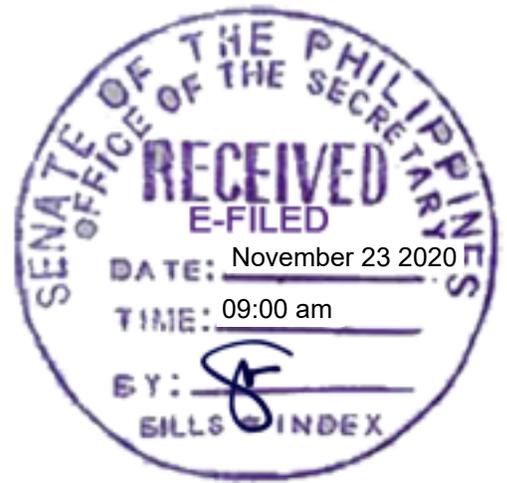


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

SENATE

S. No. 1926



Introduced by **SENATOR LEILA M. DE LIMA**

AN ACT
INSTITUTING DETENTION FACILITIES AND PRISONS REFORMS TO
UPHOLD AND PROTECT THE RIGHT TO LIFE AND HUMAN DIGNITY
OF MOTHERS DEPRIVED OF LIBERTY AND THEIR CHILDREN,
PROVIDING FOR THE MINIMUM STANDARDS THAT MUST BE
OBSERVED IN THEIR TREATMENT, PROVIDING FUNDS THEREFOR
AND FOR OTHER PURPOSES

EXPLANATORY NOTE

There can be no more convincing proof that reform must be implemented swiftly and effectively on the laws that affect the rights of pregnant and nursing women deprived of liberty, than the story of baby River Nasino. It exposed not only a looking glass through which we saw, what some have opined as a “lack of humanity” displayed by state authorities,¹ but also how the law could be bent and twisted to the disadvantage of the poor, the vulnerable, the powerless – those who are without prominent surnames or not from political families.

The tragic story unfolded before the public to witness – how a still nursing infant was so heartlessly snatched from her mother’s bosom, deprived of her mother’s breastmilk, which has long been scientifically proven to be effective in strengthening

¹ Umali, J. (20 October 2020). *Transform the outrage over baby River’s death into action*. Retrieved on 10 October 2020, from <https://www.rappler.com/voices/ispeak/opinion-transform-outrage-baby-river-death-action>

a child's immune system,² and caught in the middle of court pronouncements against her best interest.

No matter much how her mother, Reina Mae Nasino, begged and stormed the heavens and the courtroom, not even an ounce of mercy was granted unto them. It was a complete turnaround from the compassion shown by the Supreme Court in many instances based on humanitarian considerations. She was given no decency in life, and no respect was paid unto her even in her death – no, not even when her grandmother went down on her knees for the police to allow a grieving mother to embrace her child for one last time before she buries her.

The photographs and videos of a handcuffed Reina Mae standing by baby River's coffin would always haunt us – an injustice so brazenly committed, an obligation that has now been casted upon our hands to never let another drop of blood to poison the river of babies and children whose only sin – if at all a sin, was to be born in a country where the law does not favor the poor and the powerless.

Children who are born to mothers deprived of liberty while they await trial or while serving their sentence, are born without sin – they should not thus be made to bear the wrath and cruelty of this world. It is the obligation of the State under Article II, Section 11 of the Constitution to value the dignity of every human person and to guarantee full respect for human rights. This dignity and these human rights are not shed by Persons Deprived of Liberty (PDLs) at the gates of detention facilities. Human life, dignity and rights do not belong only to humans of the free world, but also even to mothers and their children inside detention facilities and prisons.

The United Nations (UN) in its “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment” has already made clear the existence of gender-specific health needs of women – especially when they are pregnant and nursing. Principle 5 thereof declared that “measures applied under the law and designed solely to protect the rights and special status of women, especially

² National Center for Biotechnology Information. *The Surgeon General's Call to Action to Support Breastfeeding*. Retrieved on 09 November 2020, from <https://www.ncbi.nlm.nih.gov/books/NBK52687/>

pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory.”³

Heeding the said principle, this measure seeks to institutionalize reforms in the treatment of women PDLs and their children as the State’s faithful compliance to its international obligations by consolidating important provisions that affect the rights and lives of pregnant and nursing PDLs and their children.

