

103 CMR: DEPARTMENT OF CORRECTION

103 CMR 462.00: INTERNATIONAL TRANSFER POLICY

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462.01: Purpose

The purpose of 103 CMR 462.00 is to establish procedures for foreign nationals to pursue a transfer back to their country of origin.

462.02: Statutory Authorization

103 CMR 462.00 is issued pursuant to M.G.L. c. 124, §1(q), and 127, § 97B.

462.03: Cancellation

103 CMR 462.00 cancels all previous Department of Correction (Department) policy statements, bulletins, directives, orders, notices, rules or regulations regarding international transfers which are inconsistent with 103 CMR 462.00.

462.04: Applicability

103 CMR 462.00 is applicable to all foreign nationals serving a Massachusetts state sentence either within the Massachusetts Department of Correction, any county facility, another state or the federal government

462.05: Access

103 CMR 462.00 shall be maintained within the central policy file and in the central policy file at each correctional institution and at each inmate library.

462.06: Definitions

Administrator - The administrator of the international transfer program is the Commissioner's designee responsible for developing, implementing, and monitoring Department initiatives in the area of international transfers of inmates. The Assistant Deputy Commissioner of Classification is designated as the administrator of the international transfer program.

Classification - A system by which each inmate's needs are regularly assessed in relation to the inmate's placement and program resources. Classification regulations are found at 103 CMR 420.00.

Commissioner - The chief executive officer of the Department.

462.06: continued

Foreign National - An inmate incarcerated in a Massachusetts state prison who is not a United States citizen or who has dual citizenship status with the United States and another country.

Receiving Country - The country to which a foreign national may be transferred.

Sentence - Any punishment or measure involving deprivation of liberty ordered by a court on account of a criminal offense.

462.07: Notification to Inmates of International Transfer Program

- (1) Foreign nationals shall be notified about the potential for a return to their home country.
- (2) During the initial intake or classification process, following a foreign national's commitment to the state prison system, a foreign national shall be given a form by which he/she may declare his/her initial intention upon being notified of the transfer possibility.
- (3) Foreign nationals shall be allowed access to the diplomatic representative of their country of citizenship pursuant to 103 CMR 481.00: *Inmate Mail*, 103 CMR 482.00: *Telephone Access and Use*, and 103 CMR 483.00: *Visiting Procedures*.

462.08: Eligibility Criteria

An inmate meeting the following general eligibility criteria may request a transfer to his/her home country (the receiving country), provided that the receiving country is a party to a prisoner transfer treaty with the United States and provided:

- (1) That the inmate is a national of the receiving country; and
- (2) That the acts or omissions upon which the sentence was imposed constitutes a criminal offense according to the law of the receiving country or would constitute a criminal offense if committed on its territory.

462.09: Initiation of Transfer Application

An inmate meeting the necessary eligibility criteria may initiate consideration of an international transfer by submitting an application form to a correction program officer.

462.10: Department of Correction Discretionary Review Process

- (1) Within thirty (30) days following the receipt of an application form, the designated staff member at the facility in which the inmate is currently incarcerated shall schedule a classification review to consider the inmate for transfer to the inmate's home country (the receiving country). All classification reviews shall be held in accordance with Department regulations concerning classification, 103 CMR 420.00. Additionally, in any instance where an inmate is being considered for international transfer, following the superintendent's decisions, the classification review shall be forwarded to the administrator of the international transfer program (Assistant Deputy Commissioner of Classification), for review and decision. If approved by the administrator, the classification materials shall be forwarded to the Commissioner for final review.
- (2) If the Commissioner approves the transfer request, the application shall be forwarded to the Governor's Office or designee.
- (3) If the Commissioner does not approve the transfer request, the application shall not be forwarded to the Governor's Office or designee.

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462.11: Other Review Processes

(1) In addition to approval by the Commissioner, an inmate's transfer application shall also be approved by each of the following: the Governor's Office; the United States Department of Justice; and the receiving country. Denial by any one of the three reviewing authorities constitutes a denial of an inmate's transfer application; however, an inmate may reapply one (1) year from the date of denial of his application.

(2) If the transfer request is approved by all of the reviewing authorities, the inmate shall receive a hearing before a United States Magistrate at which time the magistrate shall determine whether the inmate consents to the transfer. If so, and provided that no proceeding by way of any appeal or of collateral attack is pending in Massachusetts and the inmate has waived all rights of appeal or collateral attack, the inmate shall be transferred.

462.12: Effect of Transfer Upon Sentence Being Served

Unless modified by a treaty, the receiving country shall be bound by the legal nature and duration of the sentence as imposed by Massachusetts. The receiving country shall not aggravate, by its nature or duration, the sentence imposed by Massachusetts.

462.13: Transporting Inmate to Receiving Country

Following approval of an international transfer request, the administrator or a designee shall make the necessary arrangements with the United States marshals to assume custody of the inmate so that they can deliver the inmate to the receiving country.

462.14: Emergencies

Whenever in the opinion of the Commissioner or a designee, or the superintendent of a state correctional facility, an emergency exists which requires suspension of all or part of 103 CMR 462.00, the Commissioner or a designee or the superintendent may authorize such suspension, provided, that any suspension lasting more than forty-eight (48) hours shall be approved by the Commissioner.

462.15: Responsible Staff

(1) The superintendent of each institution shall be responsible for implementing and monitoring 103 CMR 462.00 within the institution.

(2) The administrator of the international transfer program or a designee shall be responsible for implementing and monitoring 103 CMR 462.00 throughout the Department.

462.16: Annual Review

103 CMR 462.00 shall be reviewed annually by the Commissioner or a designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the central policy file indicating that the review has been completed. Recommendations for revisions or deletions shall be included. An updated listing of current signatories to prisoner transfer treaties shall be obtained from the United States Department of Justice.

462.17: Severability Clause

If any article, section, subsection, sentence, clause or phrase of 103 CMR 462.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the Commissioner's authority or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 462.00.

REGULATORY AUTHORITY

103 CMR 462.00: M.G.L. c. 124, § 1(q); c. 127, § 97B.

