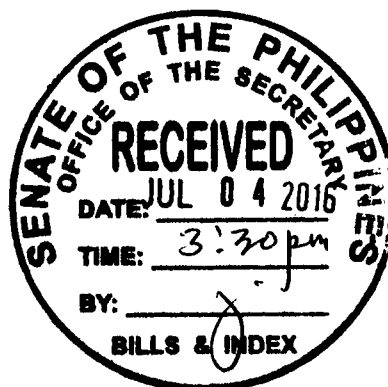


SEVENTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



SENATE

SENATE BILL No. 368

Introduced by SENATOR LEILA M. DE LIMA

AN ACT
PUNISHING EXTRAORDINARY HEINOUS CRIMES WITH THE
PENALTY OF QUALIFIED *RECLUSION PERPETUA*, THEREBY
AMENDING REPUBLIC ACT NO. 9346, OTHERWISE KNOWN AS AN
ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE
PHILIPPINES, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

The Constitution, Article 2, Sections 5, provides:

SECTION 5. The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy.

The Constitution, Article 3, Sections 19 (1), further provides:

SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. **Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it.** Any death penalty already imposed shall be reduced to *reclusion perpetua*. (Emphasis supplied)

Peace and order is a cornerstone of our democracy. And a functioning criminal justice system, as a key component of peace and order, should be that which effectively deters the commission of crime, punishes the offenders commensurate to their crime, and rehabilitates those imprisoned for their actions.

As a measure of retributive justice, we enacted Republic Act (RA) No. 7659, otherwise known as *An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, As Amended, Other Special Penal Laws, And for Other Purposes*, to establish our national policy to enforce retributive justice against those who commit heinous crimes. However, following the international trend towards respecting the sanctity of human life and abolition of

death penalty, we enacted R.A. No. 9346, otherwise known as *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, where the death penalty was commuted to *reclusion perpetua* or life imprisonment; as applicable.

In recent years, there has been a clamor from certain segments of our society to reinstate the capital punishment, on the belief that it will deter the commission of heinous crimes and impose the proper punishment. Rising incidence of crimes like murder and rape, with increased crime index at 46% in the first five months of 2015 for instance, reinforces this opinion that to address these social menace, the extreme penalty of death should be re-imposed.

However, as the efficacy and morality of death penalty is questionable at best, there is a need to legislate an alternative punishment against extraordinary heinous crimes. The penalty of qualified *reclusion perpetua*, which carries with it imprisonment of fifty (50) years without parole and a fine of ₱5,000,000.00, will show a clear message that we, as a country, do not take heinous crimes lightly nor do we condone those who perpetrate them.

Death penalty as a means of deterrence has long been debunked by countless studies. The consensus among criminologists is that the death penalty does not add any significant deterrent effect above that of long-term imprisonment.¹ The same study revealed that criminologists believe that “politicians support the death penalty as a symbolic way to show that they are tough on crime.” Furthermore, they posit that “debates about the death penalty distract politicians from focusing on ‘real’ solutions to crime.”²

Unfortunately, death penalty tends to be imposed more on the poor than those who are able to afford full-time lawyers. To quote a U.S. Circuit Court decision, “[t]he Constitution, as interpreted by the courts, does not require that the accused, even in a capital case, be represented by able or effective counsel. ... Consequently, accused persons who are represented by ‘not-legally-ineffective’ lawyers may be condemned to die when the same accused, if represented by effective counsel, would receive at least the clemency of a life sentence.”³ Being poor means being represented by a court-appointed lawyer who may lack the skill, resources, and, in some cases, even the inclination to provide a competent defense. Once convicted and sentenced, many are unable to challenge their convictions and sentences in post-conviction proceedings because they have no lawyer.⁴

¹ Radelet, Michael L. & Lacock, Tracy L. (2009), Do Executions Lower Homicide Rates? The Views of Leading Criminologists, *Journal of Criminal Law and Criminology*.

Retrieved from <http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>

² Radelet, *supra*.

³ Riles v. McCotter, 799 F.2d 947, 955 (5th Cir. 1986) (Rubin, J., concurring).

⁴ Bright, Stephen J. (2002), Race, Poverty, the Death Penalty, and the Responsibility of the Legal Profession, *Seattle Journal for Social Justice*.

Retrieved from

<http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1263&context=sjsj>

Incidentally, last February 2016, Pope Francis called for a worldwide abolition of death penalty, saying "*The commandment 'You shall not kill' has absolute value and applies to both the innocent and the guilty.*"⁵

There is currently an ongoing project of the Department of Justice and the Supreme Court to address the impact of social inequities to the administration of justice. However, to impose death penalty at a time when our justice system is still undergoing reforms will open our country to irreversible errors and the possibility of executing innocent citizens.