This measure likewise adopts the Nelson “Mandela Rules” or the United Nations Standard Minimum Rules for the Treatment of Prisoners which requires member States to work towards establishing in women’s institutions “special accommodation for all necessary pre-natal and post-natal care and treatment.”⁴ The Mandela Rules also advocates for the non-separation of mother from child whenever possible, with non-custodial sentences for pregnant women and women with dependent children being preferred.⁵

The drafting of this piece of legislation was also guided by the “Bangkok Rules” or the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders. The United Nations Office on Drugs and Crime (UNODC) in its comment thereto noted that, “[i]n view of the number of women in prison who are pregnant or who have dependent children living with them, it has become essential to provide more detailed guidance and rules as regards their treatment, in order to ensure that both the women’s and the children’s psycho-social and health-care requirements are provided for to the maximum possible extent, in line with the provisions of international instruments.” The UNODC declared that “[p]risons are not designed for pregnant women and women with small children”. Thus, the Bangkok Rules echoed the Mandela Rules in requiring that “every effort needs to be made to keep such women out of prison, where possible and appropriate, while taking into account the gravity of the offence committed and the risk posed by the offender to the public.”

³ Principle 5. 2.

⁴ Rule 28.

⁵ Rule 64.

In the UNODC's commentary on the Bangkok Rules, the body highlighted that non-custodial sentences shall be preferred, to wit:

Recognizing this reality, the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders determined that "the use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories."⁶

The rules thus require that the regime of the prison be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children.⁷ Good compliance thereto was made by South Africa when in September 2007, a case which involved an appeal by a woman who had been sentenced to four years imprisonment, showed how justice tempered with mercy can be attained even after sentence. In that case, the Court suspended the portion of the sentence which had not yet been served on condition that she would not be convicted of an offence committed during the period of suspension "taking into account the interests of the offender's three children, aged 16, 12 and 8." The judge explained his decision as follows: "Ms. Camwood's [a social worker] report indicates that all three boys rely on M as their primary source of emotional security, and that imprisonment of M would be emotionally, developmentally, physically, materially, educationally and socially disadvantageous to them. In MS Camwood's view, should M be incarcerated, the children would suffer: loss of their source of maternal and emotional support; loss of their home and familiar neighborhood; dis-ruption in school routines, possible problems in transporting to and from school; impact on their healthy developmental process; and separation of the siblings."⁸ Suspension of prison sentence is a true demonstration of the essence of restorative justice that aims to rehabilitate both

⁶ United Nations Office on Drugs and Crime. *Commentary to The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)*. Retrieved on 10 November 2020, from https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

⁷ Rule 42.

⁸ United Nations Office on Drugs and Crime. (2014) *Handbook on Women and Imprisonment. 2nd edition, with reference to the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)*. Retrieved 11 November 2020, from https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf

mother and her child or children. The aforementioned story, and similar legislation in Kazakhstan and Russia,⁹ inspired the crafting of a similar provision under this bill.

This proposed measure likewise advocates for the best practices of other model countries. It adopts the rules on the “Care of the Pregnant Inmate” under the Standards for Health Services published by the National Commission on Correctional Health Care (NCCHC) of the United States of America. The NCCHC has long advocated for the addressing of the unique health care needs of women in correctional settings. In its years of research, it has discovered that “incarcerated women tend to have higher rates of gynecological conditions, such as irregular menstrual bleeding and vaginal discharge, than non-incarcerated women, and may have had limited access to gynecologic care prior to incarceration. For instance, the chronic stress that characterizes the lives of many incarcerated women, including factors such as unstable housing, poverty, exposure to trauma and violence, addiction, and mental illness, may influence menstrual bleeding.”¹⁰ The NCCHC also documented the number of women who enter detention facilities and prisons pregnant or nursing, and concurrently suggested that their number require these facilities to “support efforts for women to provide breast milk for their infants and to maintain contact with their children, and should recognize the psychological difficulties that separation may cause to incarcerated mothers and their families.”¹¹

This measure will allow children born while their mothers are awaiting trial or serving sentence to stay with their mothers, if so requested, for the first twelve (12) months after birth – with their best interest given paramount consideration in case of extensions. Similar setup has been seen worldwide because, as raised by Stephanie

⁹ *Ibid.*

Legislation targeting pregnant women and women with children.

