

SECOND CONGRESS OF THE FEDERATED STATES OF MICRONESIA

SECOND REGULAR SESSION, 1981

C.B. No. 2/168

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A BILL FOR AN ACT

To transfer prisoners to or from foreign jurisdictions, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Scope and limitation of act.

2 (1) The provisions of this act relating to the transfer of
3 offenders shall be applicable only when a statute providing for such a
4 transfer is in force in the foreign jurisdiction, and shall only be applic-
5 able to transfer of offenders to and from a foreign jurisdiction pursuant
6 to such statute. A sentence imposed by a foreign jurisdiction upon an
7 offender who is subsequently transferred to this jurisdiction pursuant to
8 law shall be subject to being fully executed in this jurisdiction even
9 though the statute under which the offender is transferred is no longer
10 in force.

11 (2) An offender may be transferred from this jurisdiction pur-
12 suant to this act only to a jurisdiction of which the offender is a citizen or
13 a national. Only an offender who is a citizen or a national of this juris-
14 diction may be transferred to this jurisdiction. An offender may be trans-
15 ferred only with the offender's consent, and with the consent of the
16 Attorney General of each jurisdiction and only if the offense for which the
17 offender was sentenced satisfies the requirement of double criminality
18 as defined in this act. Once an offender's consent to transfer has been
19 verified by a judge of a court of record in the sentencing jurisdiction,
20 that consent shall be irrevocable. If at the time of transfer the offender
21 is under 18 years of age, the transfer shall not be accomplished unless
22 consent to the transfer is given by a parent or a guardian or by an appro-

J+60

1 priate court of the sentencing jurisdiction.

2 (3) An offender shall not be transferred to or from this juris-
3 diction if a proceeding by a way of appeal or collateral attack upon a
4 conviction of a sentence is pending.

5 (4) This jurisdiction, upon receiving notice from the sentenc-
6 ing jurisdiction that the offender has been granted a pardon, commutation,
7 or amnesty, or that there has been an ameliorating modification or a
8 revocation of the sentence, shall give the offender benefit of the action
9 taken by the sentencing jurisdiction.

10 Section 2. Definitions. As used in this act the terms:

11 (1) "Double criminality" means that at the time of the transfer
12 of an offender, the offense for which he has been sentenced is still an
13 offense in the sentencing jurisdiction and is also an offense in the
14 receiving jurisdiction. With regard to a jurisdiction which has a federal
15 form of government, an act shall be deemed to be an offense in that juris-
16 diction if it is an offense under the laws of any state thereof;

17 (2) "Imprisonment" means a penalty imposed by a court under which
18 the individual is confined to an institution;

19 (3) "Juvenile" means a person who is under 18 years of age;

20 (4) "Offender" means a person who has been convicted of an offense
21 or who has been adjudged to have committed an act of juvenile delinquency;

22 (5) "Parole" means any form of release of an offender from
23 imprisonment to the community by a releasing authority prior to the
24 expiration of his sentence, subject to conditions imposed by the releasing
25 authority and subject to its supervision;

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1 (6) "Probation" means any form of a sentence or a penalty of
2 imprisonment the execution of which is suspended and the offender is
3 permitted to remain at liberty under supervision and subject to conditions
4 for a breach of which the suspended penalty of imprisonment may be ordered
5 executed;

6 (7) "Receiving jurisdiction" means the jurisdiction which
7 receives an offender pursuant to this act;

8 (8) "Sentence" means not only the penalty imposed but also the
9 judgment of conviction in a criminal case or the adjudication of
10 delinquency in a juvenile delinquency proceeding;

11 (9) "Sentencing jurisdiction" means the jurisdiction in which
12 the offender was convicted and originally sentenced;

13 (10) "State" means a State of the Federated States of Micronesia;

14 (11) "Transfer" means a transfer of an individual for the purpose
15 of the execution in one jurisdiction of a sentence imposed by the courts of
16 another jurisdiction; and

17 (12) "Statute" means the law under which an offender sentenced
18 in the courts of one jurisdiction may be transferred to the jurisdiction of
19 which he is a citizen or a national for a purpose of serving the sentence.

