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ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D. C. 20544

TRANSMITTAL 14 VOLUME VII CHAPTER II

FOR THE GUIDE TO JUDICIARY POLICIES AND PROCEDURES

TO: JUDGES, UNITED STATES COURTS OF APPEALS
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT EXECUTIVES
FEDERAL PUBLIC/COMMUNITY DEFENDERS
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
CLERKS, UNITED STATES DISTRICT COURTS
CHIEF PROBATION OFFICERS
CHIEF PRETRIAL SERVICES OFFICERS
SENIOR STAFF/CHIEF PREARGUMENT ATTORNEYS
CIRCUIT LIBRARIANS

FROM:

Leonidas Ralph Mecham



SUBJECT:

Revisions to Appointment of Counsel in Criminal Cases, Volume VII,
Guide to Judiciary Policies and Procedures

Attached are revised pages to Appointment of Counsel in Criminal Cases, Volume VII, *Guide to Judiciary Policies and Procedures*. They reflect changes in Section A, Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines), resulting from the November 13, 2000 enactment of the Federal Courts Improvement Act of 2000 (FCIA), Pub. L. No. 106-518, and Judicial Conference action in September 2001. Also included are technical corrections to the CJA Guidelines, and to Section B, Regulations for the Appointment of Counsel Pursuant to a Prisoner Transfer Treaty. Specifically, this transmittal contains:

- 1) a new subparagraph 2.27 D, reflecting implementation of the FCIA amendment to subsection (d)(1) of the Criminal Justice Act (CJA), 18 U.S.C. § 3006A, that authorizes courts to reimburse panel attorneys for expenses reasonably incurred in defending actions alleging malpractice in furnishing representational services under the CJA;
- 2) a revised Appendix A, containing changes to item 10 in the instructions to CJA Form 20 (Appointment of and Authority to Pay Court Appointed Counsel), and to item 9 in the instructions to CJA Form 30 (Death Penalty Proceedings: Appointment of and

Authority to Pay Court Appointed Counsel), relating to reimbursement of panel attorney expenses incurred in defending against alleged malpractice actions arising from their CJA services; and

- 3) a revised Section B, Appendix A, setting forth the current text of 18 U.S.C. §§ 4100-4115, pertaining to the transfer of prisoners to or from foreign countries pursuant to a prisoner transfer treaty, which includes provisions regarding the appointment of counsel and guardians ad litem in connection with such transfers.

Please replace the applicable pages of Sections A and B of Volume VII with the corresponding revised pages (attached) as follows:

Section A (*Guidelines for the Administration of the Criminal Justice Act and Related Statutes*)

<u>Remove Previous</u>	<u>Insert Attached</u>	<u>Dated</u>
Table of Contents Pages iii, iv	Table of Contents Pages iii, iv	2/8/02
Chapter II Pages i, ii, 21-24	Chapter II Pages i, ii, 21-25	2/8/02
Appendix A Pages i, ii, 5, 6, 37, 38	Appendix A Pages i, ii, 5, 6, 37, 38	2/8/02
Index Pages 7-16	Index Pages 7-16	2/8/02

Section B (*Regulations for the Appointment of Counsel Pursuant to a Prisoner Transfer Treaty*)

<u>Remove Previous</u>	<u>Insert Attached</u>	<u>Dated</u>
Appendix A Pages 1-7	Appendix A Pages 1-9	2/8/02

Questions concerning the attached materials should be directed to the Defender Services Division, Duty Attorney, on 202-502-3030.

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attributable to the performance of the attorney's duties under the Act. In determining whether such travel time should be so apportioned, the court may consider the time reasonably expended in the performance of the attorney's duties under the Act, in relation to the time expended furthering other purposes of the trip, the significance to the representation of the duties performed, and the likelihood that the attorney would have made the trip to perform the duties under the Act in the absence of the other purposes for making the trip.

2.27 Reimbursable Out-of-Pocket Expenses. Out-of-pocket expenses reasonably incurred may be claimed on the voucher, and must be itemized and reasonably documented. Expenses for investigations or other services under subsection (e) of the Act shall not be considered out-of-pocket expenses.

A. Reimbursement for Transcripts.

- (1) Generally, court reporters or reporting services which furnish court authorized transcripts in CJA cases claim and receive compensation for their services on the CJA Form 24, "Authorization and Voucher for Payment of Transcript," (See paragraph 3.12 of these Guidelines). While this is the preferred method for payment of transcripts, if assigned counsel has elected to pay for the court authorized transcripts "out-of-pocket," the cost may be claimed as a reimbursable expense, as provided for in subsection (d)(1) of the Criminal Justice Act. However, unlike most reimbursable expenses, which should be claimed on the CJA Form 20, "Appointment of and Authority to Pay Court Appointed Counsel," reimbursement to the attorney who has paid for the transcript as an "out-of-pocket" expense should be claimed on a CJA Form 24. (See Appendix A).
- (2) The cost of transcribing depositions in criminal cases is the responsibility of the Department of Justice pursuant to Rule 17b of Fed. R. Crim. P. (but when witness is an expert, then the Administrative Office will pay out of CJA funds)(53 Comp. Gen. 638 (1974)).

B. Travel Expenses. Travel by privately owned automobile should be claimed at the rate currently prescribed for federal judiciary employees who use a private automobile for conduct of official business, plus parking fees, ferry fares, and bridge, road, and tunnel tolls. Transportation other than by privately owned automobile should be claimed on an actual expense basis.

Per diem in lieu of subsistence is not allowable, since the Act provides for reimbursement of expenses actually incurred. Therefore, counsel's expenses for meals and lodging incurred in the representation of the defendant would constitute

reimbursable "out-of-pocket" expenses. In determining whether actual expenses incurred are "reasonable," counsel should be guided by the prevailing limitations placed upon travel and subsistence expenses of federal judiciary employees in accordance with existing government travel regulations.

Government travel rates at substantial reductions from ordinary commercial rates may be available from common carriers for travel authorized by the court in connection with representation under the CJA. To obtain such rates, attorneys must contact the clerk of the court and obtain prior approval from the presiding judicial officer.

- C. Interim Reimbursement for Expenses. Where it is considered necessary and appropriate in a specific case, the presiding judge or magistrate judge may, in consultation with the Administrative Office, arrange for interim reimbursement to counsel of extraordinary and substantial expenses incurred in providing representation in a case. Interim reimbursement should be authorized when counsel's reasonably-incurred, out-of-pocket expenses for duplication of discoverable materials made available by the prosecution exceed \$500.

