



*Embassy of the United States of America
Consular Section, American Citizen Services
1-10-5 Akasaka, Minato-ku, Tokyo 107-8420*

International Prisoner Transfer in Japan

Japan acceded to the Council of Europe Convention on the Transfer of Sentenced Persons on June 1, 2003. All American prisoners in Japan which are approved for transfer are processed for transfer in accordance with this treaty.

An American prisoner in a foreign country is not eligible for transfer to the United States until he/she has been sentenced by the foreign country. Once sentencing occurs and all appeals or challenges to the sentence have been exhausted, the application process can be initiated.

In order for a transfer to be approved, the U.S. Government, the Japanese Government and the prisoner all have to agree to the transfer. The U.S. Government decision on prisoner transfer approval is made by Department of Justice officials on behalf of the U.S. Government. Neither the U.S. Embassy nor the U.S. Department of State takes part in the approval decision.

Before the Government of Japan will consider approval of a prisoner transfer request, all fines levied as part of a prisoner's sentence must be paid. Fines can be paid either by direct payment, or by working off the fine through labor while imprisoned.

When both governments consent to the prisoner transfer, a Consent and Verification Hearing is held in Japan to ensure that the prisoner requesting transfer to the United States fully understands the prisoner transfer process, and the effect of the transfer on his sentence and record in the United States. You will be assisted in understanding this process and sentencing considerations by a U.S. Federal Defense Attorney. **You will not be transferred against your will.**

Parole in Japan and the prisoner transfer application process do not interact. If you submit an application for prisoner transfer, it will not interfere consideration for parole in Japan. You can be paroled while your transfer request is still pending Japanese approval. However, once the Japanese Government approves your transfer, consideration for parole in Japan is suspended.

Many prisoners contemplating transfer have asked if a transferred prisoner would have a prior record in the United States. Please see the enclosed information sheet prepared by the U.S. Department of Justice, "International Prisoner Transfer – Prior Record" for details.

The U.S. Embassy's role in the prisoner transfer process is that of a facilitator. We provide you with information furnished by the Department of Justice and communicate with you about the current status of your request; send your application to the Department of Justice in Washington, D.C.; forward approvals by the U.S. Government to the Government of Japan; and facilitate visits by Department of Justice representatives to Japan. When prisoner transfers are approved, we support the physical transfer of prisoners from Japanese officials to officials of the U.S. Bureau of Prisons. The U.S. Embassy cannot, however, affect the speed with which your transfer application is considered by either government.

Please read the attached information carefully.

Enclosures:

1. Prisoner Transfer Information for Americans Incarcerated Abroad
2. International Prisoner Transfer-Prior Record
3. Authorization for International Prisoner Transfer Unit to Release Information to Other Persons (please return when completed)
4. International Prisoner Transfer Notification and Acknowledgement Form and Application Questionnaire (please return when completed)

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U.S. Department of Justice

10th & Constitution Avenue, N.W.
Criminal Division
Office of Enforcement Operations

*International Prisoner Transfer Unit
John C. Keeney Building, 12th Floor
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. Once final sentencing has occurred 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 that the prisoner's sentence be final (i.e. no pending appeals or other legal challenges to the 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 Defender Services Division 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:

Chief, Defender Services Division
Administrative Office of the United States Courts
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 with advice about the likely manner in which the sentence will be administered.

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

If, after receiving the information from the FPD, the prisoner still wishes to transfer, 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, you should complete a form indicating your 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 your 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

disposed of all of his belongings except for a small amount of personal property, e.g. identification cards, bible or other essential daily prayer items, cash (preferably in a money order or other negotiable instrument denominated in dollars which will be deposited in a trust account at the institution), family photos etc. Only the clothes the prisoner is wearing on the day of the transfer will be allowed. Other than a wedding band with no stones, no jewelry is permitted including watches, earrings and necklaces. Hair bands, clasps and braids are also prohibited. Medical devices prescribed for care, medication and eyeglasses are permitted. Prohibited property and additional personal property like clothing, books and appliances should be mailed to the prisoner's home before the transfer. 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 Bureau of Prisons will attempt to place prisoners in suitable prisons nearest the prisoner's home. The prisoner will first be brought to one of a handful of "gateway" prisons 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 two useful web sites. The first is from the Department of State site at "<http://travel.state.gov/transfer.html>" and the second is the Department of Justice site at:

<http://www.usdoj.gov/criminal/oeo/links/intlprisoner/intlprisoner.html>.

