

SENATE
S. No. 1883

10/24/13

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The law on infidelity in the custody of prisoners is of 1930s vintage. The penalties considered harsh 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 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 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 prisoner by their guard keepers 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 human sensibilities.

The commission of crimes that are heinous, like murder, the massacre or extermination of a family, or terrorism 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. The imposition of a stiffer 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.*

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

acc.

* This bill was originally filed in the Fourteenth 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 the House of Representatives of the Philippines in Congress assembled:

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

1 suffer special permanent disqualification from public service if the detainee shall have been
2 convicted or who has admitted his guilt in open court, even if the decision of conviction has not
3 been rendered.

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

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

20 SECTION 4. *Separability Clause.* - If any provision of this Act is held invalid or
21 unconstitutional, the remainder of the Act or the provision not otherwise affected shall remain
22 valid and subsisting.

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24 SECTION 5. *Repealing Clause.* - All laws, acts, presidential decrees, executive orders,
25 administrative orders, rules, and regulations inconsistent with or contrary to the provisions of this
26 Act are deemed amended, modified, or repealed accordingly.

1 SECTION 6. *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its
2 publication in at least two (2) newspapers of general circulation.

Approved,