

THIRTEENTH CONGRESS OF THE }
REPUBLIC OF THE PHILIPPINES }
First Regular Session

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SENATE

S. No. 686

INTRODUCED BY HON. MANUEL B. VILLAR, JR.

EXPLANATORY NOTE


While there are still a number of persons who subscribe to the imposition of sentence to convicted persons as penalty and a form of retribution for the offense they have committed against the State, it is undeniable that recent development in criminal law has emerged verging away from this retributory nature of imposition of sentence. Gone are the days when a sentence is meted out simply to punish the offender and have him pay for what he did. Focus has been shifted from the criminal to the crime. Imposition of sentence has taken a new meaning, a new purpose. Whereas before, it's sole rationale is to castigate the convicted person, now it is look upon as a tool to rehabilitate a person gone wayward.

Corollary to the concept of rehabilitating a sentenced person is the notion of reintegrating him into society. And what better way to fulfill these objectives than by having sentenced persons who have been deprived of their liberty as a result of their commission of a criminal offense the opportunity to serve their sentence within their own society. This is what is being sought by the various agreements entered into by the Philippines with other countries for the transfer of sentenced persons.

The absence of a law laying down the procedure for the implementation of these transfer, of sentenced persons treaties leaves a chasm that urgently needed to be filled and which is proving to be detrimental to the Filipinos who continue to languish in jails in foreign lands. This bill seeks to fill that void.

The provisions of the proposed bill shall govern the procedure in the implementation of treaties in effect prior to its approval and all other subsequent treaties. The respective treaties entered into by the Philippines with the foreign country where the sentenced person is presently detained, on the other hand, shall continue to govern non-procedural aspects involved in the transfer of sentenced Persons.

The prompt and immediate passage of this bill deserves utmost attention.


MANUEL B. VILLAR, JR.

JUN 30 10:08

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**AN ACT PROVIDING THE PROCEDURE FOR THE IMPLEMENTATION OF
TRANSFER OF SENTENCED PERSONS TREATIES ENTERED INTO BY THE
PHILIPPINE GOVERNMENT WITH A FOREIGN COUNTRY, AND
APPROPRIATING FUNDS THEREFOR**

*Be it enacted by the Senate and House of Representatives of the Philippines in
Congress assembled:*

SECTION 1. *Short Title.* - This Act shall be cited as the "Philippine
Transfer of Sentenced Persons Act."

SECTION 2. *Definition of Terms.* - For the purpose of this Act, the
following terms are defined as follows:

- (a) "Transfer" means a movement of a sentenced person from one country to another for the purpose of continuing the service of the sentence imposed on him.
- (b) "Sentenced Person" means any person whom a competent court found guilty of an offense and upon whom a penalty involving deprivation of liberty has been imposed.
- (c) "Transferring Country" means a country from which the sentenced person may be, or has been transferred.
- (d) "Receiving Country," means a country to which the sentenced person may be, or has been transferred.
- (e) "Treaty" means a treaty between the Republic of the Philippines and one or more foreign countries or governments under which a person sentenced in the court of one country may be transferred to another country for the purpose of serving the sentence imposed on him.
- (f) "Secretary" means the head of the Department of Justice of the Republic of the Philippines or any official acting on his behalf or temporarily occupying and discharging the duties of that position.

- (g) "Secretary of Foreign Affairs" means the head of the Department of Foreign Affairs of the Republic of the Philippines, or any official acting on his behalf or temporarily occupying and discharging the duties of that position.
- (h) "Foreign diplomat" means any authorized diplomatic representative of the transferring or receiving country and recognized as such by the Secretary of Foreign Affairs.

