



Issue Brief - 2009

OREGON DEPARTMENT OF CORRECTIONS

Criminal Aliens in Oregon Prisons

Overview

Of the more than 13,700 inmates incarcerated in Oregon, 1,202 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

An alien 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 Oregon Department of Corrections’ (DOC) mission is to hold all inmates – regardless of their nationalities – accountable for their actions, and to reduce the risk of future criminal behavior.

In doing so, DOC provides ICE with lists of inmates whose records indicate they were born abroad. ICE is solely responsible for determining each inmate’s alien status.

At ICE’s request, DOC places an “ICE detainer” on an inmate that directs state and local authorities to transfer custody to ICE following completion of the inmate’s state sanction. In March 2009, 1,168 DOC inmates from the following countries of birth had ICE detainers:

Cambodia.....5	Laos.....6
Canada.....7	Mexico.....958
Cuba.....13	Romania..... 8
El Salvador.....5	Russia.....11
Guatemala.....32	Vietnam..... 16
Honduras.....15	Other92

Note: Inmates 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 inmates in an annual application for federal funding earmarked to partially reimburse states for incarcerating criminal aliens. That funding is called a “SCAAP” grant, which is short for the State Criminal Alien Assistance Program. Oregon began receiving this partial reimbursement for costs incurred during the 1998-99 fiscal year.

Oregon SCAAP Funding - Recent Fiscal Years

Inmate Population Base Year	Federal Fiscal Year	Award (millions)	Aliens	Congressional Appropriation	OR share
2003-04	FY05	\$3.4	1,716	\$287,143,095	1.19%
2004-05	FY06	\$4.9	1,722	\$376,000,000	1.32%
2005-06	FY07	\$5.1	1,872	\$377,323,723	1.35%
2006-07	FY08	\$6.4	2,051	\$386,215,610	1.66%

DOC’s 2008 SCAAP application identified a total of 2,051 aliens who were incarcerated at some point

between July 2006 and June 2007. To be eligible for federal reimbursement, a criminal alien must be in the custody of the Department four consecutive days. Oregon's cost of housing these foreign-born inmates (based on the 2005-07 budgeted cost-per-inmate of \$67.53) multiplied by the number of days these inmates were in prison totaled \$37,284,934. The 2008 federal SCAAP award for Oregon was \$6.4 million.

Deportation

States do not have the authority to deport anyone, including inmates. 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 inmate 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 inmate's home country's government must all agree to the transfer.

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

In practical terms, this means there is no guarantee the inmate would serve the full term of his or her Oregon sentence in a prison in their home country. The foreign government would have total control over the inmate'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, his or her status is evaluated on a case-by-case basis. For instance, the Department determines where the inmate's family lives. If the family lives in Oregon, this increases the chances that once released abroad, the inmate could return to Oregon.

Other factors also are evaluated: Does the inmate have a mandatory minimum sentence? If so, he or she is ineligible for release. DOC also seeks input in possible international transfer cases from judges, victims and district attorneys.

When DOC recommends an international transfer, an application is made 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 home country's government.

Summary

- The Oregon Department of Corrections 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 policy is that DOC should hold aliens accountable for their felony crimes committed in Oregon, protect Oregonians and to ensure that justice is done for the 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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