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Introduced by Senator Miriam Defensor Santiago

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EXPLANATORY NOTE

The law on infidelity in the custody of prisoners is of 1930s vintage. The penalties considered harsh and cruel during those days are probably too tame in today's milieu where crimes of unparalleled cruelty have become a daily occurrence. At the same time, the escape of prisoners or the flight of criminals who are virtually captured has very often scandalized society. The government official or employee who has charge of a prisoner more often commit such infidelity in the custody because the penalty for such a dastardly act is light, and therefore, the lure to illegally free a prisoner through bribery is very great if not too tempting. One who frees a prisoner is part of the commission of the offense perpetrated by the prisoner. A guard who frees an inmate not only participates *post litem* to the commission of the crimes of the offender but also turns his back on the government and the laws he has sworn to protect and respect.

In the Penal Code the penalty for the crime of freeing a convicted prisoners by their guardkeepers is *prision correccional* in its medium to its maximum period, therefore, the penalty begins at two (2) years and one day to six (6) years. However for the crime of infidelity in the custody of prisoners who are merely in detention, the penalty is *prision correccional* in its minimum period, which is six (6) months and one day to two (2) years. The emphasis of the imposition of the penalty is based on whether the prisoner is convicted or merely in detention. To us, this categorization is not proper and is insufficient because it is not based on the gravity of the offense of the prisoner. True, the accused is deemed innocent until he is convicted. But today, there are occurrences of crimes that are so odious and atrocious that it despoils the human being and violate the sensibilities of man.

The commission of crimes that are heinous, like murder, the massacre or the extermination of a family, terrorism, genocide by the use of weapon of mass destruction like dynamite and explosion have become nightmares which threaten the stability of the government. Yet every now and then we are scandalized by the rampant escape of those accused of terrorism, economic sabotage, massacre and similar terrible felonies from their high security incarceration

while the officials and the personnel in charge of the detainee literally go scot-free because the highest penalty they can be meted out is two years imprisonment. Society must therefore act through the law-making body of the government. The imposition of a steeper penalty is but a defense of society against government officials and employees who desecrate their duty as care takers of detention prisoners. It is not only valid but logical as dictated by necessity that the penalty of the crime of infidelity of a custodian be made in proportion to the gravity of the crimes of the illegally freed offender.

This is a Senate counterpart bill to one filed in the House of Representatives by Rep. Salacnib F. Baterina.\*

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MIRIAM DEFENSOR SANTIAGO

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\* This bill was originally filed in the 14<sup>th</sup> Congress.

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1 AN ACT  
2 DEFINING THE CRIME OF BETRAYAL OF DUTY IN THE CUSTODY OF PRISONERS  
3 PROVIDING FOR ADDITIONAL RULES ON THE IMPRISONMENT, DETENTION,  
4 CONFINEMENT AND CUSTODY OF PRISONERS AND DETAINEES, SPECIFYING  
5 ADDITIONAL WORK AND RESPONSIBILITIES OF GOVERNMENT PERSONNEL  
6 CHARGED WITH THE CUSTODY OF SUCH PRISONERS AND  
7 STATING THE PENALTIES THEREFOR

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

8 SECTION 1. Any provision of law to the contrary notwithstanding, the crime of betrayal  
9 of duty in the custody of prisoners and detained persons is hereby defined as on act or series of  
10 acts whereby a person or persons charged with the custody of prisoners, detained persons under  
11 preventive imprisonment, persons arrested in the act of committing a crime, persons who are  
12 wanted in foreign countries by which the Philippines has a treaty of reciprocity for extradition,  
13 persons who committed heinous crimes, terrorist and war criminals or one engaged in economic  
14 sabotage, shall allow without legal justification the escape of such prisoner or persons similarly  
15 situated shall be punished with a penalty which is one (1) degree lower than the penalty imposed  
16 for the offense which the detainee is charged writ or convicted of; Provided that in no case shall  
17 the penalty imposed be lower than *prision correccional* in its minimum period; Provided further  
18 that for the scope of a detainee wanted by a foreign country, the penalty of *prision correccional*  
19 in its maximum period shall be meted out; Provided further that for the escape of the prisoners  
20 who are accused of the commission of heinous, terrorism, war crimes and economic sabotage,  
21 the penalty of life imprisonment shall be imposed without any provision for parole; and Provided  
22 finally that the persons convicted of the crime of betrayal of duty In the custody of prisoners  
23 shall likewise suffer special permanent disqualification if the detainee shall have been convicted

1 or who has admitted his guilt in open court, even if the decision of conviction has not been  
2 rendered.

3 SECTION 2. In addition to the requirement considered necessary in the custody of  
4 prisoners imposed by present rules and regulations, the office or institution for high risk  
5 detainees, shall establish or add to existing rules, a record of the time the detained person was  
6 accepted by the institution, name of the persons guarding the detainee, the time and date there  
7 were turned over to guards, properly signed and acknowledged by said personnel guarding the  
8 detainee, the movement of the detainee from and to his room or cell of detention, his transfer  
9 from one institution or detention to another and such record shall at all time be properly signed  
10 and acknowledged in the said records by the person or persons in custody.

11 SECTION 3. Any person, though not in charge of the detainee, who enjoys a higher rank  
12 than the custodian of the prisoner who shall cause, aid, abet and facilitate the escape of a  
13 detainee, shall suffer the same penalty as the persons who are in custody of the prisoner but that  
14 in imposing the penalty, the court or tribunal shall impose the same in its maximum period where  
15 the same is divisible; Provided, however, that the court shall, in every case, impose penalties  
16 under this Act in the degree that will be fair and humane as the case may be.

17 SECTION 4. This Act shall take effect fifteen (15) days after its publication in at least  
18 two (2) newspapers of general circulation.

Approved.