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SESSION NO. 35

Wednesday, November 9, 2005

**THIRTEENTH CONGRESS
SECOND REGULAR SESSION**

SESSION NO. 35
Wednesday, November 9, 2005

CALL TO ORDER

At 3:56 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

Sen. Panfilo M. Lacson led the prayer, to wit:

Almighty Father, we are once again gathered in this hallowed halls of the Senate as chosen leaders of Your people in this benighted land.

We acknowledge that the burdens that have been laid upon our people's shoulders have grown so heavy and an air of hopelessness has enveloped our nation.

We also know that much of the blame for our nation's despair lies in our country's leaders, some of whom continue to look upon power as a license to cheat, steal and lie without compunction while our people suffer without end. Amidst all these, even those of us invested with power feel powerless.

And so we call on You, our hope, our shield, and our strength to save us. We call on You to free our country from the curse of the powerful among us who are made of the yeast of hypocrisy and deceit, who mouth noble words to the crowds but commit evil deeds in the dark. We ask You to show us the way to salvation by granting us the wisdom to know what must be done and once discerned, the courage to do it.

Stay with us, Lord, that we may never lose sight of the dawn of hope You had promised Your beloved people.

In faith, we ask this in the Name of Jesus, Your Son, and Mary, our Blessed Mother.

Amen.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Oscar G. Yabes, called the roll, to which the following senators responded:

Angara, E. J.	Lim, A. S.
Arroyo, J. P.	Osmeña III, S. R.
Defensor Santiago, M.	Pangilinan, F. N.
Drilon, F. M.	Pimentel Jr., A. Q.
Ejercito Estrada, J.	Recto, R. G.
Ejercito Estrada, L. L. P.	Revilla Jr., R. B.
Enrile, J. P.	Roxas, M.
Flavier, J. M.	Villar, M.
Lacson, P. M.	

With 17 senators present, the Chair declared the presence of a quorum.

Senators Madrigal and Magsaysay arrived after the roll call.

Senators Biazon, Gordon and Lapid were on official mission abroad.

Senator Cayetano was absent.

**APPROVAL OF THE JOURNAL
AS CORRECTED**

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 34 and considered it approved, subject to the correction made by Senator Pangilinan on page 415, left column, last line of amendment No. 52, between the words "ACTED" and "DISCERNMENT," to change the word "WITH" to WITHOUT.

REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

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RESOLUTION

Proposed Senate Resolution No. 365, entitled

RESOLUTION DIRECTING THE APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO MRT LINE-7 AND OTHER BUILD-OPERATE-TRANSFER PROJECTS THAT SEEK TO ESTABLISH AN URBAN TRANSPORTATION SYSTEM IN METRO MANILA TO ENSURE THAT THE GOVERNMENT PROPERLY COORDINATE AND HARMONIZE THE IMPLEMENTATION OF THESE PROJECTS

Introduced by Senator Mar Roxas

To the Committees on Public Services; and Public Works

COMMUNICATIONS

Letter from Secretary Reby Jardin-Cuaño of the Sangguniang Panlalawigan of Camarines Norte, dated 7 September 2005, furnishing the Senate with a copy of SP Resolution No. 222-2005, supporting Resolution No. 2005-105 of the Sangguniang Panlalawigan of Iloilo re SUPPORTING AND ENCOURAGING COMMITMENT TO THE PASSAGE OF ASSEMBLY BILL NO. 15 OF THE CALIFORNIA LEGISLATURE (2005-2006 REGULAR SESSION) WHICH ENCOURAGES SCHOOL DISTRICTS IN CALIFORNIA, UNITED STATES OF AMERICA, TO INCLUDE INSTRUCTION ON THE ROLE OF FILIPINOS IN WORLD WAR II AS PART OF THEIR SOCIAL STUDIES CURRICULUM.

To the Committee on Education, Arts and Culture

Letter from Governor Amando M. Tetangco Jr. of the *Bangko Sentral ng Pilipinas*, dated 26 October 2005, submitting to the Senate a copy of the Report on Public and Publicly Guaranteed Private Sector Foreign Loans Approved by the *Bangko Sentral ng Pilipinas* (BSP) During the Third Quarter of 2005.

To the Committees on Finance; and Economic Affairs

ADDITIONAL REFERRAL

Senator Angara requested that the Committee on Banks, Financial Institutions and Currencies be furnished with a copy of the *Bangko Sentral ng Pilipinas* report.

Thereupon, the Chair also referred the BSP report to said committee.

