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SENATE

RECEIVED BY: 

SENATE BILL NO. 1438

Introduced by **SENATOR LEILA M. DE LIMA**

AN ACT
PROTECTING WOMEN IN STATE CUSTODY, PRESCRIBING THE
MINIMUM STANDARDS FOR THEIR TREATMENT, PENALIZING
ACTS IN VIOLATIONS THEREOF AND FOR OTHER PURPOSES

Explanatory Note

The Constitution proscribes the employment of physical, psychological, or degrading punishment against detainees/prisoners and that detention/prison facilities should have adequate and humane facilities.¹ Female detainees/prisoners represent a particular class of people legally deprived of their liberty who are with particular needs that warrant particular attention. Unfortunately, however, because of the inherent imbalance of power between women inmates and their custodians, they are faced with an even worse punishment of being subjected to different forms of abuses.

This imbalance of power is manifested in the easy use of direct physical force and indirect force given the detainees'/prisoners' total dependency on officers for basic necessities and the latter's ability to withhold privileges. The abuses, including rape, inappropriate sexual touching, beatings, excessive pat-downs and strip searches, and the use of sexualized language, is a crude example of the power imbalance between security personnel and women inmates. A 2001 Human Rights Advisory by the Commission on Human Rights² reported that an interview conducted with women inmates in the Correctional Institute for Women (CIW) revealed that 10 percent of those women had sexual contact with their jailers prior to their transfer to CIW.

Even more worrisome is that these abuses remain unreported because of widespread fear of retaliation by the perpetrators, aggravated by the lack of a strict and

¹ Article III, section 19 (2), 1987 Constitution.

² http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/abthr029.pdf

concrete grievance or investigatory procedures, which gives the detention/prison officers and employees impunity to continuously perform such abuses.

This unfortunate situation may have been avoided if we at least complied with Rule 53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.³ However, data as of January 2017 from the Bureau of Jail Management and Penology (BJMP) even reveals that there are only 58 female dormitories under BJMP throughout the country and three populous regions (4B, 5, and ARMM) do not even have a single female dormitory.

This Bill, therefore, seeks to protect all women in state custody, those who are under detention for investigation and/or trial, or those who have already been sentenced with imprisonment by final judgment, irrespective of the place of their detention or imprisonment. It provides for their rights and prescribes the minimum standard rules for their treatment. Further, it establishes mechanisms for proper redress of complaints of women inmates and makes the heads of the detention/prison institution directly accountable should he/she fail to act on the complaints.

In view of the foregoing, early approval of this measure is requested.


LEILA M. DE LIMA

³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>



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

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ACTS IN VIOLATIONS THEREOF AND FOR OTHER PURPOSES

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

1 **Section 1. Short Title.** - This Act shall be known as the "Women in State Custody Act
2 of 2017".

3 **Sec. 2. Declaration of Policy.** - The State recognizes the rights of every woman under
4 its custody and shall, therefore, endeavor to protect them from the different abuses in
5 which they are often being subjected to while under detention or imprisonment.

6 The responsibility of government authorities for the custody of prisoners and
7 for the protection of society against crime shall be discharged in keeping with the
8 State's other social objectives and its fundamental responsibilities for promoting the
9 well-being and development of all members of society, specifically of women in state
10 custody, who by their inherent special circumstances, are more susceptible to different
11 forms of abuses. Towards this end, the State shall exert efforts to address all forms of
12 abuse committed against women in state custody by prescribing and adopting the

1 minimum standards for their treatment as set forth in this Act and penalizing acts
2 made in violation thereof.

3 **Sec. 3. Coverage.** – This Act shall apply to all women in state custody, whether under
4 detention for investigation and/or trial for an alleged commission of an offense or
5 crime, or have already been sentenced with imprisonment by final judgment,
6 irrespective of the place of their detention or imprisonment. It shall cover all detention
7 and prison facilities where there are women inmates, such as those operated by the
8 Bureau of Corrections (BuCor), the Bureau of Jail Management and Penology (BJMP),
9 the Local Government Units (LGU), the Philippine National Police (PNP), the Armed
10 Forces of the Philippines (AFP), and the Department of Social Welfare and
11 Development (DSWD).

