DEPARTMENT OF CORRECTIONS

Policy Number:	**203.115**
Title:	**Consular Notification and International Prisoner Transfer**
Effective Date:	**1/7/20**

PURPOSE: To provide procedures for ensuring consular notification regarding foreign national offenders and processing applications for international prisoner transfers.

APPLICABILITY: All facilities and field services.

DEFINITIONS:

Collateral attack – a legal challenge, other than by direct appeal, to the validity of a criminal conviction or sentence. Examples include a petition for postconviction relief under Minn. Stat. § 590.01; a motion for correction or reduction of sentence under Minn. R. Crim. P. 27.03, subd. 9; or a federal habeas petition under 28 U.S.C. § 2254. State or federal habeas petitions that challenge the administrative execution of a sentence are not collateral attacks on the underlying conviction or sentence itself.

Consular officer ("consul") – an official of a foreign government authorized to provide assistance to that government's citizens in another country.

Diplomatic officer ("diplomat") – a foreign official assigned to an embassy in Washington, D.C. Diplomatic officers are often authorized by their government to act as consular officers.

Foreign national – any person who is not a United States citizen, including a lawful permanent resident who has a resident alien registration card (i.e., "green card"). A foreign national may be identified by possession of a foreign passport or alien registration document, or by their own verbal admission. A person who is a dual citizen of the United States and another country may be treated exclusively as a U.S. citizen for purposes of consular notification requirements.

Honorary consul – a citizen or lawful permanent resident of the United States who has been authorized by a foreign government to act as a consular officer on that government's behalf.

International Prisoner Transfer Program – a program that allows foreign national offenders, including those with dual citizenship in the United States, to be transferred to countries with which the United States has a prisoner transfer treaty to serve out their sentences closer to home and facilitate their rehabilitation. Transfers require the approval of the state, the federal government, and the foreign country. A list of countries that have prisoner transfer treaties with the United States can be found at the U.S. Department of Justice's website concerning the International Prisoner Transfer Program.

PROCEDURES:

A. Consular Notification upon Initial Commitment

1. Once a newly committed offender is identified as a foreign national, the assigned caseworker or other staff designated by the warden must, as soon as reasonably possible, determine whether the offender is from a country with which the United States has a mandatory notification treaty. A list of mandatory notification countries can be found at

the U.S. Department of State's website for consular notification. Consular notification is mandatory for the listed countries, regardless of the offender's wishes.

2. If the offender is from a mandatory notification country, the caseworker or other designated staff must, as soon as reasonably possible, notify the country's nearest embassy or consulate of the offender's incarceration using the suggested fax sheet from the U.S. Department of State's website for consular notification. The completed sheet must either be faxed or emailed to the nearest consulate. Contact information for foreign embassies and consulates can be found at the U.S. Department of State's website for consular notification.

   a) The offender must also be informed, through an interpreter if necessary, that notification will be made and that the offender may communicate with consular officers. Staff should use words to the following effect:
   Because of your nationality, we are required to notify your country's consular officers here in the United States that you have been detained. We will do this as soon as possible. In addition, you may communicate with your consular officers. You are not required to accept their assistance, but your consular officers may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things.

   b) The caseworker or designated staff must note the date and time the offender was provided with the above information in the Correctional Operations Management System (COMS). A copy of the fax and fax confirmation sheet, or sent e-mail, regarding consular notification must be placed in the offender's electronic file.

3. If the offender is from a country that is not listed as a mandatory notification country, the caseworker or other designated staff must, as soon as reasonably possible, inform the offender of the opportunity to have consular officers notified of the incarceration and to communicate with them.

   a) When conveying this information, staff should use words to the following effect:
   As a non-U.S. citizen who is being confined, you may request that we notify your country's consular officers here in the United States of your situation. You may also communicate with your consular officers. A consular officer may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things. If you want us to notify your consular officers, you can request this notification now, or at any time in the future. Do you want us to notify your consular officers at this time?

   b) If the offender wishes to have the consulate notified, the caseworker or other designated staff must do so by faxing or emailing the suggested fax sheet to the foreign country's nearest embassy or consulate (see Procedure A.2). Staff must note the offender's request in COMS and place a copy of the fax or e-mail in the offender's electronic file.

   c) If the offender declines consular notification, the caseworker or other designated staff must note this in COMS and need not take any further action unless the offender later indicates a desire to have the consulate notified.