COMMITTEE REPORT NO. 31 ON SENATE BILL NO. 1402 (Continuation)

Upon motion of Senator Flavier, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill 1402 (Committee Report No. 31), entitled

AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE JUSTICE SYSTEM AND INTERVENTION [DELINQUENCY PREVENTION] PROGRAM, CREATING THE OFFICE OF THE JUVENILE JUSTICE AND DELIQUENCY PREVENTION UNDER THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT [JUSTICE], APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES.

Senator Flavier stated that the parliamentary status was the period of individual amendments.

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

ACKNOWLEDGEMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Pangilinan acknowledged the presence of the following guests: *Aksyon ng Kabataan at Bata Para sa Bayan* from Olongapo, PREDA, Kabataang Liberal ng Pilipinas, National Youth Commission, former NYC Commissioner Arnuco, Olive Foundation, International Visitors Philippines Alumni Foundation, Child Rights Center of the Commission on Human Rights, former Children in Conflict with the Law, *Ahon Sa Kalye* Ministries, Philippine Network of Urban and Street Ministries, Philippine Action For Youth Offenders, Dir. Lina Laygo of CWC, Professor Albert Muyot of UNICEF,

Ateneo Human Rights Center, Amnesty International, Consuelo Foundation, ChildHope of Asia, PLCPD, CFSI, Virланie Foundation and *Bunso* Film Director Ditsi Carolino.

WORKING DRAFT

The Chair informed the Body that the working draft would be the November 8 version of Senate Bill No. 1402 with the approved committee amendments.

REMARKS OF SENATOR DEFENSOR SANTIAGO

Preliminarily, Senator Defensor Santiago expressed appreciation that the committee amendments contained some of the points she raised during her interpellation. She stated that it is unfortunate to push for children to be placed under the criminal justice system, in view of which, she would propose that children under age 16 be placed under a criminal avoidance system while children under ages 18 to under 25, be placed under a diversion system. She argued that Children in Conflict with the Law (CICL) should be placed under a system that is welfare- and human rights-oriented, restorative and protective. She said that if further intervention is necessary, as assessed by social workers or mental health professionals, the system should be rehabilitative and reintegrative, the purpose being to reintegrate the children into their families as well as into their community. She stressed that criminal justice should never be a controlling paradigm for children especially for those who have committed non-heinous offenses.

In the case of a mature minor aged 16 to below 18 who is charged with or accused of or may have committed a serious offense and may have acted with discernment, Senator Defensor Santiago proposed that the Department of Social Welfare and Development (DSWD) or the Local Council for the Protection of Children (LCPC) or the proposed Office of the Juvenile Justice and Delinquency Prevention (OJJDP) could recommend that the child go through a judicial proceeding bearing in mind his/her welfare, best interest and restoration. She pointed out that even in heinous crimes, the intention should still be the child's restoration, rehabilitation and reintegration, and diversion could be utilized to help therewith.

With regard to the child welfare paradigm, Senator Defensor Santiago stated that the basic principles are simpler. She expressed the belief that in non-heinous crimes, there should be no contact by any Child in Conflict with the Law with any pillar of the criminal justice system or law enforcement agency. Any contact by law enforcement agents, she stated, should be for the purpose of rescuing and protecting the children with the corollary responsibility of immediately turning over the children to the custody of the DSWD, a licensed social worker or a mental health practitioner.

In heinous crimes committed by mature minors aged 16, Senator Defensor Santiago said that the initial contact mechanism should be the proposed OJJDP, the DSWD or the LCPC which shall determine whether a child should go through criminal justice proceedings. She believed that since said offices are child-oriented, society is assured that the *primordial concern is the child's interest and welfare*. Further, she posited that custodial detention should be made only upon the recommendation of said agencies and should never be automatic and neither should police apprehension be immediate.

Moreover, Senator Defensor Santiago remarked that these agencies should make sure that the implementing rules and regulations on the intake and protective custody of Children in Conflict with the Law are followed as well as the guidelines on when it becomes necessary to recommend detention or the intervention of the criminal justice process.

With regard to the title of the bill, Senator Defensor Santiago remarked that it sets a highly conservative and traditional perspective but the paradigm of the juvenile justice system that is being promoted is restorative justice outside the criminal justice system. She pointed out that a new system is needed where the main concern is the child's welfare and best interest, and not criminal justice, and that a paradigm shift should be made from criminal justice to child welfare and restorative justice. The proposed OJJDP, she said, should fall under the DSWD and its members should include institutions whose primary thrust is protecting, nurturing and educating the children.

She observed that the term "delinquency prevention" should not be used because it tends to label children as "delinquents" if they undergo such program; hence, more neutral terms like "child

intervention," "child restoration," "child protection," or "child welfare programs" should be considered. With such terms, there is no need to emphasize the aim of delinquency prevention, she said.

