

(H. B. 1702)

**(No. 201)**

(Approved September 21, 2006)

### **AN ACT**

To empower the Governor, when a treaty exists between the United States of America and a foreign country that stipulates the transfer of convicts to the country of which they are citizens or nationals, that he/she may, on behalf of the Commonwealth of Puerto Rico and subject to the terms of the treaty, authorize the Secretary of the Department of Corrections and Rehabilitation to consent to the transfer of inmates and to take any other action necessary to initiate the participation of the Commonwealth of Puerto Rico in the treaty.

### **STATEMENT OF MOTIVES**

The Citizens' Investigating Official, better known as the Ombudsman, became aware of the situation of Puerto Rican inmates in foreign prisons through the tragedy that took place in the city of Higüey, in the Dominican Republic, in which around 150 inmates perished. Two of said inmates were Puerto Rican. As a result of this investigation, the Ombudsman learned of the existence of international treaties that allow the transfer of inmates in foreign prisons that are citizens of the United States back to their own country. Such treaties also allow foreign citizens in United States prisons to serve their sentences in their country of origin. In the latter case, local legislation is necessary in order to consent to such a transfer.

International law and modern criminal justice systems recognize that it is a duty of the State toward society to provide inmates under their custody with the means to achieve rehabilitation in order to successfully reintegrate

into society. This duty extends to all inmates under their custody, regardless of race, color, gender, nationality, age and other illegal and discriminatory distinctions.

The United Nations Organization recognizes inmates as a group that is historically disadvantaged, and against which serious injustices are committed. The United Nations Congress adopted the Standard Minimum Rules for the Treatment of Prisoners in 1955. Resolutions 43/173 of 1988 and 45/111 of 1990 on humane treatment for detained persons or inmates were approved more recently.

The governing principles of said resolutions recognize that the purpose and justification of penalties and measures that deprive persons of their freedom is the protection of society against crime. To achieve such purposes, the term of imprisonment should be taken advantage of, so that the delinquent not only wants to, but also does respect the law. The importance of giving individualized treatment to inmates, according to their special needs, to achieve a successful social readjustment is recognized.

Unfortunately, government bodies are limited in resources and sometimes unprepared to provide adequate rehabilitation programs to meet the needs of some inmates. In many cases, inmates who are foreign nationals are isolated by cultural and language barriers. Said barriers impede or make it difficult for foreign inmates to achieve adaptation to life in prison and an understanding of the legal system to which they are subject.

In response, several countries have signed treaties that pursue the development of greater international cooperation on criminal matters to achieve justice and social rehabilitation for the sentenced persons. Such treaties require that foreigners imprisoned as a result of the commission of a

crime should be provided with the opportunity to serve their sentence in their own country.

For such purposes, the United States has signed two multilateral treaties known as the “European Convention on the Transfer of Sentenced Persons” and the “Inter-American Convention on Serving Criminal Sentences Abroad.” These were created, respectively, by the European Council and the Organization of American States. The United States has also signed 12 bilateral treaties with Bolivia, Canada, France, Hong Kong SAR, Marshall Islands, Mexico, Micronesia, Palau, Panama, Peru, Thailand and Turkey.

These treaties, in addition to being based upon human rights considerations, seek to relieve or resolve the communication difficulties faced by foreign inmates due to language barriers and the absence of contact with relatives and friends.

The consent of the sentencing country, the receiving country, the authorizing state and the informed consent of the inmate are required for the transfer.

The procedure to be followed to achieve a transfer by virtue of the treaties is established for the most part by means of the federal provisions in the chapter entitled “Transfer to and from Foreign Countries” of the “United States Code (18 U.S.C. § 4100 et seq).” Federal Department of Justice special unit known as the “International Prisoner Transfer Unit” is in charge of the administration and enforcement of said law. The approval or denial of an application for transfer is ultimately under the discretion of said body.

The following factors are included among those to be considered to determine whether the transfer is in order: the gravity of the crime, the role or participation of the inmate in its commission, the existence of fines or orders of restitution, the criminal record of the inmate, the bonds existing

between the inmate and his/her country, and the probability of the transfer effectively contributing positively to the rehabilitation process of the inmate.

At times, certain considerations on human rights, such as suffering from a terminal illness, whether by the inmate or a relative, shall have priority over the general factors in favor of the approval of the transfer.

The Treaties and the pertinent Federal Laws make transfers viable in two types of situations: the transfer of U.S. citizens imprisoned abroad back into the United States and the transfer of foreign nationals serving a sentence in federal prisons back to their country of origin. However, due to jurisdictional matters, inmates who are foreign nationals who serve their sentence in state prisons cannot be transferred unless there is state legislation to enable the same.

At present, 49 states of the United States of America, including Alaska and Hawaii, have approved state legislation for this purpose.

In Puerto Rico, as of the effectiveness of Constitutional Mandate of Rehabilitation Act, Act No. 377 of September 16, 2004, the rehabilitation of delinquents ceased to be a mere goal to be reached by the State to become a mandate of the People. Said Act declares that the State has the resources to make the moral and social rehabilitation of the delinquents possible, and directs that the Constitution shall be read as such.

In harmony with the public policy declared by the State, inmates of foreign nationality serving sentences in Commonwealth of Puerto Rico prisons may benefit from an alternate rehabilitation method, appropriate for the individual needs and conditions intrinsic to their condition as foreigners.

**BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:**

Section 1.- Title

This Act shall be known as the “International Foreign Inmates Transfer Act.”

Section 2.- Power of the Governor to Authorize the Secretary of the Department of Corrections and Rehabilitation to Consent to the Transfer of Inmates

Should a treaty exist between the United States of America and a foreign country that provides for the transfer of convicted foreign nationals to the country of their citizenship or nationality, the Governor, on behalf of the Commonwealth of Puerto Rico and subject to the terms of the pertinent treaty and to the provisions of this Act, shall authorize the Secretary of the Department of Corrections and Rehabilitation to consent to the transfer of such offenders and to take any other action necessary to initiate the participation of the Commonwealth of Puerto Rico in the treaty.

Section 3.- Duty to Notify the Department of Justice of the Commonwealth of Puerto Rico

It shall be the duty of the Department of Corrections and Rehabilitation to notify the Department of Justice of the Commonwealth of Puerto Rico about any transfer request made by an inmate pursuant to this Act in order to investigate whether he/she has any matters pending in other states or territories whose interests the Department of Justice may represent in extradition cases.

Section 4.-Regulations

The Secretary of the Department of Corrections and Rehabilitation shall promulgate the necessary regulations to comply with the provisions of this Act, establishing as minimum requirements the provisions of the federal

legislation created for such purposes, Public Law 95-144 of October 28, 1977, as amended, known as the “Transfer to and from Foreign Countries.”

Section 5.- Effectiveness

This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 201 (H.B. 1702) of the 4<sup>th</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to empower the Governor, when a treaty exists between the United States of America and a foreign country that stipulates the transfer of convicts to the country of which they are citizens or nationals, that he may, on behalf of the Commonwealth of Puerto Rico and subject to the terms of the treaty, authorize the Secretary of the Department of Corrections and Rehabilitation to consent to the transfer of inmates and to take any other action necessary to initiate the participation of the Commonwealth of Puerto Rico in the treaty,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 15<sup>th</sup> of October of 2007.

Francisco J. Domenech  
Director