

 <b>NEW YORK STATE</b> <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE <b>Transfer of Foreign Nationals</b>		NO. 6902
			DATE 3/18/2021
SUPERSEDES DIR. #6902 Dtd. 05/02/19	DISTRIBUTION A B	PAGES PAGE 1 OF 4	DATE LAST REVISED
REFERENCES (Include but are not limited to) Correction Law §5(4), §71; ACA Expected Practice 5-ACI-3D-07	APPROVING AUTHORITY 		

- I. **PURPOSE:** The purpose of this directive is to provide a uniform procedure for voluntary transfer of incarcerated foreign nationals to home countries under treaty arrangements with the U.S. Government and in accordance with New York State Correction Law.
- II. **BACKGROUND:** Correction Law §5(4) authorizes the Commissioner to convert the sentence of a person serving an indeterminate sentence, except for a person serving a sentence with a maximum term of life imprisonment, to a determinate sentence equal to two-thirds of the maximum or aggregate maximum term imposed where such conversion is necessary to make the person eligible for transfer to Federal custody for transfer to foreign countries under treaties that provide for voluntary transfers.
- Correction Law §71 confers on the Commissioner, or designee, the sole and absolute authority to approve or disapprove an incarcerated individual's application for international transfer. Nothing herein shall be construed to confer upon any incarcerated individual a right to be transferred to the custody of a foreign nation.
- III. **PROCEDURE**
- A. Notice
1. Reception: Newly received incarcerated individuals who are identified as foreign nationals of treaty nations shall, as part of the reception process, be advised of the existence of prisoner transfer treaties and the possibility of the initiation of a transfer request.
  2. Law Libraries: To inform all prisoners who are citizens of another country, the law library of each general confinement facility housing incarcerated individuals subject to this directive shall contain:
    - a. A copy of this directive and NYS Correction Law
    - b. A listing of nations that have prisoner transfer treaties with the United States (see Attachment A)
    - c. The most recent Amnesty International Report describing prison conditions in each treaty nation
    - d. Other information on prison conditions in treaty nations published by the United Nations, the U.S. Department of State, or human rights organizations, if available
    - e. To the extent practicable, information on each treaty nation's provisions for the reduction of terms of sentence, or a listing of officials in the U.S. Department

of Justice or the embassy of the foreign country to whom an incarcerated individual may write for information.

B. Application

1. An incarcerated individual who wishes to be considered for voluntary transfer must complete and sign [Form #6902B](#), "Transfer Request," and forward it to the facility Superintendent.
2. Upon receipt, the Superintendent shall forward a copy to the Commissioner's Office.
3. Upon assessment of eligibility by the Commissioner's designee; they shall forward the request to the Commissioner, along with a recommendation and copies of:
  - a. The incarcerated individual's request
  - b. Sentence Conversion Certificate (see Section III-C below)
  - c. A copy of the Sentence and Commitment Order
  - d. A copy of the Final Order of Deportation against the incarcerated individual from the U.S. Bureau of Immigration and Customs Enforcement
  - e. A copy of the most recent legal date computation printout
  - f. A copy of the statute(s) under which the incarcerated individual was convicted
  - g. Description of the incarcerated individual's intake interview
  - h. Incarcerated individual family and residence information
  - i. Any other forms or information that may be required by the foreign country or treaty.

C. Conversion of Indeterminate Sentence to Determinate Sentence: Where it is necessary to convert an indeterminate sentence to a determinate sentence in order to make an applicant eligible for international transfer, the sentence shall be calculated as equal to two-thirds of the maximum or aggregate maximum term imposed. Indeterminate sentences with a maximum term of life imprisonment may not be converted to a determinate sentence.

D. Commissioner's Decision: Within 30 days of receipt, the Commissioner's designee shall acknowledge receipt of the application. If the application is disapproved, the incarcerated individual and referring Superintendent shall be so advised by letter from the Commissioner or Commissioner's designee.

E. Approvals: Upon referral of an application which has been approved by the Commissioner:

1. If the application is approved, the Commissioner's designee shall write to the Office of Enforcement Operations, International Prisoner Transfer Unit, and U.S. Department of Justice advising that New York State is willing to transfer a prisoner. The documentation listed in III-B-3-i above shall be enclosed with this communication, and the incarcerated individual shall be provided with a copy of the cover letter.
2. The U.S. Department of Justice will approve or disapprove the request and will follow with documentation and instructions.