“In Kazakhstan women’s sentences can be suspended, if they have a child of up to 14 years, except for those who have been sentenced to 5 years and over, for grave or especially grave offences. (Criminal Code of the Republic of Kazakhstan, article 72).

In Russia the execution of a sentence may be postponed and then reduced or cancelled for pregnant women or women who have children under 14 years of age, with the exception of those “sentenced to imprisonment for terms longer than five years for grave and specially grave crimes” (Criminal Code of the Russian federation, article 82)”

¹⁰ National Commission on Correctional Health Care. *Women’s Health Care in Correctional Settings*. Retrieved on 10 November 2020, from <https://www.ncchc.org/womens-health-care>

¹¹ *Ibid.*

Covington, co-director of the Center for Gender and Justice, a consulting group that advises on the treatment of women and girls in criminal justice settings, “[s]eparating a mother from her child at birth is a traumatic experience for both the child and mother.”¹² One such institution that allows for this setup is the Children’s Centre at the Bedford Hills Correctional facility in New York – a facility that houses a nursery where babies of women involved in the prison programs are cared for until they are one (1) year old. Opened in 1901, it has allowed “hundreds of women who have started their sentences pregnant to bond with their babies while behind bars – something advocates say is best for babies and lowers the mothers’ recidivism rate.”¹³

This piece of legislation also took into consideration Article 30 on “Children of Imprisoned Mothers” from the African Charter on the Rights and Welfare of the Child, which provides that States Parties to the Charter should undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law.¹⁴ The Charter mandates parties to ensure that a non-custodial sentence will be first considered when sentencing such mothers.¹⁵

This measure hopes to be the catalyst that will shed a light into the horrors to which children born to mothers deprived of liberty have to live with and survive, that will make the world to which they have been born in better, and that will give them the compassion and mercy that children for all their innocence and purity rightfully deserve.

In view of the foregoing, approval of this measure is earnestly sought.


LEILA M. DE LIMA

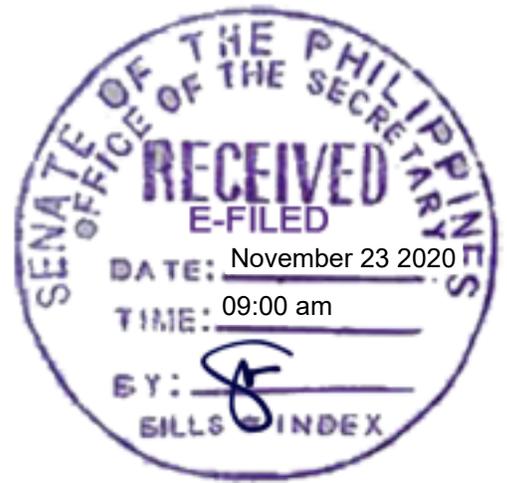
¹² Chuck, E. (04 August 2018). *Prison nurseries give incarcerated mothers a chance to raise their babies — behind bars*. Retrieved on 10 November 2020, from <https://www.nbcnews.com/news/us-news/prison-nurseries-give-incarcerated-mothers-chance-raise-their-babies-behind-n894171>

¹³ *Ibid.*

¹⁴ Article 30.

¹⁵ *Ibid.*

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

1 SECTION 1. *Short Title.* – This Act shall be known as the “Mothers Deprived of
2 Liberty and their Children Act of 2020”.