- D. Reimbursement for Expenses Incurred Defending Malpractice Allegations. The CJA was amended by the Federal Courts Improvement Act of 2000, Pub. L. No. 106-518, to authorize courts to reimburse panel attorneys for expenses reasonably incurred in defending actions alleging malpractice in furnishing representational services under the CJA. The amendment covers expenses incurred on or after its effective date (November 13, 2000). No reimbursement shall be made if a judgment of malpractice is rendered against the attorney; in view of this prohibition, no reimbursement should be provided until the malpractice claim is resolved.

The total reimbursement shall not exceed the deductible amount of counsel's professional liability insurance policy or \$5,000, whichever is less. Expenses qualifying for reimbursement may include, but are not limited to, the costs of transcripts, witness fees and costs, and attorney fees. In determining reasonable attorney fees for this purpose, CJA rates are inapplicable. Reimbursement shall not include compensation for representing oneself in defending the action alleging malpractice, or, if represented by counsel, for time spent assisting that counsel in defending the action.

Reimbursement should be claimed under the expense categories on a CJA Form 20 (or, where the appointment was in a capital matter, CJA Form 30), and supporting documentation should be attached.

- E. Other. This would include items such as telephone toll calls, telegrams, copying (except printing -- see paragraph 2.28 D below) and photographs.

- 2.28 Non-reimbursable Items. Appointed counsel may not claim reimbursement for the following:
- A. General Office Overhead. General office overhead includes general office expenses which would normally be reflected in the fee charged to the client. The statutory fee is intended to include compensation for these general office expenses. Therefore, except in extraordinary circumstances (see paragraph 3.16), personnel, rent, telephone service, and secretarial expenses associated with CJA representation, whether work is performed by counsel or other personnel, are not reimbursable.
 - B. Items and Services of Personal Nature. The cost of items of a personal nature purchased for or on behalf of the person represented, such as purchasing new clothing or having clothing cleaned, getting a haircut, furnishing cigarettes, candy or meals, etc. Also, the cost of services of a personal nature and expenses incidental thereto which cannot be considered legal representation, such as assisting the defendant in the disposition of his or her personal property, arranging for the placement of minor children of the defendant, assisting the defendant in executing the conditions of probation, providing legal assistance in matters unrelated to the litigation of the case, although incidental to the defendant's arrest, etc.
 - C. Filing Fees. Attorneys should not be required to pay a filing fee in a Criminal Justice Act case inasmuch as such payment and reimbursement thereof is tantamount to the Government billing itself to accomplish a transfer of appropriated funds into the General Fund of the Treasury.
 - D. Printing of Briefs. The expense of printing briefs, regardless of the printing method utilized, is not reimbursable; however, the cost of mimeographing, "xeroxing," or similar copying service is reimbursable.
 - E. Service of Process. Witness fees, travel costs, and expenses for service of subpoenas on fact witnesses, are not payable out of the CJA appropriation but are governed by Rule 17, Fed. R. Crim. P. and 28 U.S.C. §1825.
 - F. Taxes. Taxes paid on attorney compensation received pursuant to CJA, whether _____ based on income, sales or gross receipts, are not reimbursable expenses.
- 2.29 Writ of Certiorari. Counsel's time and expenses involved in the preparation of a petition for a writ of certiorari are considered as applicable to the case before the United States Court of Appeals, and should be included on the voucher for services performed in that court.

2.30 Interim Payments to Counsel.

- A. Non-Death Penalty Cases. Where it is considered necessary and appropriate in a specific case, the presiding trial judge may arrange for periodic or interim payments to counsel. Appendix E (pages E-1 through E-6) contains instructions on the procedures for effecting interim payments to counsel, as well as a sample memorandum order on this subject which provides for two alternative payment methods. The payment options provided in the order are designed to strike a balance between the interest in relieving court-appointed attorneys of financial hardships in extended and complex cases, and the practical application of the statutorily imposed responsibility of the chief judge of the circuit to provide a meaningful review of claims for excess compensation. Other interim payment arrangements which effectuate this balance may be devised in consultation with the Defender Services Division of the Administrative Office of the United States Courts.
- B. Death Penalty Cases. Presiding judicial officers are urged to permit interim payments in death penalty cases. Since the Anti-Drug Abuse Act of 1988 effectively repealed the CJA hourly rates and case maximums with respect to death penalty cases, a separate set of procedures and a separate memorandum order should be used in those cases. These procedures and sample memorandum order are set forth in Appendix E, beginning on page E-7.

2.31 Law Student and Computer Assisted Legal Research

- A. Law Student. In some districts and circuits, arrangements have been made for the use of qualified law students to assist assigned counsel in trial preparation and in drafting briefs and arguments on appeal. Payment under the CJA in such instances may be made to assigned counsel only for compensable time spent by counsel plus allowable expenses. Allowable expenses for the attorney may include compensation paid to law students for legal research, but do not include reimbursement for expenses incurred by a law student in assisting appointed counsel.
- B. Computer Assisted Legal Research. The cost of use, by appointed counsel, of computer assisted legal research equipment, may be allowed as a reimbursable out-of-pocket expense, provided that the total amount approved for computer assisted legal research does not exceed the total amount of attorney compensation that reasonably would have been approved if counsel had performed the research manually. Whenever appointed counsel incurs charges for computer assisted legal research, counsel should attach to the compensation voucher the following:

- 1) a brief statement setting forth the issue or issues that were the subject matter of the research; and
- 2) an estimate of the number of hours of attorney-time that would have been required to do the research manually; and
- 3) a copy of the bill and receipt for the use of the equipment or an explanation of the precise basis of the charge (e.g., indicating the extent to which it was derived by proration of monthly charges, or by charges identifiable to the specific research).

(See paragraph 3.15 concerning claims for compensation for computer assisted legal research services performed by employees of commercial legal research firms or organizations).

- 2.32 Record Keeping. Appointed counsel must maintain contemporaneous time and attendance records for all work performed, including work performed by associates, partners, and support staff, as well as expense records. Such records, which may be subject to audit, must be retained for three years after approval of the final voucher for an appointment.

APPENDIX A

CRIMINAL JUSTICE ACT FORMS

1. List of Criminal Justice Act Forms:

CJA Form 7 - Order Terminating Appointment of Counsel and/or Authorization for Distribution of Available Private Funds (Revised 2/84)

CJA Form 19 - Notice to Court-Appointed Counsel of Public Disclosure of Attorney Fee Information (Revised 4/01)

CJA Form 20 - Appointment of and Authority to Pay Court Appointed Counsel (Revised 5/99)

CJA Form 21 - Authorization and Voucher for Expert and Other Services (Revised 5/99)

CJA Form 22 - Statement of Parolee or Mandatory Releasee Concerning Appointment of Counsel Under the Criminal Justice Act (9/76)

CJA Form 23 - Financial Affidavit (Revised 5/98)

NOTE: This form may be used in determining eligibility for the appointment of counsel or authorization of other services. Whether or not this affidavit shall be required, as opposed to using alternative means of determining the financial status of the "person represented," such as through oral swearing, will be at the court's discretion. Where a judge or the court requires a written affidavit for local court files, no copy should be submitted to the Administrative Office.

