

SENATE
S.B. No. 1914

'18 AUG -6 P 3:13

Introduced by Senator Ana Theresia "Risa" Hontiveros-Baraquel

AN ACT
ADDRESSING THE SYSTEM OF PROSTITUTION, IMPOSING PENALTIES ON ITS
PERPETRATORS, PROVIDING PROTECTIVE MEASURES AND SUPPORT SERVICES
FOR ITS VICTIMS, AND DECRIMINALIZING VAGRANCY, REPEALING FOR THE
PURPOSE ARTICLES 202 AND 341 OF THE REVISED PENAL CODE AND AMENDING R.A.
9208,
AND FOR OTHER PURPOSES

EXPLANATORY NOTE

The State values the dignity of every human person and guarantees full respect for individual human rights. Further, the Constitution provides that Congress shall give highest priority to the enactment of laws that protect and enhance the rights of all people to human dignity and protect the people from any threat of violence and exploitation.

As a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the State shall undertake, among other things, to "take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." Moreover, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others requires the Philippines as a state party, to punish any person who "procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person," "exploits the prostitution of another person, even with the consent of that person", or runs a brothel or rents accommodations for prostitution purposes." It further states that "prostitution and the accompanying evil of the traffic in person and endanger the welfare of the individual, the family and the community."

Republic Act No. 9710 or the Magna Carta of Women (MCW) which is the Philippines' local translation of CEDAW recognizes that prostitution is an act of violence against women (VAW) from which women should be protected. It also provides for the amendment or repeal of laws that are discriminatory to women which, among others, include Article 202 of the Revised Penal Code (RPC) on the definition of prostitution.

Republic Act No. 9208 or the Anti-Trafficking in Persons Act, as amended by Republic Act No. 10364 also recognizes prostitution as a form of exploitation but fails to fully address the criminal liability of customers. Criminal liability is restricted to customers for they will only be prosecuted if they knew that the prostituted women had been trafficked, in which case big evidentiary problems may arise and customers are very unlikely to report suspicions about trafficking if doing so will expose them to prosecution. It is therefore recognized that trafficking does not always the ordinary pattern of supply and demand, unlike prostitution.

Republic Act No. 10158 or an An Act Decriminalizing Vagrancy only repealed Article 202 provisions in the RPC that pertain to vagrancy, leaving behind the provision that penalizes prostituted women, notwithstanding their exploitation in the prostitution. The existing provision on prostitution is discriminatory against women since their being prostituted treats them as criminals when they, in fact, are the ones exploited and victimized. Law enforcement and legal sanctions are exclusively focused on prostituted women and not those who exploit them and create the demand side of prostitution like the pimps, customers or buyers of sex, exploiters, and brothel owners, among others.

As it is in prostitution, the women and children are considered commodities that are acquired in exchange for money, made to perform unwanted sexual acts, violently abused and sometimes killed. Because of current laws on prostitution, the victims' rights are violated several times more as law enforcers arrest and sexually abuse the women and children, extract money from them and imprison them, away from their families.

In a 1998 report of the ILO, it was estimated that there were about 100,000 to 600,000 prostituted persons in the Philippines. Of this number, an estimated 60,000 to 100,000 are prostituted children, according to UNICEF and non-governmental organizations. Annually, it is also estimated that 3,266 children are being brought to prostitution. A 2009 study by Magnolia Yrasuegui and Priya Esselborn of Deutsche Welle entitled "Philippines: Women Struggling to Achieve Sexual Equality," revealed that there were around 800,000 prostituted persons in the country where half of them are children. The Philippines ranked fourth among nine nations with the most number of children in prostitution as revealed in a 1997 study of UNICEF.

Prostitution is always viewed as a problem about women and children – those usually bought. However, it is also a problem about business establishments and about the buyers, who are predominantly men.

When prostitution is solely seen as a problem about women, they are the ones questioned and subsequently stigmatized. This law seeks to shift the accountability from the bought to the business and the buyers who really gain from the system of prostitution.

These violations of human rights against the victims in prostitution have been going on with impunity. Prostitution has been normalized even as its victims die slowly from the harms and the violence within prostitution.

International instruments such as the 1949 Convention for the Suppression of Prostitution and the Convention for the Elimination of Discrimination Against Women clearly encourages states to stop violence against women, including and in particular all forms of sexual exploitation. As a party to the Convention, the Philippine State, is therefore obliged to institute mechanisms to eliminate various forms of sexual exploitation, including prostitution.

