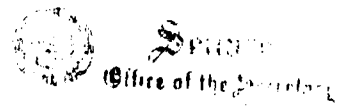


SEVENTEENTH CONGRESS OF THE]
REPUBLIC OF THE PHILIPPINES]
First Regular Session]



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SENATE

S.B. No. 985

Introduced by SEN. WIN GATCHALIAN

AN ACT
ALLOWING THE IMPOSITION OF THE DEATH PENALTY FOR HEINOUS CRIMES
INVOLVING CHILD TRAFFICKING, EXPLOITATION, PROSTITUTION,
PORNOGRAPHY, AND RAPE

EXPLANATORY NOTE

The debate on the merits of the death penalty has gone back and forth since the ratification of the 1987 Constitution effectively abrogated laws then in force and effect imposing the death penalty. However, Section 19(1) of Article III of the 1987 Constitution expressly authorizes Congress to institute the death penalty "for compelling reasons involving heinous crimes." Thus, the Constitution does not prohibit the death penalty *per se*; it merely provides for a strict standard against which the merits of any law providing for the death penalty shall be judged. In fact, Congress once again approved the imposition of the death penalty in 1993 by passing Republic Act No. 7659, only to reverse course and once again prohibit its imposition through the promulgation of Republic Act No. 9346, thirteen years later.

In upholding the constitutionality of the death penalty and the right of Congress to impose it, the Supreme Court looked favourably upon the definition of heinous crimes found in the preamble of RA No. 7659:

“Grievous, odious and hateful offenses...which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society.”¹

The Court went on to justify the continued use of the death penalty as punishment for those who commit such despicable offenses because, considering the tremendous damage that they cause to the individual and to the society as a whole, “a repetition of their acts would pose actual threat to the safety of individuals and the survival of government, they must be permanently prevented from doing so.”²

In the humble opinion of this legislator, there is no greater social evil more repugnant to the fundamental values of the State than the debased exploitation of our children. Child trafficking, exploitation, prostitution, pornography and rape are all offenses which shock the social and moral senses of our entire society, especially considering that they are aimed at corrupting and destroying the very future of our country – the youth. To commit these reprehensible activities is to wage warfare against the fundamental sense of decency that holds our society together. The State must use its sovereign power to protect our children from this great social evil by ensuring that its proponents are permanently prevented from committing these heinous crimes.

Therefore, this legislation seeks to allow, once again, the imposition of the death penalty against convicted criminals who have committed heinous crimes of a sexual and exploitative nature against children within the criminal jurisdiction of the Republic of the Philippines. The crimes enumerated herein surely meet the strict standards imposed by the Constitution. It is time for the sovereign people, through their representatives in the halls of Congress, to take this decisive step in protecting the fundamental rights of its most vulnerable group – the children. Quoting the Court *per curiam*:

“We are not unaware that for all the legal posturings we have so essayed here, at the heart of the issue of capital punishment is the wistful, sentimental life-and-death question to which all of us, without thinking, would answer, “life, of course, over death”. But dealing with the fundamental question of death provides a

¹ People v. Echegaray, G.R. No. 117472 [1997].

² *Supra*

context for struggling with even more basic questions, for to grapple with the meaning of death is, in an indirect way, to ask the meaning of life. Otherwise put, to ask what the rights are of the dying is to ask what the rights are of the living.”³

Support for the passage and approval of this legislation is earnestly sought.



WIN GATCHALIAN

³ *Supra*

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AN ACT
ALLOWING THE IMPOSITION OF THE DEATH PENALTY FOR HEINOUS CRIMES
INVOLVING CHILD TRAFFICKING, EXPLOITATION, PROSTITUTION,
PORNOGRAPHY, AND RAPE

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

1 SECTION 1. **Death Penalty.** – The imposition of the death penalty shall be
2 allowed upon persons found guilty of heinous crimes involving child trafficking,
3 exploitation, prostitution, and pornography, as expressly provided under the provisions
4 of this Act.

5 SEC. 2. The following offenses as defined under the following laws shall be
6 considered as heinous crimes:

- 7 (a) Qualified trafficking in persons when the trafficked person is a child, as
8 penalized under Section 10 of Republic Act No. 9208, as amended, otherwise
9 known as the “Anti-Trafficking in Persons Act of 2003”;
- 10 (b) Use of trafficked persons when the trafficked person is a child and the use of
11 the trafficked person involves sexual intercourse or lascivious conduct with a
12 child, as penalized under Section 11 of Republic Act No. 9208, as amended;