CJA Form 24 - Authorization and Voucher for Payment of Transcript (Revised 5/99)

CJA Form 25 - Notice to CJA Panel Attorneys Regarding Availability of Investigative, Expert and Other Services (Revised 6/94)

CJA Forms 26 and 27 - Supplemental Information Statement for a Compensation Claim in Excess of the Statutory Case Compensation Maximum (for use in district court and court of appeals, respectively) (Revised 10/00)

NOTE: These forms, which are designed only for non-capital cases, may be used at the discretion of the courts. They do not replace any other documentation requirements to support the payment request.

CJA Forms 26A and 27A - Guidance to Attorneys in Drafting the Memorandum Required for a Compensation Claim in Excess of the Case Compensation Maximum (for use in district court and court of appeals, respectively) (Revised 4/00)

NOTE: These forms, which are designed only for non-capital cases, may be used at the discretion of the courts and are offered as possible alternatives to Forms 26 and 27. They do not replace any other documentation requirements to support the payment request.

CJA Form 30 - Death Penalty Proceedings: Appointment of and Authority to Pay Court Appointed Counsel (Revised 5/99)

CJA Form 31 - Death Penalty Proceedings: *Ex Parte* Request for Authorization and Voucher for Expert and Other Services (Revised 5/99)

2. **Samples**: Sample copies of CJA Forms 7, 19, 20, 21, 22, 23, 24, 25, 26, 27, 26A, 27A, 30, and 31, along with explanatory notes and comments, are included in this appendix.
3. **Obtaining Forms**: WordPerfect versions of Forms 7, 20, 21, 22, 23, 24, 25, 26, 26A, 27, 27A, 30, and 31 are available on the J-Net (Forms/AO National Forms/CJA). <http://156.119.80.10/library/aofoms/contents.html>
4. **Questions/Suggestions**: Questions concerning any of these forms, or suggestions for improvement, should be addressed to the Defender Services Division, Administrative Office of the United States Courts, Washington, D.C. 20544 (202-502-3030).

INSTRUCTIONS FOR CJA FORM 20 APPOINTMENT OF AND AUTHORITY TO PAY COURT APPOINTED COUNSEL

Read these instructions carefully before completing the form. Accuracy and thoroughness will aid in the prompt payment of the claim. If possible, use a typewriter to complete the form; otherwise, write legibly with a ball point pen (preferably black or dark blue ink). If the form is system generated, Items 1 through 12 and 14 will be preprinted on the form. Attach an itemized statement of the services provided and expenses incurred. Give the date and the number of hours claimed for each service provided. Provide dates for and a description of the expenses incurred. For additional guidance, see the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide to Judiciary Policies and Procedures*, which is available for reference in the Clerk's office.

Appointed counsel may obtain investigative, expert, and other services necessary for adequate representation in accordance with the procedures set forth in subsection(e) of the Criminal Justice Act (CJA), 18 U.S.C. §3006A. Prior authorization from the presiding judicial officer is required for all such services where the cost, excluding expenses, will exceed \$300. Failure to obtain prior authorization will result in the disallowance of any amount claimed for compensation in excess of \$300, unless the presiding judicial officer, in the interest of justice, finds that timely procurement of necessary services could not await prior authorization. Payment for these services should be claimed directly by the service provider on a CJA Form 21, "Authorization and Voucher for Expert and Other Services."

VOUCHERS SHALL BE SUBMITTED NO LATER THAN 45 DAYS AFTER THE FINAL DISPOSITION OF THE CASE, UNLESS GOOD CAUSE IS SHOWN (PARAGRAPH 2.21A, CJA GUIDELINES). ALL PAYMENTS MADE PURSUANT TO THIS CLAIM ARE SUBJECT TO POST-AUDIT; CONTEMPORANEOUS TIME AND ATTENDANCE RECORDS AS WELL AS EXPENSE RECORDS MUST BE MAINTAINED FOR THREE YEARS AFTER APPROVAL OF THE FINAL VOUCHER (PARAGRAPH 2.32, CJA GUIDELINES). ANY OVERPAYMENTS ARE SUBJECT TO COLLECTION, INCLUDING DEDUCTION OF AMOUNTS DUE FROM FUTURE VOUCHERS

- Item 1.** **CIR./DIST./DIV. CODE:** This four-character location code is the circuit or district, and divisional office codes of the court where the proceedings for the person represented are held.
- Item 2.** **PERSON REPRESENTED:** Give the full name of the person whom you were appointed to represent.
- Items 3-6.** **DOCKET NUMBERS:** Provide the case file or miscellaneous number assigned by the court. Enter the number using the last two digits of the calendar year (YY), the sequential number assigned by the court (NNNNNN), and the defendant number (DDD) as shown on the indictment or charging document. Thus, the format of the docket number is YY-NNNNNN-DDD. **Note:** If two or more

cases are heard or tried together for the person represented, complete a separate voucher for each case in which representation is provided (i.e., for each docket number listed). Prorate the total time among the cases. On supporting documentation, cross reference all related claims for which costs are prorated.

Item 7. IN CASE/MATTER OF (CASE NAME): In criminal cases, enter *U.S. vs. Defendant's Name*. If it is a multiple defendant case, give the case cite as provided on the indictment or information (e.g., *U. S. vs. Lead Defendant's Name, et al*). If the person represented is not a defendant (e.g., material witness), enter the first named defendant in the court's recording of the case. If this is a civil case (e.g., habeas corpus), enter the *Name of the Petitioner vs. the Name of the Respondent* and include the respondent's title. If other than a civil or criminal case (i.e., miscellaneous matters), enter "*In the Matter of*" followed by the *Name of the Person Represented*.

Item 8. PAYMENT CATEGORY: Check the appropriate box that establishes the statutory threshold for representation in this case type. If "Other" payment category is checked, specify the category within the scope of the CJA. See paragraph 2.22 B(2) of the *CJA Guidelines*.

Item 9. TYPE PERSON REPRESENTED: Check the box that defines the legal status of the person represented.