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.

International Prisoner Transfer—Prior Record

Whether a transferred prisoner would have a "prior record" or "criminal record" depends on what is meant by "record." A transferred prisoner will have a record in the National Crime Information Center (NCIC) that shows the date of arrest, the offense and the sentence imposed. It will also note that the conviction was made in a foreign court. The Bureau of Prisons (BOP) will also assign the prisoner a number and the prior sentencing data would be available to BOP if the prisoner were rearrested and sentenced for a new federal offense. This information is also available to law enforcement agencies that have access to NCIC.

Civil disabilities because of a prior conviction (e.g., unable to serve on a jury, prohibited from holding public office, unable to vote, unable to be a union representative or prohibited from possessing a firearm) usually require the conviction to be a "Federal, State or Local" court and a foreign conviction would not count. Most laws regarding civil disabilities are state laws and cannot be easily summarized. There are two federal firearm statutes that prohibit convicted felons from possessing a firearm. One requires "Federal, State or Local" conviction, the other is vague it is not known whether a court would find that a foreign conviction is sufficient.

If by "record" the prisoner is worried that if he or she is arrested and convicted in the United States in the future whether a conviction in a foreign court will cause the sentence to be enhanced because of the "prior conviction" abroad, the answer is a qualified "no." Laws requiring the enhancement of a penalty because of a prior conviction require the conviction to have occurred under appropriate United States constitutional due process procedures. These enhancements are typically the "three strikes and you're out" type or a higher mandatory minimum sentence if the defendant had a prior conviction. But bear in mind that a court may be aware of the prior conviction abroad because of the transfer or because of investigations made prior to sentencing. Even though the court may not enhance the sentence based on a statutory requirement, the knowledge of the prior conviction may make the court less likely to impose as lenient a sentence as it would if there were no information on the prior criminal conduct abroad. Of course, this information may come to light even if the prisoner did not transfer, but, generally, the information is easier to obtain from NCIC after a transfer.

If by "record" the prisoner is worried what a potential employer may discover, this would depend on the thoroughness of the background investigation done by the employer. Most employers who conduct background investigations would ask the potential employee if he or she had ever been arrested. Also, employers might be interested in any significant gaps in a work history.

If the prisoner would like more information on a specific issue relating to a foreign conviction, the prisoner should specifically ask the Federal Public Defender when seeking advice on whether or not to transfer. (See OEO/IPTU form 2—Prisoner Transfer Information for Americans Incarcerated Abroad.)

INTERNATIONAL PRISONER TRANSFER NOTIFICATION AND ACKNOWLEDGMENT FORM

The United States has entered into international treaties with many countries which may permit an American Citizen who has been convicted and sentenced abroad to transfer from a foreign prison to the United States to serve the remainder of his sentence. The transfer program is discretionary and not everyone who applies will be qualified or will be approved for transfer. To transfer your application must be approved by the foreign government and the United States. In addition to applying for a transfer with the nearest United States Consulate you must also apply for a transfer with the appropriate authorities of the foreign government where you are serving your sentence.

1. Name	2. Prisoner Number
3. Date of Birth	4. Place of Birth
5. Citizenship	6. Institution/Prison
7. Offense	8. Sentence
9. Projected Release Date	10. Language Preference

I am interested in being transferred to the United States to continue serving the sentence imposed by a court in _____ . I understand that this is just an inquiry to obtain information and to initiate the process before the actual request for transfer and is not binding upon either the government of the United States or me. I understand that I must complete a prisoner transfer application questionnaire to enable the United States to consider my request. I understand that upon my approval for transfer by both the foreign government and the United States, I will be required to attend a consent verification hearing before a United States Magistrate Judge. I have indicated above the language preference for my verification hearing and understand an interpreter will be available if necessary.

