CHAPTER 2

TRANSFER TO UNITED STATES: STATUTES

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§2-1 Legislative History

Federal legislation “to provide for the implementation of treaties for the transfer of offenders to or from foreign countries” was enacted in 1977.1 It provides for transfer of offenders sentenced to probation or who have been paroled in sentencing countries as well as to those serving prison sentences. However, because foreign offenders on probation or parole in sentencing countries are routinely deported to their countries of nationality and are not subject to supervision after their return, none have elected to transfer the execution of probation or parole, and none are likely to do so. Consequently, this treatise does not discuss the legislative provisions applicable to the transfer of offenders on probation or parole in the sentencing country.2

The Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act of 1984)3 made significant changes in the original legislation with respect to the manner in which the foreign sentences of transferring Americans are executed in the United States. However, because of the failure of the Act to adequately take account of its effect on the service of

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2 Chapter 8, infra, discusses treaties on the transfer of the supervision of probationers and parolees, which would not require their consent, and the possibility of the United States becoming a party to such a treaty.
transferred sentences in the United States, additional amendments to the Act to correct its deficiencies were enacted in 1987\(^4\) and 1988.\(^5\)

The legislative provisions relating directly to the implementation of prisoner transfer treaties are contained in the following sections of the United States Code: 18 U.S.C. §§4100 to 4115; 18 U.S.C. §3244; 28 U.S.C. §636(g); and 10 U.S.C. §955. These provisions are set forth in Appendix A, and their requirements are analyzed below.

§2-2 Requirements for Transfer to Take Place

(1) Requirement of Treaty

Subsection 4100(a), title 18, United States Code, provides that the “chapter relating to the transfer of offenders shall be applicable only when a treaty providing for such a transfer is in force, and only shall be applicable to transfers of offenders to and from a foreign country pursuant to such a treaty.”

In commenting on this requirement, the House Judiciary Committee stated:

Subsection 4100(a) requires that procedures detailed in this legislation can only be applied if there is an applicable treaty. This is the same as in the case of extradition (18 U.S.C. 3181).\(^6\) Thus, agreements for the transfer of prisoners shall be in the form of treaties.

The proposed legislation does not refer specifically to all conditions which the . . . treaties impose on the transfer of an offender. There is some divergence . . . [among] those . . . treaties and additional treaties may include conditions not included in the present treaties. Therefore S. 1682 [P.L. 95-144] has been designed to accommodate the differences . . . [among] the . . . treaties as well as any future treaties.

This subsection provides that the authorization to transfer offenders is limited to transfers pursuant to such a treaty. Therefore, all of the conditions contained in the . . . treaties, other than those pertaining to the consent of the offender, are exclusively the concern of the contracting Parties, that is the countries involved.\(^7\)


\(^{5}\) Pub. L. No. 100-690, §7101, 102 Stat. 4415 (1988). There have been only minor, nonsubstantive amendments to these provisions since 1988.

\(^{6}\) See M. Abbell, Extradition to and from the United States, §2-2(1).

\(^{7}\) H.R. Rep. No. 720 at 3150 (see Ch. 1, note 13, supra). See also United States v. Porat, 17 F.3d 660, 668-71 (3d Cir. 1994) (United States courts lack the power, pursuant to the prisoner transfer implementing legislation or any other statute, to impose a sentence of imprisonment or supervised release to be served in a foreign country); United States v. Shakur, No. 82 Cr. 312 (CSH) (S.D.N.Y. 1990) (1990 WL 200646) (same).