

SENATE

'19 JUL 11 P2:44

S. No. 378

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

AN ACT
PROTECTING WOMEN IN STATE CUSTODY, PRESCRIBING THE
MINIMUM STANDARDS FOR THEIR TREATMENT, PENALIZING
ACTS IN VIOLATIONS THEREOF AND FOR OTHER PURPOSES

EXPLANATORY NOTE

The Constitution proscribes the employment of physical, psychological, or degrading punishment against detainees or prisoners and that detention or prison facilities should have adequate and humane facilities.¹

The Constitution also “recognizes the role of women in nation-building”², and instructs that “there shall be priority for the needs of... women”³.

Women constitute a vulnerable group in detention or prison facilities for a number of factors, to wit: gender-specific healthcare needs that cannot adequately be met; high victimization from sexual or physical abuse while in custody; higher level of mental health care needs as a result of domestic violence prior to imprisonment, sexual or physical abuse prior to and during imprisonment, or from distress or trauma from imprisonment; and even post-release stigmatization, victimization and abandonment by their families. For these reasons, women detainees or prisoners face even worse punishment.

A 2001 Human Rights Advisory by the Commission on Human Rights⁴ reported that an interview conducted with women inmates in the Correctional Institute for Women (CIW) revealed that 10 percent of those women had sexual contact with their jailers prior to their transfer to CIW. These women were abused, raped, touched,

¹ Article III, section 19 (2), 1987 Constitution.

² Article II, section 14, 1987 Constitution

³ Article XIII, section 11, 1987 Constitution

⁴ http://www.chr.gov.ph/MAIN%20PAGES/about%20hr/advisories/pdf_files/abthr029.pdf

subjected to excessive pat-downs and strip searches, and traumatized through use of sexualized language by their detention/prison officials.

Even more worrisome is that these abuses remain unreported because of widespread fear of retaliation by the perpetrators, aggravated by the lack of a strict and concrete grievance or investigatory procedures, which gives the detention or prison officers and employees impunity to continuously perform such abuses. This unfortunate situation may have been avoided if we at least complied with Rule 53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.⁵

Data as of January 2017 from the Bureau of Jail Management and Penology (BJMP) even reveals that there are only 58 female dormitories under BJMP throughout the country and three populous regions (4B, 5, and ARMM) do not even have a single female dormitory.

Also, according to a 2018 study⁶, Philippines is one of twelve countries worldwide with the highest rates of incarceration for women. In fact, for 2017 alone, 15, 437 women were detained and 1, 712 women were convicted because of drug-related charges.

This bill seeks to protect all women in state custody, those who are under detention for investigation and/or trial, or those who have already been sentenced with imprisonment by final judgment, irrespective of the place of their detention or imprisonment. This measure enumerates their rights and prescribes the minimum standard rules for their treatment while in custody. Further, it establishes mechanisms for proper redress of complaints of women inmates and makes the heads of the detention/prison institution directly accountable should he/she fail to act on the complaints.

Early approval of this bill is earnestly sought.


LEILA M. DE LIMA

⁵ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>

⁶ Alvarez, M.C. "Women, Incarceration and Drug Policies in the Philippines: Promoting Humane and Effective Responses", retrieved from http://fileservr.idpc.net/library/Philippines_Policy_Guide_Women.pdf

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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 "*Women in State Custody*
2 *Act of 2019*".

3 Sec. 2. *Declaration of Policy.* - The State recognizes the rights of every woman
4 under its custody and shall, therefore, endeavor to protect them from the different
5 abuses in which they are often being subjected to while under detention or
6 imprisonment.

7 The responsibility of government authorities for the custody of prisoners and
8 for the protection of society against crime shall be discharged in keeping with the
9 State's other social objectives and its fundamental responsibilities for promoting the
10 well-being and development of all members of society, specifically of women in state
11 custody, who by their inherent special circumstances, are more susceptible to different
12 forms of abuses. Towards this end, the State shall exert efforts to address all forms of
13 abuse committed against women in state custody by prescribing and adopting the
14 minimum standards for their treatment as set forth in this Act and penalizing acts
15 made in violation thereof.

