

Editor's Note
(Wayne Buchanan Eads, Attorney at Law)

In an effort to take some action that would benefit the hundreds of foreign citizens who are presently incarcerated in North Carolina, I drafted a proposed bill that would change North Carolina law to allow treaty transfers for those inmates. That proposal was submitted to the Senator from my home district, who met with me in person to discuss the issues involved, and who then agreed to introduce this legislation. At this time, the bill that appears at the end of this note is only a proposal. In order to become law, it must be introduced, debated, voted on, and pass in both the North Carolina House of Representatives and in the North Carolina Senate. To date, that has not occurred. However, I remain hopeful.

To qualify for a treaty transfer to Mexico, to use as an example herein the country which has the largest number of its citizens in North Carolina's prisons, a prisoner must meet all of the following criteria:

- (1) be a citizen of Mexico;
- (2) be convicted of and sentenced for a violation of the laws of the United States or one of the states thereof;
- (3) have no appeals or post-conviction proceedings pending;
- (4) have at least six months remaining to be served on his sentence;
- (5) have no detainers pending that would require the inmate to be tried in the future on another charge¹;
- (6) have a determinate sentence;² and
- (7) not be convicted of a violation of the United States immigration laws, including but not limited to the prohibitions against alien smuggling and unlawful re-entry after removal or deportation.

Certain violent criminals will not be transferred even if they otherwise meet all of the criteria, because the approval of both nations must precede a transfer, and that approval would be withheld on policy grounds for such inmates.

At the time that I wrote my proposed legislation, NCDOC statistics showed that there were nearly 40,000 inmates in prison in North Carolina. Nearly 2,000 of those inmates were listed as citizens of foreign countries, about half of which were believed to be citizens of Mexico.

In light of which, I propose the statutory changes included in the Bill that follows.

¹This provision does not preclude an immigration detainer that would result only in deportation. It is directed solely to detainers based on unresolved criminal charges.

²Emphasis added. A "determinate sentence" is one which defines a set term of incarceration, for example, "60 months." N. C. generally uses a system of indeterminate sentencing, and that is the biggest problem in North Carolina inmates qualifying for treaty transfers to certain countries, including Mexico and Canada.

**A BILL TO BE ENTITLED
AN ACT TO FACILITATE THE TRANSFER OF CONVICTED CRIMINALS
WHO ARE FOREIGN CITIZENS BACK TO THEIR NATIVE COUNTRIES.**

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 81B of Chapter 15A of the General Statutes is amended by adding a new section to read:

Sec. 15A-1340.18. Alternate sentence for offenders who are foreign citizens or nationals.

(a) Purpose. The purpose of this section is to facilitate the transfer of imprisoned offenders, who are foreign citizens or nationals, to the countries of which they are foreign citizens or nationals, pursuant to treaties entered into by the United States and other countries. Specifically, the intent of this section is to facilitate the transfer of offenders to countries that require an offender to have been sent to a fixed, determinate sentence.

(b) Alternate sentence required. If the offender being sentenced is a foreign citizen or national, then in addition to the minimum and maximum terms of imprisonment imposed pursuant to G.S. 15A-1340.13(cc), 20-179, or 90-95(h), the judgment of the court shall also contain an alternate term of imprisonment that is equal to the maximum term of imprisonment contained in the judgment.

(c) When alternate sentence becomes active sentence. If the offender requests to be transferred to the country of which the offender is a citizen or national pursuant to the terms of the applicable treaty, the alternate term of imprisonment shall become the offender's term of imprisonment as soon as the offender takes those measures necessary to commence the transfer process under the terms of the treaty. The offender's minimum and maximum terms shall no longer be applicable.

(d) Reinstatement of minimum and maximum sentences. If an offender's attempt to transfer is unsuccessful for any reason, the offender's minimum and maximum terms shall immediately be reinstated and the alternate term shall no longer be the applicable sentence.

(e) Section only applies to offenders sentenced to active punishment. This section shall not apply to offenders whose sentence dispositions consist solely of community or intermediate punishment.

Section 2. G.S. 15A-1340.13(d) is amended to read:

(d) Service of Minimum Required; Earned Time Authorization. An offender sentenced to an active punishment shall serve the minimum term imposed. The maximum term may be reduced to, but not below, the minimum term by earned time credits awarded to an offender by

the Department of Corrections or the custodian of the local confinement facility, pursuant to rules adopted in accordance with law. This subsection shall not apply in cases in which the offender who is a foreign citizen or national is transferred to another country pursuant to G.S. 148-122.

Section 3. G.S. 90-95(h) is amended by adding a new subdivision to read:

(7) G.S. 15A-1340.18 shall apply to offenders sentenced pursuant to this subsection who are foreign citizens or nationals.

Section 4. G.S. 20-179 is amended by adding a new subsection to read:

(u) G.S. 15A-1340.18 shall apply to defendants sentenced pursuant to this section who are foreign citizens or nationals. This subsection shall only apply if the defendant is sentenced to active punishment and shall apply regardless of whether or not the offense for which the defendant is sentenced is a felony or misdemeanor.

Section 5. This act shall apply retroactively to an offender who is serving an active term of imprisonment as of the effective date of the act, and shall also apply to all offenses committed on or after the effective date.

Section 6. This act becomes effective December 1, 2010.