20 Section 3. Authority of the Attorney General. The Attorney General is
21 authorized to act on behalf of this jurisdiction as the authority:

22 (1) To receive custody of offenders who are under a sentence of
23 imprisonment, on parole, or on probation from the sentencing jurisdiction
24 and, as appropriate, confine them to a penal or correctional institution
25 or assign them to the parole or probation authorities for supervision;

J960

1 (2) To coordinate the transfer of an offender under a sentence
2 of imprisonment, or parole, or on probation to the receiving jurisdiction;

3 (3) To render to other jurisdictions and to receive from them
4 certifications, verifications, and reports required to be made in accordance
5 with this act;

6 (4) To make arrangements by agreement with the States for the
7 transfer of offenders in their custody who are citizens or nationals of
8 other jurisdictions to the receiving jurisdiction and for the confinement,
9 when appropriate, of offenders transferred to this jurisdiction;

10 (5) To designate agents to receive, on behalf of this juris-
11 diction, the delivery by the sentencing jurisdiction of any offender being
12 transferred to this jurisdiction for the purpose of serving a sentence
13 imposed by the courts of the sentencing jurisdiction and to convey him to
14 the place designated by the Attorney General. Such agent shall have all
15 the powers of a police officer of the Division of Public Safety in the
16 several districts or jurisdictions through which it may be necessary for
17 him to pass with the offender, so far as such power is requisite for the
18 offender's transfer and safekeeping; outside of the territory of this juris-
19 diction, such agent shall have such powers as the authorities of that
20 territory may afford.

21 Section 4. Costs. Costs associated with the transfer of offenders
22 shall be borne by the sentencing jurisdiction. Costs subsequent of the costs
23 associated with the transfer of the offender shall be borne by the receiving
24 jurisdiction except for those costs associated with providing the offender
25 with a parole hearing in the sentencing jurisdiction.

J460

1 Section 5. Applicability of laws. All laws of the receiving juris-
2 diction, as appropriate, pertaining to prisoners, probationers, parolees,
3 and juvenile offenders shall be applicable to transferred offenders unless
4 a statute or this act provides otherwise. If the sentence of the offender
5 includes limitations regarding parole, probation, and work release, the
6 sentence is not modified by the law of the receiving jurisdiction.

7 Section 6. Transfer of offenders on probation.

8 (1) Prior to consenting to the transfer to this jurisdiction of
9 an offender who is on probation, the Attorney General shall determine that
10 the Supreme Court of the Federated States of Micronesia is willing to under-
11 take the supervision of the offender.

12 (2) Upon receipt of an offender on probation from the authorities
13 of the sentencing jurisdiction, the Attorney General shall cause the
14 offender to be brought before the Supreme Court of the Federated States of
15 Micronesia.

16 (3) The court shall place the offender under supervision of a
17 probation officer of the court. The offender shall be supervised by a
18 probation officer, under such conditions as are deemed appropriate by the
19 court, as though probation has been imposed by the Supreme Court.

20 (4) The probation may be revoked in accordance with the laws of
21 the Federated States of Micronesia and the Supreme Court Rules of Criminal
22 Procedure. A violation of the conditions of probation may constitute
23 grounds for revocation. If probation is revoked, the suspended sentence
24 originally imposed by the sentencing court shall be executed in the receiv-
25 ing jurisdiction.

J#60

C.B. No. 2-168

1 (5) If the sentence of the original jurisdiction includes
2 conditions of restitution, the conditions will be enforced in the receiv-
3 ing jurisdiction in the manner prescribed by law in the receiving juris-
4 diction.

5 (6) Prior to the transfer of an offender who is on probation,
6 the Attorney General of the sentencing jurisdiction shall obtain the
7 consent of the court exercising jurisdiction over the probationer.

8 Section 7. Transfer of offenders serving sentence of imprisonment.

9 (1) Except as provided elsewhere in this section, an offender
10 serving a sentence of imprisonment in another jurisdiction, will, when
11 accepted by the receiving jurisdiction, continue to serve a sentence of
12 imprisonment under the same restrictions and for the same period of time
13 as the offender would have served if no transfer had taken place.

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

18 (3) Credits toward sentences, and aggregations to sentences,
19 shall be determined as follows:

20 (a) The transferred offender shall be entitled to all
21 credits for good time, for labor, or any other credit toward the service
22 of the sentence which had been given by the transferring jurisdiction for
23 time served as of the time of the transfer. Subsequent to the transfer,
24 the offender shall, in addition, be entitled to credit for good time,
25 computed on the basis of the time remaining to be served at the time of

J+60

1 the transfer and at the rate computed under this jurisdiction's law for a
2 sentence of the length of the total sentence imposed and certified by the
3 sentencing jurisdiction. These credits shall be combined to provide a
4 release date for the offender pursuant to this jurisdiction's law.