Item 10. REPRESENTATION TYPE: From the list below, select the code that describes the type of representation:

CC	A defendant charged in a criminal case with an offense(s) that is a felony, misdemeanor, or petty offense under the United States Code, or an assimilated crime under a state code
NT	A new trial either directed from the court of appeals on remand or as a result of a mistrial
MA	Motion attacking a sentence (28 U.S.C. § 2255)
MC	Motion to correct or reduce sentence (Fed. R. Crim. P. 35)
HC	Habeas corpus, non-capital (28 U.S.C. § 2254)
BP	Bail Presentment§
WI	Material Witness (in custody)
WW	Witnesses (Grand Jury, a Court, the Congress, a Federal Agency, etc.)
PR	Probation Revocation
PA	Parole Revocation
SR	Supervised Release Hearing
EW	Extraordinary Writs (Prohibition, Mandamus)
CH	Mental Condition Hearings (see Chapter 313 of Title 18 U.S.C.)
PT	Pretrial Diversion
EX	Extradition Cases (Foreign) (under Chapter 209 of Title 18 U.S.C.)
OT	Other types (e.g., line ups, consultations, prisoner transfer, etc.)
TD	Appeal of a Trial Disposition
CA	Other Types of Appeals
AP	Appeal From Magistrate's Decision
CF	Civil Asset Forfeiture (18 U.S.C. § 983(b)(1))
AF	Appeal of Civil Asset Forfeiture (18 U.S.C. § 983(b)(1))
JU	Juror's Employment Rights (28 U.S.C. § 1875)
PL	Appeal of Parole Revocation (18 U.S.C. § 4106A)
HA	Appeal of Non-Capital Habeas representation (28 U.S.C. § 2254)
ML	Action Alleging Malpractice in Furnishing Non-capital Representational Services (18 U.S.C. § 3006A(d)(1))

FOR DEATH PENALTY CASES, USE THE CJA FORM 30 AND APPLICABLE TYPE OF REPRESENTATION CODES

Items 3-6. DOCKET NUMBERS: Provide the case number assigned by the court. Enter the number using the last two digits of the calendar year (YY), the sequential number assigned by the court (NNNNNN), and the defendant number (DDD), as shown in the indictment or charging document. Thus, the format of the docket number is YY-NNNNNN-DDD. **Note:** If two or more cases are heard or tried together for the person represented, complete a separate voucher for each case in which representation is provided (i.e., for each docket number listed). Prorate the total time among the cases. On the supporting documentation, cross reference the voucher number of all related claims for which costs are prorated.

Item 7. IN CASE/MATTER OF (CASE NAME): In criminal cases, enter *U.S. vs. Defendant's Name*. If it is a multiple defendant case, give the case cite as provided on the indictment (e.g., *U.S. vs. Lead Defendant's Name, et al.*). If this is a habeas corpus proceeding, enter the *Name of the Petitioner vs. the Name of the Respondent* and include the respondent's title.

Item 8. TYPE PERSON REPRESENTED: Check the box that defines the legal status of the person represented.

Item 9. REPRESENTATION TYPE: Check one of the following types of representations:

- D1 Habeas corpus (capital) petition pursuant to 28 U.S.C. § 2254, seeking to vacate or set aside a state death sentence and Appeals;
- D2 Federal capital prosecution, either trial or direct appeal;
- D3 Habeas corpus (capital) petition pursuant to 28 U.S.C. § 2255 seeking to vacate or set aside a federal death sentence and appeals; or
- D4 Death penalty prosecution in federal court under a state statute or any authority other than the United States Code, and appeals.
- DM Action Alleging Malpractice in Furnishing CJA Representational Services in a Capital Case (i.e., one of the four representational types above)

Item 10. OFFENSE(S) CHARGED: If the case is a capital prosecution in federal court, cite the U. S. Code, title and section, or other code citation of all charges up to five. List all death-eligible charges first. If the case is a direct appeal of a federal prosecution, list all offenses for which the defendant was convicted.

Item 11/13 ATTORNEY'S NAME AND MAILING ADDRESS AND NAME AND MAILING ADDRESS OF LAW FIRM: Complete Item 11 with the legal name and address of the attorney appointed to represent the person whose name is shown in Item 2. If prior to your appointment for representation, you had a pre-existing agreement with a law firm or corporation, including a professional corporation, indicating that CJA earnings belong to the law firm or corporation, rather than to the court-appointed attorney/payee, provide the Name and Mailing address of that law firm or corporation in Item 13. This information will allow earnings to be reported to the Internal Revenue (IRS) on a 1099 Statement as

earnings of the law firm or corporation and not as the earnings of the attorney appointed. *(Note: Information about a pre-existing agreement, including the Taxpayer Identification Number (TIN) of the law firm or corporation, should be provided to the court staff when the attorney is admitted to the panel or at initial appointment to a case.)*

Item 12. COURT ORDER: Check the box that describes the type of counsel appointed. If appointed as a substitute counsel, give the name of the previous counsel and the appointment date. If appointed as a “Standby Counsel,” attach the court order establishing this type of appointment in accordance with paragraph 2.17 of the *CJA Guidelines*. Specific qualifications are required for all counsel appointed to provide representation in death penalty cases. See 21 U.S.C. § 848 (q)(5)- (7) and 18 U.S.C. § 3005. The remaining portion of the Item will be completed by the clerk of court or other court-designated person.

If the court approves interim payments because of the conditions stated in Box “D,” the court should check this box. The presiding judicial officer or clerk of court must sign and date this court order to validate the appointment. Check statement “E,” if full or partial repayment was ordered by the court from the person represented at the time of the appointment. If services were provided prior to court appointment, the presiding judicial officer can ratify the previous service by indicating a “nunc pro tunc” date that covers the services prior to appointment. No other court order is necessary.

Item 14. STAGE OF PROCEEDING: Check the box that corresponds to the stage of proceeding for services claimed in Item 15 even if it is anticipated that the work will be used in connection with a later stage of the proceeding. **CHECK ONLY ONE BOX.** Submit a separate voucher for each stage of proceeding. **NOTE:** The stage noted as “Other” under “Other Proceeding” should be used only for a petition for presidential pardon or clemency, or other proceeding that cannot fit within the other described categories.

Item 15. CLAIM FOR SERVICES--CATEGORIES FOR HOURS AND COMPENSATION: On the applicable lines “a” through “j” enter the actual time spent in hours and tenths of hours. Total the number of hours in out-of-court categories “b” - “j” and enter the total in the “HOURS CLAIMED” column where required. Multiply the total hours for in-court and out-of-court time by the allowable compensation rate. Enter the amount claimed in the “TOTAL AMOUNT CLAIMED” column for category “a”, and for categories “b” - “j.” **NOTE:** Indicate “Other Dispositive Motions” only for work related to a motion to dismiss, motion for summary judgment, or similar motion to end the entire habeas corpus proceeding. If services included in-court hearings of one hour each on separate dates, enter two hours on the form and attach a sheet indicating one hour for each of the two dates.

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APPENDIX A

CHAPTER 306—TRANSFER TO OR FROM FOREIGN COUNTRIES

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HISTORICAL AND STATUTORY NOTES

Savings Provisions

See section 235 of Pub.L. 98-473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2031, as amended, set out as a note under section 3551 of this title.

