



Issue Brief

OREGON DEPARTMENT OF CORRECTIONS

Criminal Aliens in Oregon Prisons

Overview

Of the more than 14,600 individuals incarcerated in Oregon, 1,446 of them report – or their intake records indicate – that they were born outside of the United States.

A person's place of birth does not necessarily determine his or her citizenship. For instance, a person born abroad may be a U.S. citizen if he or she has an American parent or has been naturalized in the United States.

People who are not citizens are considered “aliens.” Their nationality or place of birth is not a valid indicator of their alien status – legal or illegal. Many people live, work, and visit the United States and hold valid visas.

The Role of the Federal Government

A person with alien status who is convicted of a crime may have been in the United States legally or illegally. Federal law determines whether a person's immigration status is subject to review as a result of a conviction. Felons who are not citizens are known as “criminal aliens.”

It is the responsibility of the U.S. Bureau of Immigration and Customs Enforcement (ICE) to pursue legal action to deport a criminal alien from the United States.

DOC's Role

An important part of the Oregon Department of Corrections' (DOC) mission is to hold all adults in custody (AIC) – regardless of their nationalities – accountable for their actions, and to reduce the risk of future criminal behavior.

DOC provides ICE with lists of AICs whose records indicate they were born abroad. ICE is solely responsible for determining each AIC's alien status.

At ICE's request, DOC places an “ICE detainer” on those AICs they have deemed criminal aliens. The detainer directs state and local authorities to transfer custody to ICE following completion of the AIC's state sanction. As of November, 2014, 995 DOC AIC's from the following countries of birth had ICE detainers:

Canada	8	Mexico	878
Cuba	12	Philippines	6
El Salvador	16	Ukraine	10
Guatemala	32	Vietnam	14
Honduras	11	Other	115

Note: AICs with ICE detainers are not eligible for outside work crews or unfenced facilities because they are considered potential flight risks.

SCAAP Grants

Oregon reports the number of foreign-born AICs in an annual application to the State Criminal Alien Assistance Program (SCAAP), which provides federal funding to partially reimburse states for incarcerating criminal aliens. Oregon began receiving this partial reimbursement for costs incurred during the 1998-99 fiscal year.

To be eligible for federal reimbursement, a criminal alien must be in the physical custody of the department for at least four consecutive days. Historically, the SCAAP funds cover approximately 15 percent of DOC's costs to incarcerate the alien population.

Oregon SCAAP Funding - Recent Fiscal Years

Inmate Population Base Year	Federal Fiscal Year	Award (millions)	Aliens	Congressional Appropriation (thousands)	OR share
2003-04	FY05	\$3.4	1,716	\$287	1.19%
2004-05	FY06	\$4.9	1,722	\$376	1.32%
2005-06	FY07	\$5.1	1,872	\$377	1.35%
2006-07	FY08	\$6.4	2,051	\$386	1.66%
2007-08	FY09	\$5.9	2,026	\$404	1.46%
2008-09	FY 10	\$4.9	2,161	\$324	1.52%
2009-10	FY 11	\$2.7	2,247	\$272	0.98%
2010-11	FY 12	\$2.0	2,247	\$240	0.83%
2011-12	FY 13	\$2.1	2,164	\$238	0.90%
2012-13	FY 14	\$ 1.8	2,035	\$180	0.99%

Deportation

States do not have the authority to deport anyone, including AICs. Deportation is a function of the federal government.

Criminal aliens can be returned to their countries of citizenship to serve their prison sentence only via a U.S. treaty designed to reunite families. That process requires DOC to transfer custody of the individual to the federal government, which would in turn, transfer custody to the foreign country. For the treaty to be used, the State of Oregon, U.S. Department of Justice, and the individual’s home country’s government must all agree to the transfer.

Oregon relinquishes all control over the AIC once custody is transferred to the federal government. Similarly, the federal government relinquishes all control over the AIC once returned to his or her home country.

In practical terms, this means there is no guarantee the individual would serve the full term of his or her Oregon sentence in a prison in his or her home country. The foreign government would have total control over the individual’s disposition and could apply its laws to his or her case, including arbitrarily releasing the inmate. Many states have found this lack of control to be unacceptable.

Oregon has used the treaty in a very small number of cases. When a potential candidate comes to DOC’s attention, the department looks at where the family lives, what type of sentence the person

received, and seeks input on the potential international transfer from judges, victims, and district attorneys.

If DOC determines an AIC is a good candidate, the department submits an international transfer application to the Governor’s Office for review. If approved, the application proceeds to the U.S. Department of Justice, with the final review and approval completed by the AIC’s home country’s government.

Summary

- The Oregon DOC has no independent release authority, and must carry out each sentence of the courts.
- Deportation is a federal, not a state, function.
- Federal SCAAP funding covers only a small part of the cost of incarcerating criminal aliens.
- Deportation treaties could spare Oregon some expense of incarcerating criminal aliens. However, the DOC’s practice is to hold aliens accountable for their felony crimes committed in Oregon, to protect Oregonians, and to ensure that justice is served for victims. ■

The mission of the Oregon Department of Corrections is to promote public safety by holding offenders accountable for their actions and reducing the risk of future criminal behavior.



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