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SESSION NO. 46
Tuesday, January 24, 2012

FIFTEENTH CONGRESS
SECOND REGULAR SESSION

SESSION NO. 46
Tuesday, January 24, 2012

CALL TO ORDER

At 9:17 a.m., the Senate President, Hon. Juan Ponce Enrile, called the session to order.

PRAYER

Sen. Edgardo J. Angara led the prayer, to wit:

Almighty Father,

We come to You, our Creator and Redeemer in solemn prayer – awed by Your power and humbled by Your benevolence.

Cleanse us of unrighteousness that leads to misconduct. Purge us of enmity that abet discord. Unburden us of troubles that cloud sound judgment.

Instead, sow the seeds of understanding among us, in our homes, in the hearts and minds of our public servants and the people, between the religions and their flock, and among our brethren in media and their public.

Help us realize, Lord, that there is nothing we can do alone that we cannot do better together; that there is nothing in our country that we cannot achieve with a people working for the common good that was inspired by a national focus.

Amen.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Atty. Emma Lirio-Reyes, called the roll, to which the following senators responded:

Angara, E. J.	Lapid, M. L. M.
Cayetano, P. S.	Pimentel III, A. L.
Ejercito Estrada, J.	Revilla Jr., R. B.
Enrile, J. P.	Sotto III, V. C.
Escudero, F. J. G.	Trillanes IV, A. F.
Honasan, G. B.	Villar, M.
Lacson, P. M.	

With 13 senators present, the Chair declared the presence of a quorum.

Senators Arroyo, Defensor Santiago, Drilon, Guingona, Osmeña and Pangilinan arrived after the roll call.

Senators Cayetano (A) and Marcos were on official mission.

Senators Legarda and Recto were absent.

APPROVAL OF THE JOURNAL

Upon motion of Senator Sotto, there being no objection, the Body dispensed with the reading of the Journal of Session No. 45 (January 17, 2012) and considered it approved.

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At this juncture, Senate President Enrile relinquished the Chair to Senate President Pro Tempore Ejercito Estrada.

REFERENCE OF BUSINESS

The Deputy Secretary for Legislation, Atty. Edwin B. Bellen, read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 3099, entitled

AN ACT FURTHER AMENDING
PRESIDENTIAL DECREE NO. 1606,
AS AMENDED

Introduced by Senator Drilon

To the Committee on Justice and Human Rights

Senate Bill No. 3100, entitled

AN ACT ESTABLISHING A POST
TRAUMATIC STRESS DISORDER
AWARENESS AND EDUCATION
PROGRAM

Introduced by Senator Defensor Santiago

To the Committee on Health and Demography

Senate Bill No. 3101, entitled

AN ACT PROMOTING THE PERSISTENT
QUEST FOR KNOWLEDGE AND
INCREASED EDUCATION AMONG
THE YOUTH

Introduced by Senator Defensor Santiago

To the Committees on Justice and Human Rights; and Youth, Women and Family Relations

Senate Bill No. 3102, entitled

AN ACT PENALIZING THE PARENTS
OR GUARDIANS FOR TORTS OR
CRIMES COMMITTED BY THEIR
MINOR CHILDREN OR WARDS

Introduced by Senator Defensor Santiago

To the Committees on Justice and Human Rights; and Youth, Women and Family Relations

RESOLUTIONS

Senate Joint Resolution No. 15, entitled

RESOLUTION URGING THE MEMBERS
OF CONGRESS OF THE UNITED
STATES OF AMERICA TO PASS U.S.
SENATE BILL NO. 1244 AND U.S.
HOUSE BILL NO. 2387 OTHERWISE
KNOWN AS THE SAVE OUR
INDUSTRIES ACT

Introduced by Senator Enrile

To the Committee on Foreign Relations

Proposed Senate Resolution No. 681, entitled

RESOLUTION CONGRATULATING
AND COMMENDING FILIPINO
PHOTOGRAPHER GEORGE TAPAN
FOR BEING DECLARED WINNER
IN THE "PLACES" CATEGORY OF
THE 2011 NATIONAL GEOGRAPHIC
PHOTOGRAPHY CONTEST FOR HIS
ENTRY INTO THE GREEN ZONE

Introduced by Senator Lapid

To the Committee on Rules

Proposed Senate Resolution No. 682, entitled

RESOLUTION DIRECTING THE SENATE
COMMITTEE ON ENVIRONMENT
AND NATURAL RESOURCES AND
COMMITTEE ON CLIMATE CHANGE
TO LOOK INTO THE NECESSITY
OF INSTITUTING A SYSTEM OF
MANDATORY ENVIRONMENTAL
INSURANCE COVERAGE IN
LIGHT OF THE ENVIRONMENTAL
DAMAGES GENERATED BY COM-
MERCIAL ACTIVITIES AND WOR-
SENS BY THE IMPACT OF
CLIMATE CHANGE

