



REPUBLIC OF THE PHILIPPINES

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SESSION NO. 39

Tuesday, November 22, 2005

**THIRTEENTH CONGRESS
SECOND REGULAR SESSION**

SESSION NO. 39
Tuesday, November 22, 2005

CALL TO ORDER

At 6:06 p.m., the Senate President, Hon. Franklin M. Drilon, called the session to order.

PRAYER

On behalf of Sen. Ramon B. Magsaysay Jr., Sen. Juan M. Flavier quoted the following passages from the Bible:

PSALM 27
DAVID'S PRAYER

Merciful Father,

*You are our light and our salvation and
we will fear no one.*

You are the stronghold of our lives.

*When evil men design a web of schemes
to bring us down,
and unseen foes attack us on every front,
we shall take refuge in You
and stand on level ground.*

*Our hearts will not fail, all the more we
shall be confident,
because there is one thing we know and
ask of You each day:
that we may dwell in Your bliss and
tranquility all the days of our lives,
that we may be satisfied with Your assuring
presence,
and seek You in the humblest
of circumstances.*

Through Christ our fortress and deliverer,
we hold Your victory in our hands.

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:

Arroyo, J. P.	Lapid, M. L. M.
Biazon, R. G.	Lim, A. S.
Cayetano, C. P. S.	Madrigal, M. A.
Defensor Santiago, M.	Osmeña III, S. R.
Drilon, F. M.	Pangilinan, F. N.
Ejercito Estrada, J.	Pimentel Jr., A. Q.
Ejercito Estrada, L. L. P.	Recto, R. G.
Enrile, J. P.	Revilla Jr., R. B.
Flavier, J. M.	Roxas, M.
Gordon, R. J.	Villar, M.

With 20 senators present, the Chair declared the presence of a quorum.

Senator Lacson was on official mission.

Senators Angara and Magsaysay were absent.

**ACKNOWLEDGMENT OF
THE PRESENCE OF GUESTS**

At this juncture, Senator Pangilinan acknowledged the presence of third year high school students from St. Scholastica's College, Manila and their instructors Ms. Jona Lim, Ms. Rose Ann Rosanes and Mr. Arnel Deliva as well as the delegates of the Children and Youth Congress on Birth Registration.

APPROVAL OF THE JOURNAL

Upon motion of Senator Pangilinan, there being no objection, the Body dispensed with the reading of the Journal of Session No. 38 and considered it approved.

REFERENCE OF BUSINESS

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

**MESSAGES FROM THE
HOUSE OF REPRESENTATIVES**

Letters from the Secretary General of the House of Representatives, informing the Senate that on

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November 14, 2005, the House of Representatives passed the following House bills in which it requested the concurrence of the Senate:

House Bill No. 683, entitled

AN ACT DECLARING THE PROVINCE OF PALAWAN AS AN ECO-TOURISM ZONE AND FOR OTHER PURPOSES

To the Committees on Environment and Natural Resources; and Tourism

House Bill No. 4276, entitled

AN ACT CONVERTING THE PIDIGAN - SAN ISIDRO - VILLAVICIOSA - POBLACION (PILAR) - PANG-OT PROVINCIAL ROAD CONNECTING THE MUNICIPALITIES OF PIDIGAN, SAN ISIDRO, VILLAVICIOSA AND PILAR, PROVINCE OF ABRA INTO A NATIONAL ROAD

To the Committees on Public Works; and Finance

House Bill No. 4363, entitled

AN ACT PROVIDING FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE 1992 INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE AND THE 1992 INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, PROVIDING PENALTIES FOR VIOLATION THEREOF, AND FOR OTHER PURPOSES

To the Committees on Environment and Natural Resources; and Finance

House Bill No. 4393, entitled

AN ACT CREATING AN ADDITIONAL BRANCH OF THE REGIONAL TRIAL COURT IN THE PROVINCE OF LANA DEL SUR TO BE STATIONED AT THE MUNICIPALITY OF WAO, AMENDING FOR

THE PURPOSE SECTION 14, PARAGRAPH (M) OF BATAS PAMBANSA BLG. 129; OTHERWISE KNOWN AS THE JUDICIARY REORGANIZATION ACT OF 1980, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR

To the Committees on Justice and Human Rights; and Finance

House Bill No. 4414, entitled

AN ACT UPGRADING THE PANGASINAN SECOND SUB-DISTRICT ENGINEERING OFFICE INTO A REGULAR DISTRICT ENGINEERING OFFICE TO BE KNOWN AS THE PANGASINAN FOURTH DISTRICT ENGINEERING OFFICE AND APPROPRIATING FUNDS THEREFOR

To the Committees on Public Works; and Finance

House Bill No. 4429, entitled

AN ACT GRANTING THE PUERTO PRINCESA BROADCASTING CORPORATION A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN RADIO AND TELEVISION BROADCASTING STATIONS IN THE CITY OF PUERTO PRINCESA AND ALL THE MUNICIPALITIES IN THE PROVINCE OF PALAWAN

To the Committee on Public Services

House Bill No. 4430, entitled

AN ACT GRANTING THE MUSLIM MINDANAO RADIO AND TELEVISION NETWORK CORPORATION A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN RADIO AND TELEVISION BROADCASTING STATIONS IN THE PROVINCE OF LANA DEL SUR

To the Committee on Public Services *JS*

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House Bill No. 4560, entitled

AN ACT DECLARING JANUARY 22 OF EACH YEAR A SPECIAL NON-WORKING HOLIDAY IN THE CITY OF VIGAN, ILOCOS SUR TO COMMEMORATE ITS ANNIVERSARY AS A CITY

To the Committee on Local Government

House Bill No. 4562, entitled

AN ACT DECLARING SEPTEMBER 11 OF EVERY YEAR A SPECIAL NONWORKING HOLIDAY IN THE PROVINCE OF ILOCOS NORTE AND IN LAOAG CITY TO BE KNOWN AS PRESIDENT FERDINAND EDRALIN MARCOS DAY

To the Committee on Local Government

House Bill No. 4636, entitled

AN ACT GRANTING THE TRANS-GLOBAL AIRWAYS CORPORATION A FRANCHISE TO ESTABLISH, OPERATE AND MAINTAIN DOMESTIC AND INTERNATIONAL AIR TRANSPORT SERVICES

To the Committee on Public Services

and House Bill No. 4834, entitled

AN ACT CREATING THE PROVINCE OF BUKIDNON DEL SUR

To the Committees on Local Government; and Constitutional Amendments, Revision of Codes and Laws

BILL ON FIRST READING

Senate Bill No. 2168, entitled

AN ACT CREATING THE CIVIL AVIATION AUTHORITY OF THE PHILIPPINES FOR THE REGULATION OF ALL CIVIL AVIATION ACTIVITIES AND INSTITUTION OF

SAFETY REQUIREMENTS, DEFINING ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES

Introduced by Senator Angara

To the Committees on Public Services; Ways and Means; and Finance

RESOLUTION

Proposed Senate Resolution No. 383, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON ENERGY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE ALLEGED PROFITEERING OR PRICE GOUGING OF OIL COMPANIES

Introduced by Senators Drilon, Flavier and Enrile

To the Committee on Energy

ADDITIONAL REFERENCE OF BUSINESS

BILL ON FIRST READING

Senate Bill No. 2170, entitled

AN ACT GRANTING OLD-AGE PENSION FOR LIFE TO SENIOR CITIZENS WHO RETIRED UNDER REPUBLIC ACT 1616 AS WELL AS SURVIVORSHIP BENEFITS TO THEIR SURVIVORS

Introduced by Senator Serge Osmeña

To the Committees on Government Corporations and Public Enterprises; Civil Service and Government Reorganization; and Finance

COMMITTEE REPORT

Committee Report No. 40, prepared and submitted jointly by the Committees on Banks, Financial Institutions and Currencies; and Trade and Commerce on Senate Bill No. 2169 with Senators Serge Osmeña, Drilon, Magsaysay Jr., Mar Roxas and the members of the Committees

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on Banks, Financial Institutions and Currencies; and Trade and Commerce as authors thereof, entitled

AN ACT ESTABLISHING THE PRE-NEED CODE OF 2005,

recommending its approval in substitution of Senate Bill Nos. 328, 1114, 1582 and 1896.

