1221, 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(1), 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. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 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 offense 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