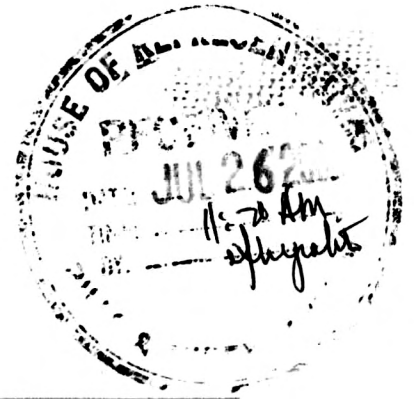


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
First Regular Session

HB NO. 1626



Introduced by Rep. Roseller L. Barinaga

EXPLANATORY NOTE

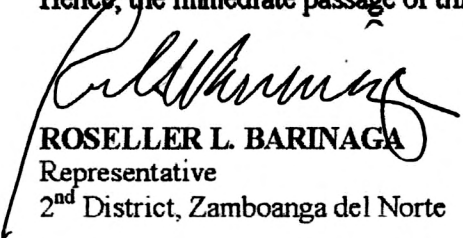
On December 22, 1998, the undersigned sponsored a resolution "Urging the Department of Foreign Affairs to look into the feasibility of forging prisoner transfer treaties between the Philippines and other countries where Filipino convicts are serving sentence". This was unanimously adopted by the Senate as Senate Resolution No. 12 and transmitted to the Department of Foreign Affairs and other agencies of government.

Since then, the DFA and the DOJ have conducted a number of meetings with representatives of the Hongkong Special Administrative Region and of Thailand for the purpose of negotiating the terms of treaties that would allow Filipinos convicted in these countries to serve their sentences in Philippine penitentiaries. These treaties will also provide reciprocal rights for Hongkong and Thai citizens convicted by Philippine Courts of Justice.

The Philippines is expected to forge prisoner transfer treaties with Hongkong and Thailand in the very near future. Many more are anticipated to be negotiated with other countries with large concentrations of Filipino migrant workers. The treaties will, however, not be self-executing and will need a domestic law that will provide for the mechanics of the transfer of prisoners between the said countries.

This bill, therefore, seeks to authorize the Secretary of Justice to receive the custody of a Filipino offender or cause the transfer of an alien serving sentence in Philippine penitentiaries in accordance with the provisions of a prisoner transfer treaty between the Philippines and another country. It provides for a procedure in securing the offender's consent to his transfer and the verification of such consent. It also provides for the source of administrative costs attendant to the transfer of sentenced Filipino prisoners. Prisoner transfer treaties and this bill that seeks to implement them are borne out of humanitarian consideration of an offender's plight in a foreign prison. It allows him to serve his prison sentence in his home country where family and friends can visit and his rehabilitation properly monitored.

Hence, the immediate passage of this bill is earnestly requested.


ROSELLER L. BARINAGA
Representative
2nd District, Zamboanga del Norte

Congress of the Philippines)
Thirteenth Congress)
First Regular Session)

HOUSE OF REPRESENTATIVES

HB NO. 1626

Introduced by Rep. Roseller L. Barinaga

AN ACT
AUTHORIZING THE TRANSFER OF OFFENDERS
TO OR FROM FOREIGN COUNTRIES

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

SECTION 1. *Short Title.* This Act shall be known as the "Transfer of Prisoners Act of 2004".

SEC. 2. *Definitions of Terms.* When used in this Act, the following terms shall, unless the context otherwise indicates, have the following respective meanings:

(a) "Transfer" means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the court of another country;

(b) "Sentence" means any penalty involving deprivation of liberty ordered by a court on a criminal defendant in the course of the exercise of its criminal jurisdiction;

(c) "Offender" means a person who is found guilty of the commission of an offense and made to serve a sentence by a final judgment of a court;

(d) "Secretary" means the Secretary of the Department of Justice or his duly designated representative; and

(e) "Treaty" means a treaty under which an offender sentenced in the court of one country may be transferred to another country for the purpose of serving the sentence imposed by the said court.

SEC. 3. *Applicability.* This Act shall only be applicable to the transfer of an offender to and from a foreign country pursuant to a treaty that is in force: *Provided, That, a sentence imposed by a foreign court upon an offender who is subsequently transferred to the Philippines pursuant to a treaty shall be fully executed in the Philippines even though the treaty under which the offender was transferred is no longer in force.*

SEC. 4. *Nationality of Offender.* An offender may be transferred from the Philippines to a country of which the offender is a citizen or national. Only an offender who is a Filipino citizen may be transferred to the Philippines.

