

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

7 JUL -2 P1:17

SENATE

RECEIVED BY: 

S.B. No. 396

Introduced by Senator JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

The inviolability and permanence of marriage as an institution and the solidarity of the family are time-honored principles and policies of the State. The Constitution articulates these precepts and devotes the entire Article XV to the Family, which provides:

"Section 1. The State recognizes the Filipino Family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and promote its total development.

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State."

The Family Code of the Philippines defines the requisites of marriage and governs all the consequences and effects that emanate from it. It likewise enumerates the almost exclusive grounds upon which the validity of marriage may be assailed.

When the Family Code of the Philippines became effective on 3 August 1988, the floodgates were opened for petitions seeking the nullity of marriages based on the ground provided under Article 36 thereof - "psychological incapacity." Psychological incapacity, is a relatively new concept in Philippine family law.

The Code Commission that drafted Executive Order No. 229 deliberately did not define psychological incapacity so as not to limit its applicability and to give trial courts the needed leeway in examining the factual milieu of each case independent of preconceived assumptions and generalizations. This ambiguity in the law, however, has resulted in tremendous confusion within the bench and the bar, especially among those who have relied upon Article 36 to escape their luckless marriage.

This bill seeks to address that gap by providing the examples or indications of psychological incapacity. These examples are cited not to limit the application of psychological incapacity only in these instances, but to give a guide as to what conditions or situations may be invoked in relation to Article 36.

Passage of this bill is earnestly sought.


JINGGOY EJERCITO ESTRADA
Senator

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AN ACT DEFINING CERTAIN INDICATIONS OF PSYCHOLOGICAL INCAPACITY AS
A GROUND FOR THE DECLARATION OF NULLITY OF MARRIAGE, AMENDING
ARTICLE 36 OF EXECUTIVE ORDER NO. 209, AS AMENDED, OTHERWISE
KNOWN AS THE FAMILY CODE OF THE PHILIPPINES

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

SECTION 1. Article 36 of Executive Order No. 209, otherwise known as the
Family Code of the Philippines, is hereby amended as follows:

“Article 36. A marriage contracted by any party who, at the time
of the celebration, was psychologically incapacitated to comply
with the essential marital obligations of marriage, shall likewise
be void even if such incapacity becomes manifest after its
solemnization.”

PSYCHOLOGICAL INCAPACITY SHALL INCLUDE, BUT NOT LIMITED TO,
ANY OR A COMBINATION OF THE FOLLOWING INDICATIONS:

1. VIOLENT BEHAVIOR OR GROSSLY ABUSIVE CONDUCT AGAINST THE
OTHER SPOUSE OR THEIR COMMON CHILD OR CHILDREN;
2. ABANDONMENT, PROTRACTED AND CONSTANT REFUSAL TO COHABIT
OR TO HAVE SEXUAL INTERCOURSE WITH THE OTHER SPOUSE;
3. CONSTITUTIONAL LAZINESS OR INDOLENCE, OR WILLFUL DEPRIVATION
OF FINANCIAL, SPIRITUAL, MORAL AND EMOTIONAL SUPPORT TO THE
OTHER SPOUSE AND CHILDREN WITHOUT JUSTIFIABLE CAUSE;
4. DRUG ADDICTION, HABITUAL ALCOHOLISM, COMPULSIVE GAMBLING, OR
CRIMINALITY;
5. INVETERATE SEXUAL INFIDELITY, HOMOSEXUALITY IN MEN OR
LESBIANISM IN WOMEN;
6. EXTREMELY LOW INTELLIGENCE OR IMMATURITY;
7. OTHER ANALOGOUS CIRCUMSTANCES SHOWING AN ADVERSE
INTEGRAL ELEMENT IN THE PERSONALITY STRUCTURE THAT
EFFECTIVELY INCAPACITATES ONE OR BOTH SPOUSES FROM
COMPLYING WITH THE PROVISIONS OF ARTICLE 68-71 HEREOF.

PSYCHOLOGICAL INCAPACITY SHALL BE CHARACTERIZED BY GRAVITY, ANTECEDENCE AND INCURABILITY ALTHOUGH SUCH INCAPACITY NEED NOT BE THE RESULT OF MENTAL ILLNESS.

IN EVERY CASE FOR DECLARATION OF NULLITY OF MARRIAGE BASED IN PSYCHOLOGICAL INCAPACITY, ANY DOUBT SHALL BE RESOLVED IN FAVOR OF THE VALIDITY AND SANCTITY OF THE MARRIAGE.

SEC. 2. Repealing Clause. - All laws, decrees, regulations or parts thereof inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 3. Separability Clause. - If any part or provision of this Act shall be declared unconstitutional, the validity and effectivity of the other parts and provisions shall not be affected thereby.

SEC. 4. Effectivity. - This Act shall take effect after fifteen (15) days following its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved,