



'19 JUL -2 P1:38

SENATE

S. No. 187

RECEIVED BY

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

Article 2, Section 5 of the 1987 Constitution provides that:

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.

Article 3, Section 19 (1) of the same Constitution further provides that:

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. A functioning and effective criminal justice system, as a key component of peace and order, is one that 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 the abolition of death penalty, we enacted R.A. No. 9346, otherwise known as An Act Prohibiting the Imposition of Death Penalty in the Philippines. This law commuted death penalty to *reclusion perpetua* or life imprisonment, as applicable.

However, in a 2018 study spearheaded by the Commission on Human Rights (CHR) and conducted by the Social Weather Stations (SWS), it appears that there is clamor from certain segments of our society to reinstate the capital punishment with nearly six (6) in every ten (10) Filipinos agreeing that the death penalty should be reinstated in the belief that it will provide an effective deterrent against heinous crimes. In the Duterte administration's drive to rid society of the illegal drug menace, the re-imposition of the death penalty is considered a priority legislation and is pending consideration in both chambers of Congress, with the House of Representatives approving on third and final reading the bill re-imposing death penalty but only for drug-related offenses back in 2017.

As the efficacy and morality of the 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 an imprisonment of fifty (50) years without parole and a fine of ₱5,000,000.00, will send 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 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.² The same study reveals 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."³

¹ Majority of Filipinos want death penalty brought back, SWS poll finds, 10 October 2018, retrieved from <https://www.philstar.com/headlines/2018/10/10/1858915/majority-filipinos-want-death-penalty-brought-back-sws-poll-finds>

² Radelet, Michael L. & Lacock, Tracy L. (2009), Do Executions Lower Homicide Rates? The Views of Leading Criminologists, *Journal of Criminal Law and Criminology*.

(URL: <http://www.deathpenaltyinfo.org/files/DeterrenceStudy2009.pdf>)

³ Radelet, *supra*.

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.”⁴ 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.⁵

To impose death penalty at a time when the Philippine justice system is still plagued by perceived corruption and inefficiency will open our country to irreversible errors and the possibility of executing innocent citizens. For instance, on the issue of wrongful convictions, the Supreme Court acknowledged in GR No. 147678-87 (*People v. Mateo*, July 7, 2004) that the judicial error rate on death penalty cases is 71.77 percent⁶.

In fact, the Supreme Court’s review of capital cases up to January 2006 found 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 Protocol⁸ to the International Covenant on Civil and Political Rights.

⁴ *Riles v. McCotter*, 799 F.2d 947, 955 (5th Cir. 1986) (Rubin, J., concurring).

⁵ Bright, Stephen J. (2002), Race, Poverty, the Death Penalty, and the Responsibility of the Legal Profession, *Seattle Journal for Social Justice*.
(URL: <http://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1263&context=sjsj>)

⁶ Debate on death penalty rages anew, 17 April 2006, retrieved from <http://pcij.org/blog/2006/04/17/debate-on-death-penalty-rages-anew>

⁷ Debate on death penalty rages anew, 17 April 2006, retrieved from <http://pcij.org/blog/2006/04/17/debate-on-death-penalty-rages-anew>

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.

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 because of 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 penalty would forgo this layer and result in shorter litigation for heinous crime cases.

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 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

⁹ Revised Penal Code, Art. 47.

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PHILIPPINES, AND FOR OTHER PURPOSES

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 “*Qualified Reclusion*
2 *Perpetua Act.*”

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

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

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

1 (a) the penalty of *reclusion perpetua*, when the law
2 violated makes use of the nomenclature of the penalties of
3 the Revised Penal Code; or

4 (b) the penalty of life imprisonment, when the law
5 violated does not make use of the nomenclature of the
6 penalties of the Revised Penal Code.

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

8 **SECTION 3. EXTRAORDINARY HEINOUS**
9 **CRIMES. – EXTRAORDINARY HEINOUS**
10 **CRIMES ARE CRIMES WHICH ARE GRIEVOUS,**
11 **ODIOUS AND HATEFUL OFFENSES AND**
12 **WHICH, BY REASON OF THEIR INHERENT OR**
13 **MANIFEST WICKEDNESS, VICIOUSNESS,**
14 **ATROCITY AND PERVERSITY ARE REPUGNANT**
15 **AND OUTRAGEOUS TO THE COMMON**
16 **STANDARDS AND NORMS OF DECENCY AND**
17 **MORALITY IN A JUST, CIVILIZED AND**
18 **ORDERED SOCIETY. THEY ARE AS FOLLOWS:**