§ 4100. Scope and limitation of chapter

(a) The provisions of this chapter relating to the transfer of offenders shall be applicable only when a treaty providing for such a transfer is in force, and shall only be applicable to transfers of offenders to and from a foreign country pursuant to such a treaty. A sentence imposed by a foreign country upon an offender who is subsequently transferred to the United States pursuant to a treaty shall be subject to being fully executed in the United States even though the treaty under which the offender was transferred is no longer in force.

(b) An offender may be transferred from the United States pursuant to this chapter only to a country of which the offender is a citizen or national. Only an offender who is a citizen or national of the United States may be transferred to the United States. An offender may be transferred to or from the United States only with the offender's consent, and only if the offense for which the offender was sentenced satisfies the requirement of double criminality as defined in this chapter. Once an offender's consent to transfer has been verified by a verifying officer, that consent shall be irrevocable. If at the time of transfer the offender is under eighteen years of age, or is deemed by the verifying officer to be mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer, the transfer shall not be accomplished unless consent to the transfer be given by a parent or guardian, guardian ad litem, or by an appropriate court of the sentencing country. The appointment of a guardian ad litem shall be independent of the appointment of counsel under section 4109 of this title.

(c) An offender shall not be transferred to or from the United States if a proceeding by way of appeal or of collateral attack upon the conviction or sentence be pending.

(d) The United States upon receiving notice from the country which imposed the sentence that the offender has been granted a pardon, commutation, or amnesty, or that there has been an ameliorating modification or a revocation of the sentence shall give the offender the benefit of the action taken by the sentencing country.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1212, and amended Pub.L. 100-690, Title VII, § 7101(e), Nov. 18, 1988, 102 Stat. 4416.)

HISTORICAL AND STATUTORY NOTES

Prisoner Transfer Treaties

Pub.L. 104-208, Div. C, Title III, § 330, Sept. 30, 1996, 110 Stat. 3009-631, provided that:

Complete Annotation Materials, see Title 18, U.S.C.A.

“(a) Negotiations with other countries.—(1) Congress advises the President to begin to negotiate and renegotiate, not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], bilateral prisoner transfer treaties, providing for the incarceration, in the country of the alien's nationality, of any alien who—

“(A) is a national of a country that is party to such a treaty; and

“(B) has been convicted of a criminal offense under Federal or State law and who—

“(i) is not in lawful immigration status in the United States, or

“(ii) on the basis of conviction for a criminal offense under Federal or State law, or on any other basis, is subject to deportation or removal under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.],

for the duration of the prison term to which the alien was sentenced for the offense referred to in subparagraph (B). Any such agreement may provide for the release of such alien pursuant to parole procedures of that country.

“(2) In entering into negotiations under paragraph (1), the President may consider providing for appropriate compensation, subject to the availability of appropriations, in cases where the United States is able to independently verify the adequacy of the sites where aliens will be imprisoned and the length of time the alien is actually incarcerated in the foreign country under such a treaty.

“(b) Sense of Congress.—It is the sense of the Congress that—

“(1) the focus of negotiations for such agreements should be—

“(A) to expedite the transfer of aliens unlawfully in the United States who are (or are about to be) incarcerated in United States prisons,

“(B) to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts,

“(C) to eliminate any requirement of prisoner consent to such a transfer, and

“(D) to allow the Federal Government or the States to keep their original prison sentences in force so that transferred prisoners who return to the United States prior to the completion of their original United States sentences can be returned to custody for the balance of their prison sentences;

“(2) the Secretary of State should give priority to concluding an agreement with any country for which the President determines that the number of aliens described in subsection (a) who are nationals of that country in the United States represents a significant percentage of all such aliens in the United States; and

“(3) no new treaty providing for the transfer of aliens from Federal, State, or local incarceration facilities to a foreign incarceration facility should permit the alien to refuse the transfer.

“(c) Prisoner consent.—Notwithstanding any other provision of law, except as required by treaty, the transfer of an alien from a Federal, State, or local incarceration facility under an agreement of the type referred to in subsection (a) shall not require consent of the alien.

“(d) Annual report.—Not later than 90 days after the date of the enactment of this Act [Sept. 30, 1996], and annually thereafter, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate stating whether each prisoner transfer treaty to which the United States is a party has been effective in the preceding 12 months in bringing about the return of deportable incarcerated aliens to the country of which they are nationals and in ensuring that they serve the balance of their sentences.

“(e) Training foreign law enforcement personnel.—(1) Subject to paragraph (2), the President shall direct the Border Patrol Academy and the Customs Service Academy to enroll for training an appropriate number of foreign law enforcement personnel, and shall make appointments of foreign law enforcement personnel to such academies, as necessary to further the following United States law enforcement goals:

“(A) Preventing of drug smuggling and other cross-border criminal activity.

“(B) Preventing illegal immigration.

“(C) Preventing the illegal entry of goods into the United States (including goods the sale of which is illegal in the United States, the entry of which would cause a quota to be exceeded, or the appropriate duty or tariff for which has not been paid).

“(2) The appointments described in paragraph (1) shall be made only to the extent there is capacity in such academies beyond what is required to train United States citizens needed in the Border Patrol and Customs Service, and only of personnel from a country with which the prisoner transfer treaty has been stated to be effective in the most recent report referred to in subsection (d).

“(f) Authorization of appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

Authorization of Appropriations

Section 5(a) of Pub.L. 95-144 provided that: “There is authorized to be appropriated such funds as may be required to carry out the purposes of this Act [which enacted this chapter, section 955 of Title 10, Armed Forces, and section 2256 of Title 28, Judiciary and Judicial Procedure, amended section 636 of Title 28, and enacted provisions set out as notes under sections 3006A, 4100, and 4102 of this title].”

