

## HISTORICAL AND REVISION NOTES

Based on section 217a of title 25, U.S.C., 1940 ed., Indians (June 8, 1940, ch. 276, 54 Stat. 249).

The attention of Congress is directed to consideration of the question whether this section should be broadened and made applicable to all states rather than only to Kansas. Such change was not regarded as within the scope of this revision.

Changes were made in phraseology.

### § 3244. Jurisdiction of proceedings relating to transferred offenders

When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders—

(1) the country in which the offender was convicted shall have exclusive jurisdiction and competence over proceedings seeking to challenge, modify, or set aside convictions or sentences handed down by a court of such country;

(2) all proceedings instituted by or on behalf of an offender transferred from the United States to a foreign country seeking to challenge, modify, or set aside the conviction or sentence upon which the transfer was based shall be brought in the court which would have jurisdiction and competence if the offender had not been transferred;

(3) all proceedings instituted by or on behalf of an offender transferred to the United States pertaining to the manner of execution in the United States of the sentence imposed by a foreign court shall be brought in the United States district court for the district in which the offender is confined or in which supervision is exercised and shall name the Attorney General and the official having immediate custody or exercising immediate supervision of the offender as respondents. The Attorney General shall defend against such proceedings;

(4) all proceedings instituted by or on behalf of an offender seeking to challenge the validity or legality of the offender's transfer from the United States shall be brought in the United States district court of the district in which the proceedings to determine the validity of the offender's consent were held and shall name the Attorney General as respondent; and

(5) all proceedings instituted by or on behalf of an offender seeking to challenge the validity or legality of the offender's transfer to the United States shall be brought in the United States district court of the district in which the offender is confined or of the district in which supervision is exercised and shall name the Attorney General and the official having immediate custody or exercising immediate supervision of the offender as respondents. The Attorney General shall defend against such proceedings.

(Added Pub. L. 95-144, § 3, Oct. 28, 1977, 91 Stat. 1220, title 28, § 2256; renumbered Pub. L. 95-598, title III, § 314(j)(1), Nov. 6, 1978, 92 Stat. 2677.)

### Editorial Notes

#### CODIFICATION

Section was formerly classified to section 2256 of Title 28, Judiciary and Judicial Procedure.

### Statutory Notes and Related Subsidiaries

#### SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§151 et seq.), chapter 96 (§1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

### CHAPTER 212—MILITARY EXTRATERRITORIAL JURISDICTION

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|---------------|---|
| Sec.<br>3261. | Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States. |
| 3262.         | Arrest and commitment.  |
| 3263.         | Delivery to authorities of foreign countries.   |
| 3264.         | Limitation on removal.  |
| 3265.         | Initial proceedings.  |
| 3266.         | Regulations.  |
| 3267.         | Definitions.  |

### § 3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States

(a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States—

(1) while employed by or accompanying the Armed Forces outside the United States; or

(2) while a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice),

shall be punished as provided for that offense.

(b) No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.

(c) Nothing in this chapter may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal.

(d) No prosecution may be commenced against a member of the Armed Forces subject to chapter 47 of title 10 (the Uniform Code of Military Justice) under this section unless—

(1) such member ceases to be subject to such chapter; or

(2) an indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to such chapter.

(Added Pub. L. 106-523, §2(a), Nov. 22, 2000, 114 Stat. 2488.)

**Statutory Notes and Related Subsidiaries**

## SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-523, §1, Nov. 22, 2000, 114 Stat. 2488, provided that: “This Act [enacting this chapter] may be cited as the ‘Military Extraterritorial Jurisdiction Act of 2000.’”

**§ 3262. Arrest and commitment**

(a) The Secretary of Defense may designate and authorize any person serving in a law enforcement position in the Department of Defense to arrest, in accordance with applicable international agreements, outside the United States any person described in section 3261(a) if there is probable cause to believe that such person violated section 3261(a).

(b) Except as provided in sections 3263 and 3264, a person arrested under subsection (a) shall be delivered as soon as practicable to the custody of civilian law enforcement authorities of the United States for removal to the United States for judicial proceedings in relation to conduct referred to in such subsection unless such person has had charges brought against him or her under chapter 47 of title 10 for such conduct.

(Added Pub. L. 106-523, §2(a), Nov. 22, 2000, 114 Stat. 2489.)

**§ 3263. Delivery to authorities of foreign countries**

(a) Any person designated and authorized under section 3262(a) may deliver a person described in section 3261(a) to the appropriate authorities of a foreign country in which such person is alleged to have violated section 3261(a) if—

(1) appropriate authorities of that country request the delivery of the person to such country for trial for such conduct as an offense under the laws of that country; and

(2) the delivery of such person to that country is authorized by a treaty or other international agreement to which the United States is a party.

(b) The Secretary of Defense, in consultation with the Secretary of State, shall determine which officials of a foreign country constitute appropriate authorities for purposes of this section.

(Added Pub. L. 106-523, §2(a), Nov. 22, 2000, 114 Stat. 2489.)

**§ 3264. Limitation on removal**

(a) Except as provided in subsection (b), and except for a person delivered to authorities of a foreign country under section 3263, a person arrested for or charged with a violation of section 3261(a) shall not be removed—

(1) to the United States; or

(2) to any foreign country other than a country in which such person is believed to have violated section 3261(a).

(b) The limitation in subsection (a) does not apply if—

(1) a Federal magistrate judge orders the person to be removed to the United States to be present at a detention hearing held pursuant to section 3142(f);

(2) a Federal magistrate judge orders the detention of the person before trial pursuant to section 3142(e), in which case the person shall be promptly removed to the United States for purposes of such detention;

(3) the person is entitled to, and does not waive, a preliminary examination under the Federal Rules of Criminal Procedure, in which case the person shall be removed to the United States in time for such examination;

(4) a Federal magistrate judge otherwise orders the person to be removed to the United States; or

(5) the Secretary of Defense determines that military necessity requires that the limitations in subsection (a) be waived, in which case the person shall be removed to the nearest United States military installation outside the United States adequate to detain the person and to facilitate the initial appearance described in section 3265(a).

(Added Pub. L. 106-523, §2(a), Nov. 22, 2000, 114 Stat. 2489.)

**Editorial Notes**

## REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(3), are set out in the Appendix to this title.

**§ 3265. Initial proceedings**

(a)(1) In the case of any person arrested for or charged with a violation of section 3261(a) who is not delivered to authorities of a foreign country under section 3263, the initial appearance of that person under the Federal Rules of Criminal Procedure—

(A) shall be conducted by a Federal magistrate judge; and

(B) may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(2) In conducting the initial appearance, the Federal magistrate judge shall also determine whether there is probable cause to believe that an offense under section 3261(a) was committed and that the person committed it.

(3) If the Federal magistrate judge determines that probable cause exists that the person committed an offense under section 3261(a), and if no motion is made seeking the person’s detention before trial, the Federal magistrate judge shall also determine at the initial appearance the conditions of the person’s release before trial under chapter 207 of this title.

(b) In the case of any person described in subsection (a), any detention hearing of that person under section 3142(f)—

(1) shall be conducted by a Federal magistrate judge; and

(2) at the request of the person, may be carried out by telephony or such other means that enables voice communication among the participants, including any counsel representing the person.

(c)(1) If any initial proceeding under this section with respect to any such person is conducted while the person is outside the United