SEC. 5. *Double Criminality.* At the time of the transfer, it must be shown that the offense for which the offender was sentenced is still an offense in the transferring country and in the receiving country.

SEC. 6. *Authority of the Secretary.* The Secretary is authorized -

(a) to receive custody of an offender under a treaty from a foreign country and as appropriate, confine him in the proper penal or correctional institution;

(b) to transfer an offender to the foreign country of which he is a citizen or national;

(c) to issue rules and regulations for the proper implementation of this Act;

(d) to render to a foreign country and to receive from it the certification and reports required to be made under a treaty;

(e) to authorize the transportation through Philippine territory of an offender convicted in a foreign country who is being transported to a third country for the execution of his sentence, the expenses of which shall be paid by the country requesting the transportation;

(f) to designate agents to receive, on behalf of the Philippines, the delivery by a foreign government of a Filipino citizen being transferred to the Philippines for the purpose of serving a sentence imposed by a court of the foreign country, and to convey him to the place designated by the Secretary. The authorities of a foreign country shall give said agents such powers as may be necessary for the offender's transfer and safekeeping within the territory of the said country.

SEC. 7. *Applicability of Philippine Laws.* All laws of the Philippines, as appropriate, pertaining to prisoners shall be applicable to an offender who is transferred to the Philippines, unless the treaty or this Act provides otherwise.

SEC. 8. *Transfer of Offenders Serving Sentence.* Except as provided in this Act, an offender serving a sentence in a foreign country who is transferred to the custody of the Secretary shall remain in the appropriate penal institution or establishment in the Philippines under the same conditions and for the same period of time as an offender who had been committed to the custody of said penal institution or establishment by a Philippine Court.

SEC. 9. *Credit for Good Conduct and Other Time Allowances.* The transferred offender shall be entitled to deductions from the period of his sentence for time served abroad as a detention prisoner in connection with the offense or acts for which the sentence was imposed.

The transferred offender shall also be entitled to good conduct and other time allowances 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 offender shall also be entitled to credits for good conduct and for loyalty provided under Articles 97 and 98 of the Revised Penal Code and similar laws. If the country from which the

offender is transferred does not give allowances for good conduct or loyalty, the basis for computing deductions from the sentence imposed shall be at the rates prescribed in the aforementioned provisions of the Revised Penal Code and similar laws.

A sentence for an offense committed earlier by the transferred offender in the Philippines, which is imposed by a Philippine Court while said offender is serving the sentence 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 Philippine Court on the offender for an offense against the Philippines.

SEC. 10. *Consent of Offender.* No offender may be transferred to or from the Philippines without the said offender's consent. Once given and verified, the offender's consent to transfer shall be irrevocable.

SEC. 11. *Verification of Consent of Offender to Transfer from the Philippines.* Prior to the transfer of an offender from the Philippines, the Secretary shall verify that the offender -

(a) consents to such transfer and that such consent is voluntary and not the result of any promises, threats, or other improper inducements with full knowledge of the consequences thereof; and

(b) understands and agrees that the transfer shall be subject to the following conditions:

(i) only the appropriate court in the transferring country may modify or set aside the conviction of sentence, and any proceeding seeking such action may only be brought in such court;

(ii) the service of sentence shall be carried out according to the laws of the receiving country and that those laws are subject to change;

(iii) if a court in the receiving country should determine upon a proceeding initiated by the offender or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of the transferring country, the offender may be returned to the transferring country to complete the sentence if the said country requests for his return; and

(iv) his consent to transfer, once given and verified, is irrevocable.

SEC. 12. *Verification Proceedings.* The proceedings for the verification of the consent of an offender shall be in accordance with the terms of the treaty.

SEC. 13. *Right to Counsel.* In proceedings to verify the consent given by an offender for transfer, the offender shall be advised of his right to consult with counsel before determining if his consent is given voluntary and with full knowledge of the consequences. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be suspended until he has had an opportunity to consult with counsel. If the offender is financially unable to obtain counsel, he shall be provided with the assistance of counsel for free.

SEC. 14. *Loss of Rights, Disqualification.* An offender 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 other than those which are provided under the laws of the Philippines in which the issue arises and which would result from the fact of the conviction in the foreign country.

SEC. 15. *Return of Transferred Offender.* a) Upon final decision by a Philippine Court that the transfer of the offender to the Philippines was not in accordance with the treaty or the laws of the Philippines and upon ordering the offender released from serving the sentence in the Philippines, the offender so released may be returned to the transferring country to complete the sentence: *Provided*, That the transferring country requests for his return. The Secretary shall notify the appropriate authority of the transferring country within ten (10) days from a final decision of a Philippine court ordering the release of the offender. The notification shall specify the time within which the transferring country must request for the return of the offender which shall be not be later than thirty (30) days from the date of the release order of the court.

(b) Upon receiving a request from the transferring country that the offender ordered released be returned for the completion of his sentence, the Secretary may file a complaint for the return of the offender to the transferring country with the judge of the court that exercised jurisdiction over the offender. The complaint shall be made under oath and supported by affidavits establishing that --

(i) the offender was convicted and sentenced by a court of the transferring country;

(ii) the offender was transferred to the Philippines for the execution of his sentence;

(iii) the offender was ordered released by a Philippine Court before he had completed his sentence because the transfer of the offender was not in accordance with the treaty or the laws of the Philippines; and

(iv) that the transferring country has requested that the offender be returned for the completion of the sentence.

There shall be attached to the complaint a copy of the sentence of the court of the transferring country and of the decision of the court in the receiving country which ordered the released of the offender.

A summons or a warrant shall be issued by the judge ordering the offender to appear or to be brought before it. If the judge finds that the person before him is the offender described in the complaint and that the facts alleged in the complaint are true, he shall issue an order for the commitment of the offender to the custody of the Secretary until surrender to the transferring country has been made. The findings and a copy of all the testimonies taken before him and of all documents introduced before him shall be transmitted to the Secretary of Foreign Affairs of the Philippines so that an order may, upon the request of the proper authorities of the transferring country, be issued against the offender.

(c) A complaint referred to in subsection (b) must be filed within sixty (60) days from the date on which the decision ordering the release of the offender becomes final.

(d) An offender returned under this Section shall be subject to the jurisdiction of the transferring country to which he is returned for all purpose.

(e) The return of an offender shall be conditioned upon the offender being given credit toward service of the sentence for the time spent in the custody of, or under the supervision of the Philippine Court or the Secretary.

SEC. 16. *Execution of Sentence Imposed; Restitution or Reparation.* If in a sentence issued in a criminal proceeding of a transferring country, an offender transferred to the Philippines has been ordered to pay a sum of money to the victim of the offense, that penalty of award of damages may be enforced as though it were a judgment rendered by a Philippine Court. Proceedings to collect the moneys ordered to be paid may be instituted by the Secretary in a Philippine Court. 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.

SEC. 17. *Jurisdiction of Proceedings Relating to Transferred Offender.* When a treaty is in effect between the Philippines and a foreign country providing for the transfer of convicted offenders: -

(a) 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;

(b) all proceedings instituted by or in behalf of an offender transferred from the Philippines 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 that would have jurisdiction and competence if the offender had not been transferred;

(c) all proceedings instituted by or on behalf of an offender transferred to the Philippines pertaining to the manner of execution in the Philippines of the sentence imposed by a foreign court shall be brought in the Philippine Court in the place where the offender is confined or in which supervision is exercised and shall name the Secretary and the official having immediate custody or exercising immediate supervision of the offender as respondents. The Secretary shall defend against such proceedings;

(d) all proceedings instituted by or on behalf of an offender seeking to challenge the validity or legality of the offender's transfer from the Philippines shall be brought in the Philippine Court in which the proceedings to determine the validity of the offender's consent were held and shall name the Secretary as respondent; and

(e) all proceedings instituted by or on behalf of an offender seeking to challenge the validity or legality of the offender's transfer to the Philippines shall be brought in the Philippine Court of the place where the offender is confined or in which supervision is exercised and shall name the Secretary and the official having immediate custody or exercising immediate supervision of the offender as respondents. The Secretary shall defend against such proceedings.

SEC. 18. *Expenses.* The expenses incurred in the transportation of the offender and those brought about by the continued enforcement of the sentence after transfer shall be borne by the receiving country. The Secretary may, however, seek to recover all or part such costs from the offender.

SEC. 19. *Appropriations.* There is hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act.

SEC. 20. *Implementing Rules and Regulations.* The Secretary shall, within three (3) months from the effectivity of this Act, draw up the necessary rules and regulations to implement its provisions.

SEC. 21. *Repealing Clause.* All laws, decrees, orders, rules and regulations or other issuances or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 22. *Separability Clause.* Should any part of this Act be declared unconstitutional, the rest of the provisions shall not be affected thereby.

SEC. 23. *Effectivity.* This Act shall take effect upon its publication in at least two (2) newspapers of general circulation in the Philippines or in the *Official Gazette*, whichever comes earlier. The provisions of this Act shall remain in force during the existence of a treaty or convention with any foreign state or government for the transfer of prisoners.

Approved.