§ 4101. Definitions

As used in this chapter the term—

(a) “double criminality” means that at the time of transfer of an offender the offense for which he has been sentenced is still an offense in the transferring country and is also an offense in the receiving country. With regard to a country which has a federal form of government, an act shall be deemed to be an offense in that country if it is an offense under the federal laws or the laws of any state or province thereof;

(b) “imprisonment” means a penalty imposed by a court under which the individual is confined to an institution;

(c) "juvenile" means—

(1) a person who is under eighteen years of age; or

(2) for the purpose of proceedings and disposition under chapter 403 of this title because of an act of juvenile delinquency, a person who is under twenty-one years of age;

(d) "juvenile delinquency" means—

(1) a violation of the laws of the United States or a State thereof or of a foreign country committed by a juvenile which would have been a crime if committed by an adult; or

(2) noncriminal acts committed by a juvenile for which supervision or treatment by juvenile authorities of the United States, a State thereof, or of the foreign country concerned is authorized;

(e) "offender" means a person who has been convicted of an offense or who has been adjudged to have committed an act of juvenile delinquency;

(f) "parole" means any form of release of an offender from imprisonment to the community by a releasing authority prior to the expiration of his sentence, subject to conditions imposed by the releasing authority and to its supervision, including a term of supervised release pursuant to section 3583;

(g) "probation" means any form of a sentence under which the offender is permitted to remain at liberty under supervision and subject to conditions for the breach of which a penalty of imprisonment may be ordered executed;

(h) "sentence" means not only the penalty imposed but also the judgment of conviction in a criminal case or a judgment of acquittal in the same proceeding, or the adjudication of delinquency in a juvenile delinquency proceeding or dismissal of allegations of delinquency in the same proceedings;

(i) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(j) "transfer" means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the courts of another country; and

(k) "treaty" means a treaty under which an offender sentenced in the courts of one country may be transferred to the country of which he is a citizen or national for the purpose of serving the sentence.

(Added Pub.L. 95-144, § 1, Oct. 23, 1977, 91 Stat. 1213, and amended Pub.L. 98-473, Title II, § 223(m)(1), Oct. 12, 1984, 98 Stat. 2029.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1984 Acts. Amendment by Pub.L. 98-473 effective on the first day of first calendar month beginning thirty six months

after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 4102. Authority of the Attorney General

The Attorney General is authorized—

(1) to act on behalf of the United States as the authority referred to in a treaty;

(2) to receive custody of offenders under a sentence of imprisonment, on parole, or on probation who are citizens or nationals of the United States transferred from foreign countries and as appropriate confine them in penal or correctional institutions, or assign them to the parole or probation authorities for supervision;

(3) to transfer offenders under a sentence of imprisonment, on parole, or on probation to the foreign countries of which they are citizens or nationals;

(4) to make regulations for the proper implementation of such treaties in accordance with this chapter and to make regulations to implement this chapter;

(5) to render to foreign countries and to receive from them the certifications and reports required to be made under such treaties;

(6) to make arrangements by agreement with the States for the transfer of offenders in their custody who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals and for the confinement, where appropriate, in State institutions of offenders transferred to the United States;

(7) to make agreements and establish regulations for the transportation through the territory of the United States of offenders convicted in a foreign country who are being transported to a third country for the execution of their sentences, the expenses of which shall be paid by the country requesting the transportation;

(8) to make agreements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of juveniles who are transferred pursuant to treaty, the expenses of which shall be paid by the country of which the juvenile is a citizen or national;

(9) in concert with the Secretary of Health, Education, and Welfare, to make arrangements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of individuals who are accused of an offense but who have been determined to be mentally ill; the ex-

penses of which shall be paid by the country of which such person is a citizen or national;

(10) to designate agents to receive, on behalf of the United States, the delivery by a foreign government of any citizen or national of the United States being transferred to the United States for the purpose of serving a sentence imposed by the courts of the foreign country, and to convey him to the place designated by the Attorney General. Such agent shall have all the powers of a marshal of the United States in the several districts through which it may be necessary for him to pass with the offender, so far as such power is requisite for the offender's transfer and safekeeping; within the territory of a foreign country such agent shall have such powers as the authorities of the foreign country may accord him;

(11) to delegate the authority conferred by this chapter to officers of the Department of Justice.
(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1214.)

HISTORICAL AND STATUTORY NOTES

Change of Name

The Secretary and Department of Health, Education, and Welfare was redesignated the Secretary and Department of Health and Human Services by Pub.L. 96-88, Title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

Certification by Attorney General to Secretary of State for Reimbursement of Expenses Incurred Under Transfer Treaty

Section 5(b) of Pub.L. 95-144 provided that: "The Attorney General shall certify to the Secretary of State the expenses of the United States related to the return of an offender to the foreign country of which the offender is a citizen or national for which the United States is entitled to seek reimbursement from that country under a treaty providing for transfer and reimbursement."

§ 4103. Applicability of United States laws

All laws of the United States, as appropriate, pertaining to prisoners, probationers, parolees, and juvenile offenders shall be applicable to offenders transferred to the United States, unless a treaty or this chapter provides otherwise.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

§ 4104. Transfer of offenders on probation

(a) Prior to consenting to the transfer to the United States of an offender who is on probation, the Attorney General shall determine that the appropriate United States district court is willing to undertake the supervision of the offender.

(b) Upon the receipt of an offender on probation from the authorities of a foreign country, the Attorney General shall cause the offender to be brought before

the United States district court which is to exercise supervision over the offender.

(c) The court shall place the offender under supervision of the probation officer of the court. The offender shall be supervised by a probation officer, under such conditions as are deemed appropriate by the court as though probation had been imposed by the United States district court.

(d) The probation may be revoked in accordance with section 3653 of this title and rule 32(f) of the Federal Rules of Criminal Procedure. A violation of the conditions of probation shall constitute grounds for revocation. If probation is revoked the suspended sentence imposed by the sentencing court shall be executed.

(e) The provisions of sections 4105 and 4106 of this title shall be applicable following a revocation of probation.

(f) Prior to consenting to the transfer from the United States of an offender who is on probation, the Attorney General shall obtain the assent of the court exercising jurisdiction over the probationer.
(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

§ 4105. Transfer of offenders serving sentence of imprisonment

(a) Except as provided elsewhere in this section, an offender serving a sentence of imprisonment in a foreign country transferred to the custody of the Attorney General shall remain in the custody of the Attorney General under the same conditions and for the same period of time as an offender who had been committed to the custody of the Attorney General by a court of the United States for the period of time imposed by the sentencing court.

(b) The transferred offender shall be given credit toward service of the sentence for any days, prior to the date of commencement of the sentence, spent in custody in connection with the offense or acts for which the sentence was imposed.

(c)(1) The transferred offender shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer. Subsequent to the transfer, the offender shall in addition be entitled to credits toward service of sentence for satisfactory behavior, computed on the basis of the time remaining to be served at the time of the transfer and at the rate provided in section 3624(b) of this title for a sentence of the length of the total sentence imposed and certified by the foreign authorities. These credits shall be combined to provide a release date for the offender pursuant to section 3624(a) of this title.

(2) If the country from which the offender is transferred does not give credit for good time, the basis of

computing the deduction from the sentence shall be the sentence imposed by the sentencing court and certified to be served upon transfer, at the rate provided in section 3624(b) of this title.

(3) Credit toward service of sentence may be withheld as provided in section 3624(b) of this title.