Introduced by Senator Legarda

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To the Committees on Environment and Natural Resources; and Climate Change

Proposed Senate Resolution No. 683, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE PRACTICE OF FEEDING WHALE SHARKS BY LOCAL TOURISM INDUSTRIES, AND ITS IMPACT ON THE ANIMAL'S NATURAL WAY OF LIFE

Introduced by Senator Defensor Santiago

To the Committees on Environment and Natural Resources; and Tourism

Proposed Senate Resolution No. 684, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE NEED TO CREATE MEASURES THAT WILL PROMOTE A "ZERO TOURISM WASTE" POLICY

Introduced by Senator Defensor Santiago

To the Committees on Environment and Natural Resources; and Tourism

Proposed Senate Resolution No. 685, entitled

RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ESSENTIAL BENEFITS OF URBAN AGRICULTURE AS A VIABLE SOLUTION TO THE LOOMING FOOD SHORTAGE

Introduced by Senator Defensor Santiago

To the Committee on Agriculture and Food

COMMITTEE REPORT

Committee Report No. 97, prepared and submitted jointly by the Committees on Trade and Commerce; Economic Affairs; and Finance, on Senate Bill No. 3098, with Senators Enrile,

Trillanes IV, Recto, Osmeña III, Defensor Santiago and Villar as authors thereof, entitled

AN ACT PENALIZING ANTI-COMPETITIVE CONDUCT, ABUSE OF DOMINANCE, AND ANTI-COMPETITIVE MERGERS, ESTABLISHING FOR THE PURPOSE AN OFFICE FOR COMPETITION UNDER THE DEPARTMENT OF JUSTICE, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill Nos. 1, 123, 175, and 1838, taking into consideration Proposed Senate Resolution No. 123.

Sponsor: Senator Villar

To the Calendar for Ordinary Business

PARLIAMENTARY INQUIRY OF SENATOR CAYETANO (P)

Senator Cayetano (P) inquired when the deliberations on the Reproductive Health (RH) bill would resume as she informed the Body that the Sponsors were ready to be interpellated by the other senators. Senator Sotto replied that the senators who made reservations to interpellate – Senators Trillanes and Pimentel and the Senate President, among them — were not ready to do so this week but perhaps next week, while Senator Legarda was still out of the country.

Noting that sessions have been scheduled only twice a week, Senator Cayetano (P) appealed to the Body to take up pending measures, among them the RH bill. Senator Sotto concurred with Senator Cayetano (P) as he expressed eagerness to finish the deliberations on the RH bill so he could deliver his speech *en contra*.

SUSPENSION OF SESSION

Upon motion of Senator Sotto, the session was suspended.

It was 9:26 p.m.

RESUMPTION OF SESSION

At 9:26 p.m., the session was resumed.

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SPECIAL ORDER

Upon motion of Senator Sotto, there being no objection, the Body approved the transfer of Committee Report No. 95 on Proposed Senate Resolution No. 519 from the Calendar for Ordinary Business to the Calendar for Special Orders.

COMMITTEE REPORT NO. 95

Upon motion of Senator Sotto, there being no objection, the Body considered Committee Report No. 95 re Proposed Senate Resolution No. 519, entitled RESOLUTION DIRECTING THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATION (BLUE RIBBON) TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE ALLEGED NUMEROUS VIOLATIONS OF REPUBLIC ACT NO. 3019 OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT BY THE PREVIOUS BOARD OF THE PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO) WITH THE END IN VIEW OF CRAFTING LEGISLATIVE MEASURES TO CURB CORRUPTION AND PROMOTE TRANSPARENCY AND ACCOUNTABILITY IN GOVERNMENT.

The Chair recognized Senator Guingona for the sponsorship.

SPONSORSHIP SPEECH OF SENATOR GUINGONA

Senator Guingona presented to the Body for its consideration Committee Report No. 95.

Hereunder is the full text of Senator Guingona's sponsorship speech:

PCSO Blue Ribbon Committee Report (Committee Report No. 95)

Ang mandato ng PCSO ay ang pagtulong sa kapwang nangangailangan. Ang tunay na diwa ng PCSO, samakatuwid, ay ang pagkawkawangawa.

Ngunit ang naibunyag sa mga pandinig ng Blue Ribbon ay ang pagwawaldas ng pondo ng PCSO sa mga bagay na walang anumang kinalaman sa pagkawkawangawa. Maraming kumita. Marami ang dapat parusahan.

The Blue Ribbon Committee hereby presents Committee Report No. 95, filed on December 19,

2011, pursuant to Proposed Senate Resolution No. 519 introduced by Sen. Panfilo Lacson and this Representation, which directed the Blue Ribbon Committee to "conduct an inquiry, in aid of legislation, into the alleged numerous violations of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, by the previous board of the PCSO with the end in view of crafting legislative measures to curb corruption and promote transparency and accountability in government."

The Blue Ribbon hereby presents the essential findings of its Report.