SECTION 3. *Applicability.*

- (a) The provisions of this Act relating to the transfer of sentenced person shall be applicable only when a treaty providing for such transfer is in force, and shall only be applicable to transfers of sentenced person to and from a foreign country pursuant to such a treaty. A sentence imposed by a foreign country upon a sentenced person who is subsequently transferred to the Philippines pursuant to a treaty shall be subject to being fully executed in the Philippines even though the treaty under which the sentenced person was transferred is no longer in force.
- (b) The provisions of this Act shall govern the procedure in the implementation of treaties in effect prior to the enactment of this Act and all other treaties subsequent to its enactment. The respective treaties entered into by the Philippines with the foreign country where the sentenced person is presently detained shall govern non-procedural aspects such as the specific conditions for eligibility involved in the transfer of sentenced persons.

SECTION 4. *Authority of the Secretary.* —The Secretary is authorized:

- (a) To act on behalf of the Philippines as the authority referred to in a treaty;
- (b) To receive custody of sentenced person under a sentence of imprisonment, on parole, or on probation from foreign countries and as appropriate confine them in penal or correctional institutions, or assign them to the parole or probation authorities for supervision;
- (c) To transfer sentenced persons under a sentence of imprisonment, on parole, or on probation to the foreign countries
- (d) To make regulations for the proper implementation of such treaties in accordance with this Act and to make regulations to implement this Act;
- (e) To render to foreign countries and to receive from them the certifications and reports required to be made under such treaties;

- (f) To make agreements and establish regulations for the transportation through the territory of the Philippines of sentenced persons convicted in a foreign country who are being transported to a third country for the execution of their sentences, the expenses of which shall be paid by the country requesting the transportation;
- (g) To make agreements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of juveniles who are transferred pursuant to treaty, the expenses of which shall be paid by the country of which the juvenile is a citizen or national;
- (h) In concert with the Secretary of Health, Education, and Social Welfare, to make arrangements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of individuals who are accused of an offense but who have been determined to be mentally ill; the expenses of which shall be paid by the country of which such person is a citizen or national;
- (i) To designate agents to receive, on behalf of the Philippines, the delivery by a foreign government of any sentenced person being transferred to the Philippines for the purpose of serving a sentence imposed by the courts of the foreign country, and to convey him to the place designated by the Secretary.
- (j) To delegate the authority conferred by this Act to officers of the Department of Justice.

SECTION 5. *Applicability of Philippine Law.* – All laws of the Philippines, as appropriate, pertaining to prisoners, probationers, parolees, and juvenile sentenced persons shall be applicable to sentenced persons transferred to the Philippines, unless a treaty or this Act provides otherwise.

SECTION 6. *Procedure for Transfer; Request.*

- (a) The Department of Justice shall inform the sentenced persons of their right to transfer pursuant to a treaty.
- (b) When the receiving country is the Philippines, the request shall originate from the Secretary who shall forward the same to the Secretary of Foreign Affairs. The Secretary of Foreign Affairs shall address the request to the foreign diplomat of the transferring country. When the receiving country is the foreign country, its diplomat shall make the request to the Secretary of Foreign Affairs.
- (c) If the Secretary of Foreign Affairs finds the request to be in order and to have met the requirements of this Act and the relevant

- treaty, he shall forward the request to the Secretary.
- (d) The Secretary shall inform the receiving country through the same channels, of its decision on whether to approve or refuse the request for transfer. If the request for transfer is approved, both countries shall take all measures necessary for effectuating the transfer.
 - (e) Prior to making a request or making a decision on whether to grant a request, the Secretary, through the same channels used in making a request for transfer, shall make a request for relevant information, document and statements.
 - (f) If the Philippines is the transferring country, the Secretary shall provide the receiving country, through the same diplomatic channels, the following information:
 - (1) A summary of the facts upon which the sentence was based, the text of the legal provision defining the offense and the conclusion of the court judgment
 - (2) The termination date of the sentence, the length of time already served by the sentenced person and any credits to which he is entitled on account of work done, good behavior, pre-trial confinement or other reasons
 - (3) A certified copy of all judgments and sentences concerning the sentenced person and of the law on which they are based
 - (4) Any other additional information requested by the receiving country so far as such information may be significant for the sentenced person's transfer and for the enforcement of his sentence.
 - (g) Upon request of the receiving country, the Philippines shall allow the designated official of the receiving country to verify that the consent of the sentenced person, or the person entitled to act in his behalf, has given his consent voluntarily and with full knowledge of the consequence thereof in accordance with SECTION 12 of this Act. Similarly, the consent of the sentenced person to be transferred from the Philippines shall be verified in accordance with SECTION 13.
 - (h) The transfer of the sentenced person shall occur on the date and place agreed upon by both countries