12 **Sec. 4. Register.** – In every place where women are detained or imprisoned, there
13 shall be kept a bound registration book with numbered pages, exclusively dedicated to
14 women detainees and prisoners in which hereunder information shall be entered in
15 respect of each woman detainee/prisoner received:

- 16 (a) Information concerning her identity;
- 17 (b) The reasons for her commitment and the authority therefor;
- 18 (c) The day and hour of her admission and release.

19 **Sec. 5. Separate Detention/Prison Cell and its Facilities.** –

- 20 (a) Female detainees/prisoners shall at all times be held separately from male
21 detainees/prisoners. For this purpose, separate cells and facilities for women
22 shall form part of the standard design in the construction and improvement of
23 jails and its facilities. Provided that, in an institution which presently receives
24 both men and women, there shall be an entirely separate building in which the

1 whole of the premises shall be allocated exclusively to women
2 detainees/prisoners.

3 (b) There shall be special accommodation in every women's institution for all
4 necessary pre-natal and post-natal care and treatment. Arrangements shall be
5 made, wherever practicable, for children to be born in a hospital outside the
6 institution. If a child is born in prison, this fact shall not be mentioned in the
7 birth certificate.

8 **Sec. 6. Rights of Women in State Custody.** – In addition to the existing rights
9 provided for by law in favor of persons deprived of their liberty or are under detention
10 or in prison, all women in state custody shall have the following rights:

11 (a) Every woman in state custody shall be treated in a humane manner and
12 with respect for the inherent dignity of the human person and with
13 particular regard to the special circumstances of womanhood;

14 (b) Detention or imprisonment shall only be carried out strictly in
15 accordance with the provisions of the law and by competent officials or
16 persons authorized for that purpose;

17 (c) No woman under any form of detention or imprisonment shall be
18 subjected to torture or to cruel, inhumane or degrading treatment or
19 punishment and no circumstance whatever may be invoked as a
20 justification for such acts;

21 (d) No detained or imprisoned woman shall be subjected to any sexual
22 abuse such as, but not limited to, having carnal knowledge or making
23 any other form of sexual advancements;

24 (e) Any woman shall, at the commencement of detention or imprisonment,
25 or promptly thereafter, be provided by the authority responsible for her

1 detention or imprisonment with information on and an explanation of
2 her rights and how to avail herself of such rights; and

- 3 (f) Except for those rights the exercise of which is necessarily precluded by
4 the fact of her detention or imprisonment, or the exercise of which has
5 been temporarily or permanently denied to her as a result of, or as an
6 accessory to the penalty imposed upon her, no woman deprived of
7 liberty shall be barred from exercising rights that she would otherwise
8 have been entitled to were it not for her detention or imprisonment,
9 such as but not limited to, the right to access reproductive and maternal
10 health services and rights relating to marriage and family relations.

11 **Sec. 7. *Treatment of Women in State Custody.*** – Each of the governmental agencies
12 cited in Section 3 hereof shall at all times strictly implement the following:

13 (a) Female security personnel shall always be present during the
14 interrogation of women detainees;

15 (b) At no time shall male security personnel be allowed entry to
16 detention/prison facilities of women. Provided, however, that where
17 there is an inevitable situation which needs the presence of male
18 security personnel in the detention/prison facilities for women, there
19 should be no contact between male security personnel and female
20 detainees/prisoners without the presence of female security personnel;
21 and

22 (c) In no case shall male security personnel or male inmates be allowed to
23 stay in the premises allocated for women during nighttime.

24 **Sec. 8. *Mandatory Visit and Inspection of Women Detention/Prison Cells and***
25 ***Facilities.*** – In order to supervise the strict observance of relevant laws and regulations

1 in places of detention and imprisonment, the Commission on Human Rights (CHR)
2 shall regularly visit and inspect the various women detention/prison cells and
3 facilities, which shall be made without prior announcement to the agency concerned.
4 Provided, however, that independent women organizations may likewise inspect such
5 places, with prior coordination with the CHR.

6 A detained or imprisoned woman shall have the right to communicate freely
7 and in full confidentiality with the persons who visit and inspect the places of
8 detention or imprisonment in accordance with the preceding paragraph of this
9 section, subject to reasonable conditions to ensure security and order in such places.