DEFENSOR SANTIAGO AMENDMENTS

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

1. Reword the title of the bills as follows:

AN ACT ESTABLISHING A COMPREHENSIVE JUVENILE WELFARE AND RESTORATION SYSTEM, CREATING THE OFFICE OF JUVENILE JUSTICE AND RESTORATION UNDER THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, APPROPRIATING FUNDS THEREFOR.

2. On page 1, lines 5 and 6, amend the short title to JUVENILE WELFARE AND RESTORATION ACT OF 2005.

On the *Declaration of State Policy*, Senator Defensor Santiago stated that it must be emphasized that the State shall adopt measures without resorting to judicial proceedings as well as without resorting to any proceeding under any of the pillars of the criminal justice system, meaning, the police, prosecutors and judges should not even be involved in the initiatory stages of proceedings against minors.

On page 1, between lines 14 and 15, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved the insertion of a new subsection to read as follows:

B) THE STATE SHALL ADOPT MEASURES WITHOUT RESORTING TO JUDICIAL PROCEEDINGS AND ALSO WITHOUT RESORTING TO ANY PROCEEDING UNDER ANY OF THE PILLARS OF THE CRIMINAL JUSTICE SYSTEM.

Senator Defensor Santiago asserted that Section 3(9) should refer to the intake of a Child in Conflict with the Law by duly licensed social

workers and without the involvement of law enforcement officers. She stated that if a law enforcement officer makes any initial contact or apprehension of a minor, he is obligated to immediately turn over the child to the DSWD, the OJWR, or the LCPCs. To assure the protection of the rights of the child, she stressed that the avoidance of contact with any law enforcement officer is mandatory so that the child shall not be criminally contaminated or traumatized by the insensitivity of the law enforcement system.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:17 p.m.

RESUMPTION OF SESSION

At 4:18 p.m., the session was resumed.

Accepted by the Sponsor, there being no objection, the following Defensor Santiago amendments were approved by the Body, one after the other:

1. On page 4, reword line 22, as follows:

(9) *Initial contact with the child* – SHALL REFER TO THE INTAKE OF A CHILD IN CONFLICT WITH THE LAW BY DULY LICENSED SOCIAL WORKERS FROM GOVERNMENT OR NON-GOVERNMENT AGENCIES INTO CUSTODY;

2. On page 5, reword lines 7 to 11, as follows:

(11) *Juvenile Justice System* – SHALL REFER TO PROCEEDINGS OF CRIMINAL AVOIDANCE OUTSIDE THE CRIMINAL JUSTICE SYSTEM AS WELL AS TO JUDICIAL PROCEEDINGS INVOLVING CHILDREN IN CONFLICT WITH THE LAW FOR HEINOUS OFFENSES.

Adverting to Section 3(16) on *Serious Offense*, Senator Defensor Santiago pointed out that the

definition of said term should be omitted in the law since what is important is not to make a distinction between serious and non-serious offenses but between heinous and non-heinous offense. She defined "heinous offenses" as crimes punishable by life imprisonment which is equivalent to 30 years or death. On the other hand, she said that "non-heinous offenses" provide a penalty lesser than that for heinous crimes.

She also believed that the term "status offenses" should be defined as offenses that discriminate only against a child while an adult does not suffer any penalty for committing similar acts.

Senator Defensor Santiago proposed the inclusion in Section 3(16) of the following terms:

HEINOUS OFFENSES - SHALL REFER TO CRIMES PUNISHABLE BY LIFE IMPRISONMENT, *RECLUSION PERPETUA* (30 YEARS IMPRISONMENT), OR DEATH;

NON-HEINOUS OFFENSES - SHALL REFER TO CRIMES WITH CORRESPONDING PENALTIES LOWER THAN THE PENALTIES IMPOSED ON HEINOUS OFFENSES; AND

STATUS OFFENSES - SHALL REFER TO OFFENSES WHICH DISCRIMINATE ONLY AGAINST A CHILD WHEN AN ADULT DOES NOT SUFFER ANY PENALTY FOR COMMITTING SIMILAR ACTS. THIS SHALL INCLUDE CURFEW VIOLATION, TRUANCY, PARENTAL DISOBEDIENCE AND THE LIKE.

Senator Pangilinan pointed out that based on the present definition of "serious offense" in the bill, any offense punishable by less than six years imprisonment is subject to diversion and an offense punishable by imprisonment beyond six years is subject to court proceedings.

Since the definition of the term "non-heinous crimes" is being proposed to be included in the bill, he asked if an offense that is punishable by 12 years, for instance, shall not be considered a heinous offense and therefore diversion would apply. Senator Defensor Santiago replied in the affirmative.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:22 p.m.

RESUMPTION OF SESSION

At 4:24 p.m., the session was resumed.

