

<b>POLICY TITLE: RESIDENT INTERNATIONAL TRANSFERS</b>		<b>PAGE 1 OF 8</b>
<b>POLICY NUMBER: 23.2 (AF)</b>		
<b>CHAPTER 23: CLASSIFICATION AND CASE MANAGEMENT</b>		
	<b>STATE of MAINE</b> <b>DEPARTMENT of CORRECTIONS</b>  <b>Approved by Commissioner</b>  	<b>PROFESSIONAL STANDARDS:</b>  <b>See Section VIII</b>
	<b>EFFECTIVE DATE:</b> <b>November 8, 2024</b>	<b>LATEST REVISION:</b>

**I. AUTHORITY**

The Commissioner of Corrections adopts this policy pursuant to the authority contained in 34-A M.R.S.A. Sections 1403 and 3072.

**II. APPLICABILITY**

All Department Adult Facilities

**III. POLICY**

It is the policy of the Department of Corrections to provide for a process for transfers of adult residents who are citizens of other countries to their home countries to finish their sentences as permitted by treaties between those countries and the United States government.

**IV. DEFINITIONS**

1. Current custody release date – the release date calculated with detention time credit and with all good time awarded and not lost up to the prior month. It also takes account of the restoration of lost good time if that occurred any time up to the prior month.
2. Maximum custody release date – the release date calculated with detention time credited but without any good time credited, except that in the case of a 1983 Code sentence with meritorious good time credited.
3. Projected release date – the release date calculated by starting with the current custody release date and then projecting how much good time the resident could earn based on the applicable good time code and their current job or program status during the rest of their sentence.

**V. CONTENTS**

- Procedure A: International Transfers, General  
 Procedure B: Notification of Residents who are Foreign Citizens

- Procedure C: Eligibility to Apply for an International Transfer
- Procedure D: Application and Review Process
- Procedure E: Post-Approval Actions
- Procedure F: Appeals
- Procedure G: Documentation

## VI. ATTACHMENTS

- Attachment A: [Notice to Residents who are Citizens of Other Countries](#)
- Attachment B: [Resident International Transfer Notification and Acknowledgement](#)
- Attachment C: [Resident International Transfer Application and Release of Information](#)
- Attachment D: [Review of Out of State Transfer and Return Requests](#)
- Attachment E: [Case Summary for International Transfer of Maine Department of Corrections Resident](#)

## VII. PROCEDURES

### Procedure A: International Transfers, General

1. This policy is in effect only if the Governor has authorized the Commissioner to consent to the transfers of citizens of other countries to their home countries to finish their Maine Department of Corrections sentences.
2. Other countries with which the United States has treaties allowing such transfers are those listed on the U.S. Department of Justice, International Prisoner Transfer Unit website - [www.justice.gov/criminal/criminal-oia/list-participating-countriesgovernments](http://www.justice.gov/criminal/criminal-oia/list-participating-countriesgovernments).
3. All actions taken under this policy shall be in conformance with the treaty between the relevant foreign country and the federal government.
4. All decisions made by the Commissioner, or designee, under this policy are within their complete discretion.
5. A decision of the Commissioner to approve a transfer under this policy is contingent upon the approval of the U.S. Department of Justice and the relevant foreign government.

### Procedure B: Notification of Residents who are Foreign Citizens

1. The Chief Administrative Officer, or designee, of each adult facility shall ensure that a notice is posted in every resident housing unit about the opportunity for residents who are citizens of other countries with which the United States has treaties allowing transfers to apply for transfers to their home countries to finish their sentences using the Notice to Residents who are Citizens of Other Countries (Attachment A).
2. If a resident is identified as a citizen of a foreign country with which the United States has a treaty allowing transfers, the resident's Unit Manager (UM), or designee, shall notify the resident at their initial classification review of the opportunity for them to apply for a transfer to their home country to finish their sentence.

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
23.2 (AF) Resident International Transfers	23. Classification and Case Management	Page 2 of 8 11/8/24

3. If the resident's initial classification review has already been held, the UM shall notify them at their next annual or semi-annual reclassification review.
4. This notification shall be provided using the Resident International Transfer Notification and Acknowledgement form (Attachment B), which shall be signed by the resident.

**Procedure C: Eligibility to Apply for an International Transfer**

1. In order to apply for a transfer to another country, an adult facility resident must be a citizen of a country with which the United States has a treaty allowing transfers.
2. In addition, any crime for which they are currently or will be serving a Maine Department of Corrections sentence must also be a crime in the other country.
3. Also, all convictions and sentences being served or to be served must be final, with no pending appeals, petitions for post-conviction review, or petitions for writs of habeas corpus related to any conviction or sentence.
4. Finally, the resident must apply at least one year prior to their current custody release date in order for there to be enough time for the process to be completed and for an approved transfer to take place.
5. If a particular treaty imposes additional eligibility requirements, they shall be adhered to.
6. Per constitutional provisions giving exclusive treaty making power to the federal government, there shall be no other eligibility requirements.

**Procedure D: Application and Review Process**

1. An adult resident who is eligible may apply to the resident's Unit Management Team (UT) to be transferred to their home country using the Resident International Transfer Application and Release of Information form (Attachment C).
2. The resident's case manager shall, as necessary, assist the resident to complete the application.
3. As soon as possible after they apply, the resident shall notify the nearest consulate for their home country of their application.
4. Unless there is already in Department records proof of citizenship of the country to which the resident is requesting to be transferred, the UT shall require the resident to provide such proof.
5. The resident's case manager shall, as necessary, assist the resident to make the required notification to the consulate and/or acquire proof of citizenship by providing them with the contact information for the nearest consulate of their home country.
6. Any question as to the adequacy of proof of citizenship shall be referred to the Department's legal representative in the Attorney General's Office.

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
23.2 (AF) Resident International Transfers	23. Classification and Case Management	Page 3 of 8 11/8/24

7. The UT shall make a recommendation to the facility Chief Administrative Officer, or designee, within thirty (30) days of receipt of the application and forward a copy of the application and its recommendation to the facility Chief Administrative Officer, or designee.
8. The facility Chief Administrative Officer, or designee, shall forward their recommendation to the Department's Director of Classification, or designee. The reason(s) for the recommendation and the facts in support of the reason(s), including any relevant documentation, shall also be provided.
9. The Director of Classification, or designee, shall inform the Department's Director of Victim Services, or designee, for their input on the resident's application. The Director of Classification, or designee, may also ask for input from the prosecuting attorney's office and, in the case of a resident serving a sentence for murder or a Class A or B crime of violence who has more than 5 years remaining until their current custody release date, shall ask for input from the prosecuting attorney's office.
10. The out of state transfer committee established under Department Policy (AF) 23.5, Resident Transfers from and to the Department (including Federal Holds, Safekeepers, and Boarders) shall review the application for transfer, the recommendation of the facility Chief Administrative Officer, or designee, including any information and supporting documentation provided by the facility, and any input provided by the Office of Victim Services and, if applicable, the prosecuting attorney's office and shall forward the materials reviewed and their recommendation and reason(s) for the recommendation to the Commissioner, or designee, using the Review of Out of State Transfer and Return Requests form (Attachment D), within thirty (30) days of receipt of the recommendation of the facility Chief Administrative Officer, or designee, by the Director of Classification, or designee.
11. The Commissioner, or designee, shall inform the Department's Director of Classification, or designee, of their decision. If the decision is to approve the transfer, the Director of Classification, or designee, shall proceed as set out in Procedure E.
12. The Director of Classification, or designee, shall inform the Department's Director of Victim Services, or designee, of the transfer decision, regardless of whether the transfer is approved or denied.
13. The Commissioner, or designee, shall notify the resident of their decision in writing, but, if approved, the resident shall not be informed of the date of transfer.
14. All decisions relating to whether an eligible resident is recommended for approval or is approved to transfer to their home country to finish their sentence shall have as the primary determining factor whether a transfer would promote rehabilitation by facilitating the resident's reintegration with their family, friends, and/or community in the country to which they have the most ties, keeping also in mind any input from the Director of Victim Services, or designee, and the office of the prosecuting attorney.

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
23.2 (AF) Resident International Transfers	23. Classification and Case Management	Page 4 of 8 11/8/24

15. Each of the following shall be considered as a positive factor (but not a requirement) for approval:
- a. close family, friend, and/or community ties (including religious and cultural ties) in the other country;
  - b. recent arrival to the United States;
  - c. illegal immigrant status;
  - d. pending Immigration and Customs Enforcement (ICE) detainer;
  - e. not currently and will not be serving a sentence for a violent crime;
  - f. no ties with a gang, security threat group, or criminal or terrorist organization;
  - g. has served a substantial part of the sentence;
  - h. most or all victim restitution has been paid;
  - i. no recent history of a Class A or B disciplinary offense;
  - j. case plan compliant;
  - k. if applicable, recent successful participation in community programs (e.g., furlough, work release, community work crew, etc.);
  - l. other rehabilitative efforts, including demonstration of positive change;
  - m. other accomplishments (e.g., volunteering, mentoring other residents, etc.);
  - n. humanitarian considerations (such as the resident is terminally ill or a close family member in the other country is terminally ill); and
  - o. and any other relevant positive factors.
16. Each of the following shall be considered as a negative factor (but not a disqualifier) for approval:
- a. close family, friend and/or community ties (including religious and cultural ties) in the United States;
  - b. ownership of a business or home in the United States;
  - c. living in the United States for lengthy period of time;
  - d. legal immigrant status or dual citizenship with the United States;
  - e. pending charges, detainers (other than an ICE detainer), or other legal holds, or notification requests;
  - f. involvement as a suspect or witness in an ongoing criminal investigation;
  - g. currently or will be serving a sentence for a violent crime;
  - h. likely to engage in criminal conduct in the other country if transferred;
  - i. ties with a gang, security threat group, or criminal or terrorist organization, especially in the other country;
  - j. has not served a substantial part of the sentence;

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
23.2 (AF) Resident International Transfers	23. Classification and Case Management	Page 5 of 8 11/8/24

- k. is serving a life sentence (note: some countries will not accept transfers of persons serving life sentences);
  - l. is claiming that is not guilty of the crime;
  - m. little to no victim restitution has been paid (note: foreign governments rarely, if ever, collect victim restitution);
  - n. recent history of a Class A or B disciplinary offense;
  - o. not case plan compliant;
  - p. recent unsuccessful participation in community programs (e.g., furlough, work release, community work crew, etc.);
  - q. recent history of revocation of probation or supervised release for sex offenders; and
  - r. and any other relevant negative factors.
17. In the event that a resident is serving a sentence for murder or a Class A or B crime of violence and has more than 5 years remaining until their current custody release date, the Director of Classification, or designee, may make appropriate inquiries as to how the other country is likely to carry out the sentence, and this may be considered as a factor. Note: the sentence will be carried out in accordance with the laws of the foreign country and the term of imprisonment could be reduced significantly from what it would have been if the resident had remained in the United States.
18. An eligible resident shall not be denied approval for a transfer solely because of the type of crime they committed or solely because of objections received from a victim or prosecuting attorney's office. However, legitimate concerns expressed by the Office of Victim Services, a victim, or a prosecuting attorney's office may be considered as a factor.
19. All of the above applicable factors, positive and negative, shall be considered and weighed together as appropriate.
20. Specific information about input from a victim, a prosecuting attorney's office, or the Office of Victim Services shall not be disclosed to the resident under any circumstances.
21. The Commissioner, or designee, may withdraw approval if new circumstances arise or there are newly discovered circumstances that significantly affect the reason(s) for the initial approval, and, if so, they shall inform the Director of Classification, or designee, who shall inform the Director of Victim Services, or designee. The Commissioner, or designee, shall notify the resident of their decision to withdraw approval in writing.

**Procedure E: Post-Approval Actions**

- 1. If an international transfer is approved by the Commissioner, or designee, the Director of Classification, or designee, shall complete the Case Summary for International Transfer of Maine Department of Corrections Resident (Attachment E), to include both the projected release date and the maximum custody release date.

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
23.2 (AF) Resident International Transfers	23. Classification and Case Management	Page 6 of 8 11/8/24

2. The Director of Classification, or designee, shall forward to the appropriate official in the International Prisoner Transfer Unit of the U.S. Department of Justice proof of the resident's citizenship in the foreign country, the resident's application, and the case summary.
3. If the U.S. Department of Justice and the foreign government both approve the transfer, the Director of Classification, or designee, shall arrange with the U.S. Department of Justice for the U.S. Marshals Service to transport the resident to a federal court for a consent verification hearing and, if the resident's consent to transfer is verified, to take the resident into federal custody pending the resident's transfer to their home country (unless the Marshals Service asks the Department to retain the resident in Department custody pending the transfer).
4. Once the resident is transferred to their home country, the Maine sentence shall be terminated.

**Procedure F: Appeals**

1. A resident who has been denied approval to transfer by the U.S. Department of Justice or by a foreign government may not grieve or appeal the decision to the Department but must contact the other agency if they disagree with the decision.
2. A resident may appeal the decision of the Commissioner, or designee, to deny approval of a transfer request or withdraw approval of a transfer request by writing a letter to the Commissioner, or designee, via the U.S. Postal Service.
3. In order to be reviewed, the appeal must be postmarked within fifteen (15) days of the receipt of the decision.
4. If an appeal is timely, after reviewing the case with the Department's Director of Classification, or designee, the relevant facility Chief Administrative Officer, or designee, and other appropriate staff, the Commissioner, or designee, shall decide the appeal within fifteen (15) days after receiving the appeal. When it is sent to the resident, the decision on the appeal (or notation that the appeal was not timely) shall be marked as "legal mail" and processed as such at the facility where the resident is housed.
5. Upon review of the appeal, the Commissioner, or designee, may:
  - a. approve the decision;
  - b. reverse the decision;
  - c. modify the decision; or
  - d. remand the matter for review at an earlier point in the process.
6. The Commissioner, or designee, shall provide a copy of the appeal and the response to the appeal to the Department's Director of Classification, and the Department's Director of Victim Services, or their designees.
7. The Commissioner, or designee, is the final authority on an appeal (i.e., there is no further administrative level of appeal).

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
23.2 (AF) Resident International Transfers	23. Classification and Case Management	Page 7 of 8 11/8/24

**Procedure G: Documentation**

1. The Director of Classification, or designee, shall document every transfer request and decision in the Department's resident and client records management system after the decision is made.
2. The forms and other records relating to transfer requests shall be filed in the confidential section of the resident's administrative record.

**VIII. PROFESSIONAL STANDARDS**

None

POLICY NUMBER/TITLE	CHAPTER NUMBER/TITLE	PAGE NUMBER
23.2 (AF) Resident International Transfers	23. Classification and Case Management	Page 8 of 8 11/8/24