- 1 (c) Syndicated child pornography as penalized under Section 15 of Republic Act
2 No. 9775, as amended; otherwise known as the "Anti-Child Pornography Act
3 of 2009;"
- 4 (d) Hiring, employing, using, persuading, inducing or coercing a child to perform
5 in the creation or production of any form of child pornography as penalized
6 under Section 15 of Republic Act No. 9775, as amended;
- 7 (e) Producing, directing, manufacturing, or creating any form of child
8 pornography as penalized under Section 15 of Republic Act No. 9775, as
9 amended; and,
- 10 (f) Publishing, offering, transmitting, selling, distributing, broadcasting,
11 advertising, promoting, exporting or importing any form of child pornography
12 as penalized under Section 15 of Republic Act No. 9775, as amended;
- 13 (g) Rape, when the offended party is under twelve (12) years of age or is demented
14 and the crime is committed under the circumstances of force, threat or
15 intimidation, or when the offended party is deprived of reason or is otherwise
16 or unconscious, or by means of fraudulent machination or grave abuse of
17 authority, as defined and penalized under Articles 266-A and 266-B of Act No.
18 3815, otherwise known as the "The Revised Penal Code," as amended.

19 SEC. 3. Sections 10 and 11 of Republic Act No. 9208 as amended by, are hereby
20 amended to read as follows:

21 "SEC. 10. *Penalties and Sanctions.* - The following penalties
22 and sanctions are hereby established for the offenses
23 enumerated in this Act:

24 (a) xxx;

25 xxx xxx xxx;

26 (e) Any person found guilty of qualified trafficking under Section 6
27 shall suffer the penalty of life imprisonment and a fine of not less
28 than Two million pesos (P2,000,000.00) but not more than Five
29 million pesos (P5,000,000.00): **PROVIDED, THAT IF THE ACT OF**
30 **TRAFFICKING IS QUALIFIED BY THE PROVISIONS OF**

1 **SECTIONS 6(A) OF THIS ACT, THE PERSON FOUND GUILTY OF**
2 **SAID OFFENSE SHALL SUFFER THE PENALTY OF RECLUSION**
3 **PERPETUA TO DEATH AND A FINE OF NOT LESS THAN THREE**
4 **MILLION PESOS (P3,000,000.00) BUT NOT MORE THAN SIX**
5 **MILLION PESOS (P6,000,000.00);**

6 xxx.

7 SEC. 11. *Use of Trafficked Persons.* – Any person who buys or
8 engages the services of a trafficked person for prostitution shall be
9 penalized with the following: *Provided, That* the Probation Law
10 (Presidential Decree No. 968) shall not apply:

11 (a) xxx

12 (1) If an offense under paragraph (a) involves sexual intercourse or
13 lascivious conduct with a child, the penalty shall be [reclusion
14 temporal in its medium period to reclusion perpetua or seventeen
15 (17) years to forty (40) years imprisonment] **RECLUSION**
16 **PERPETUA TO DEATH** and a fine of not less than [Five hundred
17 thousand pesos (P500,000.00) but not more than One million pesos
18 (P1,000,000.00)] **ONE MILLION PESOS (P1,000,000.00) BUT NOT**
19 **MORE THAN TWO MILLION PESOS (P2,000,000.00);**

20 (2) If an offense under paragraph (a) involves carnal knowledge of,
21 or sexual intercourse with, a male or female trafficking victim and
22 also involves the use of force or intimidation, to a victim deprived of
23 reason or to an unconscious victim, [or a victim under twelve (12)
24 years of age,] instead of the penalty prescribed in the subparagraph
25 above the penalty shall be a fine of not less than One million pesos
26 (P1,000,000.00) but not more than five million pesos
27 (P5,000,000.00) and *reclusion perpetua* or forty (40) years
28 imprisonment with no possibility of parole[;]: [except] **PROVIDED,**
29 [t]That if a person violating paragraph (a) of this section knows the
30 person that provided prostitution services is in fact a victim of

1 trafficking, the offender shall not be likewise penalized under this
2 section but under Section 10 as a person violating Section 4; and if
3 in committing such an offense, the offender also knows a qualifying
4 circumstance for trafficking, the offender shall be penalized under
5 Section 10 for qualified trafficking. If in violating this section the
6 offender also violates Section 4, the offender shall be penalized
7 under Section 10 and, if applicable, for qualified trafficking instead
8 of under this section[.]; **PROVIDED, FINALLY, THAT IF THE**
9 **VICTIM IS A CHILD, THE PENALTY IMPOSED SHALL BE A FINE**
10 **OF NOT LESS THAN TWO MILLION PESOS (P2,000,000.00) BUT**
11 **NOT MORE THAN FIVE MILLION PESOS (P5,000,000.00) AND**
12 **RECLUSION PERPETUA TO DEATH.**