Thereupon, Senator Pangilinan accepted the proposed amendment to Section 3(16) and there being no objection, the same was approved by the Body.

Senator Defensor Santiago noted that Section 4 should promote "children's safety" rather than "community safety" since promoting the former would result in the achievement of the latter.

On page 7, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved the rewording of lines 3 and 4 as follows:

THIS FRAMEWORK SHALL PROMOTE ACCOUNTABILITY AND RESPONSIBILITY, COMPETENCY DEVELOPMENT, COMMUNITY SAFETY AND CHILDREN'S SAFETY.

Senator Defensor Santiago noted that Section 5(1) of the bill should obligate those involved in the criminal justice system such as social workers, mental health professionals, law enforcement officers, psychologists and psychiatrists to identify themselves to the Child in Conflict with the Law so as not to traumatize him/her.

On page 7, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved the recasting of lines 7 to 11 as follows:

"THE RIGHT TO HUMANE TREATMENT FROM THE TIME OF INITIAL CONTACT WITH SOCIAL WORKERS OR MENTAL HEALTH PROFESSIONALS THROUGH THE INTAKE AND ASSESSMENT PROCEDURES, OR FOR HEINOUS CRIMES, FROM THE TIME OF INITIAL CONTACT WITH THE CRIMINAL

JUSTICE SYSTEM. OFFICERS OR STAFF INVOLVED, WHICH INCLUDE SOCIAL WORKERS, PSYCHOLOGISTS, PSYCHIATRISTS, AND LAW ENFORCEMENT OFFICERS, SHALL HAVE THE FOLLOWING DUTIES: (A) MUST PROPERLY IDENTIFY”

Senator Defensor Santiago posited that Section 6 is superfluous because the social workers, mental health professionals and law enforcement officers have the duty to inform the children of their responsibilities while under custody.

On page 9, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved the deletion of lines 14 to 19;

On page 9, Senator Defensor Santiago proposed that Section 7 be reworded as follows:

Minimum Age of Criminal Responsibility for Non-Heinous Offenses.
CHILDREN UNDER EIGHTEEN (18) YEARS SHOULD BE TOTALLY EXEMPT FROM CRIMINAL LIABILITY BUT CAN BE SUBJECTED TO A CHILD WELFARE, RESTORATION, INTERVENTION AND PROTECTION PROGRAM TO BE DETERMINED BY A SOCIAL WORKER.

Thereafter, she proposed the insertion of a new section on the *Minimum Age of Criminal Responsibility for Heinous Offenses* providing that children aged at least 16 years but below 18 years, if charged with a heinous offense punishable by life imprisonment or death, might be recommended for detention or for judicial process by the LCPC, OJWR, or DSWD, if the child acted with discernment.

She explained that the determination of whether a child acted with discernment would be placed in the hands of social welfare workers and mental health professionals through proper guidelines. Only then, she added, can the pillars of the criminal justice system intervene, upon the recommendation of the agencies involved. She stressed that diversion could be applied in cases where mature minors accused of heinous crimes may have acted with discernment. She stated that in all other cases involving minors and non-heinous crimes, a system of avoidance from

the criminal justice system is applied, which means avoidance from criminal contamination, police detention, trauma, stigmatization, labeling and all the other detrimental effects of the criminal justice system.

Senator Defensor Santiago agreed that exemption from criminal liability does not mean exemption from civil liability, although this is more an obligation of the parents than of the minor. She also expressed concern over the fact that the bill makes children aged 16 years and above assume criminal responsibility and that conversely, the children could only be diverted if they are 16 years old and below. She feared that a higher penalty might be applied especially when the offense charged by the prosecutor is exaggerated. As such, she proposed that diversion should be available for children involved in serious crimes where the penalty is less than 20 years imprisonment. Moreover, she stated that the judge should have an opportunity to consider the possibility of diversion even in heinous crimes where the penalty is *reclusion perpetua*. She underscored that a higher standard should be set for children to avoid the criminal justice system as much as possible.

Additionally, she pointed out that mature minors aged 16 or 17 usually commit crimes either under the direction of adult masterminds or as a result of their having come from absolutely dysfunctional families or due to psychological disorders. In these cases, she believed that the criminal justice system would not be the most effective approach to rehabilitating the minors. Therefore, she maintained that the mature minors should be diverted from a criminal justice system to a less formal juvenile diversion program that provides rehabilitation measures. Relative thereto, she suggested that the diversion system be made available to young adults aged 18 to below 25 as they still do not possess absolute discernment.