SECTION 7. *Concurrent Request for Transfer.* - In case transfer of the same sentenced person has been requested by two or more countries, the Secretary of Foreign Affairs in consultation with the Secretary, shall decide

which of the several request shall be first considered, and copies of the decision shall be promptly be forwarded to the other requesting countries.

SECTION 8. *Transfer of Sentenced Person on Probation.*

- (a) Prior to consenting to the transfer to the Philippines of a sentenced person who is on probation, the Secretary shall determine that the Probation Administration is willing and capable to undertake the supervision of the sentenced person.
- (b) Upon the receipt of a sentenced person on probation from the authorities of a foreign country, the Secretary shall cause the sentenced person to be brought before the Probation Administration which is to exercise supervision over the sentenced person.
- (c) The Probation Administration shall place the sentenced person under supervision of a probation officer. The sentenced person shall be supervised by a probation officer, under such conditions as are deemed appropriate as though a Philippine Court had imposed the probation.
- (d) The probation may be revoked in accordance with SECTION 15 of PD 968, as amended (The Probation Law of 1976). If probation is revoked the suspended sentence imposed by the sentencing court shall be executed.
- (e) Prior to consenting to the transfer from the Philippines of a sentenced person who is on probation, the Secretary shall obtain the assent of the court exercising jurisdiction over the probationer.

SECTION 9. *Transfer of sentenced persons serving sentence of imprisonment.*

- (a) Except as provided elsewhere in this Act, a sentenced person serving a sentence of imprisonment in a foreign country transferred to the custody of the Secretary shall remain in the custody of the Secretary under the same conditions and for the same period of time as a sentenced person who had been committed to the custody of the Secretary by a court in the Philippines for the period of time imposed by the sentencing court.
- (b) The transferred sentenced person shall be given credit toward service of the sentence for any days, prior to the date of commencement of the sentence, spent in custody in connection with the offense or acts for which the sentence was imposed.
- (c) (1) The transferred sentenced person shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time

served as of the time of the transfer. Subsequent to the transfer, the sentenced person shall in addition be entitled to credits toward service of sentence for good conduct and loyalty as provided under Articles 97 and 98 of the Revised Penal Code and similar laws. These credits shall be combined to provide a release date for the sentenced person.

- (2) If the country from which the sentenced person is transferred does not give credit for good time, the basis of computing the deduction from the sentence shall be the sentence imposed by the sentencing court and certified to be served upon transfer.
- (d) Any sentence for an offense against the Philippines, imposed while the sentenced person is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was one imposed by a Philippines court for an offense against the Philippines.

SECTION 10. *Transfer of sentenced persons on parole; parole of sentenced persons transferred*

- (a) Upon the receipt of a sentenced person who is on parole from the authorities of a foreign country, the Secretary shall assign the sentenced person to the Board of Pardons and Parole for supervision.
- (b) The Board of Pardons and Parole shall have the same powers and duties with reference to a sentenced person transferred to the Philippines to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to a sentenced person convicted in a court of the Philippines except as otherwise provided in this Act or in the pertinent treaty.
- (c) A sentenced person transferred to the Philippines to serve a sentence of imprisonment may be released on parole in accordance with the provisions of Act No. 4103, as amended (The Indeterminate Sentence Law).