Signature	Date
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I hereby indicate that I am **not** interested in being transferred to the United States to continue serving the sentence imposed by a court in _____ .

Signature	Date
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AMERICAN NATIONAL OFFENDER TRANSFER APPLICATION QUESTIONNAIRE

Instructions: Please answer each question completely. If the question is not applicable put N/A in the box. Type or print your answers and return the completed form to the United States Consulate.

1. Name:		
_____	_____	_____
Last Name	First Name	Middle Name
Birth name (if different):		
Other names used/aliases:		
2. Prison where incarcerated:	3. Prisoner number:	
4. Height:	5. Weight:	
6. Hair color:	7. Eye color:	
8. Social Security number:	9. Passport number:	
10. True date of birth:	11. Place of birth:	
Month / Day / Year	City / Country	
12. Country(s) of citizenship and date of naturalization if not born in the United States:		
13. Sentencing information:		
Date of sentencing:	Sentence length:	Projected release date:
_____	_____	_____
Month / Day / Year	(Months, years, life etc.)	Month / Day / Year
14. Date of arrest:		
15. Type of offense:		

16. Do you have an appeal or other legal challenge pending? (Please mark with an "X"):

Yes or No

17. Languages spoken (please mark with an "X"): English, Español, Français,

Português, Dutch, German, other _____.

18. How long have you lived abroad and in what countries have you lived?

19. Have you contacted the U.S. consulate regarding your application?

Yes or No Note: You should notify your consulate of your interest in transfer.

20. Prior record/arrest history: List all prior arrests in any country including the date of arrest, place of arrest, charge and any disposition. This information is necessary for arranging for Bureau of Prisons escorts and will not affect your application to transfer.

20. What is your current marital status? (Please read all and mark the most appropriate):

- | | |
|---|--|
| <input type="checkbox"/> Single | <input type="checkbox"/> Divorced |
| <input type="checkbox"/> Married | <input type="checkbox"/> Divorced and remarried |
| <input type="checkbox"/> Common law marriage | <input type="checkbox"/> Long-term personal relationship |
| <input type="checkbox"/> Separated or estranged | |

21. What is the name and complete address of your spouse? Not applicable-no spouse

Name: _____
Address: _____
City: _____
State: _____
Country: _____
Telephone: _____

22. Do you have any children? Yes or No

23. What are the names, ages and complete addresses of your children? (If more than four, use back) Not applicable--no children

Name: _____	Name: _____
Age _____	Age _____
Address: _____	Address: _____
_____	_____
City: _____	City: _____
State: _____	State: _____
Country: _____	Country: _____
Name: _____	Name: _____
Age _____	Age _____
Address: _____	Address: _____
_____	_____
City: _____	City: _____
State: _____	State: _____
Country: _____	Country: _____

24. Who are your parents and closest relatives and where do they live?

Mother	Father
Name: _____	Name: _____
Address: _____	Address: _____
_____	_____
City: _____	City: _____
State: _____	State: _____
Country: _____	Country: _____

Other close relatives:

Relationship: _____	Relationship: _____
Name: _____	Name: _____
Address: _____	Address: _____
_____	_____
City: _____	City: _____
State: _____	State: _____
Country: _____	Country: _____

25. Educational level and history. Please list highest level of education; the name and location of the schools attended; and the dates of attendance:

26. Occupation:

27. Work history for 10 year period prior to incarceration. Please provide name of employer, location of employment, dates of employment and type of work performed:

28. Drug history: For the purpose of determining appropriate rehabilitative treatment, please list your history of drug use with dates of usage:

29. Where do you intend to reside upon your release from custody?

30. Please describe your current medical condition and list any medications used. In your response also include any current health concerns such as whether you need a wheelchair, require special medication, are diabetic etc.:

31. Please provide any additional information you believe is pertinent to your application to transfer.

I hereby request a transfer to the United States to complete my sentence and I authorize the disclosure and release of information necessary to process my request to transfer.

Signature

Date