On the issue of wrongful convictions, the Supreme Court acknowledged in *People v. Mateo*, G.R. No. 147678-87, July 7, 2004, that there is a judicial error rate of 71.77 percent on death penalty cases.⁶

In fact, the Supreme Court's review of capital cases up to January 2006 revealed that four (4) out of five (5) death inmates have been wrongfully sentenced by the various lower courts. Of the 1,513 cases reviewed, almost half (645) were modified from death penalty to *reclusion perpetua* or indeterminate sentence, close to a third (456) were transferred to the Court of Appeals, 69 were acquitted, and 37 were remanded for further proceedings. Only 270 cases (18 percent) were affirmed by the high court.⁷

Likewise, it should be emphasized that the Philippines is a signatory to the Second Optional Protocol to the International Covenant on Civil and Political Rights.⁸ If we restore the death penalty, we will be in clear breach of both the Covenant and the Protocol.

On the other hand, legislating commensurate punishment against heinous crime offenders other than death penalty will not only be legal and moral, but also more practical. Death penalty cases are subject to automatic review by the Supreme Court.⁹ It is a process which places extra burden to our public prosecutors and defendants, our courts, and the litigants but is necessary due to our country's commitment to the sanctity of life by affording another layer of due process against those already convicted of the crime. Harsher penalties short of death penalties would forgo this layer and result in shorter litigation for heinous crime cases.

A prolonged incarceration with limited interaction with society will also serve as a means to incapacitate the convicted offenders. In effect, these offenders will be taken off the street and prevent them from causing any more injury to society.

This bill provides us with a measure and a statement against heinous crimes without having to deal with the problems that beset the death penalty system. This

⁵ Pulella, Phillip (21 February 2016) Pope calls for worldwide abolition of death penalty. *Reuters*. Retrieved from <http://www.reuters.com/article/us-pope-capitalpunishment-idUSKCN0VUoGH>

⁶ Debate on death penalty rages anew (17 April 2006) *Philippine Center for Investigative Journalism*. Retrieved from <http://pcij.org/blog/2006/04/17/debate-on-death-penalty-rages-anew>

⁷ Debate on death penalty rages anew, *supra*.

⁸ The Second Optional Protocol is the only international treaty of worldwide scope to prohibit executions and to provide for total abolition of the death penalty.

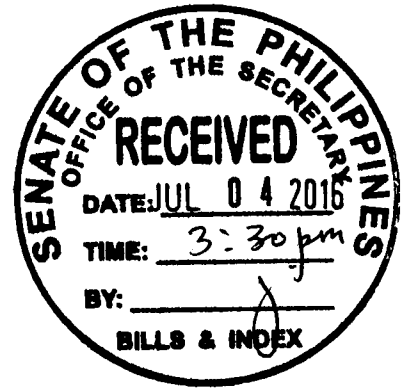
⁹ Revised Penal Code, Art. 47.

bill establishes the penalty of qualified *reclusion perpetua* as punishment for those convicted of extraordinary heinous crimes.

On the strong belief that qualified *reclusion perpetua* will be an effective antidote to death penalty, the passage of this important bill is earnestly sought.


LEILA M. DE LIMA

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



SENATE

SENATE BILL NO. 368

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

**AN ACT
PUNISHING EXTRAORDINARY HEINOUS CRIMES WITH THE
PENALTY OF QUALIFIED *RECLUSIO PERPETUA*, THEREBY
AMENDING REPUBLIC ACT NO. 9346, OTHERWISE KNOWN AS AN
ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE
PHILIPPINES, AND FOR OTHER PURPOSES**

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

1 Section 1. *Short Title*. - This Act shall be known as the "Qualified *Reclusion Perpetua*
2 Act."

3

4 Sec. 2. *Declaration of Policy*. - It is a declared policy of the State to exert all means
5 towards the maintenance peace and order, the protection of life, liberty, and
6 property, and the promotion of the general welfare, which are essential for the
7 enjoyment by all the people of the blessings of democracy. Towards this end, the
8 State shall adopt a policy of imposing a punishment commensurate to the nature of
9 the crime committed. However, it shall remain the policy of the State to uphold the
10 sanctity of life and refrain from imposing death penalty as a means of retribution.

11

1 Sec. 3. Section 2 of Republic Act (RA) No. 9346, otherwise known as An Act
2 Prohibiting the Imposition of Death Penalty in the Philippines, is hereby amended to
3 read as follows:

4 SEC. 2. In lieu of the death penalty, the following shall
5 be imposed EXCEPT AS PROVIDED IN SECTIONS 3 AND 4
6 OF THIS ACT:

7 (a) the penalty of *reclusion perpetua*, when the law
8 violated makes use of the nomenclature of the penalties of
9 the Revised Penal Code; or

10 (b) the penalty of life imprisonment, when the law
11 violated does not make use of the nomenclature of the
12 penalties of the Revised Penal Code.