Sponsor: Senator Angara

To the Calendar for Ordinary Business

**PARLIAMENTARY INQUIRY
OF SENATOR GORDON**

Senator Gordon queried why House Bill No. 683 was primarily referred to the Committee on Environment and Natural Resources considering that eco-tourism is normally a product of a tourism effort, although the environmental aspect is considered as well. He asked that he be clarified if it has been the practice of making such referrals insofar as eco-tourism zone bills are concerned. Senator Pangilinan replied that the referral of said bill to the Committee on Environment and Natural Resources as the primary committee is consistent with previous referrals of bills on the same subject matter. He pointed out that eco-tourism zones refer primarily to the ecology, to ensure that biological balance in the designated area is upheld, respected and promoted.

Senator Gordon recounted that during his term as Secretary of the Department of Tourism, his department tried to bring in eco-tourism to Palawan as a main product. He recalled that the New Zealand government as well as the Japanese government awarded a grant for tourism development in the area, with environmental responsibility and accountability. He then asked if the bill could be referred to the Committee on Rules to determine whether it deals more with tourism than with environment issues. Senator Pangilinan agreed to review the manner of referring eco-tourism zone bills.

Upon motion of Senator Pangilinan, there being no objection, the Chair referred the query of Senator Gordon to the Committee on Rules.

**SECOND ADDITIONAL
REFERENCE OF BUSINESS**

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

RESOLUTIONS

Proposed Senate Resolution No. 384, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON HEALTH AND DEMOGRAPHY TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE EXPIRATION OF P25.47 MILLION WORTH OF MEDICINES AND VACCINES OF THE DEPARTMENT OF HEALTH

Introduced by Senator Miriam Defensor Santiago

To the Committees on Health and Demography; and Accountability of Public Officers and Investigations

Proposed Senate Resolution No. 385, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON JUSTICE AND HUMAN RIGHTS; THE SENATE COMMITTEE ON NATIONAL DEFENSE AND SECURITY, THE SENATE COMMITTEE ON PEACE, UNIFICATION AND RECONCILIATION, TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE REPORTED USE OF LANDMINES BY THE NEW PEOPLE'S ARMY IN ITS GUERRILLA TACTICAL OFFENSIVES

Introduced by Senator Miriam Defensor Santiago

To the Committees on National Defense and Security; and Justice and Human Rights

SUSPENSION OF SESSION

Upon motion of Senator Pangilinan, the Chair suspended the session.

It was 6:18 p.m.

RESUMPTION OF SESSION

At 6:20 p.m., the session was resumed.

COMMITTEE REPORT NO. 21
ON SENATE BILL NO. 1402
(Continuation)

Upon motion of Senator Cayetano, there being no objection, the Body resumed consideration, on Second Reading, of Senate Bill No. 1402 (Committee Report No. 21), entitled

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

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

The Chair recognized Senator Pangilinan, Sponsor of the measure.

REMARKS OF SENATOR PANGILINAN

Preliminarily, Senator Pangilinan pointed out that Senator Defensor Santiago had completed her amendments except on her proposal that the age of criminal responsibility be pegged at 18 and above but the Committee accommodated the amendment to change the age instead to 15. He recalled that before any action on the proposed amendment of Senator Defensor Santiago could be taken, Senator Arroyo requested that the same be deferred.

He informed the Body that after conferring with Senator Arroyo, Senator Defensor Santiago would no longer pursue her proposed amendment; on the other hand, he said that Senator Arroyo would likewise no longer raise the age issue.

INQUIRIES OF SENATOR PIMENTEL

Senator Pimentel asked to be clarified why raising the age of criminal responsibility for Children in Conflict with the Law from 15 years old to 18 years old seems to be encountering a problem. Senator Pangilinan replied that at present, the age of criminal responsibility is 9 but the original report pegged it at 12. He explained that after the interpellations and other inputs, the Committee agreed to peg it at age 15. He informed the Body that the Committee secured data indicating that in the Philippines, the age of discernment is 15, and so, it was made as a basis for setting the age of criminal liability.

