



*Embassy of the United States of America*

The Ministry of Foreign Affairs has informed the Embassy that Japan will officially accede to the Council of Europe Convention on the Transfer of Sentenced Persons on June 1, 2003. Although we expect the first prison transfer to be at least 12 months from this start date, or June 2004, we would like to share with you what information we have available about the program as well as query if you would be interested in participating, assuming you are eligible. Please read the enclosed documents carefully.

- **If you are interested in a transfer, please sign in the upper box, complete the prisoner transfer application questionnaire and return both to us.**
- **If you are not interested at this time, we ask that you nevertheless sign in the lower box and return this letter to us.**

Stating that you do not wish to be transferred will not prejudice the ultimate decision should you change your mind later. We would simply ask that you retain the questionnaire for later submission, if desired.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

**I do NOT wish to be considered for transfer to the United States of America to complete my sentence at this time.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

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*Embassy of the United States of America  
Tokyo, Japan*

## **Summary Fact Sheet on Prisoner Transfer Treaty**

The Ministry of Foreign Affairs has informed the Embassy that Japan will officially accede to the Council of Europe Convention on the Transfer of Sentenced Persons on June 1, 2003. Based on experience with other member countries, we expect that the processing of paperwork necessary for transfers to be effected will likely take roughly 12 months from this start date – **do not expect to be transferred before June 2004**. We thought it might be useful to provide you with some information regarding the program, and what you may expect in the future.

An American prisoner is not eligible for transfer to the United States until he has been sentenced by the foreign country. Once sentencing occurs 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. **You will not be transferred against your will.**

Many prisoners sentenced for crimes overseas who are contemplating transfer have asked if a transferred prisoner would have a prior record in the United States. A **transferred prisoner will have a record in NCIC** (National Crime Information Center) 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 decision whether to transfer an American citizen back to the United States is made by the United States Department of Justice.** The U.S. Embassy is not directly involved beyond confirming that the prisoner is in fact a citizen of the United States of America. There is **nothing you can do now that will speed up a potential transfer except indicating your desire to transfer on the attached form**. Once the Japanese government develops its own system for handling transfers and briefs us on it, we will pass on all the information we have at that time. You will hear rumors and statements from prisoners of other nationalities. Please understand that prisoner transfer can work differently for different countries: No doubt some will happen faster, and some slower, than for Americans.

We hope this preliminary information is useful to you. You do not need to write to us for more information -- we will share more with you as it becomes available.

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*Embassy of the United States of America  
Tokyo, Japan*

## **Background Information on Prisoner Transfer Treaty**

The Ministry of Foreign Affairs has informed the Embassy that Japan will officially accede to the Council of Europe Convention on the Transfer of Sentenced Persons on June 1, 2003. Based on experience with other member countries, we expect that the processing of paperwork necessary for transfers to be effected will likely take 12 months, or June 2004. We thought it might be useful to provide you with some information regarding the program, and what you may expect in the future.

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. Once sentencing occurs the application process can be initiated.

In addition to the requirement that the prisoner be sentenced, there are other general requirements that must be satisfied before a transfer can occur. The judgment and sentence must be final which means that there can be no pending appeals or collateral attacks. 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 may prohibit the transfer of certain types of offenses such as immigration, military and political offenses.

A prisoner who is interested in transferring may wish to 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

Please remember that Japanese prison regulations must be followed. If the prisoner wants to write to the Defender Services Division, he must submit a written request form to the prison authorities requesting permission to do so. In the letter to the FPD, 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 cites;
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) 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.

If, after receiving the information from the FPD, the prisoner still wishes to transfer, he should apply for transfer to the foreign government. Thereafter, the foreign government with the American Embassy will assemble the necessary documents 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 (proof of citizenship) and information regarding the prisoner classification and conduct. Once these documents are assembled they will be forwarded to the International Prisoner Transfer Unit ("IPTU") of the Criminal Division of the Department of Justice. The IPTU will review the application and decide whether to approve the request. If both the IPTU and the foreign government approve the request,

the IPTU will make arrangements for a consent verification hearing. At the consent verification hearing which is presided by a federal magistrate and where the prisoner is represented by a FPD, a determination is made whether the prisoner understands the outcome of the transfer and whether he consents to the transfer. If the prisoner consents to the transfer, arrangements are made with the Federal Bureau of Prisons and the foreign government to transport him back to the United States where he will be incarcerated in a federal prison.