13 Sec 4. Insert a new Section 3 in R.A. No. 9346, which shall read as follows:

14 SECTION 3. *Extraordinary Heinous Crimes.* –
15 Extraordinary heinous crimes are crimes which are grievous,
16 odious and hateful offenses and which, by reason of their
17 inherent or manifest wickedness, viciousness, atrocity and
18 perversity are repugnant and outrageous to the common
19 standards and norms of decency and morality in a just,
20 civilized and ordered society. They are as follows:

- 21 1. Treason under Revised Penal Code (RPC), Art. 114;
22 2. Piracy under RPC, Articles 122 and 123;

- 1 3. Murder under RPC, Art. 248;
- 2 4. Infanticide under RPC, Art. 255;
- 3 5. Kidnapping and Serious Illegal Detention under RPC, Art.
- 4 267;
- 5 6. Robbery with violence against or intimidation of persons
- 6 under RPC, Art. 294;
- 7 7. Destructive Arson under RPC, Art. 320;
- 8 8. Rape under RPC, Art. 266-A;
- 9 9. Plunder under Section 2 of Republic Act No. 7080,
- 10 otherwise known as An Act Defining and Penalizing the
- 11 Crime of Plunder;
- 12 10. Violations of Sections 4, 5, 6, 8, 11, 16, and 19 of Republic
- 13 Act No. 9165, otherwise known as the Dangerous Drugs
- 14 Act of 2002, regardless of amount, or quality or chemicals
- 15 or drugs, including the instrument for the manufacture
- 16 thereof;
- 17 11. Carnapping under Sec. 14 of Republic Act No. 6539;
- 18 12. Acts of Trafficking in Persons, as defined in Republic Act.
- 19 9208 as amended, when it involves children or
- 20 committed by a syndicate;

1 13. Acts of violence against women as defined in Republic
2 Act No. 9262 which results in the death of woman, her
3 child, or common child with the offender, or result in
4 insanity;

5 14. Violations of Republic Act No. 9851 otherwise known as
6 Philippine Act on Crimes Against International
7 Humanitarian Law, Genocide, and Other Crimes Against
8 Humanity, under Section 4(a) 1-3 on War Crimes; all acts
9 of Genocide in Section 5; and all acts that constitute
10 Crimes Against Humanity under Section 6;

11 15. Acts of Torture identified in Section 14 (a), 1-5, of
12 Republic Act No. 9745 or the Anti-Torture Act of 2009;
13 and

14 16. Acts of Terrorism as identified in Section 3 of Republic
15 Act No. 9472 or the Human Security Act of 2007;

16 Sec. 5. Insert a new Section 4 in R.A. No. 9346, which shall read as follows:

17 SECTION 3. *Penalty for Extraordinary Heinous*
18 *Crimes.* – The penalty for extraordinary heinous crimes shall
19 be *Qualified Reclusion Perpetua*, which shall be defined as
20 imprisonment for a period of fifty (50) years, with no
21 possibility of parole under Republic Act No. 4103, as
22 amended, otherwise known as the Indeterminate Sentence
23 Law, and fine of Five Million Pesos (₱5,000,000.00).

1 Sec. 6. Renumber the succeeding sections of R.A. No. 9346, accordingly.

2 Sec. 7. *Standards for Detention of Qualified Reclusion Perpetua Prisoners.* –
3 Qualified *Reclusion Perpetua* (QRP) Prisoners shall be detained under the following
4 additional standards:

5 1. QRP Prisoners shall be placed under maximum security facilities separate
6 from other prisoners, including recreational, educational, health care, and
7 religious areas, within the correctional facilities;

8 2. QRP Prisoners shall be allowed very limited interactions with other
9 prisoners and visitors;

10 3. QRP Prisoners shall not be entitled to possess and use personal
11 communication and computing devices such as telephones, cellphones and
12 computers, and shall have only limited use of communal telephone and
13 computers to be provided, maintained, and regulated by the Bureau of Jail
14 Management and Penology (BJMP) and the Bureau of Corrections (BuCor)
15 in all correctional facilities; and

16 4. QRP Prisoners shall be made to work within the QRP maximum security
17 facility for at least eight (8) hours a day, six (6) days a week without pay.
18 BJMP and BuCor shall take the health and age of the QRP Prisoners in
19 consideration in assigning work.

20 Sec. 8. *QRP Work Program.* – BJMP shall establish a QRP Work Program which
21 shall employ QRP Prisoners for services necessary for the proper maintenance and
22 functioning of their correctional facility and outsourced services as provided in this

1 Section. BJMP and BuCor shall enter into outsourcing agreements with government
2 offices, government owned and controlled corporations, and private corporations for
3 the QRP Work Program.

4 The hours of work performed by the QRP Prisoners as provided in Section 7,
5 paragraph 4 of this Act shall be deducted from the sentence of the QRP Prisoners
6 who performed the service. However, no more than ten (10) years from the final
7 sentence may be credited for this purpose.

8 *Sec 9. Separability Clause.* – If any provision or part hereof, is held invalid or
9 unconstitutional, the remainder of the law or the provision not otherwise affected
10 shall remain valid and subsisting.

11 *Sec. 10. Repealing Clause.* – Any law, presidential decree or issuance, executive
12 order, letter of instruction, administrative order, rule or regulation contrary to or is
13 inconsistent with the provision of this Act is hereby repealed, modified, or amended
14 accordingly.

15 *Sec. 11. Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
16 publication in the *Official Gazette* or in two (2) newspapers of general circulation.

17

18 Approved,