

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

Office of the Secretary

15 JAN -5 P3:58

SENATE
S. No. 2557

RECEIVED BY: *Ji*

Introduced by Senator Miriam Defensor Santiago

AN ACT
AMENDING THE FAMILY CODE OF THE PHILIPPINES, ARTICLE 36 ON
THE DEFINITION OF PSYCHOLOGICAL INCAPACITY

EXPLANATORY NOTE

The law does not define what psychological incapacity is. The determination is left solely to the courts. From the Committee deliberations during the drafting of the Family Code, it can be deduced that the absence of definition was intentional. Justice Eduardo Caguioa, the main proponent for the incorporation of Article 36, stated during the deliberations that the Code should not define psychological incapacity, because a definition would straightjacket the concept.

Unfortunately, Article 36 has become a divorce provision in disguise, often invoked as a ground to terminate a marriage when other grounds provided in the Code are not present. Due to its generic character, it has become an easy way for many parties to sever their ties as husband and wife.

This bill seeks to amend Article 36 in order to preserve the sanctity of marriage as an inviolable social institution.¹

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO
7P

¹ This bill was originally filed during the Thirteenth Congress, First Regular Session

SECRETARY

15 JAN -5 P3:58

SENATE
S. No. 2557

[Handwritten signature]

Introduced by Senator Miriam Defensor Santiago

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT
AMENDING THE FAMILY CODE OF THE PHILIPPINES, ARTICLE 36 ON
THE DEFINITION OF PSYCHOLOGICAL INCAPACITY

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

SECTION 1. The Family Code, Article 36, 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 only after its
solemnization. SUCH INCAPACITY MUST BE IDENTIFIED AS A
PSYCHOLOGICAL ILLNESS TO BE PROVEN MEDICALLY OR
CLINICALLY. Article 36-A. THE COURT SHALL, IN CASE OF
DOUBT, RESOLVE THE CASE IN FAVOR OF THE EXISTENCE
AND CONTINUATION OF THE MARRIAGE AND AGAINST ITS
DISSOLUTION OR NULLITY. MERE SHOWING OF
'IRRECONCILABLE DIFFERENCES' AND 'CONFLICTING
PERSONALITIES' IN NO WISE CONSTITUTES
PSYCHOLOGICAL INCAPACITY.”

1 “Article 36-A. THE INDICATIONS OF PSYCHOLOGICAL
2 INCAPACITY ARE THE FOLLOWING:

3 1. EXCESSIVE AND PROMISCUOUS SEXUAL HUNGER

4 2. REFUSAL OF THE SPOUSE TO DWELL WITH THE
5 OTHER AFTER THE MARRIAGE AND TO EXTEND
6 FINANCIAL, SPIRITUAL, MORAL AND EMOTIONAL
7 SUPPORT WITHOUT FAULT ON THE PART OF THE LATTER.

8 3. CRIMINALITY, DRUG ADDICTION, HABITUAL
9 ALCOHOLISM, LESBIANISM AND HOMOSEXUALITY,
10 RENDERNG THE OFFENDER INCAPACITATED TO COMPLY
11 WITH HIS DUTIES AND RESPONSIBILITIES AS PROVIDED IN
12 THIS CODE.

13 4. MANIFESTATIONS OF SOCIO-PATHIC ANOMALIES
14 IN THE OFFENDER, LIKE SADISM, OR REPEATED
15 INFLICTION OF PHYSICAL VIOLENCE.

16 5. LAZINESS OR INDOLENCE

17 6. SIMILAR BEHAVIOR WHICH RENDERS THE
18 OFFENDER INCAPABLE OF COMPLYING WITH HIS OR HER
19 MARITAL DUTIES AND RESPONSIBILITIES AS SET FORTH IN
20 THIS CODE.

21 SUCH INDICATIONS MUST EXHIBIT GRAVITY,
22 ANTECEDENCE, AND INCURABILITY. THE OFFENDED
23 PARTY SHALL BE WITHOUT FAULT IN ANY WAY.”

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

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

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

Approved,

/apm12152014