The decision whether to transfer an American citizen back to the United States is made by the United States Department of Justice. The U.S. Embassy is not directly involved beyond confirming that the prisoner is in fact a citizen of the United States of America. The decision-making authority is vested in the Department of Justice because the determination whether to transfer an offender primarily affects criminal justice functions of the government rather than political or diplomatic functions.

Once the prisoner is returned to the United States, 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 length of sentence that should be imposed under the applicable 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 released that will apply when the prisoner is released from prison.

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 "[www.usdoj.gov/criminal/oeo/](http://www.usdoj.gov/criminal/oeo/)". 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. **PRIVACY ACT WAIVER** — to authorize the Department of Justice to discuss a case with an attorney, with family members, or with others, the prisoner needs to send the International Prisoner Transfer Unit a waiver. No particular form need be followed, though it should include the following information:

I (*name of prisoner*) do hereby authorize the United States Department of Justice to discuss my application for an international prisoner transfer with (*name(s) of any authorized persons, along with telephone numbers and/or addresses for the authorized persons*).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Many prisoners sentenced for crimes overseas who are contemplating transfer whether a transferred prisoner would have a "prior record" or "criminal record" in the United States. This depends on what is meant by "record." A transferred prisoner will have a record in NCIC (National Crime Information Center) 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.

If the prisoner is concerned about civil disabilities because of the 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) these disabilities 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. 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 with regard to a foreign conviction. 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 U.S. 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. However a judge may be aware of the prior conviction abroad because of the transfer or because of investigations made prior to sentencing. Even though the judge 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.

A number of prisoners have asked about safety and security conditions inside Federal Prisons. The Federal Prison system is administered by the Bureau of Prisons, whose vision statement contains the following excerpt: "The Bureau ensures the physical safety of all inmates through a controlled environment which meets each inmate's need for security through the elimination of violence, predatory behavior, gang activity, drug use, and inmate weapons. Through the provision of health care, mental, spiritual, educational, vocational and work programs, inmates are well prepared for a productive and crime free return to society."



**PRISONER TRANSFER APPLICATION QUESTIONNAIRE**  
**CUESTIONARIO DE SOLICITUD PARA TRANSFERENCIA DE PRESOS**

Instructions: Please answer each question completely. You should type or print your answers.  
Instrucciones: Por favor, conteste por completo todas las preguntas. Debe escribir sus respuestas a máquina o en letras de molde.

Name / Nombre \_\_\_\_\_, \_\_\_\_\_  
last name / apellido(s) first name / nombre

Birth name (if different) / Nombre de nacimiento (si fuera diferente):

Other names used / Otros nombres utilizados:

Prison where incarcerated / Prisión donde está encarcelado(a):

Prisoner number / Número del preso:

True date of birth / Fecha de nacimiento real:

(day/día) / (month/mes) / (year/año)

Place of birth / lugar de nacimiento:

Country of citizenship / Nacionalidad:

Date of sentencing and length of sentence / Fecha de sentencia y duración de la sentencia:

8. Type of offense/tipo de delito:

9. Do you have an appeal or other legal challenge pending? / ¿Tiene pendiente algún recurso de apelación u otra demanda legal?

[ ] yes / sí or / o [ ] no / no

10. Languages spoken / Idiomas que habla:

[ ] English, [ ] Español, [ ] Français, [ ] Português, [ ] Dutch, [ ] German,  
[ ] other / otro: \_\_\_\_\_.