Intelligence funds

The Senate Blue Ribbon Committee strongly recommends that a case for plunder be filed against former President Gloria Macapagal-Arroyo and former Vice-chairman and General Manager of PCSO, Mrs. Rosario Uriarte.

While they were public officers, Gloria Arroyo and Rosario Uriarte teamed up to rob this nation of at least P244.5 million. Mrs. Arroyo made mere marginal notes and caused the release of millions of pesos to her partner, Mrs. Uriarte, who was in charge with the disbursement, use, and liquidation of excessive amounts of intelligence funds.

Mrs. Uriarte's memoranda of request for millions of pesos cited the need to address threats against the operations of the PCSO. However, her own certifications immediately revealed that the funds were allegedly also used to address terrorism, bomb threats, and bilateral security relations.

Because of the excessive amounts released, the Blue Ribbon Committee asked for proof of lawful use of public funds. However, neither Gloria Arroyo nor Rosario Uriarte ever presented the actual receipts and documents to prove that these funds were indeed used lawfully.

The Committee strongly believes that there is probable cause to believe that these funds were, in fact, illegally diverted into the pockets of Gloria Macapagal-Arroyo. Despite facing a possible case for plunder, not a single receipt has been presented by Gloria Arroyo or Rosario Uriarte to save themselves. The Committee emphasizes the fact that particularly for the year 2010, an election year, the PCSO already used up P137.5 million out of the P150 million that was approved by the former president at the beginning of the year. For the same year, PCSO's intelligence fund budget was larger than the intelligence fund budget of the Philippine Army, ISAFP-GHQ, DND, Navy, and the NBI.

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Additionally, Gloria Macapagal-Arroyo and Rosario Uriarte should likewise be charged with technical malversation for using confidential/intelligence funds as "blood money" for two OFWs sentenced to death in Kuwait.

Donations of vehicles to members of the Catholic Church

The Blue Ribbon finds that the donations of vehicles to various Catholic priests did not violate the Constitution because: (a) The donation was for a public, and not a religious purpose; (b) The donation was not for the personal use of any religious leader;

Excessive public relations/advertising spending

The findings of the Commission on Audit, together with the testimonies laid down in the Blue Ribbon hearings, revealed PCSO's excessive and unnecessary spending on public relations. Billions were spent on promoting betting in lotteries that could have been spent more wisely on charity.

The extravagant expenses for the sole purpose of promoting legal gambling are superfluous and pointless by the fact that there will always be people who will do anything to take a stake for the chance of winning big.

Equipment Lease Agreement (ELA) for PCSO's online lottery system

The Blue Ribbon hearings revealed that a company named International Totalizator System (ITS) initially offered to sell lotto equipment to PCSO for US\$25 million.

However, instead of buying the equipment from ITS, the PCSO conducted a public bidding to lease—not to buy—the same equipment from private suppliers. The decision to lease instead of purchase continues to impose a great financial burden to the Philippines. Instead of spending US\$25 million to purchase the machines, the government instead has paid the private suppliers approximately US\$148 million in rental fees and will continue to pay exorbitant amounts until the contract ends in 2015.

Despite proper bidding, the resulting award of the contract, not only to the winning bidder but also to the two other losing bidders, is questionable. The Blue Ribbon strongly recommends further investigation on this matter by the Ombudsman.

For signing the ELA, Manuel Morato, former PCSO Chairman, and Rosario Uriarte, former PCSO General Manager, should be charged with

a violation of the Anti-Graft and Corrupt Practices Act for allegedly entering, on behalf of the government, any contract that is manifestly and grossly disadvantageous to the government.

STL remittances, ambulance donations, and commingling of funds

There have been unaccountable remittances of Small Town Lottery (STL) Share to congressmen and the Philippine National Police (PNP).

The Blue Ribbon also finds that there has been mismanagement in the execution of PCSO's Ambulance Program. LGUs of a higher class category were prioritized compared to the lower class categories of LGUs.

Commingling of funds by PCSO was also revealed. This violates the PCSO Charter which apportions the net receipts into three funds: (1) Prize Fund; (2) Charity Fund; and (3) Operating Fund.

Joint Venture Agreement

The Contractual Joint Venture Agreement (CJVA) between TMA Group of Companies (TMA) and the PCSO entered into for the purpose of establishing the first thermal coating plant in the Philippines should be cancelled for being grossly prejudicial to the Philippines. Violations of the Anti-Graft and Corrupt Practices Act were, in fact, committed by members of the former board of the PCSO.

The Blue Ribbon Committee finds that the profit-oriented JVA entered into by PCSO violates the latter's own charter, which limits the agency's ability to engage in profit-oriented ventures only to "health, welfare and related investments."

Likewise, the Committee finds the contract grossly disadvantageous to the government because while it requires a P4.4 billion investment by the private company and a P42-billion worth of contribution on the part of the PCSO, the profit-sharing agreement flips the scenario and gives the private company an 80% share in the profits while leaving only 20% for the Philippine government.