Senator Pangilinan stated that the age of discernment is the ability to distinguish between right and wrong, therefore, it would be unjust to make one criminally liable if he is unable to tell the difference. However, Senator Pimentel pointed out that while the age of discernment is based on the chronological years of a person when he is able to distinguish between right and wrong, there are circumstances that would militate in favor of raising that age to below 18. He noted that an 18-year old already qualifies to work as a soldier, vote or even get married. As such, he said that any attempt to give people the benefit of the doubt as to whether they acted with discernment should start at age below 18. He asked Senator Pangilinan to share studies showing that the age of discernment should be pegged at 15 as he did not want this matter to be fixed arbitrarily. Senator Pangilinan said he would provide Senator Pimentel with a study commissioned by the Council for the Welfare of Children and undertaken by the Pamantasan ng Lungsod ng Maynila.

Asked whether there were other studies conducted overseas supporting the idea that the age of criminal responsibility should be pegged at 15, Senator Pangilinan replied that he could present Senator Pimentel with a matrix of a survey of ages of criminal responsibility in other parts of the world which showed that age 12 is the average international standard. He pointed out that this was the reason why the committee report initially recommended 12 as the age for discernment. Moreover, he admitted that he had been in a bind on whether to accept the international standard or put in a higher age as a result of the local study which had been the Committee's other basis for determining the age of discernment.

On whether the Committee considered the suggestion of Senator Defensor Santiago that the treatment of juvenile offenders be calibrated according to different age categories, Senator Pangilinan replied in the affirmative. He explained that the Committee adopted the amendment that a child above 15 but below 18 years old would also be exempt from criminal liability if he/she did not act with discernment.

On whether there is a provision totally exempting juvenile offenders below 18 years from the death penalty, Senator Pangilinan said that the death penalty law exempts all minors not from criminal liability but from the imposition of the death penalty. However, he clarified that a juvenile offender over 15 but below 18 years old would not be held criminally responsible as long as it can be shown that he/she did not act with discernment.

At this juncture, the Chair inquired whether there is an exemption from criminal liability under this situation. Senator Pangilinan replied in the affirmative, provided that the individual did not act with discernment. Additionally, he clarified that the juvenile offender above 15 and below 18 years old would be held criminally liable if he was proven to have acted with discernment.

To Senator Pimentel's observation that in actual law practice, the prosecutor is under obligation to establish by competent evidence that the accused juvenile offender acted with discernment as a separate circumstance, Senator Pangilinan replied in the affirmative.

INQUIRY OF SENATOR OSMEÑA

Asked by Senator Osmeña to explain the meaning of the word "discernment" and how a prosecutor could prove that one acted with discernment, Senator Pangilinan replied that the Supreme Court has defined "discernment" as the ability or capacity to distinguish between right and wrong. He explained that testimonies from social workers and child psychologists when entered into the record during trial would be used as testimonial evidence to establish whether the accused acted with discernment.

Asked if this procedure is the standard or whether it is possible for the accused to pretend to have acted without discernment, Senator Pangilinan

replied in the negative, as he stressed that the competent authorities have to establish whether the offender acted with discernment.

PIMENTEL AMENDMENTS

Given the fact that there are minors who had been sentenced to death, Senator Pimentel asked how the bill would safeguard these youthful offenders from execution. In response, Senator Pangilinan stated that there are youthful offenders in the death row because the courts had been unable to determine with certainty that they are indeed minors since they cannot present proof by means of their birth certificates, records or testimonies. He said that because of this experience, the Committee has included in the bill Section 7 on *Determination of Age* which provides that the Child in Conflict with the Law enjoys the presumption of minority. He affirmed that the burden of proof that the offender is no longer a minor lies with the prosecution.

Senator Pimentel stressed that in view of the fact that minors had been tried and convicted as adults, reasonable doubt should favor the minor absent any evidence that he is an adult. Noting that laws are prospective, he suggested that a transitory provision be included in the bill to the effect that the law applies to those who had been convicted as adults and awaiting the execution of their sentence. Senator Pangilinan pointed out that Section 67 provides that upon the effectivity of the Act, "cases of children fifteen years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer."

However, Senator Pimentel clarified that he was referring to juvenile offenders who were erroneously convicted as adults and are now awaiting execution. Senator Pangilinan stated that a separate provision could be included in the bill to address the matter.

Asked by the Chair if an offender who, after final conviction, is able to prove that he was a minor at the time of the commission of the crime would be given the benefit of the law, Senator Pimentel replied in the affirmative.