5 (b) A transferred offender may earn extra good time as
6 authorized by the law of this jurisdiction.

7 (c) All credits toward service of a sentence, other than
8 for time in custody before sentencing, may be forfeited or restored in the
9 same manner and under the same procedure as are all other prisoners of this
10 jurisdiction.

11 (d) Any sentence for an offense against the National Govern-
12 ment of the Federated States of Micronesia or a State, imposed while the
13 transferred offender is serving a sentence of imprisonment imposed in
14 another jurisdiction, shall be aggregated with the foreign sentence in the
15 same manner as if the foreign sentence was one imposed by the Supreme Court
16 of the Federated States of Micronesia.

17 Section 8. Transfer of offenders on parole.

18 (1) Prior to the consent to the transfer of this jurisdiction of
19 an offender who is on parole, the Attorney General shall determine that
20 the parole authority of the National Government of the Federated States of
21 Micronesia is willing to undertake the supervision of the offender.

22 (2) Upon receipt of an offender on parole from the authorities
23 of the sentencing jurisdiction, the Attorney General shall cause the
24 offender to be brought before the parole authority of the National Govern-
25 ment of the Federated States of Micronesia.

J-60

C.B. No. 2-168

1 (3) The parole authority shall place the offender under the
2 supervision of a parole officer. The offender shall be supervised by
3 the parole officer, under such conditions as are deemed appropriate by
4 the parole authority, giving due consideration to the conditions of parole
5 originally ordered by the sentencing jurisdiction.

6 (4) The parole may be revoked in accordance with the laws of the
7 Federated States of Micronesia. A violation of the conditions of parole
8 may constitute grounds for revocation. If parole is revoked, the sentence
9 originally imposed by the sentencing court shall be executed in the
10 receiving jurisdiction.

11 Section 9. The verification of consent of offender to transfer.

12 (1) Prior to the transfer of an offender pursuant to this act,
13 the fact that the offender consents to such transfer and that such consent
14 is voluntary and with full knowledge of the consequences thereof shall be
15 verified by a judge of a court of record in the sentencing jurisdiction.

16 (2) The judge shall inquire of the offender whether the offender
17 understands and agrees that the offender will be subject to the following
18 conditions:

19 (a) Only the jurisdiction in which he was convicted and
20 sentenced can modify or set aside the conviction for sentence, and any
21 proceedings seeking such action may only be brought in that jurisdiction;

22 (b) Any sentence of imprisonment shall be carried out
23 according to laws of the sentencing jurisdiction and that those laws are
24 subject to change;

25 (c) If the offender is a probationer or parolee, he will be

J460

1 subject to the authority of the receiving jurisdiction for all purposes
2 except the length of sentence and that the laws of the receiving juris-
3 diction are subject to change;

4 (d) If a court in a jurisdiction to which he was trans-
5 ferred should determine upon a proceeding initiated by him or on his behalf
6 that the transfer was not accomplished in accordance with the laws of the
7 sentencing jurisdiction, he may be returned to the jurisdiction which
8 imposed the sentence for the purpose of completing the sentence if that
9 jurisdiction requests his return; and

10 (e) His consent to transfer, once verified by the verifying
11 judge, is irrevocable.

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

18 (4) The verifying judge shall make the necessary inquiries to
19 determine that the offender's consent is voluntary and not the result of
20 any promises, threats, or other improper inducement, and that the offender
21 accepts the transfer subject to the conditions set forth in subsection (2).
22 The consent and acceptance shall be memorialized in an appropriate court
23 order.

24 (5) The proceedings shall be taken down by a court reporter or
25 recorded by suitable sound recording equipment. The court shall immediately

1 order a transcript to be prepared and to be made part of the court file
2 maintained for the case. In cases where the consent of the parents or
3 guardian is required, the verifying court need not be a court in the
4 sentencing jurisdiction but may be the applicable court where the parents
5 or guardian resides. The consent of the parents or a guardian should then
6 be verified to the court having jurisdiction over the offender.

7 Section 10. Right to counsel--appointment of counsel. In proceedings
8 to verify consent of an offender for transfer, the offender shall have the
9 right to advice of counsel. If the offender is financially unable to obtain
10 counsel, counsel for proceedings under section 9 shall be appointed by the
11 verifying court pursuant to its applicable regulations regarding court
12 appointments in felony cases.

13 Section 11. Transfer of juveniles. An offender transferred to this
14 jurisdiction because of an act which would have been an act of juvenile
15 delinquency had it been committed in the Federated States of Micronesia
16 shall be subject to the laws of the State jurisdiction to which he is
17 transferred regarding the length of sentence, probation regulations,
18 and juvenile court supervision as he would have been if the underlying
19 offense had been committed in the Federated States of Micronesia.

20 Section 12. Prosecution barred by foreign conviction. For purposes
21 of article IV, section 7, of the Constitution of the Federated States of
22 Micronesia, the sentence upon which the offender's transfer was based
23 shall be treated as if the prosecution had been conducted by the National
24 Government of the Federated States of Micronesia.

25 Section 13. Loss of rights--disqualification. An offender transferred

J+60

1 to the Federated States of Micronesia to serve a sentence imposed by a
2 foreign court shall not incur any loss of civil, political, or customary
3 rights, nor incur any disqualification other than those which under the
4 laws of the National Government of the Federated States of Micronesia or of
5 any State in which the issue arises would result from the fact of conviction
6 in the sentencing jurisdiction.

7 Section 14. Return of transferred offenders.

8 (1) A final decision by the courts of the receiving jurisdiction
9 that the transfer was not in accordance with its law shall result in the
10 court ordering the Attorney General to return the offender to the sentencing
11 jurisdiction if the sentencing jurisdiction requests his return. That
12 Attorney General shall notify the Attorney General of the sentencing juris-
13 diction within 10 days of the final decision of the court ordering the
14 offender returned. The notification shall specify the time in which the
15 sentencing jurisdiction must request the return of the offender which shall
16 be no longer than 30 days. An order of the court in the receiving juris-
17 diction which orders the return of the offender shall not be effective until
18 15 days have passed from the filing of the order.

19 (2) Upon receiving a request from the sentencing jurisdiction
20 that the offender who was ordered returned be returned for the completion
21 of his sentence, the Attorney General of the receiving jurisdiction may
22 file a complaint for the return of the offender with any judge of the
23 receiving jurisdiction. The complaint shall be upon oath and supported
24 by affidavits establishing that the offender was convicted and sentenced
25 by the courts of the jurisdiction to which his return is requested; the

J+60

1 offender was transferred to the receiving jurisdiction for the execution
2 of the sentence; the offender was ordered returned before he had completed
3 his sentence because the transfer of the offender was not in accordance with
4 this act; and that the sentencing jurisdiction has requested that the
5 offender be returned for completion of his sentence. There shall be attached
6 to the complaint a copy of the sentence of the sentencing court, the order
7 of the verifying court authorizing the transfer, and of the decision of the
8 court which authorized the release of the offender. A summons or a warrant
9 shall be issued by the court ordering the offender to appear or to be
10 brought before the court. If the court finds that the person before it is
11 the offender described and that the facts alleged in the complaint are
12 true, it shall issue a warrant for commitment of the offender until surrender
13 shall be made. The court may place a reasonable limit on the time available
14 to effectuate the return.

15 (3) A complaint referred to in subsection (b) must be filed
16 within 60 days from the date on which the decision ordering the release of
17 the offender becomes final.

18 (4) Upon the return of the offender to the sentencing jurisdiction,
19 the offender shall be given credit toward service of the sentence for the
20 time spent in the custody of the receiving jurisdiction.

21 (5) An offender returned under this section shall not be deemed
22 to have been extradited for any purpose.

23 Section 15. Status of alien offenders transferred to receiving juris-
24 diction.

25 (1) An alien who is deportable from the Federated States of Micro-

J+60

1 nesia who has been granted voluntary departure and who is transferred to a
2 receiving jurisdiction pursuant to this act shall be deemed for all purposes
3 to have voluntarily departed from the jurisdiction.

4 (2) An alien who is the subject of an order of deportation from
5 the Federated States of Micronesia who is transferred to a receiving juris-
6 diction pursuant to this act shall be deemed for all purposes to have been
7 deported from this jurisdiction.

8 (3) An alien who is the subject of an order of exclusion and
9 deportation from the Federated States of Micronesia, who is transferred to
10 a receiving jurisdiction pursuant to this act shall be deemed for all
11 purposes to have been excluded from admission and deported from the Feder-
12 ated States of Micronesia..

13 Section 16. Effective date. This act shall become law upon approval
14 by the President of the Federated States of Micronesia or upon its becoming
15 law without such approval.

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17 Date: 10/28/81

Introduced by: 

Luke M. Tman
(By request)