When the Prime Gaming Philippines Inc. (PGPI) purchased the property of TF Ventures—a company partly owned by Manuel Morato—the latter was relieved of the burden of paying for the corporate debts owned by TF Ventures to the banks. It can be inferred that PGPI's resulting assumption of the debts of Morato's company is partly an act of gratitude extended to Morato, who was then board member of PCSO that approved the Equipment Lease Agreement of PGPI's related company, PGMC.

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Further investigation must be pursued on possible conflicts of interest by Morato and his dealing with PGPI.

Possible election offenses committed by Manuel Morato

This Representation did not participate in the drafting of this portion of the report because Mr. Morato's allegations involved an assertion against me. Senator Drilon's concurring opinion is hereby adopted as a main part of the report.

The Blue Ribbon hearings revealed that Mr. Morato has committed violations of the Omnibus Election Code and the Philippine Constitution. During an episode of "Dial M"—a production of PCSO paid for by public funds—he was shown campaigning in favor of a certain presidential candidate and criticizing several other candidates as well. This is a form of electioneering or partisan political activity aggravated by the blatant use of public funds, an act that is punishable under Section 79(b) of the Election Code.

Recommendations

The Blue Ribbon Committee, as a result of this legislative inquiry, has made the following recommendations:

FIRST. The PCSO Charter must contain penal provisions, imposing criminal, civil, and administrative liabilities for acts in violation of the charter, committed by its employees and private individuals.

SECOND. The PCSO management must improve its accounting system to ensure that no further unlawful commingling of funds shall occur in the future.

THIRD. PCSO funds must be allocated only to various national programs which are relevant to the mandate of the agency. The current board of the PCSO must immediately undertake an extensive assessment and evaluation of the programs and projects to ensure that the public funds are used within the scope of this agency's mandate.

FOURTH. The Commission on Audit should come up with new auditing guidelines for confidential and intelligence funds which should include, among others, the following provisions:

- A requirement to submit, in classified and sealed envelopes, the vouchers, receipts and other documents evidencing the expenses charged against a specific allocation of a confidential or intelligence fund.

- A certification by the officer-in-charge of liquidation that these envelopes can be accessed for lawful purposes.
- A sealed copy of the proposals/requests submitted in support of the request for confidential or intelligence funds, which may be accessed also for lawful purposes.

FIFTH. A law must be passed establishing a Single Treasury Account which can help the government track and discover, on a timely basis, transactions which may appear irregular based on the frequency of fund releases and the amount of said releases.

SIXTH. The PCSO's budget for public relations and advertising should not exceed 1.8% of its gross sales. The PCSO is not a private corporation that needs a huge advertising budget.

SEVENTH. Passage of a law that would augment PhilHealth funds with PCSO funds.

EIGHTH: PCSO should stop giving shares of the proceeds of its operations to the PNP because it is not primarily mandated to implement projects within the mandate of the PCSO.

NINTH. Shares from PCSO's operations that are released to congressional and other local government units should be strictly regulated. *Without proper liquidation, future releases should never be made.*

TENTH. The PCSO management should ensure that the strictest standards are established and observed to ensure that public funds are devoted only for public and secular purposes.

Let this serve as a reminder to all that public funds are sacred as it is imbued with public interest. Public funds could only be spent for authorized public purposes and can never be used as a private piggy bank.

SUSPENSION OF CONSIDERATION OF COMMITTEE REPORT NO. 95

Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of Committee Report No. 95.

COMMITTEE REPORT NO. 30 ON SENATE BILL NO. 2796

(Continuation)

Upon motion of Senator Sotto, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 2796 (Committee Report No. 30), entitled

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**AN ACT DEFINING CYBERCRIME,
PROVIDING FOR PREVENTION,
INVESTIGATION AND IMPOSITION
OF PENALTIES THEREFOR AND
FOR OTHER PURPOSES.**

Senator Sotto stated that the Body has already closed the period of interpellations and being a substitute bill, there will be no committee amendments. He said that the parliamentary status was the period of individual amendments.

Thereupon, the Chair recognized Senator Angara, Sponsor of the measure.

REQUEST OF SENATOR ANGARA

Senator Angara requested that he be given enough time as he was awaiting the Secretariat's submission of the amended committee report incorporating all the individual amendments which were introduced in the course of the debate and interpellations on the bill. He said that the Secretariat shall likewise submit the copies of the proposed amendments introduced individually by the senators and the corresponding explanation behind each amendment for purposes of convenience. He stated that these documents will soon be distributed to the Members.

REQUEST OF THE CHAIR

At this point, Senate President Pro Tempore Ejercito Estrada requested Senate President Enrile to preside over the rostrum and hand over the resolution commending Sen. Miriam Defensor Santiago.

SUSPENSION OF SESSION

With the permission of the Body, the Chair suspended the session.

It was 9:48 a.m.

RESUMPTION OF SESSION

At 10:04 a.m., the session was resumed.