Senator Pimentel asked whether another provision could be included in the bill instructing judges to exercise due diligence in determining

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whether the accused is an adult or a minor. Senator Pangilinan stated that the Committee would insert another provision to that effect.

Senator Pimentel stated that there should also be a sweeping provision on the obligation of the police who are the first level of the government's prosecutorial arm that come in contact with the youthful offenders. Senator Pangilinan gave assurance that the Committee would include such a provision.

There being no objection, the proposed amendments of Senator Pimentel to include three new provisions in the bill were approved by the Body, subject to style.

FLAVIER AMENDMENTS

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

1. On the title of the bill, before the word "SYSTEM," change the word "RESTORATION" to RESTORATIVE; and between the words "AND" and "[DELINQUENCY," change the word "RESTORATION" to RESTORATIVE SYSTEM;
2. On page 1, line 6, and wherever it appears in the bill, replace the word "RESTORATION" with RESTORATIVE SYSTEM;
3. Wherever it appears in the bill, change the name "OFFICE OF JUVENILE JUSTICE AND RESTORATION" to OFFICE OF JUVENILE JUSTICE AND RESTORATIVE SYSTEM;
4. On page 5, line 2, delete the words "DULY LICENSED";
5. On page 6, delete the definitions of "HEINOUS OFFENSES" on lines 23 to 26 and "NON-HEINOUS OFFENSES" on lines 27 to 29;
6. As a consequence, renumber the succeeding subsections accordingly; and
7. On page 8, line 5, between the words "of" and "initial," insert the phrase APPREHENSION OF LAW ENFORCEMENT OFFICERS AND.

SUSPENSION OF SESSION

Upon motion of Senator Cayetano, the session was suspended.

It was 6:45 p.m.

RESUMPTION OF SESSION

At 6:46 p.m., the session was resumed.

REMARKS OF SENATOR PANGILINAN

Senator Pangilinan informed the Body that the Committee just received a letter from Senator Madrigal, a copy of which was furnished Senate President Drilon, Senator Pimentel and Senator Arroyo, requesting that she be given four working days to study all the approved amendments before she introduces her own amendments.

Stating that the Committee has no objection to the request, Senator Pangilinan nevertheless took exception to a portion of Senator Madrigal's letter stating that, "In my experience on children's right, I feel that it would indeed be better to have a good law passed after a thorough deliberation rather than a haphazard law passed with dispatch riddled with loopholes which cannot be implemented properly."

Senator Pangilinan asserted that the bill is a product of the collective wisdom of the Body, and to say that it is "riddled with loopholes" would be a bit unfair. However, he stated that the Committee would accommodate the request and hopefully, Senator Madrigal would be ready to introduce her amendments by Tuesday next week.

REMARKS OF SENATOR MADRIGAL

Senator Madrigal clarified that she ended her letter on a metaphorical note considering the social implications of the bill.* She said that the statement was not a criticism of the Juvenile Justice Bill but a general statement referring also to other major bills concerning the rights of children and women like the Anti-Trafficking Law. She believed that the measure, which would determine the quality of lives of a lot of Children in Conflict with the Law, has to be studied closely. Relative thereto, she disclosed that her office has been receiving a lot of criticisms from both international and local nongovernment

* As corrected by Senator Madrigal on November 23, 2005

organizations about certain provisions of the Anti-Trafficking Law which, three years after its passage, has been difficult to enforce because of its loopholes.

Senator Madrigal hoped that she would receive at the soonest possible time the amended version of the bill incorporating the Flavie amendments so that she could start working on her own amendments. Senator Pangilinan acceded to the request, saying that Senator Madrigal would receive a clean copy in the morning of the following day.

SUSPENSION OF CONSIDERATION OF SENATE BILL NO. 1402

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

ANNOUNCEMENT OF THE CHAIR

The Chair announced that the Body would resume consideration of Senate Bill No. 1402 on Tuesday,


November 29, to act on the proposed amendments of Senator Madrigal.

ADJOURNMENT OF SESSION

Upon motion of Senator Pangilinan, there being no objection, the Chair declared the session adjourned until four o'clock in the afternoon of the following day.

It was 6:52 p.m.

I hereby certify to the correctness of the foregoing.


OSCAR G. YABES
Secretary of the Senate
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Approved on November 23, 2005