4. Staff must never disclose to a consular officer whether an offender has applied for asylum in the United States. If a consular officer insists on information the offender does not want disclosed, staff should contact the U.S. Department of State for guidance.

B. Consular Notification for Release Violators

Whenever a foreign national offender is taken back into custody following the revocation of parole, supervised release, or conditional release, the caseworker or other designated staff must follow the consular notification procedures set forth above in Procedure A.

C. Consular Notification upon Death or Serious Illness or Injury

1. When a foreign national offender dies while in custody, the caseworker must promptly notify the nearest embassy or consulate of the offender's death by faxing or e-mailing the suggested fax sheet from the U.S. Department of State's website for consular notification. See Policy 203.230, "Death of an Offender."

2. The caseworker or other designated staff must follow similar procedures whenever it comes to their attention that a foreign national offender has a potentially life-threatening illness or injury.

D. Access of Consular Officers

Consular officers, honorary consuls, and diplomatic officers will be allowed legal phone calls and official visits with the offender. Calls with consular officials must be arranged in the same manner as attorney phone calls (see Policy 302.210, "Offender Telephone Use"). Consular officials must present identification from the U.S. Department of State for visits and must comply with all visitation procedures, including searches.

E. International Prisoner Transfer

1. Notification of International Prisoner Transfer Program

To ensure foreign national offenders are aware of the opportunity to apply for an international transfer, information about the International Prisoner Transfer Program is included in the Offender Handbook distributed during initial intake and orientation. See Policy 202.051, "Offender Handbook."

2. Basic Eligibility Criteria

a) Offenders, including those on parole or supervised release, who meet the following criteria are eligible to apply for transfer to a foreign country:

(1) The offender is a citizen or national of the foreign country;
(2) The foreign country is a party to a prisoner transfer treaty with the U.S.;
(3) The offense of conviction is recognized as a crime in the foreign country;
(4) The offender has no pending appeals or collateral attacks on his current convictions(s) or sentence(s); and
(5) At least six months remain on the offender's sentence.

b) If an offender has a pending appeal or collateral attack on the criminal judgment, the caseworker or supervision agent should advise the offender that they are not eligible for transfer until the court proceedings have concluded.

c) Offenders who are dual citizens of the United States and a foreign country are eligible to apply for a transfer to that foreign country.

3. Applying for an International Transfer

a) Offenders who meet the basic eligibility criteria may apply for a transfer to their home country by completing the following forms and submitting them to their caseworker (if incarcerated) or supervision agent (if in the community):

(1) International Prisoner Transfer Application (attached); and

(2) Authorization to Release Information (attached).

b) Offenders who wish to transfer to Canada must also complete a Request for Transfer to Canada Form (CSC/SCC 0308E) and Information Form in Support of a Request for Transfer to Canada (CSC/SCC 0614e).

c) Within 45 days of receiving the offender's application forms, the caseworker or supervision agent must complete a Certified Case Summary (attached) and prepare an application packet containing the following materials:

(1) Offender's application forms;

(2) Completed Certified Case Summary;

(3) Judgement(s) of conviction and sentence for current offenses (e.g., warrant of commitment, sentencing order);

(4) Presentence Investigation Report(s) for current offenses (if available);

(5) FBI fingerprint card and photograph (if available);

(6) Sentence calculation, including length of sentence, jail credit given, projected release date, and expiration date;

(7) Progress reports regarding the offender's classification level, discipline history, institutional work record, education, program participation, and medical/mental health issues;

(8) Copy of the offender's birth certificate or passport (if available);

(9) Information regarding the offender's immigration status, including any ICE detainers or orders for supervision;

(10) Information regarding the offender's family members and their residences to the extent known; and

(11) Visiting and emergency contact information.

d) Once complete, the caseworker or supervision agent must forward the application packet to the Office of the Commissioner of Corrections for review. Completed application materials for international prisoner transfers are retained by the Office of Legal Affairs Unit.

e) During the initial application process, the caseworker or supervision agent should advise the offender to contact the nearest consular office about their desire to be considered for a transfer. Foreign officials may have documents for the offender to complete and return to the local consulate so that the consular office can verify citizenship and facilitate processing the transfer request in the home country.

4. Approval Process

a) If the commissioner approves the transfer request, the application will be forwarded to the governor for approval and, if applicable, the U.S. Department of Justice (DOJ). An offender may only be transferred if the commissioner, the governor, the DOJ, and the foreign country all approve the transfer request.

b) If the commissioner denies the transfer request, the application will not be forwarded to other officials for further review. The commissioner will inform both the offender and the DOJ of the denial by letter.

5. Reapplication

a) An offender whose prior transfer application was denied by state or federal officials may reapply for a transfer three years from the date the last application was denied. The denial date is the date listed on the letter informing the offender that the application was denied.

(1) An offender may only reapply before the end of the three-year period if the previous denial was based on non-compliance with a basic eligibility requirement that has since been satisfied, such as the resolution of a pending appeal or a new prisoner transfer treaty between the offender's home country and the United States.

(2) An offender who was previously approved for a transfer by state and federal officials but denied a transfer by the foreign country must address any questions about the denial directly with the foreign country.

b) Offenders who wish to reapply for transfer to a foreign country must complete new application forms (see Procedure E.3(a) above) and submit them to their caseworker or supervision agent.

c) Caseworkers and supervision agents need not prepare a complete application packet in reapplication cases. Staff must, however, complete an updated Certified Case Summary and supplement the original application packet with any new pertinent information concerning:

(1) The offender's classification level, discipline history, institutional work record, program participation, and medical/mental health issues;

(2) The offender's family members and their residences to the extent known;

(3) Sentence calculation, including new or amended sentencing documents; and

(4) Visiting and contact lists.

6. Transportation to Consent Verification Hearing

a) If state, federal, and foreign officials all approve a transfer request, the DOJ will schedule a consent verification hearing before a federal magistrate judge to verify the offender's consent to being transferred.

b) Once department staff have been informed that a consent verification hearing has been scheduled, they must notify the associate warden of operations (AWO) of the offender's facility that an international transfer has been approved, the time of the consent verification hearing, and forward copies of the approval documents. The AWO must ensure all necessary arrangements to facilitate the offender's transfer are completed and all appropriate operations units, such as records, transport, property, health services, and finance, are notified.

c) The facility housing the offender is responsible for their transportation to the consent verification hearing. Transport staff must remain with the offender until the end of the hearing, in case the offender decides not to consent to transfer. If the offender does not consent to transfer at the hearing, transport staff must return the offender to the facility.

d) Once the hearing is completed and the offender has consented to transfer, the U.S. Marshals will take custody and transport the offender to a federal facility pending international transfer.

INTERNAL CONTROLS:

A. Information regarding consular notification is retained in COMS or the offender's electronic file.

B. Completed application materials for international prisoner transfers are retained by the Office of Legal Affairs Unit.

ACA STANDARDS: 4-4280

REFERENCES:
Minn. Stat. § 243.515
18 U.S.C. Chapter 306 (§§ 4100 *et seq.*), Transfer to or from Foreign Countries
Policy 202.051, "Offender Handbook"
Policy 203.230, "Death of an Incarcerated Offender"
Policy 302.020, "Mail"
Policy 302.100, "Visiting"
Policy 302.210, "Offender Telephone Use"
U.S. Department of Justice, International Prisoner Transfer Program
U.S. Department of State, consular notification

REPLACES:
Policy 203.015, "Consular Notification and International Prisoner Transfer" 8/21/18.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS:
International Prisoner Transfer Application (English and Spanish) (203.115A)
Authorization to Release Information (203.115BEnglish)
Authorization to Release Information (203.115BSpanish)
Certified Case Summary for State of Minnesota Offender (203.115C)

APPROVALS:
Deputy Commissioner, Community Services
Deputy Commissioner, Facility Services
Assistant Commissioner, Operations Support
Assistant Commissioner, Facility Services