(4) Any sentence for an offense against the United States, imposed while the transferred offender is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was one imposed by a United States district court for an offense against the United States.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1215, and amended Pub.L. 98-473, Title II, § 223(m)(2), Oct. 12, 1984, 98 Stat. 2029.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1984 Acts. Amendment by Pub.L. 98-473 effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 4106. Transfer of offenders on parole; parole of offenders transferred

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b) The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with reference to an offender transferred to the United States to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to an offender convicted in a court of the United States except as otherwise provided in this chapter or in the pertinent treaty. Sections 4201 through 4204; 4205(d), (e), and (h); 4206 through 4215; and 4218 of this title shall be applicable.

(c) An offender transferred to the United States to serve a sentence of imprisonment may be released on parole at such time as the Parole Commission may determine.

(d) This section shall apply only to offenses committed before November 1, 1987, and the Parole Commission's performance of its responsibilities under this section shall be subject to section 235 of the Comprehensive Crime Control Act of 1984.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1216, and amended Pub.L. 98-473, Title II, § 223(m)(3), Oct. 12, 1984, 98 Stat. 2029; Pub.L. 100-182, § 14, Dec. 7, 1987, 101 Stat. 1268; Pub.L. 100-690, Title VII, § 7072(c), Nov. 18, 1988, 102 Stat. 4405.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1984 Acts. Amendment by Pub.L. 98-473 effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 4106A. Transfer of offenders on parole; parole of offenders transferred

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b)(1)(A) The United States Parole Commission shall, without unnecessary delay, determine a release date and a period and conditions of supervised release for an offender transferred to the United States to serve a sentence of imprisonment, as though the offender were convicted in a United States district court of a similar offense.

(B) In making such determination, the United States Parole Commission shall consider—

(i) any recommendation of the United States Probation Service, including any recommendation as to the applicable guideline range; and

(ii) any documents provided by the transferring country; relating to that offender.

(C) The combined periods of imprisonment and supervised release that result from such determination shall not exceed the term of imprisonment imposed by the foreign court on that offender.

(D) The duties conferred on a United States probation officer with respect to a defendant by section 3552 of this title shall, with respect to an offender so transferred, be carried out by the United States Probation Service.

(2)(A) A determination by the United States Parole Commission under this subsection may be appealed to the United States court of appeals for the circuit in which the offender is imprisoned at the time of the determination of such Commission. Notice of appeal must be filed not later than 45 days after receipt of notice of such determination.

(B) The court of appeals shall decide and dispose of the appeal in accordance with section 3742 of this title as though the determination appealed had been a sentence imposed by a United States district court.

(3) During the supervised release of an offender under this subsection, the United States district court for the district in which the offender resides shall supervise the offender.

(c) This section shall apply only to offenses committed on or after November 1, 1987.

(Added Pub.L. 100-690, Title VII, § 7101(a), Nov. 18, 1988, 102 Stat. 4415, and amended Pub.L. 101-647, Title XXXV, §§ 3599B, 3599C, Nov. 29, 1990, 104 Stat. 4931, 4932.)

HISTORICAL AND STATUTORY NOTES

Codification

Amendment by section 3599C of Pub.L. 101-647 directed the insertion of a period at the end of subsec. (b)(1)(C). Such period had already been editorially supplied, therefore, no further change was required.

§ 4107. Verification of consent of offender to transfer from the United States

(a) Prior to the transfer of an offender from the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified by a United States magistrate or a judge as defined in section 451 of title 28, United States Code.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the appropriate courts in the United States may modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in such courts;

(2) the sentence shall be carried out according to the laws of the country to which he is to be transferred and that those laws are subject to change;

(3) if a court in the country to which he is transferred should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of that country, he may be returned to the United States for the purpose of completing the sentence if the United States requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall

be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1216.)

HISTORICAL AND STATUTORY NOTES

Change of Name

United States magistrate appointed under section 631 of Title 28, Judiciary and Judicial Procedure, to be known as United States magistrate judge after Dec. 1, 1990, with any reference to United States magistrate or magistrate in Title 28, in any other Federal statute, etc., deemed a reference to United States magistrate judge appointed under section 631 of Title 28, see section 321 of Pub.L. 101-650, set out as a note under section 631 of Title 28.

§ 4108. Verification of consent of offender to transfer to the United States

(a) Prior to the transfer of an offender to the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof, shall be verified in the country in which the sentence was imposed by a United States magistrate, or by a citizen specifically designated by a judge of the United States as defined in section 451 of title 28, United States Code. The designation of a citizen who is an employee or officer of a department or agency of the United States shall be with the approval of the head of that department or agency.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the country in which he was convicted and sentenced can modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in that country;

(2) the sentence shall be carried out according to the laws of the United States and that those laws are subject to change;

(3) if a United States court should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of the United States, he may be returned to the country which imposed the sentence for the purpose of completing the sentence if that country requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided

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by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1217, and amended Pub.L. 98-473, Title II, § 228(m)(4), Oct. 12, 1984, 98 Stat. 2030; Pub.L. 100-690, Title VII, § 7101(b), Nov. 18, 1988, 102 Stat. 4415.)

HISTORICAL AND STATUTORY NOTES

Effective and Applicability Provisions

1984 Act. Amendment by Pub.L. 98-473 effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 2551 of this title.

Change of Name

United States magistrate appointed under section 631 of Title 28, Judiciary and Judicial Procedure, to be known as United States magistrate judge after Dec. 1, 1990, with any reference to United States magistrate or magistrate in Title 28, in any other Federal statute, etc., deemed a reference to United States magistrate judge appointed under section 631 of Title 28, see section 321 of Pub.L. 101-650, set out as a note under section 631 of Title 28.

§ 4109. Right to counsel, appointment of counsel

(a) In proceedings to verify consent of an offender for transfer, the offender shall have the right to advice of counsel. If the offender is financially unable to obtain counsel—

(1) counsel for proceedings conducted under section 4107 shall be appointed in accordance with section 3006A of this title. Such appointment shall be considered an appointment in a misdemeanor case for purposes of compensation under the Act;

(2) counsel for proceedings conducted under section 4108 shall be appointed by the verifying officer pursuant to such regulations as may be prescribed by the Director of the Administrative Office of the United States Courts. The Secretary of State shall make payments of fees and expenses of the appoint-

ed counsel, in amounts approved by the verifying officer, which shall not exceed the amounts authorized under section 3006A of this title for representation in a misdemeanor case. Payment in excess of the maximum amount authorized may be made for extended or complex representation whenever the verifying officer certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the chief judge of the United States court of appeals for the appropriate circuit. Counsel from other agencies in any branch of the Government may be appointed: *Provided*, That in such cases the Secretary of State shall pay counsel directly, or reimburse the employing agency for travel and transportation expenses. Notwithstanding section 3324(a) and (b) of title 31, the Secretary may make advance payments of travel and transportation expenses to counsel appointed under this subsection.