3. The U.S. Department of Justice will also notify the appropriate embassy of its decision, and in cases where it has approved the request, will ask if the other country is willing to accept the prisoner.
4. If accepted, the U.S. Department of Justice will arrange for a verification proceeding before a U.S. Magistrate Judge, who will have authority to order the prisoner accepted into Federal custody.

NOTE: This entire process, from the incarcerated individual's application through approval or denial, typically takes up to one year, and may take longer. Upon receipt of notification of the decision, the incarcerated individual will be informed by letter from the Commissioner or Commissioner's designee.

- F. Costs: The facility is responsible for transporting the incarcerated individual to a U.S. Magistrate Judge for a Consent Verification Hearing at the time of the transfer.
- G. Counsel: The Federal Government provides counsel for these hearings. When requested, the Superintendent shall allow counsel to interview an incarcerated individual prior to a hearing.
- H. Property: The incarcerated individual is responsible for disposing of his or her property prior to the consent verification hearing. Upon completion of the hearing, the incarcerated individual will be in the custody of the U.S. Marshals Service and will not be permitted to have any property in his or her possession.
- I. Qualifications for Transfer to Foreign Countries
  1. The incarcerated individual must be a citizen of the receiving country.
  2. The incarcerated individual must be convicted and sentenced to a term of imprisonment.
  3. The incarcerated individual must not be committed solely for a military or immigration offense.
  4. The incarcerated individual must have served one-half of the minimum term and have at least one year of the instant sentence remaining to be served at the time of request for transfer.
  5. The incarcerated individual must have no pending proceeding by way of appeal or collateral attack upon the instant conviction or sentence.
  6. The incarcerated individual must be convicted of a crime which is generally punishable as a crime under the laws of the other country.
  7. The incarcerated individual, the Commissioner, the U.S. Department of Justice, and the receiving country must all consent to the incarcerated individual's transfer.
  8. The incarcerated individual must have received a Final Order of Deportation from the U.S. Bureau of Immigration and Customs Enforcement.
- J. Rescission of Approval: The Commissioner may withdraw prior approval of a transfer application if the incarcerated individual engages in criminal conduct or serious disciplinary infraction(s) following his or her request for transfer pursuant to this directive, or if the Commissioner becomes aware of any information which would have led to disapproval of the application.

COUNTRIES WITH INTERNATIONAL PRISONER TRANSFER AGREEMENTS

Albania	Georgia	Netherlands (including Aruba, Bonaire, Curacao, Saba, Sint Eustatius, and Sint Maarten, )
Andorra	Germany	Nicaragua
Anguilla	Gibraltar	Norway
Argentina	Ghana	Palau, Republic of Panama
Armenia	Greece	Paraguay
Australia	Guatemala	Peru
Austria	Henderson Island	Pitcairn
Azerbaijan	Holy See	Poland
Bahamas	Honduras	Portugal
Belgium	Hungary	Romania
Belize	Iceland	Russia
Bermuda	India	San Marino
Bolivia	Ireland	Saudi Arabia
Bosnia and Herzegovina	Island of Cyprus, Sovereign Base Areas of Akrotiri and Dhekelia	Serbia and Montenegro
Brazil	Isle of Man	Slovakia
British Indian Ocean Territory	Israel	Slovenia
Bulgaria	Italy	Spain
Canada	Japan	St. Helena and St. Helena Dependencies
Cayman Islands	Kazakhstan	Suriname
Chile	Korea, Republic of (formerly South Korea)	Sweden
Costa Rica	Latvia	Switzerland
Croatia	Liechtenstein	Thailand
Cyprus	Lithuania	Tonga
Czech Republic	Luxembourg	Trinidad/Tobago
Denmark	Macedonia, Republic of Malta	Turkey
Ducie and Oeno Islands	Marshall Islands	Ukraine
Ecuador	Mauritius	United Kingdom
El Salvador	Mexico	United States
Estonia	Micronesia, Federated States of Moldova	Uruguay
Falkland Islands	Mongolia	Venezuela
Finland	Montserrat	Virgin Islands, British
France		