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A Guide for Canadians Imprisoned Abroad



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A Guide for Canadians Imprisoned Abroad

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INTRODUCTION

Thousands of Canadians are imprisoned in foreign countries. Most of them are in the United States; the rest are in prisons in more than 85 other countries.

The criminal justice system in many countries is different from that in Canada, and a Canadian may be at a disadvantage because of unfamiliarity with the local judicial system, culture and language. Prison conditions in other countries are often more severe than in Canada.

This booklet provides information to help you, your family and friends benefit from the assistance provided by the Government of Canada to Canadians imprisoned abroad. This assistance is available through Consular Services of Foreign Affairs, Trade and Development Canada in Ottawa, and through Canadian government offices abroad. Consular services are clearly established in international law and, more specifically, under the terms of the Vienna Convention on Consular Relations, to which Canada and many other nations are signatories. For further information on the

Vienna Convention, contact Consular Services or consult travel.gc.ca/laws.

Canadian consular officials have extensive experience in dealing with the types of problems you may encoun-

As a Canadian detained or imprisoned in a foreign country, you will be subject to living conditions that may be harsh and depressing. The family and friends of a Canadian detained or imprisoned in a foreign country often carry a considerable financial and emotional burden over an extended period.

ter. They understand how difficult the situation can be for everyone and are there to provide advice and assistance. Stay in touch with them and keep them informed about your situation.

PROTECTION, ADVICE AND ASSISTANCE

For the detainee/prisoner

The emotional stress and practical problems arising from arrest and imprisonment in a foreign country can be daunting. Foreign Affairs, Trade and Development Canada can provide you with advice and assistance, but it is important that you understand certain limitations.

If you break the laws of another country, you are subject to the judicial system of that country. Being a foreigner or not knowing the local laws is not an excuse. Foreign Affairs, Trade and Development Canada can

neither protect you from the consequences of your actions nor override the decisions of local authorities.

If you are detained or arrested in a foreign country and you choose to talk to Canadian consular officials, any information you give them will remain confidential, **subject to the provisions of Canada's Privacy Act.** It will not normally be passed on to anyone other than the consular officials concerned with your case without your permission. You have the right, for example, to determine who will be notified of your situation and who may act as your legal representative. Your family and friends will not have access to your information without your consent.

However, under the Privacy Act, personal information may be disclosed in certain circumstances, such as in cases where disclosure would clearly benefit you,

where the public interest in disclosure clearly outweighs any invasion of your privacy, or pursuant to a court order.

Note that the Royal Canadian Mounted Police (RCMP) and other police agencies have their own international contacts and may know of your circumstances through those sources.

If you are detained or arrested abroad and wish to have Canadian consular officials notified, you should communicate that request clearly to the arresting authorities. Contact the nearest Canadian government office abroad or Foreign Affairs, Trade and Development Canada's Emergency Operations Centre in Ottawa (see "For More Information" on page 15).

The arresting foreign authorities have an obligation, under the Vienna Convention on Consular Relations, to advise you of your right of access to a consular rep-

resentative. **They are not, however, obliged to inform a Canadian government office of your detention or arrest, unless you ask them to do so.**

For family and friends in Canada

Family members or friends of Canadians detained or imprisoned abroad should contact Foreign Affairs, Trade and Development Canada's Consular Services (see "For More Information" on page 15).

A consular official can provide you with general information about the country involved, prison conditions and the local justice system. You will not be given any details of the detention or arrest or told how to establish contact with the detainee/prisoner **without his or her authorization.**

You should resist the urge to take immediate action, such as visiting the de-

tainee/prisoner or sending money or parcels. You should discuss your actions with a consular official in Ottawa, who will advise you on the feasibility of such initiatives and how best to proceed.

In many countries, mail sent or received by detainees/prisoners will be opened and read by prison authorities. Telephone conversations may also be monitored. Take care not to discuss or put in writing anything you would not wish to become public.

Consular Services emphasizes personal responsibility, respect for privacy and the provision of help where it is needed. You should maintain direct contact with the detainee/prisoner through normal channels, as much as possible. Advice and information are available from consular officials, both in Ottawa and at Canadian government offices abroad, and from the Correctional Service of Canada (csc-scc.gc.ca).

The role of the Government of Canada

The Government of Canada will make every effort to ensure you receive equitable treatment under the local criminal justice system. It will seek to ensure you are not penalized for being a foreigner and that you are neither discriminated against nor denied justice because you are Canadian. **It cannot, however, seek preferential treatment for you or try to exempt you from the due process of local law.** Just as a foreign government cannot interfere in Canada's judicial process, **the Government of Canada cannot interfere in the judicial affairs of another country.**

The range of consular services will depend on local circumstances, which may affect your ability to provide support and assistance to your family member or friend. In general, consular officials will provide a more comprehensive range of services when a Canadian is detained or imprisoned in a country where it is difficult for family or friends to provide assistance, or where prison conditions warrant such services.

HIRING A FOREIGN LAWYER

Your choice of legal representation in the country of your detention or arrest can be critically important and should be made with care. As a first step, you should contact a consular official at the Canadian government office responsible for services in that country.

Be cautious about hiring lawyers who initially approach you in jail or who are recommended by another prisoner or a prison official. Also, be wary of lawyers who promise to have you released quickly in exchange for a large sum of money, particularly if they imply that the money is to pay bribes. The promise may not be fulfilled, and you may lose your money. Bribery is illegal in most countries and could result in your prosecution under Canadian law.

Consular officials can provide a list of lawyers who have expertise in your particular type of case and who may have represented Canadians in the past. **They cannot, however, recommend specific lawyers. You may prefer to hire a lawyer who is not on the list. This decision remains your responsibility.** You may wish to consider whether a lawyer is:

- experienced in your type of case;
- well regarded in the local legal community;
- able to communicate in your language of choice; and
- willing to agree on a contract specifying a fee structure and detailed objectives for the duration of the case, including appeal procedures.

Inform your family or friends of your lawyer's full name and address, as well as the details of your contract, to ensure they are aware of your legal arrangements and are vigilant if asked to pay additional fees without your knowledge.

First-class lawyers in any country command high fees. If you are unable to raise sufficient funds to hire a lawyer, consular officials can give you advice on the availability of legal aid in the country where you are detained or imprisoned. State-sponsored legal aid is not available in all countries. Public defenders are usually very busy and unable to devote significant time to individual cases. They often have limited English language skills and even more limited French language skills.

Consular officials will facilitate communication between you or a designated contact person and your

lawyer. They will provide you with information based on their experience, but cannot make decisions for you. Ultimately, all decisions affecting the handling of your case must be made by you or your legal representative.

SERVICES PROVIDED BY CONSULAR OFFICIALS

Canadian consular officials offer a range of services that vary from case to case and from country to country. They will discuss services appropriate to your case, with you or with a designated contact person. At your request, consular officials can:

- notify your family or friends of your situation and let them know if and how they can help;
- help you communicate with your legal representative and family or friends;
- request immediate and regular access to you;
- seek to ensure you receive equitable treatment under the laws and in keeping with the standards of the host country, upon your arrest or detention;
- obtain information about the status of your case and encourage authorities to process the case without undue delay;
- provide you, your representative or family with information on the local judicial and prison systems, approximate times for court action, typical sentences for the alleged offence and bail provisions;
- make every effort to ensure you receive adequate nutrition and medical and dental care;
- arrange for the purchase (at your expense and if permitted) of food supplements, essential clothing and other basic items

- not available through the prison system;
- deliver letters and provide permitted reading material if normal postal services are not available;
- convey messages to you if telephone or postal services are not available or practical;
- contact relatives or friends on your behalf and ask them to send you funds if required; and
- facilitate the transfer of funds to you if other means are unreliable or unavailable (fees apply).

SERVICES NOT PROVIDED BY CONSULAR OFFICIALS

Canadian consular officials cannot provide some services to you for reasons of law and public policy. For example, they cannot:

- get you out of prison;
- post bail or pay fines or legal fees;
- provide legal advice or interpret local laws;

- select or recommend a specific lawyer;
- get involved in important matters between you and your lawyer;
- forward or deliver parcels entering or leaving the country or clear them through customs;
- circumvent rules regarding what can and cannot be brought into or taken out of a prison; or
- make travel or accommodation arrangements for your family or friends.

VISITING A CANADIAN IN PRISON ABROAD

Arrangements to visit a Canadian imprisoned abroad should be made before you leave Canada.

Certain countries allow visits only at specific times of year or restrict who may visit and how many visits a prisoner may receive. For example, visits by common-law spouses may not be allowed. If language is a problem, you will need to

be accompanied by an interpreter. Prison authorities are unlikely to grant special treatment to visitors from Canada, such as admitting them outside regular visiting hours.

Be sure to discuss with officials in Ottawa the details of any proposed visit early in the planning stages. Your itinerary will be forwarded to the responsible Canadian government office, which will make arrangements for the prison visit.

TRANSFER OF OFFENDERS TREATIES

Canada has transfer of offenders treaties with many countries. These treaties enable Canadians convicted of offences in other countries to serve—with their consent and the approval of Canada and the sentencing countries—their sentences in Canadian penal institutions, where they can more easily prepare for their

return to Canadian life. The Minister of Public Safety is responsible for the implementation of these treaties. The Correctional Service of Canada, an agency of Public Safety Canada, administers the International Transfer of Offenders Program through Foreign Affairs, Trade and Development Canada and its offices abroad. Transfer decisions are discretionary and rest with Public Safety Canada.

In some countries, individual states or provinces determine whether or not to accede to a transfer of offenders treaty signed by their national government. Canadians imprisoned under their legislation are not necessarily eligible to apply for a transfer to serve part of their sentence in a Canadian facility. However, offenders imprisoned in states or provinces that have acceded to the treaty can apply for a transfer to a Canadian institution.

Canada has transfer of offenders arrangements with the following countries

- Albania
- Andorra
- Argentina
- Armenia
- Australia
- Austria
- Azerbaijan
- Bahamas
- Barbados
- Belgium
- Belize
- Bolivia
- Bosnia and Herzegovina
- Brazil
- Bulgaria
- Chile
- Costa Rica
- Croatia
- Cuba
- Cyprus
- Czech Republic
- Denmark
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Estonia
- Finland
- France
- Georgia
- Germany
- Greece
- Guatemala
- Honduras
- Hungary
- Iceland
- India
- Ireland
- Israel
- Italy
- Japan
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Macedonia*
- Malawi
- Malta
- Mauritius
- Mexico
- Moldova
- Mongolia
- Montenegro
- Morocco
- Netherlands
- Nicaragua
- Nigeria
- Norway
- Panama
- Paraguay
- Peru
- Poland
- Portugal
- Romania
- Russia
- San Marino
- Saudi Arabia
- Serbia
- Slovakia
- Slovenia
- South Korea
- Spain
- Sri Lanka
- Sweden
- Switzerland
- Thailand
- Tonga
- Trinidad and Tobago
- Turkey
- Ukraine
- United Kingdom
- United States
- Uruguay
- Venezuela
- Zimbabwe

If Canada does not have a treaty with a country where a Canadian is imprisoned, Canada may enter into an administrative arrangement with the other country for the transfer of an offender on a case-by-case basis. The administrative arrangement would be subject to the approval of the Minister of Foreign Affairs and the Minister of Public Safety, in accordance with Canada's *International Transfer of Offenders Act*. The consent of provincial or territorial authorities in Canada may also be a condition of the transfer. For more information, enquire with Foreign Affairs, Trade and Development Canada's Consular Services in Ottawa or with the nearest embassy or consulate of the country of incarceration.

Only you, as the detainee/prisoner, may make the request for a transfer to a Canadian prison. Canadian consular officials will provide you with the necessary

documentation to apply for a transfer. However, your application must be approved by both the host country and Canada. If your application is accepted, you will be transferred to Canada, where you will complete the terms of your original sentence, subject to Canadian laws and regulations, including conditional release.

A foreign conviction does not necessarily constitute a criminal record in Canada. However, if a Canadian convicted abroad returns to Canada through an international transfer of offender treaty or an administrative arrangement under the *International Transfer of Offenders Act*, the foreign conviction will be kept on record by the Canadian Police Information Centre. Some offenders choose not to pursue or continue with the transfer process. In accordance with Canadian law and policy, the Government

of Canada does not object to an offender abandoning a transfer request in progress. However, the governments of some sentencing countries consider the process to be irreversible at a certain stage. Be fully aware of the sentencing country's policies regarding transfer requests before submitting an application.

An application for transfer can be submitted only after you have been convicted and sentenced. All appeals concerning your conviction and sentence must have been exhausted or the prescribed time for an appeal must have expired. In addition, **at least six months of your sentence must remain** at the time you submit your request for a transfer.

For more information on transfer of offenders treaties, consult travel.gc.ca/laws or contact the Correctional Service of Canada (csc-scc.gc.ca).

OBLIGATIONS FOR INTERNATIONALLY CONVICTED SEX OFFENDERS

Canada's Criminal Code requires persons who have been convicted of a sex offence in another country and released by that country to provide the following information to local police services within seven days of arriving in Canada: their name; date of birth; gender; address in Canada; and the conviction/offence. They must also communicate any change in address to police services within seven days. These individuals must report this information so that the attorney general or minister of justice of the province/territory can make a decision regarding their inclusion in the National Sex Offender Registry and compliance with the Sex Offender Information Registration Act. Persons failing to report are subject to criminal prosecution.

Further information on the National Sex Offender Registry is available from Public Safety Canada (publicsafety.gc.ca) or the Royal Canadian Mounted Police (rcmp.gc.ca).

For more information on how to request a clemency intervention by the Government of Canada, speak to a consular official.

SEEKING CLEMENCY IN DEATH PENALTY CASES

The Government of Canada opposes the use of the death penalty in all cases, everywhere, and will undertake clemency intervention in all cases of Canadians facing execution. The Government of Canada is opposed to the death penalty and is committed to providing the highest standard of consular assistance. Canadian officials will determine how to undertake clemency intervention for each case.

FOR MORE INFORMATION

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Canada and the U.S.) or
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from abroad, where service is
available)

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613-996-5358

TTY: 1-800-394-3472 (in
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613-944-1310

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