3 Sec. 2. *Declaration of Policy.* – The State recognizes the vulnerability of women
4 and their dependent children. The State also affirms that among the essential aims of
5 the penitentiary system are the reformation, integration to the family, and social
6 rehabilitation of mothers deprived of liberty. Towards this end, it shall comply with its
7 obligations as a member of the United Nations to carry out efforts to provide
8 appropriate programs for pregnant women, nursing mothers and women with
9 children incarcerated in detention facilities and prisons.

10 The State likewise recognizes the rights of every child, and shall thus endeavor
11 to uphold their welfare, protect them and advocate for their best interest even when
12 they are born to mothers who are either awaiting trial or sentence, or even when their

1 mothers have been incarcerated. It shall give attention to the impact of parental
2 detention and imprisonment on children, and identify and promote good practices in
3 relation to the needs and physical, emotional, social and psychological development of
4 babies and children affected by parental detention and imprisonment.

5 Sec. 3. *Coverage.* – The programs and services set forth in this law shall apply
6 to all incarcerated women categorized as persons deprived of liberty (PDLs), i.e.,
7 detention prisoners or those awaiting trial and judgment and prisoners serving
8 sentences. It shall cover all detention and prison facilities where there are women
9 PDLs.

10 Sec. 4. *Pregnant and women PDLs with dependent children.* – When
11 sentencing or deciding on pre-trial measures, priority should be given to non-custodial
12 measures, bearing in mind the gravity of the offence and after taking into account the
13 best interest of the child.

14 Non-custodial sentences for pregnant women and women with dependent
15 children shall be preferred when possible and appropriate, with custodial sentences
16 being considered only when the offense is serious or heinous in nature, after taking
17 into account the best interest of the child or children, while ensuring that appropriate
18 provision has been made for the care of such children.

19 Sec. 5. *Convicted Pregnant Women and Women Having Small Children.* – For
20 convicted pregnant women and women having a child under twelve (12) years of age,
21 except for women convicted and sentenced to deprivation of freedom for a period of
22 more than six (6) years, the court may suspend the service of the sentence for a period
23 of up to one (1) year, or until alternative care arrangements for the child have been
24 identified.

25 Sec. 6. *Care of Pregnant PDLs.* –Pregnant PDLs shall receive timely and
26 appropriate pre-natal care, specialized obstetrical services when indicated, and *post-*
27 *partum* care.

28 There shall be established in all penal and detention facilities special
29 accommodation for all necessary pre-natal and post-natal care and treatment which
30 must be prepared to handle the prevalence of high-risk pregnancies among

1 incarcerated women, and set forth specific compliance indicators for pregnancy care
2 generally, including but limited to the following:

- 3 a) Pre-natal medical examinations;
- 4 b) Pre-natal laboratory and diagnostic tests, including HIV testing
5 and prophylaxis when indicated;
- 6 c) Advising inmates on levels of activity and safety precautions during
7 pregnancy;
- 8 d) Pre-natal nutritional guidance and counseling;
- 9 e) Maintaining a list of specialized obstetrical services;
- 10 f) Written agreement with a community facility for delivery;
- 11 g) Documented, appropriate post-natal care;
- 12 h) Keeping a list of all pregnancies and their outcomes; and
- 13 i) Having a written policy and defined procedures addressing
14 compliance with this standard.

15 *Sec. 7. Health and diet of pregnant and breastfeeding women PDLs.* Pregnant
16 or breastfeeding women PDLs shall receive advice on their health and diet under a
17 program to be drawn up and monitored by a qualified health practitioner.

18 Adequate and timely food, a healthy environment and regular exercise
19 opportunities shall be provided free of charge for pregnant women, babies, children
20 and breastfeeding mothers.

21 The medical and nutritional needs of women PDLs who have recently given
22 birth, but whose babies are not with them in detention facility or prison, shall be
23 included in treatment programs.

24 *Sec. 8. Breastfeeding women PDLs.* – Women PDLs shall not be discouraged
25 from breastfeeding their children, unless there are specific health reasons to do so.

26 *Sec. 9. Childbirth.* – Pregnant PDLs should be transferred to civilian hospitals
27 for childbirth as may be practicable. If the baby is born in prison, delivery should be
28 undertaken by a medical specialist in facilities suitable for childbirth.

