

Jo GO/EX. AFF

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) An offender may be transferred from this jurisdiction  
3 pursuant to this act only to a jurisdiction of which the offender is a  
4 citizen or a national. Only an offender who is a citizen or a national of  
5 this jurisdiction may be transferred to this jurisdiction. An offender  
6 may be transferred only with the offender's consent, and with the consent  
7 of the Attorney General of each jurisdiction and only if the offense for  
8 which the offender was sentenced satisfies the requirement of double  
9 criminality as defined in this act. Once an offender's consent to  
10 transfer has been verified by a judge of a court of record in the  
11 sentencing jurisdiction, that consent shall be irrevocable. If at the  
12 time of transfer the offender is under 18 years of age, the transfer shall  
13 not be accomplished unless consent to the transfer is given by a parent or  
14 a guardian or by an appropriate court of the sentencing jurisdiction.

15 (2) An offender shall not be transferred to or from this  
16 jurisdiction if a proceeding by a way of appeal or collateral attack upon  
17 a conviction of a sentence is pending.

18 (3) This jurisdiction, upon receiving notice from the  
19 sentencing jurisdiction that the offender has been granted a pardon,  
20 commutation, or amnesty, or that there has been an ameliorating  
21 modification or a revocation of the sentence, shall give the offender  
22 benefit of the action taken by the sentencing jurisdiction.

23 Section 2. Definitions. The following terms are used in this act:

24 (1) "Double criminality" means that at the time of the transfer  
25 of an offender, the offense for which he has been sentenced is

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1 still an offense in the sentencing jurisdiction and is also an offense  
2 in the receiving jurisdiction. With regard to a jurisdiction which has  
3 a federal form of government, an act shall be deemed to be an offense  
4 in that jurisdiction if it is an offense under the laws of either the  
5 federal government or any state thereof;

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

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

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

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

16 (6) "Probation" means any form of a sentence or a penalty of  
17 imprisonment the execution of which is suspended and the offender is  
18 permitted to remain at liberty under supervision and subject to  
19 conditions for a breach of which the suspended penalty of imprisonment  
20 may be ordered executed;

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

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

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

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

5 (11) "Statute" means the law under which an offender  
6 sentenced in the courts of one jurisdiction may be transferred to the  
7 jurisdiction of which he is a citizen or a national for the purpose of  
8 serving the sentence; and

9 (12) "Transfer" means a transfer of an individual for the  
10 purpose of the execution in one jurisdiction of a sentence imposed by  
11 the courts of another jurisdiction.

12 Section 3. Authority of the Attorney General of the Federated  
13 States of Micronesia. The Attorney General of the Federated States of  
14 Micronesia is authorized to act on behalf of this jurisdiction as the  
15 authority:

16 (1) To receive custody of offenders who are under a sentence  
17 of imprisonment, on parole, or on probation from the sentencing  
18 jurisdiction and, as appropriate, confine them to a penal or  
19 correctional institution or assign them to the parole or probation  
20 authorities for supervision.

21 (2) To coordinate the transfer of an offender under a  
22 sentence of imprisonment, or parole, or on probation to the receiving  
23 jurisdiction.

24 (3) To negotiate with other jurisdictions the sharing of the  
25 costs of transferring persons under this act.

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

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

9           (6) To designate agents to receive, on behalf of this  
10 jurisdiction, the delivery by the sentencing jurisdiction of any  
11 offender being transferred to this jurisdiction for the purpose of  
12 serving a sentence imposed by the courts of the sentencing jurisdiction  
13 and to convey him to the place designated by the Attorney General.

14           (7) Such agent shall have all the powers of a police officer  
15 of the Division of Public Safety in the several districts or  
16 jurisdictions through which it may be necessary for him to pass with  
17 the offender, so far as such power is requisite for the offender's  
18 transfer and safekeeping; outside of the territory of this  
19 jurisdiction, such agent shall have such powers as the authorities of  
20 that territory may afford.

21       Section 4. Applicability of laws. All laws of the receiving  
22 jurisdiction, as appropriate, pertaining to prisoners, probationers,  
23 parolees, and juvenile offenders shall be applicable to transferred  
24 offenders unless a statute or this act provides otherwise. If the  
25 sentence of the offender includes limitations regarding parole,

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1 probation, and work release, the sentence is not modified by the law of  
2 the receiving jurisdiction.

3 Section 5. Transfer of offenders on probation.

4 (1) Prior to consenting to the transfer to this jurisdiction  
5 of an offender who is on probation, the Attorney General shall  
6 determine that the Supreme Court of the Federated States of Micronesia  
7 is willing to undertake the supervision of the offender.

8 (2) Upon receipt of an offender on probation from the  
9 authorities of the sentencing jurisdiction, the Attorney General shall  
10 cause the offender to be brought before the Supreme Court of the  
11 Federated States of Micronesia.

12 (3) The Court shall place the offender under supervision of  
13 a probation officer of the Court. The offender shall be supervised by  
14 a probation officer, under such conditions as are deemed appropriate by  
15 the Court, as though probation has been imposed by the Supreme Court.

16 (4) The probation may be revoked in accordance with the laws  
17 of the Federated States of Micronesia and the Supreme Court Rules of  
18 Criminal Procedure. A violation of the conditions of probation may  
19 constitute grounds for revocation. If probation is revoked, the  
20 suspended sentence originally imposed by the sentencing court shall be  
21 executed in the receiving jurisdiction.

22 (5) If the sentence of the original jurisdiction includes  
23 conditions of restitution, the conditions will be enforced in the  
24 receiving jurisdiction in the manner prescribed by law in the receiving  
25 jurisdiction.

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

5 Section 6. Transfer of offenders serving sentence of  
6 imprisonment.

7 (1) An offender serving a sentence of imprisonment in  
8 another jurisdiction, will, when accepted by this jurisdiction,  
9 continue to serve a sentence of the same length but under the parole  
10 and other supervisory conditions that apply generally to prisoners in  
11 this jurisdiction; PROVIDED that the Attorney General may waive the  
12 application of this jurisdiction's parole and supervisory conditions  
13 and may agree with the sentencing jurisdiction to apply those of the  
14 sentencing jurisdiction.

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

19 (3) Credits toward sentences, and aggregations to sentences,  
20 shall be determined as follows, unless otherwise specified pursuant to  
21 subsection(1) of this section.

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

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1 Subsequent to the transfer, the offender shall, in addition, be  
2 entitled to credit for good time, computed on the basis of the time  
3 remaining to be served at the time of the transfer and at the rate  
4 computed under this jurisdiction's law for a sentence of the length of  
5 the total sentence imposed and certified by the sentencing  
6 jurisdiction. These credits shall be combined to provide a release  
7 date for the offender pursuant to this jurisdiction's law.

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

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

14 (d) Any sentence for an offense against the National  
15 Government of the Federated States of Micronesia or a State, imposed  
16 while the transferred offender is serving a sentence of imprisonment  
17 imposed in another jurisdiction, shall be aggregated with the foreign  
18 sentence in the same manner as if the foreign sentence had been imposed  
19 by the courts of the Federated States of Micronesia or a State.

20 Section 7. Transfer of offenders on parole.

21 (1) Prior to consenting to the transfer to this jurisdiction  
22 of an offender who is on parole, the Attorney General shall determine  
23 that the parole authority of the National Government of the Federated  
24 States of Micronesia agrees to undertake the supervision of the  
25 offender.

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1           (2) Upon receipt of an offender on parole from the  
2 authorities of the sentencing jurisdiction, the Attorney General shall  
3 cause the offender to be brought before the parole authority of the  
4 National Government of the Federated States of Micronesia.

5           (3) The parole authority shall place the offender under the  
6 supervision of a parole officer or similar official. The offender  
7 shall be supervised by the parole officer, under such conditions as are  
8 deemed appropriate by the parole authority, giving due consideration to  
9 the conditions of parole originally ordered by the sentencing  
10 jurisdiction.

11           (4) The parole may be revoked in accordance with the laws of  
12 the Federated States of Micronesia. A violation of the conditions of  
13 parole may constitute grounds for revocation. If parole is revoked,  
14 the sentence originally imposed by the sentencing court shall be  
15 executed in the receiving jurisdiction.

16           Section 8. Verification of consent of offender to transfer.

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

22           (2) The judge shall inquire of the offender whether the  
23 offender understands and agrees that the offender will be subject to  
24 the following conditions:

25           (a) Only the jurisdiction in which he was convicted and



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1 sentenced can modify or set aside the conviction or sentence, and any  
2 proceedings seeking such action may only be brought in that  
3 jurisdiction, except that the receiving jurisdiction's parole and other  
4 supervisory conditions will be applied;

5 (b) If the offender is a probationer or parolee, he  
6 will be subject to the authority of the receiving jurisdiction for all  
7 purposes except the length of sentence and that the laws of the  
8 receiving jurisdiction are subject to change;

9 (c) If a court in the jurisdiction to which he was  
10 transferred should determine upon a proceeding initiated by him or on  
11 his behalf that the transfer was not accomplished in accordance with  
12 the laws of the sentencing jurisdiction, he may be returned to the  
13 jurisdiction which imposed the sentence for the purpose of completing  
14 the sentence if that jurisdiction requests his return; and

15 (d) His consent to transfer, once verified by the  
16 verifying judge, is irrevocable.

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

24 (4) The verifying judge shall make the necessary inquiries  
25 to determine that the offender's consent is voluntary and not the

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1 result of any promises, threats, or other improper inducement, and that  
2 the offender accepts the transfer subject to the conditions set forth  
3 in subsection (2). The consent and acceptance shall be memorialized in  
4 an appropriate court order.

5 (5) The proceedings shall be taken down by a court reporter  
6 or recorded by suitable sound recording equipment. The court shall  
7 immediately order a transcript to be prepared and to be made part of  
8 the court file maintained for the case. In cases where the consent of  
9 the parents or guardian is required, the verifying court need not be a  
10 court in the sentencing jurisdiction but may be the court where the  
11 parents or guardian resides. The consent of the parents or guardian  
12 should then be verified to the court having jurisdiction over the  
13 offender.