INDIVIDUAL AMENDMENTS

As proposed by Senator Angara, there being no objection, the following amendments to Senate Bill No. 2796 were approved by the Body, one after the other:

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1. On line 15, insert a new paragraph to read:
 - D) COMPUTER – AN ELECTRONIC, MAGNETIC, OPTICAL, ELECTROCHEMICAL, OR OTHER DATA PROCESSING OR COMMUNICATIONS DEVICE, OR GROUPING OF SUCH DEVICES, CAPABLE OF PERFORMING LOGICAL, ARITHMETIC, ROUTING, OR STORAGE FUNCTIONS AND WHICH INCLUDES ANY STORAGE FACILITY OR EQUIPMENT OR COMMUNICATIONS FACILITY OR EQUIPMENT DIRECTLY RELATED TO OR OPERATING IN CONJUNCTION WITH SUCH DEVICE. IT COVERS ANY TYPE OF COMPUTER DEVICE INCLUDING DEVICES WITH DATA PROCESSING CAPABILITIES LIKE MOBILE PHONES AND ALSO COMPUTER NETWORKS;
2. Renumber the succeeding terms accordingly;
3. On line 31, insert the following subparagraphs to read:
 - H) CRITICAL INFRASTRUCTURE – REFERS TO THE COMPUTER SYSTEMS, AND/OR NETWORKS, WHETHER PHYSICAL OR VIRTUAL, AND/OR THE COMPUTER PROGRAMS, COMPUTER DATA AND/OR TRAFFIC DATA SO VITAL TO THIS COUNTRY THAT THE INCAPACITY OR DESTRUCTION OF OR INTERFERENCE WITH SUCH SYSTEMS AND ASSETS WOULD HAVE A DEBILITATING IMPACT ON SECURITY, NATIONAL OR ECONOMIC SECURITY, NATIONAL PUBLIC HEALTH AND SAFETY, OR ANY COMBINATION OF THOSE MATTERS;
 - I) CYBERSECURITY – REFERS TO THE COLLECTION OF TOOLS, POLICIES, RISK MANAGEMENT APPROACHES, ACTIONS, TRAINING, BEST PRACTICES, ASSURANCE AND TECHNOLOGIES THAT CAN BE USED TO PROTECT THE CYBER ENVIRONMENT AND ORGANIZATION AND USER'S ASSETS;
4. Renumber the succeeding terms accordingly;

Page 3

5. On line 20, between the words "which" and "can", insert the word IDENTITY;

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6. On lines 14 to 17, delete the word "intentional" as found in the definitions of "Illegal Access" and "Illegal Interception";

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- 7. On line 29, delete the phrase "intentional or reckless" and in lieu thereof, add the words, *DELETION, DETERIORATION* in the definition of "Data Interference";
- 8. On line 32, delete the phrase "intentional or reckless" from the definition of "System Interference";
- 9. On line 36, insert a new subparagraph to read:
 - 5. *CYBERSQUATTING – THE ACQUISITION OF A DOMAIN NAME OVER THE INTERNET IN BAD FAITH TO PROFIT, MISLEAD, DESTROY REPUTATION, AND DEPRIVE OTHERS FROM REGISTERING THE SAME, IF SUCH DOMAIN IS:*
 - I. *SIMILAR, IDENTICAL OR CONFUSINGLY SIMILAR TO AN EXISTING TRADEMARK REGISTERED WITH THE APPROPRIATE GOVERNMENT AGENCY AT THE TIME OF THE DOMAIN NAME REGISTRATION;*
 - II. *IDENTICAL OR IN ANY WAY SIMILAR WITH THE NAME OF A PERSON OTHER THAN THE REGISTRANT, IN CASE OF A PERSONAL NAME; AND*
 - III. *ACQUIRED WITHOUT RIGHT OR WITH INTELLECTUAL PROPERTY INTERESTS IN IT.*

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- 10. On line 23, delete the word "intentional";
- 11. On line 31, delete the phrase "intentional and";
- 12. On line 33, after the word "thereby," insert a period (.) and delete the rest of the paragraph;

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- 13. Delete lines 3 to 5 and insert the new definition as follows:
 - I. *CYBERSEX – THE WILLFUL ENGAGEMENT, MAINTENANCE, CONTROL OR OPERATION, DIRECTLY OR INDIRECTLY, OF ANY LASCIVIOUS EXHIBITION OF SEXUAL ORGANS OR SEXUAL ACTIVITY, WITH THE AID OF A COMPUTER SYSTEM FOR FAVOR OR CONSIDERATION.*

REMARKS OF SENATOR GUINGONA

At this juncture, Senator Guingona expressed concern that the definition of cybersex smacked of

prior restraint and he feared that this would violate the Constitution.

Senator Angara stated that the Committee did not intend to impose any prior restraint. He appealed to the Body to first hear the individual amendments and after which, the Committee could go back to Senator Guingona's query.