11. How long have you lived abroad? / ¿Cuánto tiempo ha vivido en el extranjero?

12. Have you contacted your consulate regarding your application? (Please mark with an "X") / ¿Se ha puesto en contacto con su consulado acerca de su solicitud? (Por favor, marque con una "X"):

yes/sí or/o  no/no

13. What is your current marital status? (Please read all and mark the most appropriate) / ¿Cuál es su estado civil actual? (Por favor, lea todas las respuestas y marque la más apropiada):

- single / soltero(a)  
 married / casado(a)  
 common law marriage / concubinato  
 separated or estranged / separado(a) oficialmente o de hecho  
 divorced / divorciado(a)  
 divorced and remarried / divorciado(a) y casado(a) de nuevo  
 long-term personal relationship / relación afectiva personal de largo plazo

14. What is the name and complete address of your spouse? / ¿Cuál es el nombre y la dirección completa de su esposo(a)?

Not applicable / no aplica

name / nombre: \_\_\_\_\_

address / dirección: \_\_\_\_\_

city / ciudad: \_\_\_\_\_

state / estado: \_\_\_\_\_

country / país: \_\_\_\_\_

telephone/teléfono: \_\_\_\_\_

15. Do you have any children? / ¿Tiene hijos?

yes / sí or / o  no / no

16. What are the names, ages and complete addresses of your children? (If more than four, use back.) / ¿Cuáles son los nombres, las edades y las direcciones completas de sus hijos? (Si tiene más de cuatro hijos, utilice el dorso.)

Not applicable / no aplica

Name/nombre:	_____	Name/nombre:	_____
age/edad:	_____	age/edad:	_____
address/dirección:	_____	address/dirección:	_____
	_____		_____
city/ciudad:	_____	city/ciudad:	_____
state/estado:	_____	state/estado:	_____
country/país:	_____	country/país:	_____

Name/nombre:	_____	Name/nombre:	_____
age/edad:	_____	age/edad:	_____
address/dirección:	_____	address/dirección:	_____
	_____		_____
city/ciudad:	_____	city/ciudad:	_____
state/estado:	_____	state/estado:	_____
country/país:	_____	country/país:	_____

17. Who are your closest relatives and where do they live? / ¿Quiénes son sus parientes más cercanos y dónde viven?

Mother/madre		Father/padre	
Name/nombre:	_____	Name/nombre:	_____
address/dirección:	_____	address/dirección:	_____
	_____		_____
city/ciudad:	_____	city/ciudad:	_____
state/estado:	_____	state/estado:	_____
country/país:	_____	country/país:	_____

Relationship/parentesco:		Relationship/parentesco:	
Name/nombre:	_____	Name/nombre:	_____
address/dirección:	_____	address/dirección:	_____
	_____		_____
city/ciudad:	_____	city/ciudad:	_____
state/estado:	_____	state/estado:	_____
country/país:	_____	country/país:	_____

18. Education level / nivel de educación:

19. Occupation / ocupación:

20. Work history for 10 year period prior to incarceration. / Historial de trabajo para el período de 10 años antes del encarcelamiento.:

21. Have you ever previously received an international prisoner transfer? / ¿Se le ha concedido alguna vez antes una transferencia internacional de prisionero?

yes / sí or / o  no / no

If yes, when and from which country were you transferred? / En caso afirmativo, ¿cuándo y de qué país se le transfirió?

22. Have you ever been deported from a country? / ¿Alguna vez se le ha deportado de un país?

yes / sí or / o  no / no

If yes, when and from which country were you deported? / En caso afirmativo, ¿cuándo y de qué país lo deportaron?

23. Is there any additional information you believe is pertinent to your application to transfer? / ¿Hay cualquier otra información que usted considere pertinente para su solicitud de transferencia?

**I hereby request a transfer to the United States of America to complete my sentence and I authorize the disclosure and release of information necessary to process my request to transfer. / Por este medio, solicito una transferencia a mi país del cual soy ciudadano para seguir cumpliendo mi sentencia y autorizo la divulgación de cualquier información requerida para tramitar mi solicitud de traslado..**

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Signature / Firma

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Date / Fecha