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

20 Section 10. Transfer of juveniles. An offender transferred to  
21 this jurisdiction because of an act which would have been an act of  
22 juvenile delinquency had it been committed in the Federated States of  
23 Micronesia shall be subject to the same laws of the State jurisdiction  
24 to which he is transferred regarding the length of sentence, probation  
25 regulations, and juvenile court supervision as he would have been if

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1 the underlying offense had been committed in the Federated States of  
2 Micronesia.

3 Section 11. Prosecution barred by foreign conviction. For  
4 purposes of article IV, section 7, of the Constitution of the Federated  
5 States of Micronesia, the sentence upon which the offender's transfer  
6 was based shall be treated as if the prosecution had been conducted by  
7 the National Government of the Federated States of Micronesia, or by a  
8 State.

9 Section 12. Loss of rights--disqualification. An offender  
10 transferred to the Federated States of Micronesia to serve a sentence  
11 imposed by a foreign court shall not incur any loss of civil,  
12 political, or customary rights, nor incur any disqualification other  
13 than those which under the laws of the National Government of the  
14 Federated States of Micronesia or of any State in which the issue  
15 arises would result from the fact of conviction in the sentencing  
16 jurisdiction.

17 Section 13. Return of transferred offenders.

18 (1) A final decision by the courts of the receiving  
19 jurisdiction that the transfer was not in accordance with its law shall  
20 result in the court ordering the Attorney General to return the  
21 offender to the sentencing jurisdiction if the sentencing jurisdiction  
22 requests his return. The Attorney General shall notify the Attorney  
23 General of the sentencing jurisdiction within 10 days of the final  
24 decision of the court ordering the offender returned. The notification  
25 shall specify the time in which the sentencing jurisdiction must

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1 request the return of the offender which shall be no longer than 30  
2 days. An order of the court in the receiving jurisdiction which orders  
3 the return of the offender shall not be effective until 15 days have  
4 passed from the filing of the order.

5 (2) Upon receiving a request from the sentencing  
6 jurisdiction that the offender who was ordered returned be returned for  
7 the completion of his sentence, the Attorney General of the receiving  
8 jurisdiction may file a complaint for the return of the offender with  
9 any judge of the receiving jurisdiction. The complaint shall be upon  
10 oath and supported by affidavits establishing that the offender was  
11 convicted and sentenced by the courts of the jurisdiction to which his  
12 return is requested; the offender was transferred to the receiving  
13 jurisdiction for the execution of the sentence; the offender was  
14 ordered returned before he had completed his sentence because the  
15 transfer of the offender was not in accordance with this act; and that  
16 the sentencing jurisdiction has requested that the offender be returned  
17 for completion of his sentence. There shall be attached to the  
18 complaint a copy of the sentence of the sentencing court, the order of  
19 the verifying court authorizing the transfer, and of the decision of  
20 the court which authorized the release of the offender. A summons or a  
21. warrant shall be issued by the court ordering the offender to appear or  
22 to be brought before the court. If the court finds that the person  
23 before it is the offender described and that the facts alleged in the  
24 complaint are true, it shall issue a warrant for commitment of the  
25 offender until surrender shall be made. The court may place a

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1 reasonable limit on the time available to effectuate the return.

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

6 (4) An offender returned under this section shall not be  
7 deemed to have been extradited for any purpose.

8 Section 14. Status of alien offenders transferred to receiving  
9 jurisdiction.

10 (1) An alien who is deportable from the Federated States of  
11 Micronesia who has been granted voluntary departure and who is  
12 transferred to a receiving jurisdiction pursuant to this act shall be  
13 deemed for all purposes to have voluntarily departed from the  
14 jurisdiction.

15 (2) An alien who is the subject of an order of deportation  
16 from the Federated States of Micronesia who is transferred to a  
17 receiving jurisdiction pursuant to this act shall be deemed for all  
18 purposes to have been deported from this jurisdiction.

19 (3) An alien who is the subject of an order of exclusion and  
20 deportation from the Federated States of Micronesia, who is transferred  
21 to a receiving jurisdiction pursuant to this act, shall be deemed for  
22 all purposes to have been excluded from admission and deported from the  
23 Federated States of Micronesia.

24 Section 15. Effective date. This act shall become law upon  
25 approval by the President of the Federated States of Micronesia or upon

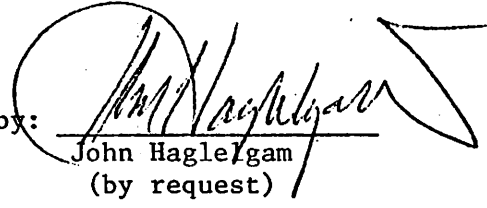
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1 its becoming law without such approval.

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3 Date: 5/28/83

Introduced by:

  
John Hagleygam  
(by request)

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