Senator Defensor Santiago posited that the diversionary system would have tremendous effects on the barangays that would have to keep a more peaceful and orderly society aimed at improving community relations; and giving priority to education, skills training and employment to mature minors and young adults would provide them the opportunities to improve their lives. She added that the system would also have positive effects on the criminal justice system. She said that family court judges would think more in terms of helping minors and

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young adults instead of penalizing them with longer jail terms.

At this juncture, Senator Arroyo requested that the proposed amendments to Section 7 be deferred as he wanted to study them more closely. Senator Defensor Santiago acceded to the request.

On page 10, line 26, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved the rewording of the title of Section 9 to OFFICE OF JUVENILE WELFARE AND RESTORATION (OJWR).

Adverting to Section 10, Senator Defensor Santiago stressed the need to clarify in all provisions that it is the Department of Social Welfare and Development and its Secretary that would discharge the functions of the OJWR. She reiterated that "juvenile delinquency prevention" should be referred to as "juvenile restoration"; and the treatment and rehabilitation of the Child in Conflict with the Law should include welfare, intervention, protection, and family or community reintegration in addition to juvenile delinquency prevention.

Senator Defensor Santiago then proposed the inclusion of a provision in Section 10 that the recommendations of the LCPCs for the detention and criminal justice procedure for a mature minor in conflict with the law who may be accused of a heinous offense should be made appealable to the OJWR for further determination of the merits of the case for purposes of determining whether it should be detention or referral to the criminal justice system. She stated that no custodial detention by the police or law enforcement agency should be made unless finally determined by the OJWR. She said that she would leave the wordings of this provision to the Committee, hoping that her comments would be incorporated therein. Senator Pangilinan replied that the Committee would study the request.

On another matter, Senator Defensor Santiago commented that Section 12 is superfluous because whether or not there is recognition of the Child Rights Center in the bill, it is still the obligation of the Commission on Human Rights to monitor and ensure that children's rights are upheld.

Senator Pangilinan clarified that the Committee placed the provision in the bill because the mandate

of the Child Rights Center of the Commission on Human Rights is in the form of an executive issuance, not a specific provision of the law. He believed that it would be good to include such a provision in the bill.

Senator Defensor Santiago said she had no strong feelings about the provision.

On page 14, Senator Defensor Santiago stated that while Sections 13 and 14 recognize the importance of the family and education systems, they do not mention anything about maintaining the child in the family or school or community environment where the child is supposed to be. She observed that Section 14 speaks only of a child being taken into custody or detained in the rehabilitation centers.

That being the case, Senator Defensor Santiago proposed that Sections 13 and 14 be expanded with the end view of providing that the child shall be maintained in his/her family, school or community environment and that he/she should be provided adequate and individualized educational schemes if he/she is manifesting difficult behavior. She further proposed that these sections provide that the child shall have the opportunity for continuous learning under alternative systems outside custodial detention as may be determined by the LCPCs, DSWD or OJWR.

Senator Pangilinan expressed willingness to craft another paragraph incorporating the inputs of Senator Defensor Santiago, subject to style.

On Section 16, Senator Defensor Santiago underscored the need to clarify that the local councils, at whatever level, should have the power to determine such matters as whether or not the crime committed is heinous, whether a minor is at least 16 years old and can be held criminally responsible, whether the minor acted with discernment, and whether the minor should be provided with criminal justice intervention—meaning, custodial police detention, preliminary investigation and judicial trial. She said that appeals from the decision of the LCPC should be made to the OJWR. She proposed, subject to style, that a provision be inserted in Section 16 emphasizing that the LCPCs and OJWR possess quasi-judicial function insofar as Children in Conflict with the Law are concerned and that their functions are preventive, quasi-judicial, and administrative in undertaking or deciding the proportionate

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disposition of a child's case, and determining juvenile restoration programs.

Senator Pangilinan replied that while the barangay council has the power to exercise quasi-judicial functions, the barangay officials might not have the ability to perform such functions.

Senator Defensor Santiago said that she would not object to an amendment excluding the barangay council in the grant of quasi-judicial power.

Senator Pangilinan stated that the Committee would try to craft a provision taking into account the inputs of Senator Defensor Santiago.

On Sections 19 and 20, Senator Defensor Santiago proposed that the term "delinquency," which stigmatizes and labels, be replaced with RESTORATION which is a more politically correct term. Senator Pangilinan replied that the word "delinquency" has been changed to "intervention."

In Sections 19 and 20, as proposed by Senator Defensor Santiago and modified by the Sponsor, there being no objection, the Body approved the changing of the words "Juvenile Intervention" to JUVENILE INTERVENTION AND RESTORATION.