This bill seeks to decriminalize the prostituted person and address the demand side of prostitution by shifting the criminal liability from the prostituted persons to those who exploit persons in prostitution and broaden the base of illegality of the said act. This also proposes protection and institutionalization of support services for victims or persons exploited in prostitution such as counseling, legal services, medical or psychological services, emergency shelter, livelihood skills training, and educational assistance, among others.

Several legislative measures repealing Article 202 of the RPC and enacting a new anti-prostitution law were filed since the previous Congresses but were not approved. Hence the immediate passage of this bill is earnestly requested.

In view of the need to eliminate prostitution and to penalize its perpetrators and patrons, the immediate passage of this bill is earnestly urged.

as Hontiveros-Parael
Ana Theresia "Risa" Hontiveros-Parael

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

SECTION 1. Short Title. – This Act shall be known as “The Anti-Prostitution Act of 2010.”

SECTION 2. Declaration of Policies. – The State:

(a) values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the Constitution provides that the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity and protect the people from any threat of violence and exploitation. The State, consistent with the Magna Carta of Women (MCW), also recognizes that prostitution is a human rights violation and women and children are systematically victimized and sexually exploited, and declares its commitment to eliminate prostitution, not only to support persons exploited in prostitution but more importantly, to ensure recovery, rehabilitation and reintegration into the mainstream society.

(b) In accordance with the relevant international instruments, recognizes the equal rights and inherent human dignity of women and men as enshrined in the United Nations Universal Declaration on Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, Convention Against Transnational Organized Crime including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and other international human rights instruments of which the Philippines is a party, declares its commitment to end the continuing sexual exploitation of women, men, and children and all forms of gender-based violence by creating an enabling environment where the human rights of women and children are promoted, protected, and fulfilled.

(c) recognizes prostitution as a human rights violation that calls for coordinated and sustained response from all agencies of government as well as non-governmental organizations that comprehensively addresses the factors that perpetuate sexual exploitation.

1 (d) recognizes that women and children are systematically victimized by and in the
2 system of prostitution and must, therefore, be given protection and support by the State,
3 instead of being treated as offenders;

4
5 (e) recognizes that eliminating prostitution is essential for women and children to
6 genuinely and meaningfully participate in nation-building; and

7
8 (f) recognizes that the law on vagrancy has outlived its usefulness and that vagrants
9 should be looked upon not as common criminals but as victims of their ill circumstance.

10
11 **SECTION 3. Definition of Terms.** – The following terms are defined for purposes of this
12 Act:

13
14 (a) *Prostitution* – any act, transaction, scheme or design involving the use **OR**
15 **EXPLOITATION** of a person, whether through the performance of such act or mere
16 demonstration thereof, whether woman, man or child, for the sexual gratification or
17 pleasure of another in exchange for money or checks, profit or other consideration, or any
18 act that promotes or facilitates the accomplishment of the said act, transaction, scheme or
19 design.

20
21 (b) *Person in prostitution or prostituted person* – refers to a woman, man or child
22 used, exploited, acquired, obtained, provided, offered, sold, bought, or hired for another
23 person's sexual gratification or pleasure and for the monetary gain or profit of others.

24
25 (c) *Child* – refers to any person below eighteen (18) years of age or one who is over
26 eighteen (18) but is unable to fully take care of or protect himself/herself from abuse,
27 neglect, cruelty, exploitation or discrimination because of a physical or mental disability or
28 condition.

29
30 (d) *Sexual exploitation* – refers to the practice by which women are sexually
31 subjugated through abuse or violation, either overt or covert, of women's sexuality and
32 physical or mental integrity, as a means of achieving power and domination, including
33 gratification, financial gain, and advancement.

34
35 (e) *Sexual act* – refers to sexual intercourse, including genital-to-genital, oral-to-
36 genital, anal-to-genital, or oral-to-anal intercourse or contact, insertion of any instrument
37 or object into the genital or anal orifice of any person, bestiality, masturbation, lap dance,
38 sadistic or masochistic abuse, exhibition of the genitals or pubic area of any person, and
39 other acts of a sexual nature, whether the same is made between persons of the same or
40 opposite sex.

41
42 (f) *Establishment* – refers to any business or enterprise, including, but not limited to,
43 sauna, bath, massage parlor, discotheque, bar, restaurant, resort, lodging house, motel,
44 hotel, theater, ship, vessel, cab or taxi, or any other vehicle, or any dwelling, house, jail,
45 detention center, structure or building serving as a cover or venue for prostitution, or any
46 group, association or organization that engages in prostitution activities.

47
48 (g) *Cult* – refers to, but not limited to fanatic groups that entice, recruit, condition
49 any person to become sexual offerings in organizational rituals or in other circumstances
50 as part of membership requirements.