- 19 **1. TREASON UNDER REVISED PENAL CODE**
20 **(RPC) ART. 114;**
- 21 **2. PIRACY UNDER RPC, ARTICLES 122 AND 123**
- 22 **3. MURDER UNDER RPC, ART. 248;**
- 23 **4. INFANTICIDE UNDER RPC, ART. 255;**
- 24 **5. KIDNAPPING AND SERIOUS ILLEGAL**
25 **DETENTION UNDER RPC, ART. 267;**
- 26 **6. ROBBERY WITH VIOLENCE AGAINST OR**
27 **INTIMIDATION OF PERSONS UNDER RPC,**
28 **ART. 294;**
- 29 **7. DESTRUCTIVE ARSON UNDER RPC, ART.**
30 **320;**
- 31 **8. RAPE UNDER RPC, ART. 266-A;**

- 1 **9. PLUNDER UNDER SECTION 2 OF REPUBLIC**
2 **ACT NO. 7080, OTHERWISE KNOWN AS AN**
3 **ACT DEFINING AND PENALIZING THE**
4 **CRIME OF PLUNDER;**
- 5 **10. VIOLATIONS OF SECTIONS 4, 5, 6, 7, 8, 11,**
6 **12, 16, 17, AND 18 OF REPUBLIC ACT NO. 9165,**
7 **OTHERWISE KNOWN AS THE DANGEROUS**
8 **DRUGS ACT OF 2002, REGARDLESS OF**
9 **AMOUNT, OR QUALITY OR CHEMICALS OR**
10 **DRUGS, INCLUDING THE INSTRUMENT FOR**
11 **THE MANUFACTURE THEREOF;**
- 12 **11. CARNAPPING UNDER SEC. 14 OF REPUBLIC**
13 **ACT NO. 6539;**
- 14 **12. ACTS OF TRAFFICKING IN PERSONS, AS**
15 **DEFINED IN REPUBLIC ACT. 9208 AS**
16 **AMENDED, WHEN IT INVOLVES CHILDREN**
17 **OR COMMITTED BY A SYNDICATE;**
- 18 **13. ACTS OF VIOLENCE AGAINST WOMEN AS**
19 **DEFINED IN REPUBLIC ACT NO. 9262**
20 **WHICH RESULT IN THE DEATH OF WOMAN,**
21 **HER CHILD, OR COMMON CHILD WITH THE**
22 **OFFENDER, OR RESULTS IN INSANITY;**
- 23 **14. VIOLATIONS OF REPUBLIC ACT NO. 9851,**
24 **OTHERWISE KNOWN AS PHILIPPINE ACT**
25 **ON CRIMES AGAINST INTERNATIONAL**
26 **HUMANITARIAN LAW, GENOCIDE, AND**
27 **OTHER CRIMES AGAINST HUMANITY,**
28 **UNDER SECTION 4(A) 1-3 ON WAR CRIMES;**
29 **ALL ACTS OF GENOCIDE IN SECTION 5; AND**
30 **ALL ACTS THAT CONSTITUTE CRIMES**
31 **AGAINST HUMANITY UNDER SECTION 6;**

1 **15. ACTS OF TORTURE IDENTIFIED IN SECTION**
2 **14 (A), 1-5, OF REPUBLIC ACT NO. 9745 OR**
3 **THE ANTI-TORTURE ACT OF 2009; AND**

4 **16. ACTS OF TERRORISM AS IDENTIFIED IN**
5 **SECTION 3 OR REPUBLIC ACT NO. 9372 OR**
6 **THE HUMAN SECURITY ACT OF 2007;**

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

8 **SECTION 4. PENALTY FOR EXTRAORDINARY**
9 **HEINOUS CRIMES. – THE PENALTY FOR**
10 **EXTRAORDINARY HEINOUS CRIMES SHALL BE**
11 **QUALIFIED RECLUSION PERPETUA, WHICH**
12 **SHALL BE DEFINED AS IMPRISONMENT FOR A**
13 **PERIOD OF FIFTY (50) YEARS, WITH NO**
14 **POSSIBILITY OF PAROLE UNDER REPUBLIC**
15 **ACT NO. 4103, AS AMENDED, OTHERWISE**
16 **KNOWN AS THE INDETERMINATE SENTENCE**
17 **LAW, AND FINE OF FIVE MILLION PESOS**
18 **(P5,000,000.00).**

19 Sec. 6. The succeeding sections of R.A. No. 9346 shall be renumbered
20 accordingly.

21 Sec. 7. *Separability Clause.* – If any provision or part hereof, is held invalid or
22 unconstitutional, the remainder of the law or the provision not otherwise affected
23 shall remain valid and subsisting.

24 Sec. 8. *Repealing Clause.* – Any law, presidential decree or issuance, executive
25 order, letter of instruction, administrative order, rule or regulation contrary to or is
26 inconsistent with the provision of this Act is hereby repealed, modified, or amended
27 accordingly.

28 Sec. 9. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
29 publication in the Official Gazette or in two (2) newspapers of general circulation.

 Approved,