On Section 22, Senator Defensor Santiago noted that prior provisions should already have outlined a criminal avoidance system where the minor is sent through a social welfare, restoration, intervention and protection program outside the criminal justice system before he/she is finally referred to the criminal justice system for police inquiry, preliminary investigation and judicial trial. She reiterated her proposal to increase the age for criminal responsibility from 15 to 18 years for non-heinous offenses, and 16 years for heinous offenses. She said that if the child falls under an indictable heinous offense for having possibly acted with discernment, then the authority conducting the investigation may proceed to diversion under the following chapter.

On Section 24, on *System of Diversion*, Senator Defensor Santiago believed that diversion systems should apply to conditions where the impossible penalty for the crime is life imprisonment, *reclusion perpetua* or death. She said that the other inclusive provisions on mediation, family conferencing and conciliation, including indigenous modes of conflict resolution, could be used for the diversion schemes.

Senator Defensor Santiago believed that the other paragraphs of Sections 24 are no longer necessary when they mention victimless crimes, status offenses or misdemeanors, light or less serious offenses, because all of these fall under a criminal avoidance scheme outside the criminal justice system and are actionable by the DSWD, LCPCs and the OJWR.

Senator Pangilinan replied that the proposal to amend Section 24 may likewise have a bearing on the position of Senator Arroyo that the Body should defer the proposed amendments to Section 7, on the age of criminal responsibility. Senator Defensor Santiago agreed that all amendments concerning ages be tackled altogether.

On page 20, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved the rewording of lines 25 to 27 as follows:

STAGES WHERE DIVERSION MAY BE CONDUCTED. – DIVERSION MAY BE CONDUCTED AT THE KATARUNGANG PAMBARANGAY, THE POLICE INVESTIGATION OR THE INQUEST, PRELIMINARY INVESTIGATION STAGE AND AT ALL LEVELS AND PHASES OF THE PROCEEDINGS, INCLUDING JUDICIAL LEVEL.

Still on page 20, before Section 26, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved, subject to style, the insertion of a provision that would refer to Contract of Restoration, Contract of Child Intervention, Contract of Child Protection and Contract of Child Welfare during the conferencing, mediation or conciliation outside the criminal justice structure/system, or prior to the child's entry into the system.

On page 21, Senator Defensor Santiago proposed the deletion of Section 27 because the punong barangay had been divested of power which was transferred to the LCPCs.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 4:56 p.m.

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RESUMPTION OF SESSION

At 4:58 p.m., the session was resumed.

Upon resumption, Senator Defensor Santiago withdrew her proposed amendment. But she posited that some cases might not fall within the jurisdiction of the LCPCs, and the punong barangay would take charge.

Relative to Sections 28, 29, 30 and 31, Senator Defensor Santiago proposed that the restoration programs for non-heinous offenses be similarly replicated as these programs also involve restitution, reparation, indemnification, apology and other similar dispositions.

Accepted by the Sponsor, there being no objection, the amendment was approved, subject to style.

On page 24, Sections 34 and 35, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved that bail and release on recognizance, as well as diversion with similar dispositions and programs, be made available also at the police and prosecutorial or preliminary investigation levels so as not to unduly detain the child in jail.

On page 26, Section 41, Senator Defensor Santiago commented that the procedure for the return of the child to court should apply only to heinous crimes where a child, aged 16, is put under suspended sentence. She expressed the view that informal schemes of diversion and suspended sentences should also be extended to young adult offenders aged 18 to below 25 who usually would still be getting a college education, have to secure parental advice on marriage, or need guarantors for opening bank accounts. She stressed that diversion could truly be beneficial to these young adult offenders.

On page 28, Senator Defensor Santiago proposed that the mandatory nature of Section 47 be emphasized. She underscored that separate detention facilities for minors are provided for under existing laws but the provision has not been properly implemented. Moreover, she pointed out that the law also provides for rehabilitation programs in agricultural and forestry camps but these facilities are non-existent. She stressed that such detention

facilities for minors should establish a home environment, not a mini-jail, so that quality counseling and treatment can be provided to juvenile offenders.

Senator Pangilinan agreed to add another paragraph to capture the proposed amendment, subject to style, and there being no objection, the same was approved by the Body.

On page 29, Section 50, Senator Defensor Santiago proposed that the provision should state clearly the procedure on how a minor can demand the right to the shortest possible detention period. She noted that in the present criminal justice system, the trial takes so long that the juvenile detainee actually serves out the sentence. She proposed that the prosecutor be required to make a manifestation to the court when the juvenile offender has been in jail for a certain period of time.

Senator Pangilinan agreed to include a specific provision setting the guidelines in the implementing rules and regulations.

On page 30, Section 53, Senator Defensor Santiago stressed that confinement in agricultural camps and other training facilities should be under the control and supervision of the DSWD in coordination with the Bureau of Corrections or the Department of Justice.

