

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

SENATE  
S. No. **1969**

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Introduced by Senator Miriam Defensor Santiago

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#### EXPLANATORY NOTE

Section 4 of Presidential Decree No. 968, also known as the Probation Law of 1976, provides that “no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.” The effect of such provision is to deny to one who appeals the right to apply for probation.

There are, however, instances where the judgment of conviction erroneously imposes a non-probationable penalty, in which case the accused appeals the judgment for the sole purpose of reducing the penalty within probationable limits. In one case, *Francisco v. Court of Appeals*, G.R. No. 108747, 16 April 1995, the Supreme Court, while conceding that in such cases the appeal “should not bar the accused from applying for probation,” nevertheless held that under the present state of the law, “appeal and probation are considered mutually exclusive” and, therefore, probation would still be unavailable to the accused. Iniquitous as this situation may appear, the law as it stands should be followed.

To remedy the iniquitous situation described above, this bill seeks to amend the Probation Law by adding an excepting clause in Par. 1, Sec. 4 thereof. The proposed amendment will give an accused the right to apply for probation despite his appeal from the judgment of conviction, if his appeal is for the sole purpose of reducing the penalty within probationable limits and the appellate court modifies the judgment by imposing a probationable penalty.\* This bill was originally filed during the Thirteenth Congress, First Regular Session.

  
MIRIAM DEFENSOR SANTIAGO

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\* This bill was originally filed during the Thirteenth Congress, First Regular Session.

Introduced by Senator Miriam Defensor Santiago

AN ACT  
AMENDING SECTION 4 OF PRESIDENTIAL DECREE NO. 968, OTHERWISE KNOWN  
AS THE PROBATION LAW OF 1976, AS AMENDED, ON THE GRANT OF PROBATION

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

SECTION 1. Section 4, Paragraph 1, of Presidential Decree No. 968, otherwise known as the Probation Law, as amended, is hereby further amended to read as follows:

“Section 4. *Grant of Probation.* - Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best: *Provided,* That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment or conviction, EXCEPT, HOWEVER, WHEN THE APPEAL IS FOR THE SOLE PURPOSE OF REDUCING THE PENALTY WITHIN THE PROBATIONABLE LIMIT AND THE APPELLATE COURT MODIFIES THE APPEALED JUDGMENT BY IMPOSING A PROBATIONABLE PENALTY, IN WHICH CASE THE RECORDS OF THE CASE SHALL BE TRANSMITTED TO THE LOWER COURT WHERE THE APPLICATION FOR PROBATION MAY BE FILED.

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1           SECTION 2. *Separability Clause.* – If any provision or part hereof, is held invalid or  
2   unconstitutional, the remainder of the law or the provision not otherwise affected shall remain  
3   valid and subsisting.

4           SECTION 3. *Repealing Clause.* – Any law, presidential decree or issuance, executive  
5   order, letter of instruction, administrative order, rule or regulation contrary to or is inconsistent  
6   with the provision of this Act is hereby repealed, modified, or amended accordingly.

7           SECTION 4. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its  
8   publication in at least two (2) newspapers of general circulation.

Approved,