10 **Sec. 9. *Recruitment and Training of Police, Military, and Prison Personnel.*** – Each
11 detention/prison institution shall recruit an adequate number of women police
12 officers to specialize in cases of violence against women. All detention/prison
13 personnel of the government agencies referred to in Section 3 hereof shall receive
14 mandatory training and information about unlawful discrimination, sexual
15 harassment and standards for the protection of women's rights, and how to respect
16 and enforce them properly, which shall be conducted by the CHR or by duly registered
17 nongovernmental organizations in the field of women's rights.

18 **Sec. 10. *Complaints of Alleged Abuse against Women in State Custody.*** – A detained
19 or imprisoned woman or her counsel shall have the right to make a complaint
20 regarding her treatment or violation of her rights, in particular in cases of sexual abuse,
21 torture or other cruel, inhumane or degrading treatment, to the authorities
22 responsible for the administration of the place of detention/imprisonment or other
23 proper authorities. In those cases where neither the detained or imprisoned person
24 nor his counsel is unable to exercise her rights under this Section, a member of the
25 family of the detained or imprisoned woman or any other person who has knowledge

1 of the case may exercise such rights. Confidentiality concerning the complaint shall be
2 maintained if so requested by the complainant.

3 Every complaint shall be promptly dealt with and replied to without undue
4 delay. Neither the detained or imprisoned woman nor any complainant under the
5 preceding paragraph of this Section shall suffer prejudice for making a complaint.

6 **Sec. 11. Duty to Report Alleged Abuse against Women in State Custody.** – Prison
7 officials and employees who have reason to believe that a violation of this Act has
8 occurred or is about to occur shall have the duty to report the matter to their superior
9 authorities and, where necessary, to other appropriate authorities.

10 Any other person who has grounds to believe that a violation of this Act has
11 occurred or is about to occur shall have the right to report the matter to the superiors
12 of the officials involved as well as to other appropriate authorities.

13 **Sec. 12. Accountability of the Head of the Prison Institution.** –

14 (a) The respective heads of institutions responsible for the custody of women
15 detainees/prisoners shall take effective steps to protect women detainees who
16 report rape, sexual harassment, and other forms of abuses, threats, reprisals or
17 intimidation.

18 (b) The immediate respective heads of the detention/prison institutions are *prima*
19 *facie* presumed to have knowledge of the abuse committed against the women
20 prisoners if:

21 i. a complaint has been made before him or such other authority
22 designated to receive such complaint, or if abuse was openly
23 performed or well-known among her co-inmates or prison
24 personnel; and

25 ii. the head of the prison institution has failed to act on the same.

1 **Sec. 13.** *Investigation of Alleged Abuse against Women in State Custody.* – All
2 complaints of rape, sexual abuse, torture or any unlawful advancement or violation of
3 the rights provided in this Act, committed by any person against a woman
4 detainee/prisoner must be investigated promptly and independently by the CHR. A
5 medical examination and adequate legal services should be provided immediately for
6 any woman in custody who alleges that she has been abused.

7 Whenever the abuse has resulted to death or unexplainable disappearance of a
8 detained or imprisoned woman, an inquiry into the cause of death or disappearance
9 shall be conducted by the CHR, at its own instance or at the instance of a member of
10 the family of such woman or any person who has knowledge of the case. When
11 circumstances so warrant, such an inquiry shall be held on the same procedural basis
12 whenever the death or disappearance occurs shortly after the termination of the
13 detention or imprisonment. The findings of such inquiry or a report thereon shall be
14 made available upon request, unless doing so would jeopardize an ongoing criminal
15 investigation.

16 **Sec. 14.** *Penalty Clause.* – Any person who shall be guilty of violation of this Act shall
17 suffer a penalty of six (6) months and one (1) day but not exceeding six (6) years,
18 without prejudice to other criminal and administrative charges for which he may be
19 held liable.

20 **Sec. 15.** *Separability Clause.* - If any provision of this Act is declared invalid or
21 unconstitutional, the provisions not affected thereby shall continue to be in full force
22 and effect.

23 **Sec. 16.** *Repealing Clause.* - All laws, executive orders, presidential decrees,
24 presidential proclamations, letters of instruction, rules and regulations or parts

1 thereof inconsistent with the provisions of this Act are hereby repealed or modified
2 accordingly.

3 **Sec. 17. Effectivity.** - This Act shall take effect fifteen (15) days following its
4 publication in the Official Gazette or in two (2) newspapers of general circulation in
5 the Philippines.

6 Approved,