51
52 **SECTION 4. Acts of Prostitution.** – Prostitution is a crime committed by:

53
54 (a) Any person who gives or delivers money or any other consideration in exchange
55 for the actual performance or mere demonstration of a sexual act by a person exploited in

1 prostitution, regardless of whether or not the person giving or delivering money or any
2 other consideration is the recipient of such a sexual act;

3
4 (b) any person who is a recipient of a sexual act, whether or not such a recipient has
5 directly given or delivered money or any other consideration for the procurement of a
6 person exploited in prostitution; provided that the person he is receiving sexual acts from
7 was paid for or given any other consideration by any person to do such acts to the
8 recipient.

9
10 (c) Any person, such as a pimp, trafficker or any prostitution establishment owner,
11 who offers another for sexual exploitation in exchange for money or any other
12 consideration;

13
14 (d) any person who induces, persuades, grooms, entices, compels, kidnaps, recruits
15 or in any manner procures or causes a person to serve and/ or be sold in an establishment
16 or in the streets, knowing that the same is involved in prostitution activities or when s/he
17 has reasonable cause to believe that such establishment or person is involved in said
18 activities;

19
20 (e) any person who organizes or arranges travel tours and/or tourism-related
21 activities that involve the sexual exploitation of any person or the escort services of any
22 person who is expected to perform the sexual acts as defined in this Act;

23
24 (f) any person who as part of cult or religious obligation uses, entices, recruits, or
25 offers any person as sexual offering or favor to other members of the cult or religious
26 organization;

27
28 (g) any person who uses information technology or any form of media for the
29 purposes of prostitution;

30
31 (h) any person who derives profit or advantage from any of the prohibited acts
32 defined in this Section such as a pimp, owner, operator, manager, head, director, officer or
33 agent of the establishment where the prostitution activity takes place, or of the
34 establishment serving as a cover or venue for such prostitution activity, or aiding another
35 establishment or person involved in any prostitution activity;

36
37 (i) any person who leases, subleases, or in any manner allows the use of any
38 dwelling, house, structure, building, land or any other property knowing that the
39 lessee/sub-lessee intends to use or uses it for prostitution activities as defined in this
40 Section. For the purposes of this paragraph, the owner of the dwelling, house structure,
41 building, land or any other property used for prostitution and his/her agent shall be
42 presumed to have knowledge that the place is being used or intended to be used or
43 intended to be used for prostitution unless s/he disproves it;

44
45 (j) any member of the military or police establishment, or any government official or
46 employee, or any person in authority who commits, causes, or promotes, facilitates, allows,
47 or tolerates the commission of any of the acts defined in this Section, or who, in any
48 manner, provides protection to the perpetrators of the said acts.

49
50 (k) any official or employee of any jail or detention center or any person connected
51 thereto who commits, causes, promotes, facilitates, allows or tolerates the commission of
52 any of the acts defined in this section upon inmates or who, in any manner, provides
53 protection to the perpetrators of the said act.

1 For purposes of this Section, it is understood that the prohibited acts of prostitution
2 may be committed in any establishment as defined in Section 3(f) above or in any other
3 place not otherwise mentioned in Section 3(f).
4

5 Furthermore, an attempt to commit any of the acts defined in this Section is also
6 prohibited.
7

8 **SECTION 5. Persons Exploited in Prostitution as Victims.** – Any woman, man or child,
9 regardless of sexual orientation or gender identity, used, exploited, acquired, obtained,
10 provided, offered, sold, bought or hired for another person's sexual gratification, pleasure
11 and/or exploitation and for the monetary gain or profit of others, as defined in Section 4 of
12 this Act, shall be treated as victims of prostitution. As such, they shall not incur any
13 criminal liability under this Act.
14

15 In addition, the consent of the person exploited in prostitution to the commission of
16 any of the acts defined in Section 4 of this Act shall not in any way exempt the offender
17 from, or mitigate his/her, criminal liability. Prostituted persons shall not be penalized for
18 unlawful acts committed as a direct result of, or as an incident or in relation to, being
19 prostituted, or in obedience to the order made by the offender in relation to any of the acts
20 defined in Section 4 of this Act.
21

22 **SECTION 6. Penalties and Sanctions.** –
23

24 (a) any person found guilty of the acts defined in Section 4 shall suffer the penalty of
25 imprisonment of twenty (20) years and a fine of not less than one million pesos (P1, 000,
26 000.00) but not more than two million pesos (P2, 000, 000.00);
27

28 (b) any person guilty of attempting to commit any of the prohibited acts shall suffer
29 the penalty of imprisonment of fifteen (15) years and a fine of not less than five hundred
30 thousand pesos (P500, 000.00) but not more than one million pesos (P1, 000, 000.00);
31