SECTION 11. *Consent*- In order for a sentenced person to be transferred, both the transferring and the receiving country must agree to the transfer. The sentenced person himself must also give his consent to the transfer. *Provided* that if at the time of transfer the sentenced person is under eighteen years of age, or is deemed by the verifying officer to be mentally incompetent or otherwise incapable of knowingly and voluntarily consenting to the transfer, the transfer shall not be accomplished unless consent to the transfer be given by a parent or guardian, guardian ad litem, or by an appropriate court of the sentencing country.

SECTION 12. *Verification of consent of sentenced person to transfer from the Philippines*

- (a) Prior to the transfer of a sentenced person from the Philippines, the fact that the sentenced person consents to such transfer and that such consent is voluntary and with full knowledge of the consequences shall be verified by a Philippines judge. Should the receiving country request, a person officially designated by it shall verify.
- (b) The verifying officer shall inquire of the sentenced person whether he understands and agrees that the transfer will be subject to the following conditions:
 - (1) Only the appropriate courts in the Philippines may modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in such courts;
 - (2) The sentence shall be carried out according to the laws of the country to which he is to be transferred and that those laws are subject to change;
 - (3) If a court in the country to which he is transferred should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of that country, he may be returned to the Philippines for the purpose of completing the sentence if the Philippines requests his return; and
 - (4) His consent to transfer, once verified by the verifying officer, is irrevocable.
- (c) The verifying officer, before determining that a sentenced person's consent is voluntary and given with full knowledge of the consequences, shall advise the sentenced person of his right to consult with counsel as provided by this Act. If the sentenced person wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.
- (d) The verifying officer shall make the necessary inquiries to determine that the sentenced person's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the sentenced person accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall be on an appropriate form prescribed by the Secretary.
- (e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Secretary shall maintain custody of the records.

SECTION 13. *Verification of consent of sentenced person to transfer to the Philippines.*

- (a) Prior to the transfer of an sentenced person to the Philippines, the fact that the sentenced person consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof, shall be verified in the country in which the sentence was imposed by a Secretary of the embassy or legation, consul-general, consul, vice-consul or consular agent or by any officer in the foreign service of the Philippines stationed in the said foreign country.
- (b) The verifying officer shall inquire of the sentenced person whether he understands and agrees that the transfer will be subject to the following conditions:
 - (1) Only the country in which he was convicted and sentenced can modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in that country;
 - (2) The sentence shall be carried out according to the laws of the Philippines and that those laws are subject to change;
 - (3) If a Philippines court should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of the Philippines, he may be returned to the country which imposed the sentence for the purpose of completing the sentence if that country requests his return; and
 - (4) His consent to transfer, once verified by the verifying officer, is irrevocable.
- (c) The verifying officer, before determining that an sentenced person's consent is voluntary and given with full knowledge of the consequences, shall advise the sentenced person of his right to consult with counsel as provided by this Act. If the sentenced person wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.
- (d) The verifying officer shall make the necessary inquiries to determine that the sentenced person's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the sentenced person accepts the transfer subject to the conditions set forth in subsection (c). The consent and acceptance shall be on an appropriate form prescribed by the Secretary.
- (e) The proceedings shall be taken down by a reporter or recorded by

suitable sound recording equipment. The Secretary shall maintain custody of the records.

SECTION 14. *Right to counsel, appointment of counsel* -- In the proceedings to verify consent of an sentenced person for transfer, the sentenced person shall have the right to advice of counsel. If the sentenced person is financially unable to obtain counsel, a counsel for the proceedings shall be appointed

SECTION 15. *Loss of rights, disqualification* - An sentenced person transferred to the Philippines to serve a sentence imposed by a foreign court shall not incur any loss of civil, political, or civic rights nor incur any disqualification.