- 14. Delete lines 7 to 19;
- 15. On line 21, between the word "law" and period (.), insert a comma (,) and the phrase *ESPECIALLY AS COMMITTED THROUGH A COMPUTER SYSTEM;*

REMARKS OF SENATOR CAYETANO (P)

Senator Cayetano (P) requested that she be given time to make sure that the bill's definition of child pronography is aligned with that of RA 9775.

Senator Angara explained that the particular provision was amended upon the request of Senator Cayetano (P) so that there will be no conflict with the definition of child pornography on the bill and that of RA 9775.

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- 16. After line 22, insert the following paragraph:

ANY PERSON FOUND GUILTY OF THE PUNISHABLE ACT UNDER SECTION 4A.5 SHALL BE PUNISHED WITH IMPRISONMENT OF PRISION MAYOR OR A FINE OF NOT MORE THAN FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) OR BOTH.
- 17. Before line 23, insert the following paragraph:

IF PUNISHABLE ACTS IN SECTION 4A ARE COMMITTED AGAINST CRITICAL INFRASTRUCTURE, THE PENALTY OF RECLUSION TEMPORAL OR A FINE OF AT LEAST FIVE HUNDRED THOUSAND PESOS (PHP500,000.00) UP TO MAXIMUM AMOUNT COMMENSURATE TO THE DAMAGE INCURRED OR BOTH.

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- 18. On line 9, after the word "within" and the comma (,), delete the word "in";
- 19. Delete lines 28 to 33 and in lieu thereof, insert the following paragraphs:

SEC. 9. REAL-TIME COLLECTION OF TRAFFIC DATA. — LAW ENFORCEMENT

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AUTHORITIES, WITH DUE CAUSE, SHALL BE AUTHORIZED TO COLLECT OR RECORD BY TECHNICAL OR ELECTRONIC MEANS TRAFFIC DATA IN REAL-TIME ASSOCIATED WITH SPECIFIED COMMUNICATIONS TRANSMITTED BY MEANS OF A COMPUTER SYSTEM.

TRAFFIC DATA REFER NOT ONLY TO COMMUNICATION'S ORIGIN, DESTINATION, ROUTE, TIME, DATE, SIZE, DURATION, OR TYPE OF UNDERLYING SERVICE, BUT NOT CONTENT, NOR IDENTITIES.

ALL OTHER DATA TO BE COLLECTED OR SEIZED OR DISCLOSED WILL REQUIRE A COURT WARRANT.

SERVICE PROVIDERS ARE REQUIRED TO COOPERATE AND ASSIST LAW ENFORCEMENT AUTHORITIES IN THE COLLECTION OR RECORDING OF THE ABOVE-STATED INFORMATION.

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20. On line 1, between the words "the" and "of," replace the word "data" with "DATE";
21. On line 25, after the word "ACT," delete the phrase "content of communications, procure the content of data either directly, through access and use of computer system, or indirectly, through the use of electronic eavesdropping or tapping devices, in real time or at the same time that the communication is occurring;"
22. On line 33, between the words "conduct" and "examination," insert the phrase FORENSIC ANALYSIS OR;

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23. After line 9, insert a new section to read as follows:

SEC. 13. *RESTRICTING OR BLOCKING ACCESS TO COMPUTER DATA.* – WHEN A COMPUTER DATA IS PRIMA FACIE FOUND TO BE VIOLATIVE OF THE PROVISIONS OF THIS ACT, THE CENTRAL AUTHORITY SHALL ISSUE AN ORDER TO RESTRICT OR BLOCK ACCESS TO SUCH COMPUTER DATA.;

24. Renumber the following sections accordingly;
25. On line 35, insert a new paragraph to read as follows:

THERE SHALL BE DESIGNATED SPECIAL CYBERCRIME COURTS MANNED BY SPECIALLY TRAINED JUDGES TO HANDLE CYBERCRIME CASES.

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26. Delete lines 10 to 13;
27. On line 18, reword Section 18 ("*Department of Justice*") as follows:

SEC. 18. *DEPARTMENT OF JUSTICE* — THERE IS HEREBY CREATED AN OFFICE OF CYBERCRIME WITHIN THE DOJ DESIGNATED AS THE CENTRAL AUTHORITY IN ALL MATTERS RELATED TO INTERNATIONAL MUTUAL ASSISTANCE AND EXTRADITION.

28. On line 27, reword Section 19 ("*Commission on Information and Communication Technology*") as follows:

SEC. 19. *DEPARTMENT OF SCIENCE AND TECHNOLOGY – INFORMATION AND COMMUNICATIONS TECHNOLOGY OFFICE.* — THERE IS HEREBY CREATED A NATIONAL CYBERSECURITY CENTER (NSCS) WITHIN THE DOST-ICTO DESIGNATED TO FORMULATE AND IMPLEMENT A NATIONAL CYBERSECURITY POLICY, AND EXTEND TECHNICAL ASSISTANCE FOR THE SUPPRESSION OF REAL-TIME COMMISSION OF CYBERCRIME OFFENSES THROUGH A COMPUTER EMERGENCY RESPONSE TEAM (CERT).

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29. On lines 1 and 2, delete the chapter title "CYBERCRIME INVESTIGATION AND COORDINATING CENTER" and replace it with NATIONAL CYBERSECURITY COUNCIL;
30. On line 4, replace the words "*Cybercrime Investigation and Coordinating Center*" with NATIONAL CYBERSECURITY COUNCIL;
31. On line 6, delete the words "Cybercrime Investigation and Coordinating Center, herein referred to as CICC" and in lieu thereof, insert the phrase NATIONAL CYBERSECURITY COUNCIL, HEREIN REFERRED TO AS NCCC" to read as follows:
32. On line 10, reword lines 10 to 14 as follows:

SEC. 21. *COMPOSITION.* — THE NCCC SHALL BE HEADED BY THE EXECUTIVE DIRECTOR OF THE DOST-ICTO AS CHAIRMAN; WITH THE DIRECTOR OF THE NBI; CHIEF OF THE PNP; HEAD OF THE DOJ OFFICE OF THE CYBERCRIME, AS MEMBERS; AND REPRESENTATIVES FROM THE PRIVATE SECTOR AND ACADEME.
33. On line 16, change the acronym "CICC" to NCCC;

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34. On line 19, change the acronym "CICC" to NCCC;
35. On lines 21 and 22, delete the phrase "to prevent and suppress cybercrime activities" and in lieu thereof, insert the phrase RELATED TO CYBERSECURITY;
36. Delete lines 25 to 27;
37. On lines 29 and 30, change the words "cybercrime prevention" to CYBERSECURITY;
38. On line 34, replace the acronym "CICC" with NCCC;
39. On line 35, between the words "duties" and "necessary," insert the word AS and delete the phrase "for the implementation of this Act";

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40. On line 4, replace the word "ten" with FIFTY;
41. On line 5, replace the figure "10,000,000.000" with "50,000,000.00";
42. On line 8, delete the words "Commission on Information and Communication Technology" and in lieu thereof, insert the words DEPARTMENT OF SCIENCE AND TECHNOLOGY AND THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, WITHIN 90 DAYS FROM THE EFFECTIVITY OF THIS ACT.
43. On line 10, replace the word "Office" with CENTER;
44. On line 17, after the figure "33," insert a hyphen (-) and letter "A."

REMARKS OF SENATOR ANGARA

As regards the definition of "cybersex," Senator Angara said that the new definition was precisely in response to the reservation of Senators Guingona and Defensor Santiago over the word "arousal" which they asserted is a very subjective term. However, he explained that the phrase "favor or consideration" was retained because this is the crux of the cybercrime — that the act was done for money, consideration or favor. He asked why the definition would suggest or imply prior restraint.

In answer, Senator Guingona argued that the definition leaves to the judge the discretion to interpret, for example, lascivious exhibition that can be very broad. He admitted that he was very uncomfortable with the definition because it is akin to legislating

morality. He suggested that the whole section be deleted.

Senator Angara disagreed that it was tantamount to legislating morality as he pointed out that deleting the definition would imply that the Body is not in agreement that cybersex, probably one of the rampant crimes committed against children, is indeed a crime.

To the observation of Senator Guingona that it runs against the Constitution, Senator Angara stated that while he respects Senator Guingona's libertarian inclinations, the definition ought to be kept, otherwise, children using computers or internet kiosks will be exposed to a large field of unregulated and non-criminalized activities.

SUSPENSION OF SESSION

Upon motion of Senator Guingona, the session was suspended.

It was 10:30 a.m.

RESUMPTION OF SESSION

At 10:32 a.m., the session was resumed.

DEFENSOR SANTIAGO AMENDMENTS

As proposed by Senator Defensor Santiago, and accepted by the Sponsor, there being no objection, the Body approved the following amendments, one after the other:

1. On page 2, line 27, after the word "messages" and the semicolon (;), insert the words WHETHER STORED IN A LOCAL COMPUTER SYSTEMS OR ONLINE.

Senator Defensor Santiago explained that while Sections 4(A) and (B) of the Act define offenses against confidentiality, integrity and availability of computer data and systems and computer-related offenses, said offenses apply to computer data and computer system. It is clear, she noted, that owners of computer systems or data are protected from hacking or interference as criminalized in said subsections but the same should also apply to online programs, emails and social networks.

2. On page 5, line 33, delete the phrase "with the intent of procuring economic benefit for

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oneself or for another person or for the perpetuation of a fraudulent or dishonest activity” and in lieu thereof, insert the phrase WITH FRAUDULENT INTENT.