32 (c) when the offender is any establishment as defined in this Act, the penalty shall
33 be imposed upon the pimps, owner and operator or manager, or the directors and officers,
34 or the responsible officers or agents of the establishment, corporation, partnership, or
35 association found to be engaged in any of the acts defined in Section 4 of this act.
36

37 In addition, the establishment, corporation, partnership or association shall be
38 immediately closed and its registration and/or license to operate shall be revoked. A sign
39 with the words "off limits" shall be conspicuously displayed outside the establishment by
40 the Department of Social Welfare and Development for such period as the Department may
41 determine, which shall not be less than one year. The unauthorized removal of such sign
42 shall be punishable by imprisonment of six months.
43

44 (d) when the offender is a foreigner, s/he shall be deported immediately after
45 service of sentence and permanently barred from entry into the country;
46

47 (e) any person found guilty of committing or attempting to commit any of the
48 prohibited acts under Section 4 shall, in addition to the penalties stated in this section,
49 undergo, counseling, rehabilitation and mandatory education on the human rights situation
50 of victims of prostitution with DSDW for a period of not less than three (3) months but not
51 longer than one (1) year with the DSWD. The DSWD shall submit to the court a report on
52 the rehabilitation of the offender.
53
54

1 **SECTION 7. Civil Liability for Prostitution.** – Persons exploited in prostitution may file
2 independent civil cases for damages against the persons, natural or juridical, responsible
3 for their exploitation.
4

5 Provinces, cities and municipalities shall be liable for damages, in addition to any
6 other criminal or administrative liability under existing laws, to persons exploited in
7 prostitution when it is proven that the responsible authorities had knowledge or were
8 informed of the activities constituting prostitution but did not take proper action within a
9 reasonable period of time. For purposes of this Section, the responsible authorities shall be
10 deemed to have knowledge of the prostitution activities when the same are common
11 knowledge in the community.
12

13 **SECTION 8. Prosecution of Cases.** - Any person who has personal knowledge of the
14 commission of any offense under this Act, or the person exploited in prostitution, the
15 parents, spouse, siblings, children or legal guardian, or the law enforcement agencies, or
16 the Task Force created under this Act may file a complaint for prostitution.
17

18 **SECTION 9. Venue.** - A criminal action arising from a violation of this Act shall be filed
19 where the offense was committed, or where any of its elements occurred, or where the
20 person exploited in prostitution actually resides at the time of the commission of the
21 offense; provided, that the court where the criminal action is first filed shall acquire
22 jurisdiction to the exclusion of other courts.
23

24 **SECTION 10. Prescriptive Period.** - Cases under this Act shall prescribe in TWENTY-
25 FIVE (25) years. The prescriptive period shall commence to run from the day on which the
26 person exploited in prostitution is delivered or released from the situation of exploitation
27 and shall be interrupted by the filing of the complaint or information and shall commence
28 to run again when such proceedings terminate without the accused being convicted or
29 acquitted or are unjustifiably stopped for any reason not imputable to the accused.
30

31 **SECTION 11. Exemption from Filing Fees.** – When the victim of prostitution institutes a
32 separate civil action from the recovery of civil damages, s/he shall be exempt from the
33 payment of filing fees.
34

35 **SECTION 12. Confiscation And Forfeiture Of The Proceeds And Instruments Derived**
36 **From Prostitution.**- In addition to the penalty imposed for the violation of this Act, the
37 Court shall order the confiscation and forfeiture, in favor of the government, of all the
38 proceeds and properties derived from the commission of the crime, unless they are the
39 property of a third person not liable for the unlawful act: provided, however, that all
40 awards for damages shall be taken from the personal and separate properties of the
41 offender: provided, further, that if such properties are insufficient, the balance shall be
42 taken from the confiscated and forfeited properties.
43

44 When the proceeds, properties and instruments of the offense has been destroyed,
45 diminished in value or otherwise rendered worthless by any act or omission, directly or
46 indirectly, of the offender, or it has been concealed, removed, converted or transferred to
47 prevent the same from being found or to avoid forfeiture or confiscation, the offender shall
48 be ordered to pay the amount equal to the value of the proceeds, property or instruments
49 of the offense.
50

51 **SECTION 13. Trust Fund.** – All fines imposed under this Act and the proceeds and
52 properties forfeited and confiscated pursuant to Section 12 hereof shall accrue to a Trust
53 Fund to be administered by the Council to be used exclusively for programs that will
54 prevent prostitution and protect, heal and reintegrate prostituted persons into the
55 mainstream of society. Such programs shall include but not limited to those provided for
56 under Section 20 of this Act.