

## **INFORMATION FOR AMERICAN CITIZENS ARRESTED AND IMPRISONED IN ECUADOR**

This pamphlet contains information about the Ecuadorian legal and prison systems, and the services that a consular officer can and cannot provide to U.S. prisoners.

### **JURISDICTION**

All foreigners in Ecuador are subject to Ecuadorian law. Ecuadorian authorities investigate all crimes and foreigners not cleared by the investigation will be tried by an Ecuadorian court. Foreigners found guilty and sentenced to prison will serve their sentences in Ecuadorian prisons. Note that while the Ecuadorian Penal System has some similarities to the criminal law known and used in the United States, there are many important differences.

### **THE ROLE OF THE CONSULAR OFFICER**

- The consular officer cannot get an American citizen out of prison. An American citizen should not expect, and will not receive, preferential treatment by the Ecuadorian authorities because of their nationality.
- The consular officer cannot act as an agent or attorney or provide any legal advice. Under no circumstances will the consular officer become involved in any scheme involving bribery or any other violation of the law. The consular officer will provide American citizens with a list of local attorneys but cannot recommend or choose an attorney.
- The consular officer makes regular visits to check on the physical and emotional well-being of American citizens in prison and to encourage good rapport and a cooperative relationship with host country prison directors, judges, law enforcement officials and prosecutors.
- With a signed Privacy Act Release, the consular officer can notify a prisoner's family, respond to inquiries from friends, congressional representatives and others, and relay requests for financial and other assistance.
- The consular officer can receive money through the State Department trust fund and deliver it to American citizens in prison.

## **INITIAL ARREST AND INVESTIGATION**

American citizens may be arrested and detained under the following circumstances:

- If s/he is caught in a criminal activity. In this case the investigative authority is not required to have a search or arrest warrant to arrest a suspect. A suspect must be arraigned before a judge within 24 hours.
- To comply with an ongoing investigation. This can only be done by a court order and the suspect can be detained only for 24 hours. If during these 24 hours the presiding judge does not have sufficient evidence to warrant charging the suspect, the accused must be released.
- The prosecutor has begun an investigation and the presiding judge has subsequently ordered a preliminary detention.
- When an official “notice to appear before the court” (auto de llamamiento a juicio) is issued and a jail sentence is received as a result of above-mentioned hearing.

After the arrest, the accused can only be detained if the prosecutor has presented sufficient evidence and the prosecutor has initiated an official investigation. Upon the prosecutor’s request, the presiding judge will then order pretrial confinement of the accused. Once charged, the defendant may be held until the conclusion of the investigation.

The investigation is followed by an intermediate stage (etapa intermediana) with two possible outcomes:

- A not guilty verdict, in which case the defendant is released
- A guilty verdict, in which the defendant will be imprisoned in a permanent facility until a hearing is held to determine the sentence

If the offense is a misdemeanor, the police have the authority to impose a fine or a short prison sentence. Note that there is no bail or bond for major offences such as drug trafficking.

## **TRIAL, APPEAL, AND SENTENCE**

According to the new Ecuadorian criminal trial law, the emphasis is on oral presentations before a committee of 3 judges rather than on a written record of testimony. In the oral presentation the prosecutor has to present the case and prove guilt. This includes the presentation of witnesses, expert testimonies and physical evidence. The victim’s private lawyer also can present himself (herself) as a “private accuser” (acusador privado).

During the trial, this private accuser has the same rights and privileges as the prosecutor. The defendant also has the right to present proof of his/her innocence.

During the investigation and trial, American citizens have the right to an attorney. If they cannot afford to pay for a legal counsel they are entitled to a public defender paid for by the Ecuadorian government. Public defenders are not chosen until after the trial date is scheduled and tend to be young and inexperienced. A private attorney may be more experienced and have contacts in the legal system. S/he can attempt to use his/her influence and knowledge to expedite the long investigation process.

Without a capable attorney, it is very difficult to prepare a defense. A defendant will not be able to interview witnesses, obtain documents and written testimonies, or monitor progress on their case very easily from within the prison. Even with a capable attorney the investigation can drag for several months. Note that the Embassy is not able to provide prisoners with legal assistance in these matters. Therefore we strongly urge prisoners to retain a capable and reputable attorney to assist in their defense.

### **PENALTIES**

Penalties for narcotics possession and or trafficking range from 3 to 25 years, depending on the seriousness of the crime. If other felonies are involved, each additional charge can add 40 years to the sentence. Pretrial confinement is credited toward the sentence. Sentenced prisoners can receive a reduction of 6 months for every 5 years served for good behavior. However, these reductions do not apply toward other narcotic related sentences. In minor cases such as immigration law violations, and “Intende de Policia” can order deportation.

The verdict of a lower court may be appealed at the Superior Court by either the prosecution or the defense. Thus, even an acquittal is not necessarily final if the prosecution appeals. During the appeal, the accused is held in prison. Note that an appeal must be made within three days after the “auto de apertura al plenario.”

Possession of marijuana and hard drugs for personal use is permitted under the new Law 108. According to the law, those who illegally use narcotics are considered sick and should be subjected to detoxification and rehabilitation treatment during a period to be determined by a National Directorate of Health physician. There is no exact determination as to the exact amount that is considered for personal use. Therefore the jury will follow advice of a physician from the National Directorate of Health, who likely will base his/her opinion on international norms that have determined 5 grams of hard drugs and 20 grams of marijuana to be sufficient for personal use.

Note that “trafficking” is any commercial transaction, possession or shipment, for whatever reason, of hallucinogenic medicines or drugs. A narcotics transaction does not have to involve an exchange of money in order to be defined as trafficking. Depending

on the judicial interpretation regarding the case, simple possession of narcotics may be penalized as severely as trafficking.

### **ECUADORIAN PRISONS**

Ecuador does not have the resources to provide the standard of living found in U.S. prisons. Nevertheless, Consular Officers receive very few complaints from U.S. citizens about their treatment by prison authorities. Most U.S. citizen prisoners are able to adapt reasonably well to prison life here, and find conditions to be acceptable if not comfortable.

The three most common problems for U.S. citizens are food, medical care and boredom. After the arrest prisoners may have to pay for food until they are moved to one of the long-term prisons where food is provided. Financial arrangements can be made with prison guards to have better food brought in from the outside. For this, as well as for bed linens and other personal supplies that the prison does not provide, prisoners often request money to be sent to them from the U.S. from time to time. The Embassy will provide American citizen prisoners with dietary supplements to help them maintain good nutrition while they are incarcerated.

Medical attention is the responsibility of the prison. Prisoners requiring medical attention should bring their request to the attention of the prison director. If American citizen prisoners require the services of a specialist, the Consular Officer can provide them with a list of medical specialists, but it will be up to the prisoner to make appropriate arrangements for the medical visit. The prison director (or, in the case of narcotics offenders, the Attorney General – Fiscal) must authorize any treatment outside the prison.

Perhaps the most difficult aspect of life in prison here as well as elsewhere is the lack of activities. While some prisons provide opportunities for work, exercise and crafts projects, prisoners likely will find themselves with more free time than they would like. The Embassy provides a limited amount of reading material and notepaper for correspondence as well as information on correspondence courses that prisoners pursue at their own expense. Prisoners should ask family members in the U.S. to provide additional reading material or other items to help pass the time as productively as possible.

Prisoners may receive visits from family members and friends during the regular visiting hours that are established by each prison. Prisoners receive phone calls at any time and may make collect telephone calls. Visits and telephone calls are considered privileges that may be suspended by the prison authorities for bad behavior or other reasons at their discretion.

Difficulties in prison should first be taken up with the prison director. In our experience directors have been very helpful in trying to resolve problems. If that fails, prisoners may contact a Consular Officer to help resolve any outstanding problems.

Transfer from one prison to another lies entirely within the jurisdiction of the prison authorities. The Embassy will not be able to intervene on behalf of a prisoner either to obtain or to hinder a transfer.

Prisoners who believe prison authorities are discriminating against them because they are American citizens should discuss the circumstances with the Consular Officer. The Consular Officer will discuss the matter with prison authorities in an effort to reach a satisfactory resolution.

## LEGAL VOCABULARY

1. Affidavit- Declaracion jurada, testimonio
2. Appeal- Apelacion
3. To appeal-Llevar a un tribunal superior, apelar
4. Arrest- Reclusion, detencion, arresto
5. To arrest, to jail- Arrestar, detener, apresar, encarcelar
6. Attorney, lawyer- Abogado
7. Bail / bond- Fianza, caucion, escritura de fianza
8. Civil Proceedings (Case)- Juicio, proceso civil
9. Conjugal visits- Visitas conyugales, visitas matrimoniales
10. Controlled Liberty (similar to parole, more freedom than pre-liberty)- Libertad condicionada
11. Drug user, drug addict- Drogadicto, consumidor de drogas
12. Court- Tribunal, juzgado, la corte
13. Criminal proceedings (Case)- Juicio, proceso criminal
14. Detention center- Centro de detencion provisional (CDP)
15. Drugs- Drogas
16. Felony- Crimen, delito (ofensa), de mayor cuantia
17. Good behaviour- Buen comportamiento, Buena conducta
18. Hearing- Audiencia
19. Human Rights- Los derechos humanos
20. Jail- Carcel, prision
21. Jail term (sentence)-condena, periodo que por condena se pasa en un carcel
22. Jail break- Escape, fuga de una carcel
23. Prisoner- interno (interna)
24. Prison guard- Carcelero, la guardia, guias penitenciarios
25. Judge- Juez
26. Misdemeanor- Contravencion, delito (ofensa) de menor cuantia
27. Offense- Ofensa, culpa
28. Police- Policia
29. Parole (pre-liberty)- prelibertad
30. Prison authorities- Autoridades de la carcel
31. Prosecutor (District Attorney)- Fiscal
32. To prosecute- Acusar
33. Public defender- Defensor publico, abogado de oficio
34. Trafficker (as in drugs)- narcotraficante
35. Trial- Juicio
36. Warrant- Orden de arresto
37. Arrest Warrant- Orden de arresto