SECTION 16. *Return of transferred sentenced persons*

- (a) Upon a final decision by the courts of the Philippines that the transfer of the sentenced person to the Philippines was not in accordance with the treaty or the laws of the Philippines and ordering the sentenced person released from serving the sentence in the Philippines the sentenced person may be returned to the country from which he was transferred to complete the sentence if the country in which the sentence was imposed requests his return. The Secretary shall notify the appropriate authority of the transferring country, within ten (10) days, of a final decision of a court of the Philippines ordering the sentenced person released. The notification shall specify the time within which the sentencing country must request the return of the sentenced person which shall be no longer than thirty days.
- (b) Upon receiving a request from the transferring country that the sentenced person ordered released be returned for the completion of his sentence, the Secretary may file a complaint for the return of the sentenced person with a court within whose jurisdiction the sentenced person is found. The complaint shall be upon oath and supported by affidavits establishing that:
 - (1) The sentenced person was convicted and sentenced by the courts of the transferring country to which his return is requested;
 - (2) The sentenced person was transferred to the Philippines for the execution of his sentence;
 - (3) The sentenced person was ordered released by a court of the Philippines before he had completed his sentence because the transfer of the sentenced person was not in accordance with the treaty or the laws of the Philippines;

- (4) And that the sentencing country has requested that he be returned for the completion of the sentence.

There shall be attached to the complaint a copy of the sentence of the sentencing court and of the decision of the court which ordered the sentenced person released.

A summons or a warrant shall be issued by the court ordering the sentenced person to appear or to be brought before the issuing authority. If the court finds that the person before him is the sentenced person described in the complaint and that the facts alleged in the complaint are true, he shall issue a warrant for commitment of the sentenced person to the custody of the Secretary until surrender shall be made. The findings and a copy of all the testimony taken before him and of all documents introduced before him shall be transmitted to the Secretary, that a Return Warrant may issue upon the requisition of the proper authorities of the transferring country, for the surrender of sentenced person.

- (c) A complaint referred to in subsection (b) must be filed within sixty days from the date on which the decision ordering the release of the sentenced person becomes final.
- (d) A sentenced person returned under this Act shall be subject to the jurisdiction of the country to which he is returned for all purposes.
- (e) The return of a sentenced person shall be conditioned upon the sentenced person being given credit toward service of the sentence for the time spent in the custody of or under the supervision of the Philippines.

SECTION 17. *Execution of sentences imposing an obligation to make restitution or reparations* - If in a sentence issued in a penal proceeding of a transferring country a sentenced person transferred to the Philippines has been ordered to pay a sum of money to the victim of the offense for damage caused by the offense, that penalty or award of damages may be enforced as though it were a civil judgment rendered by a Philippine court. Proceedings to collect the moneys ordered to be paid may be instituted by the Secretary in a court of competent jurisdiction. Moneys recovered pursuant to such proceedings shall be transmitted through diplomatic channels to the treaty authority of the transferring country for distribution to the victim.

SECTION 18. *Jurisdiction in Proceedings Relating to Transfer of Sentenced Persons*

- (a) The transferring country shall have exclusive jurisdiction over proceedings seeking to challenge, modify or set aside a conviction or sentence handed down by a court of such country.
- (b) The Philippines shall have exclusive jurisdiction over all proceedings pertaining to the manner of execution in the Philippines of a sentenced imposed by a foreign court as well as to any challenge to the validity of the transfer to and from the Philippines.

SECTION 19. *Cost.* -The cost incurred in the transportation of the sentenced person and those brought about by the continued enforcement of the sentence after transfer shall be borne by the receiving party. Provided that the Secretary may seek to recover a portion or the whole amount corresponding to the transport cost.

SECTION 20. *Appropriations* – The amount of One Million Pesos (P1, 000,000.00) is hereby appropriated yearly from the General Fund to be administered by the Department of Justice.

SECTION 21. *Implementing Rules and Regulations.* -- The Secretary shall promulgate the appropriate rules and regulations within two (2) months from its approval to implement this Act.

SECTION 22. *Separability Clause.* If any portion or provision of this Act is declared unconstitutional or invalid, the other portions or provisions hereof which are not affected thereby shall continue in full force and effect.

SECTION 23. *Effectivity Clause.* This Act shall take effect fifteen days following its publications in the Official Gazette or in any two newspapers of general circulation.

Approved,