13 **(3) IF AN OFFENSE UNDER PARAGRAPH (A) INVOLVES CARNAL**
14 **KNOWLEDGE OF, OR SEXUAL INTERCOURSE WITH, A MALE**
15 **OR FEMALE TRAFFICKING VICTIM WHO IS A CHILD AND ALSO**
16 **INVOLVES THE USE OF FORCE OR INTIMIDATION, OR THE**
17 **VICTIM IS DEPRIVED OF REASON OR IS UNCONSCIOUS, AND**
18 **THE OFFENDED PARTY DIES, BECOMES INSANE, SUFFERS**
19 **MUTILATION, OR IS AFFLICTED WITH HUMAN**
20 **IMMUNODEFICIENCY VIRUS (HIV) OR THE ACQUIRED IMMUNE**
21 **DEFICIENCY SYNDROME (AIDS), INSTEAD OF THE PENALTY**
22 **PRESCRIBED IN THE SUBPARAGRAPH ABOVE, THE PENALTY**
23 **SHALL BE A FINE OF NOT LESS THAN FIVE MILLION PESOS**
24 **(P5,000,000.00) BUT NOT MORE THAN TEN MILLION PESOS**
25 **(P10,000,000.00) AND RECLUSION PERPETUA TO DEATH.**

26 xxx

27 SEC. 4. Section 15 of Republic Act No. 9775, as amended, is hereby amended to
28 read as follows:

1 **Section 15. Penalties and Sanctions.** – The following
2 penalties and sanctions are hereby established for offenses
3 enumerated in this Act:

4 (a) Any person found guilty of syndicated child pornography as
5 defined in Section 5 of this Act shall suffer the penalty of
6 *reclusion perpetua* **TO DEATH** and a fine of not less than Two
7 million pesos (Php2,000,000.00) but not more than Five million
8 pesos (Php5,000,000.00)

9 (b) Any person found guilty of violating Section 4(a), (b) and (c) of
10 this Act shall suffer the penalty of [reclusion temporal in its
11 maximum period] **RECLUSION PERPETUA TO DEATH** and a
12 fine of not less than One million pesos (Php1,000,000.00) but
13 not more than Two million (Php2,000,000.00);

14 SEC. 5. Article 266-B of Act No. 3815, as amended, is hereby further amended
15 to read as follows:

16 “ART. 266-B. Penalties. – Rape under paragraph 1 of the next
17 preceding article shall be punished by *reclusion perpetua*[,] **PROVIDED,**
18 **THAT WHEN RAPE COMMITTED UNDER SUB-PARAGRAPH 1(D) IS**
19 **ATTENDED BY ANY OF THE CIRCUMSTANCES ENUMERATED IN SUB-**
20 **PARAGRAPHS 1(A), 1(B), OR 1(C) OF THE NEXT PRECEDING ARTICLE,**
21 **THE PENALTY SHALL BE RECLUSION PERPETUA TO DEATH.”**

22 SEC. 6. **When and How the Death Penalty is to be Executed.** – The death
23 sentence shall be executed with preference to any other penalty and shall consist in
24 putting the person under the sentence to death by lethal injection. The death sentence
25 shall be executed under the authority of the Director of the Bureau of Corrections,
26 endeavoring so far as possible to mitigate the sufferings of the person under the
27 sentence during the lethal injection as well as during the proceedings prior to the
28 execution.

1 The Director of the Bureau of Corrections shall take steps to ensure that the
2 lethal injection to be administered is sufficient to cause the instantaneous death of the
3 convict.

4 Pursuant to this, all personnel involved in the administration of lethal injection
5 shall be trained prior to the performance of such task.

6 The authorized physician of the Bureau of Corrections, after thorough
7 examination, shall officially make a pronouncement of the convict's death and shall
8 certify thereto in the records of the Bureau of Corrections.

9 The death sentence shall be carried out not earlier than one (1) year nor later
10 than eighteen (18) months after the judgment has become final and executory without
11 prejudice to the exercise by the President of his executive clemency powers at all times.

12 **SEC. 7. Separability Clause.** – Should any part or provision of this Act be
13 declared invalid or unconstitutional, the rest of the provisions or parts of this Act not
14 affected shall continue to be in effect and subsisting.

15 **SEC. 8. Repealing Clause.** – Any provision of Republic Act No. 9346 inconsistent
16 or contrary to the provisions of this Act are hereby repealed, amended, or modified
17 accordingly. All other laws, decrees, executive orders, rules and regulations inconsistent
18 with this Act are hereby repealed, amended, or modified accordingly.

19 **SEC. 9. Effectivity.** – This Act shall take effect fifteen (15) days after its
20 publication in the *Official Gazette* or in at least two (2) national newspapers in general
21 circulation.

Approved,