Senator Defensor Santiago explained that damage and fraudulent intent should be sufficient whether or not there is an economic benefit. It is possible, she said, that the intention of the computer-related fraud is not for economic gain but to destroy. She further noted that “perpetuation of a fraudulent activity” connotes a series of actions, therefore, it should be sufficient that the perpetrator in one act shows fraudulent intent.

3. On page 8, after line 33, insert a new paragraph, to read as follows:

THE COURT WARRANT REQUIRED UNDER THIS SECTION SHALL ONLY BE ISSUED OR GRANTED UPON WRITTEN APPLICATION AND THE EXAMINATION UNDER OATH OR AFFIRMATION OF THE APPLICANT AND THE WITNESSES HE MAY PRODUCE AND THE SHOWING: (1) THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT ANY OF THE CRIMES ENUMERATED HEREIN-ABOVE HAS BEEN COMMITTED OR IS BEING COMMITTED OR IS ABOUT TO BE COMMITTED; (2) THAT THERE ARE REASONABLE GROUNDS TO BELIEVE THAT EVIDENCE OBTAINED IS ESSENTIAL TO THE CONVICTION OF ANY PERSON FOR, OR TO THE SOLUTION OF, OR TO THE PREVENTION OF, ANY SUCH CRIMES; AND (3) THAT THERE ARE NO OTHER MEANS READILY AVAILABLE FOR OBTAINING SUCH EVIDENCE.

Senator Defensor Santiago observed that Section 9 lacks the parameters to ensure that the authority granted therein will not be abused by law enforcement authorities. She cited a provision in Section 3 of RA 4200, otherwise known as the “Anti-Wire Tapping Law,” which may serve as guide in setting the parameters: “Provided, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: xxx (3) that there are no other means readily available for obtaining such evidence.”

Senator Angara stated that the amendment further strengthens the restraint to be exercised by law enforcers before they search any of the computer data.

INQUIRY OF SENATOR LACSON

Asked by Senator Lacson whether the definition of “cybersex” which refers to “any lascivious exhibition of sexual organs or sexual activity with the aid of a computer system for favor or consideration,” covers phone sex, Senator Angara expressed apprehension that doing so might be outside what is permissible.

Senator Sotto added that it is very difficult nowadays to classify the telephone as part of the computer system.

SOTTO AMENDMENT

Preliminarily, Senator Sotto stated that there are numerous abuses in technology, particularly the video and photo uploading and unnecessary write-ups and comments in social networking systems. He read the definition of libel in *Mendez vs. Court of Appeals* (GR No. 124491, June 1, 1999), to wit:

...a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to discredit or cause the dishonor or contempt of a natural or juridical person, or to blacken the memory of one who is dead. Thus, the elements of libel are: (a) imputation of a discreditable act or condition to another; (b) publication of the imputation; (c) identity of the person defamed; and, (d) existence of malice.

Senator Sotto further cited the ruling in *Lacsa vs. Intermediate Appellate Court* (161 SCRA 427) which states that:

Words calculated to induce suspicion are sometimes more effective to destroy reputation than false charges directly made. Ironical and metaphorical language is a favored vehicle for slander. A charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses, or are sufficient to impeach their honesty, virtue, or reputation, or to hold the person or persons up to public ridicule.

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Further, Senator Sotto observed that the publication requirement in the crime of libel can be achieved by the mere fact that it is seen in cyberspace and this can further promote the habit of "think before you click." It is clear, he noted, that cybercrimes are not covered under Article 355 of Revised Penal Code.

On page 6, line 37, as proposed by Senator Sotto and accepted by the Sponsor, there being no objection, the Body approved the insertion of a new paragraph, to wit:

4. *LIBEL* - THE UNLAWFUL OR PROHIBITED ACTS OF LIBEL AS DEFINED IN ARTICLE 355 OF THE REVISED PENAL CODE COMMITTED THROUGH A COMPUTER SYSTEM OR ANY OTHER SIMILAR MEANS WHICH MAY BE DEvised IN THE FUTURE.

Senator Angara pointed out that cyberspace is just a new avenue for publicizing or communicating a libellous statement which is subject to prosecution and punishment as defined by the Revised Penal Code.

TERMINATION OF THE PERIOD OF INDIVIDUAL AMENDMENTS

There being no other individual amendment, upon motion of Senator Sotto, there being no objection, the Body closed the period of individual amendments.

APPROVAL OF SENATE BILL NO. 2796 ON SECOND READING

Submitted to a vote, there being no objection, Senate Bill No. 2796 was approved on Second Reading.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 2796

Upon motion of Senator Sotto, there being no objection, the Body suspended consideration of the bill.

COAUTHOR


Senator Sotto manifested that Senator Villar had asked to be made coauthor of Senate Bill Nos. 455 and 3060.

ADJOURNMENT OF SESSION

Upon motion of Senator Sotto, there being no objection, the President Pro Tempore declared the session adjourned until nine o'clock in the morning of Monday, January 30, 2012.

It was 10:47 a.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO REYES
Secretary of the Senate
for ps 100

Approved on January 30, 2012