(b) Guardians ad litem appointed by the verifying officer under section 4100 of this title to represent offenders who are financially unable to provide for compensation and travel expenses of the guardian ad litem shall be compensated and reimbursed under subsection (a)(1) of this section.

(c) The offender shall have the right to advice of counsel in proceedings before the United States Parole Commission under section 4106A of this title and in an appeal from a determination of such Commission under such section. If the offender is financially unable to obtain counsel, counsel for such proceedings and appeal shall be appointed under section 3006A of this title.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218, and amended Pub.L. 97-258, § 3(e)(2), Sept. 13, 1982, 96 Stat. 1064; Pub.L. 100-690, Title VII, § 7101(d), Nov. 18, 1988, 102 Stat. 4416; Pub.L. 101-647, Title XXXV, § 3598, Nov. 29, 1990, 104 Stat. 4931.)

§ 4110. Transfer of juveniles

An offender transferred to the United States because of an act which would have been an act of juvenile delinquency had it been committed in the United States or any State thereof shall be subject to the provisions of chapter 403 of this title except as otherwise provided in the relevant treaty or in an agreement pursuant to such treaty between the Attorney General and the authority of the foreign country. (Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4111. Prosecution barred by foreign conviction

An offender transferred to the United States shall not be detained, prosecuted, tried, or sentenced by the United States, or any State thereof for any offense the prosecution of which would have been barred if the sentence upon which the transfer was based had been

by a court of the jurisdiction seeking to prosecute the transferred offender, or if prosecution would have been barred by the laws of the jurisdiction seeking to prosecute the transferred offender if the sentence on which the transfer was based had been issued by a court of the United States or by a court of another State.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4112. Loss of rights, disqualification

An offender transferred to the United States to serve a sentence imposed by a foreign court shall not incur any loss of civil, political, or civic rights nor incur any disqualification other than those which under the laws of the United States or of the State in which the issue arises would result from the fact of the conviction in the foreign country.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4113. Status of alien offender transferred to a foreign country

(a) An alien who is deportable from the United States but who has been granted voluntary departure pursuant to section 240B of the Immigration and Nationality Act and who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have voluntarily departed from this country.

(b) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been removed from this country.

(c) An alien who is the subject of an order of removal from the United States pursuant to section 240 of the Immigration and Nationality Act, who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been excluded from admission and removed from the United States.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1219, and amended Pub.L. 104-208, Div. C, Title III, § 308(d)(4)(U), (e)(1)(Q), (2)(I), (g)(3)(B), (5)(A)(iv), Sept. 30, 1996, 110 Stat. 3009-619, 3009-620, 3009-622, 3009-623.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Immigration and Nationality Act, referred to in text, is Act June 27, 1952, c. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (section 1101 et seq.) of Title 8, Aliens and Nationality. Sections 240 and 240B of such Act are classified to sections 1229a and 1229c, respectively, of Title 8. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

Effective and Applicability Provisions

1996 Acts. Amendment by section 308(d)(4)(U), (e)(1)(Q), (2)(I), and (g)(3)(B) of Div. C. of Pub.L. 104-208, effective, with certain exceptions and subject to certain transitional rules, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub.L. 104-208, set out as a note under section 1101 of Title, Aliens and Nationality.

Severability of Provisions

If any provision of Division C of Pub.L. 104-208 or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of Division C of Pub.L. 104-208 and the application of the provisions of Division C of Pub.L. 104-208 to any person or circumstance not to be affected thereby, see section 1(e) of Pub.L. 104-208, set out as a note under section 1101 of Title 8, Aliens and Nationality.

§ 4114. Return of transferred offenders

(a) Upon a final decision by the courts of the United States that the transfer of the offender to the United States was not in accordance with the treaty or the laws of the United States and ordering the offender released from serving the sentence in the United States the offender may be returned to the country from which he was transferred to complete the sentence if the country in which the sentence was imposed requests his return. The Attorney General shall notify the appropriate authority of the country which imposed the sentence, within ten days, of a final decision of a court of the United States ordering the offender released. The notification shall specify the time within which the sentencing country must request the return of the offender which shall be no longer than thirty days.

(b) Upon receiving a request from the sentencing country that the offender ordered released be returned for the completion of his sentence, the Attorney General may file a complaint for the return of the offender with any justice or judge of the United States or any authorized magistrate within whose jurisdiction the offender is found. The complaint shall be upon oath and supported by affidavits establishing that the offender was convicted and sentenced by the courts of the country to which his return is requested; the offender was transferred to the United States for the execution of his sentence; the offender was ordered released by a court of the United States before he had completed his sentence because the transfer of the offender was not in accordance with the treaty or the laws of the United States; and that the sentencing country has requested that he be returned for the completion of the sentence. There shall be attached to the complaint a copy of the sentence of the sentencing court and of the decision of the court which ordered the offender released.

A summons or a warrant shall be issued by the justice, judge or magistrate ordering the offender to

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appear or to be brought before the issuing authority. If the justice, judge, or magistrate finds that the person before him is the offender described in the complaint and that the facts alleged in the complaint are true, he shall issue a warrant for commitment of the offender to the custody of the Attorney General until surrender shall be made. The findings and a copy of all the testimony taken before him and of all documents introduced before him shall be transmitted to the Secretary of State, that a Return Warrant may issue upon the requisition of the proper authorities of the sentencing country, for the surrender of offender.

(c) A complaint referred to in subsection (b) must be filed within sixty days from the date on which the decision ordering the release of the offender becomes final.

(d) An offender returned under this section shall be subject to the jurisdiction of the country to which he is returned for all purposes.

(e) The return of an offender shall be conditioned upon the offender being given credit toward service of the sentence for the time spent in the custody of or under the supervision of the United States.

(f) Sections 3186, 3188 through 3191, and 3195 of this title shall be applicable to the return of an

offender under this section. However, an offender returned under this section shall not be deemed to have been extradited for any purpose.

(g) An offender whose return is sought pursuant to this section may be admitted to bail or be released on his own recognizance at any stage of the proceedings. (Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1219.)

§ 4115. Execution of sentences imposing an obligation to make restitution or reparations

If in a sentence issued in a penal proceeding of a transferring country an offender transferred to the United States has been ordered to pay a sum of money to the victim of the offense for damage caused by the offense, that penalty or award of damages may be enforced as though it were a civil judgment rendered by a United States district court. Proceedings to collect the moneys ordered to be paid may be instituted by the Attorney General in any United States district court. Moneys recovered pursuant to such proceedings shall be transmitted through diplomatic channels to the treaty authority of the transferring country for distribution to the victim.

(Added Pub.L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1220.)