Senator Pangilinan explained that existing agriculture and forestry camps are in fact under the Bureau of Corrections. But he agreed to a proviso that such camps yet to be established be placed under the DSWD.

Thereafter, on page 30, line 7, after the word "Corrections," as modified by the Chair and accepted by the Sponsor, there being no objection, the Body approved the addition of the phrase IN COORDINATION WITH THE DSWD.

On page 34, Section 65, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved the enumeration of the individuals liable for the violation of the law.

On Section 66, Senator Defensor Santiago proposed that the appropriations be raised to an amount equivalent to 2% of the internal revenue allotment.

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SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:12 p.m.

RESUMPTION OF SESSION

At 5:13 p.m., the session was resumed.

Upon resumption, Senator Defensor Santiago withdrew her proposed amendment to Section 66.

On the Transitory Provisions, Senator Defensor Santiago proposed the insertion of another section to read as follows:

ALL CHILDREN WHO DO NOT HAVE CRIMINAL LIABILITY UNDER THIS LAW, PENDING THE CREATION OF THE OFFICE OF THE JUVENILE WELFARE AND RESTORATION (OJWR) AND THE LOCAL COUNCIL FOR THE PROTECTION OF CHILDREN (LCPC) WITHIN A YEAR, SHALL BE IMMEDIATELY TRANSFERRED TO A DSWD INSTITUTION, AND DSWD SHALL UNDERTAKE DIVERSION PROGRAMS FOR THEM, PRIORITIZING THE YOUNGER CHILDREN BELOW 15 YEARS OF AGE AND THE LIGHTER OFFENSES.

She asked whether DSWD has enough facilities for these adult offenders.

Senator Pangilinan stated that according to the Council for the Welfare of Children (CWC), the DSWD does not have the capability at the moment. Senator Defensor Santiago said that these offenders could be transferred when the facilities are ready.

Senator Pangilinan asked whether the children without criminal liability being referred to are those who currently have criminal liability but would be exempt upon the approval of the measure because of its retroactive effect, and that these children should be released either to their parents or to a diversion program. Senator Defensor Santiago replied in the affirmative, adding that a sifting process should be conducted by the DSWD.

Senator Pangilinan said that the Committee would craft the provision, incorporating the issues raised by Senator Defensor Santiago, particularly on the capacity of the DSWD to absorb the offenders.

Asked by the Chair whether all Children in Conflict with the Law who were committed under the Revised Penal Code would be immediately released once the law becomes effective, Senator Pangilinan replied in the affirmative, saying that these children would fall within the diversion requirements.

Asked by the Chair what would happen to these children while the facilities are not yet available, Senator Defensor Santiago said that they do not necessarily have to remain in detention. She explained that the measure provides for conferencing, family mediation, and negotiation.

Senator Pangilinan stated that while this would require manpower from the DSWD, the measure should indeed provide for the strengthening of the Department's capacity to absorb these children.

Accepted by the Sponsor, there being no objection, the Defensor Santiago amendment was approved by the Body.

On page 35, as proposed by Senator Defensor Santiago and accepted by the Sponsor, there being no objection, the Body approved the rewording of Section 70 so that the rule-making under the Act shall be exercised by the DSWD alone, and that the DSWD would promulgate the rules and regulations in coordination with the DOJ and the other members of the OJWR.

Asked by the Chair whether there is a set of rules which identifies child-focused NGOs that should be consulted in the issuance of rules and regulations, Senator Pangilinan said that these child-focused NGOs should be duly accredited by the DSWD.

PANGILINAN AMENDMENT

On page 35, line 27, after the acronym "NGOS," as proposed by Senator Pangilinan, there being no objection, the Body approved the insertion of the phrase DULY ACCREDITED BY THE DSWD.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1402

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

CLEAN COPY

The Chair directed the Secretariat to prepare a new copy of the bill incorporating all the approved amendments.

SUSPENSION OF SESSION

Upon motion of Senator Flavier, the session was suspended.

It was 5:22 p.m.

RESUMPTION OF SESSION

At 5:31 p.m., the session was resumed.

MANIFESTATION OF SENATOR PANGILINAN

Senator Pangilinan manifested that the draft of the proposed rules to govern the Committee of the Whole in discussing the national budget had been reproduced. In view thereof, he said that the session would be suspended to enable the Body to go into caucus to discuss the same. He then requested the Secretariat to advise the other senators to proceed to the lounge.

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the session was suspended.

It was 5:33 p.m.

RESUMPTION OF SESSION

At 6:45 p.m., the session was resumed.

ADDITIONAL REFERENCE OF BUSINESS

The Secretary of the Senate read the titles of following resolutions which the Chair referred to the Committees hereunder indicated:

Proposed Senate Resolution No. 366, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON LABOR, EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND THE SENATE COMMITTEE ON PUBLIC SERVICES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE COMPOSTELA MINE BLAST

Introduced by Senator Miriam Defensor Santiago

To the Committees on Labor, Employment and Human Resources Development; and Environment and Natural Resources

Proposed Senate Resolution No. 367, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON PUBLIC ORDER AND ILLEGAL DRUGS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE INCREASING INCIDENCE OF CARJACKING IN METRO MANILA

Introduced by Senator Miriam Defensor Santiago

To the Committee on Public Order and Illegal Drugs

Proposed Senate Resolution No. 368, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON HEALTH AND DEMOGRAPHY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE PREVENTION OF CHRONIC DISEASES AMONG FILIPINOS

Introduced by Senator Miriam Defensor Santiago

To the Committee on Health and Demography

Proposed Senate Resolution No. 369, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON FOREIGN

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RELATIONS AND THE SENATE COMMITTEE ON NATIONAL DEFENSE AND SECURITY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON REPORTS THAT REBEL GROUPS IN MINDANAO ARE SMUGGLING WEAPONS FROM CAMBODIA

Introduced by Senator Miriam Defensor Santiago

To the Committees on Foreign Relations; and Public Order and Illegal Drugs

Proposed Senate Resolution No. 370, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON PUBLIC INFORMATION AND MASS MEDIA TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE WORSENING CABLE TELEVISION PIRACY IN THE COUNTRY

Introduced by Senator Miriam Defensor Santiago

To the Committees on Public Information and Mass Media; and Trade and Commerce

Proposed Senate Resolution No. 371, entitled

RESOLUTION CONSTITUTING THE SENATE INTO A COMMITTEE OF THE WHOLE TO DELIBERATE UPON MATTERS CONCERNING THE GENERAL APPROPRIATIONS FOR THE FISCAL YEAR 2006 AND ADOPTING THE PROCEDURE THAT WILL GOVERN THE CONDUCT OF ITS PROCEEDINGS

Introduced by Senator Manny Villar

To the Committee on Rules

PROPOSED SENATE RESOLUTION NO. 371

Upon motion of Senator Pangilinan, there being no objection, the Body considered Proposed Senate Resolution No. 371, entitled

RESOLUTION CONSTITUTING THE SENATE INTO A COMMITTEE OF THE WHOLE TO DELIBERATE UPON MATTERS CONCERNING THE GENERAL APPROPRIATIONS FOR FISCAL YEAR 2006 AND ADOPTING THE PROCEDURE THAT WILL GOVERN THE CONDUCT OF ITS PROCEEDINGS.

Secretary Yabes read the text of the resolution, to wit:

WHEREAS, there is a felt need to immediately enact the General Appropriations Act for 2006;

WHEREAS, to ensure the timely enactment of the General Appropriations Act for 2006 there is a need to constitute the Senate into a Committee of the Whole which shall immediately conduct hearings on the budget proposals;

WHEREAS, the Committee of the Whole will enable the Senate to thoroughly scrutinize the 2006 budget proposals and to immediately consider the General Appropriations Bill upon its transmittal from the House of Representatives; NOW THEREFORE, be it

Resolved by the Senate, as it is hereby resolved, To constitute itself into a Committee of the Whole.

Resolved further, as it is further resolved, to adopt, as it is hereby adopts the following:

- I. All Senators shall be Members of the Committee of the Whole.
- II. At least one third (1/3) of all Members of the Committee of the Whole shall constitute a quorum for the purpose of conducting hearings and acting on motions and other incidents related thereto.
- III. The Senate President as Chairman of the Committee of the Whole shall preside over its hearings. However, he may designate the Chairman of the Committee on Finance or any concerned Vice-Chair to preside over the meetings.
- IV. Unless otherwise decided by the Committee of the Whole, the meetings shall be held on Mondays, Tuesdays and Wednesdays from 10:00 a.m. to 4:00 p.m.
- V. The report of the Committee of the Whole shall be approved by a majority of the Members and shall be submitted to the Senate.

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VI. To achieve an orderly conduct of business by the Committee of the Whole, the hearings to the extent possible shall be on the basis of the established sectoral clusters.

adjourned until four o'clock in the afternoon of Monday, November 14, 2005.

It was 6:49 p.m.


**ADOPTION OF PROPOSED
SENATE RESOLUTION NO. 371**

Upon motion of Senator Pangilinan, there being no objection, Proposed Senate Resolution No. 371 was adopted by the Body.

I hereby certify to the correctness of the foregoing.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session


OSCAR G. YABES
Secretary of the Senate
lluc *10* *x*

Approved on November 14, 2005