29 Security measures applied when taking pregnant women to hospital and during
30 childbirth should be the minimum necessary. The restraining of pregnant women

1 during examinations, transport to and back from hospital, child-birth and
2 immediately following childbirth shall be prohibited, except in cases where
3 restrictions to movement are necessary to protect the PDL and/or her security detail.

4 Wherever the birth takes place, it should be registered immediately, but the fact
5 that the baby was born in prison may be redacted from the birth certificate at the
6 instance of the mother.

7 *Sec. 10. Children born to women PDLs while under detention or serving*
8 *sentence.* – Unless prohibited by health reasons, all infants born to women PDLs while
9 the latter is under detention, shall remain with their mothers for the first twelve (12)
10 months after birth. Thereafter, in allowing children to stay with their mothers while
11 under detention or serving sentence, the best interest of the child shall be the
12 paramount consideration. A decision to allow a child to stay with his or her mother in
13 detention facility or prison shall be based on the best interests of the child concerned.

14 Where a child is allowed to remain in a detention facility or prison with his or
15 her mother, provision shall be made for:

16 (a) Food for babies and children free of charge, including milk, high-
17 protein products and adequate amounts of fresh fruit and vegetables;

18 (b) Internal or external childcare facilities staffed by qualified persons,
19 where the children shall be placed when they are not in the care of their mother;
20 and

21 (c) Child-specific health-care services, including health screenings, upon
22 admission and ongoing monitoring of their development by specialists.

23 Children in prison with their mothers shall never be treated as prisoners.
24 Women PDLs whose children are in detention facilities and prison with them shall be
25 provided with the maximum possible opportunities to spend time with their children.

26 *Sec. 11. Children living with their mother PDLs while under detention.* –
27 Children living with their mothers in detention facilities or prisons shall be provided
28 with ongoing healthcare services, and their development shall be monitored by
29 specialists. Detention facilities and prisons must collaborate with health clinics for

1 vaccinations and periodic examinations of children for administering their
2 vaccinations and monitoring their physical development.

3 The State shall endeavor to provide an environment for such children's
4 upbringing which is as close as possible to that of a child outside detention or penal
5 facilities. Adequate play and exercise facilities shall be provided to them, and their
6 mothers should be provided with the maximum possible opportunities to spend time
7 with them.

8 *Sec. 12. Separation of a child from his/her mother PDL.* – Decisions as to when
9 a child is to be separated from his/her mother after the twelve (12) months from birth,
10 shall be based on individual assessments and the best interest of the child.

11 The removal of the child from prison shall be undertaken with sensitivity
12 following an individual assessment as to the suitability of removal and when
13 alternative care arrangements for the child have been identified.

14 After children are separated from their mothers and placed with family or
15 relatives or in other alternative care, women PDLs shall be given the maximum
16 possible opportunity and facilities to meet with their children, when it is in the best
17 interest of the children, to reduce the mental distress of the mothers and the emotional
18 trauma of the child, as well as to protect the children from developmental problems.

19 *Sec. 13. Women PDLs who have been subjected to sexual abuse.* – Women
20 PDLs who have been subjected to sexual abuse, and especially those who have become
21 pregnant as a result, shall receive appropriate medical advice and counselling and shall
22 be provided with the requisite physical and mental health care, support and legal aid.

23 *Sec. 14. Prohibition against solitary confinement.* – Solitary confinement for
24 pregnant PDLs, women PDLs with infant, and breastfeeding PDLs and mothers shall
25 be prohibited.

26 *Sec. 15. Separability Clause.* – Should any provision of this Act be found
27 unconstitutional by a court of law, such provision shall be severed from the remainder
28 of this Act, and such action shall not affect the enforceability of the remaining
29 provisions of this Act.

1 Sec. 16. *Repealing Clause.* – All laws, decrees, letters of instruction,
2 resolutions, orders or parts thereof which are inconsistent with the provisions of this
3 Act are hereby repealed, modified or amended accordingly.

4 Sec. 17. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
5 publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved,