



Public Safety
Canada

Sécurité publique
Canada

BUILDING A **SAFE AND RESILIENT CANADA**



INTERNATIONAL TRANSFER OF OFFENDERS

Overview for the Senate Standing Committee on Legal and
Constitutional Affairs

Overview



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1. Background
2. International Legal Obligations
3. Purpose and Principles
4. Legislative Framework
5. Decision-making Process



1. Background



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- *Transfer of Offenders Act* enacted in 1978 to support implementation of international treaties for exchange of prisoners
- Legislation revised and updated in 2004 with *International Transfer of Offenders Act* (ITOA)
- Legislation is based on international principles and agreements endorsed by countries and organizations around the world
- The ITOA is framed in context of those principles and *Canadian Charter of Rights and Freedoms (Charter)* obligations
- The ITOA allows Canadians convicted and sentenced abroad to serve their sentence in their home country and allows for foreign nationals to do the same
- The Minister of Public Safety is responsible for the administration of the ITOA and is the decision-making authority on requests for transfer



2. International Legal Obligations

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- **Current treaties**

- 15 bilateral treaties currently in force (USA, Mexico, France, Bolivia, Peru, Morocco, Thailand, Brazil, Venezuela, Egypt, Cuba, Barbados, Argentina, Mongolia, Dominican Republic)
- 3 multilateral treaties (Council of Europe Convention, Inter-American Convention, Commonwealth Scheme)
- Between bilateral and multilateral treaties – over 80 countries covered



3. Purpose and Principles

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- **Purpose:**

- Contribute to the administration of justice and the rehabilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals

- **Principles:**

- Promote criminal justice interests and contribute to public safety. If transferred to Canada, offenders:
 - Serve remainder of sentence under supervision
 - Opportunity to participate in rehabilitation programs
 - Information on foreign convictions in Canadian Police Services Information Centre (CPSIC) database
- Humanitarian
 - Alleviate undue hardships borne by offenders and their families
 - Allow offenders to develop and maintain positive community and family relationships that will assist them in preparing for reintegration as law-abiding citizens



Purpose and Principles



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Key Principles of Transfer of Offender Treaties:

- **Non-aggravation of the sentence** is a principle that underscores criminal law and is generally interpreted to mean not extending the total length of the foreign sentence;
- **The rule of dual criminality** is satisfied where an act is "criminal" in one state and has the same general qualification in the other;
- **Continued enforcement** allows continuing the enforcement of a foreign sentence in the receiving state in accordance with the latter's domestic laws; and
- **Adaptation** is applied where a foreign sentence is by its nature or duration incompatible with the law of Canada. The foreign sentence is adapted to the sentence prescribed by Canadian law for a similar offence.

Key elements of Canada's model treaty:

- Both Canadian and foreign offenders are to be informed of the substance of any transfer treaty or administrative arrangement that applies to them.
- Requests for transfer must be made in writing to the Minister of Public Safety.
- Canada, the foreign state, and the offender must all consent to the transfer.
- Sentencing state may request in writing to be informed in advance of the transfer of how the offender's sentence is to be served in the Receiving State.



4. Legislative Framework



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- In deciding whether or not to approve a transfer of a **Canadian offender**, the Minister shall consider the following factors:
 - whether the offender's return to Canada would constitute a threat to the security of Canada
 - whether the offender left or remained outside of Canada with the intention of abandoning Canada as their place of permanent residence
 - whether the offender has social or family ties in Canada
 - whether the foreign entity or its prison system presents a serious threat to the offender's security or human rights



Legislative Framework

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- For **Canadian and foreign offenders**, the Minister shall consider the following factors:
 - whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence
 - whether the offender was previously transferred under the ITOA or the *Transfer of Offenders Act*
- All-party agreement is required for any transfer (i.e. the offender, the sentencing state, and the receiving state)
- If no treaty is in force, the ITOA allows the Minister of Foreign Affairs, with the consent of the Minister of Public Safety, to enter into an administrative arrangement with a foreign entity for the transfer of offenders on a case-by-case basis
- To date, Canada has not entered into such an agreement



5. Decision-making Process



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- CSC prepares a summary of information and facts for the Minister
- The CSC summary, the offender's application and the relevant supporting documents are transmitted to the Department of Public Safety, where a briefing note is prepared and submitted with the package to the Minister for review
- Once a decision is rendered by the Minister, offender and sentencing state are notified of the decision by CSC

Approval of Transfer	Denial of Transfer
<ul style="list-style-type: none">• Offender is notified of the manner in which the sentence will be administered in Canada (i.e. eligibility dates for conditional release)• Offender must consent to the transfer• Transfer operation coordinated by CSC, with assistance from foreign missions (i.e. passports, airport/customs clearance, etc.)• CSC covers costs associated with transfer	<ul style="list-style-type: none">• Reasons for the denial are provided to the offender in writing• Offender advised that he/she may re-apply one year from the date the Minister denied the request for transfer