16 Sec. 3. *Coverage.* - This Act shall apply to all women in state custody, whether
17 under detention for investigation and/or trial for an alleged commission of an offense
18 or crime, or have already been sentenced with imprisonment by final judgment,
19 irrespective of the place of their detention or imprisonment. It shall cover all detention

1 and prison facilities where there are women inmates, such as those operated by the
2 Bureau of Corrections (BuCor), the Bureau of Jail Management and Penology (BJMP),
3 the Local Government Units (LGU), the Philippine National Police (PNP), the Armed
4 Forces of the Philippines (AFP), and the Department of Social Welfare and
5 Development (DSWD).

6 *Sec. 4. Registry.* – In every place where women are detained or imprisoned, there
7 shall be kept a bound registration book with numbered pages, exclusively dedicated to
8 women detainees and prisoners in which hereunder information shall be entered in
9 respect of each woman detainee or prisoner received:

- 10 (a) Information concerning her identity;
11 (b) The reasons for her commitment and the authority therefor;
12 (c) The day and hour of her admission and release.

13 *Sec. 5. Separate Detention/Prison Cell and its Facilities.* –

14 (a) Female detainees or prisoners shall at all times be held separately from male
15 detainees or prisoners. For this purpose, separate cells and facilities for women
16 shall form part of the standard design in the construction and improvement of
17 jails and its facilities; Provided that, in an institution which presently receives
18 both men and women, there shall be an entirely separate building in which the
19 whole of the premises shall be allocated exclusively to women detainees or
20 prisoners.

21 (b) There shall be special accommodation in every women's institution for all
22 necessary pre-natal and post-natal care and treatment, preventive health care
23 for diseases like STDs (sexually transmittable diseases) and UTIs (urinary tract
24 infections), and even counselling. Arrangements shall be made, whenever
25 practicable, for children to be born in a hospital outside the institution. If a
26 child is born in prison, this fact shall not be mentioned in the birth certificate.

27 *Sec. 6. Rights of Women in State Custody.* – In addition to the existing rights
28 provided for by law in favor of persons deprived of their liberty or are under detention
29 or in prison, all women in state custody shall have the following rights:

- 30 (a) Every woman in state custody shall be treated in a humane manner and
31 with respect for the inherent dignity of the human person and with
32 particular regard to the special circumstances of womanhood;

- 1 (b) Detention or imprisonment shall only be carried out strictly in
2 accordance with the provisions of the law and by competent officials or
3 persons authorized for that purpose;
- 4 (c) No woman under any form of detention or imprisonment shall be
5 subjected to torture or to cruel, inhumane or degrading treatment or
6 punishment, and no circumstance whatever may be invoked as a
7 justification for such acts;
- 8 (d) No detained or imprisoned woman shall be subjected to any sexual
9 abuse such as, but not limited to, having carnal knowledge or making
10 any other form of sexual advancements;
- 11 (e) Any woman shall, at the commencement of detention or imprisonment,
12 or promptly thereafter, be provided by the authority responsible for her
13 detention or imprisonment with information on and an explanation of
14 her rights and how to avail herself of such rights;
- 15 (f) The State must take active steps to ensure that, where possible, female
16 lawyers are available to represent woman detainees or prisoners; and
- 17 (g) Except for those rights the exercise of which is necessarily precluded by
18 the fact of her detention or imprisonment, or the exercise of which has
19 been temporarily or permanently denied to her as a result of, or as an
20 accessory to the penalty imposed upon her, no woman deprived of
21 liberty shall be barred from exercising rights that she would otherwise
22 have been entitled to were it not for her detention or imprisonment,
23 such as but not limited to, the right to access reproductive and maternal
24 health services and rights relating to marriage and family relations.

25 *Sec. 7. Treatment of Women in State Custody.* – Each of the governmental
26 agencies cited in Section 3 hereof shall at all times strictly implement the following:

- 27 (a) Female security personnel shall always be present during the
28 interrogation of women detainees;
- 29 (b) At no time shall male security personnel be allowed entry to
30 detention/prison facilities of women without the presence of female
31 security personnel; and
- 32 (c) In no case shall male security personnel or male inmates be allowed to
33 stay in the premises allocated for women during nighttime.

1 *Sec. 8. Mandatory Visit and Inspection of Women Detention/Prison Cells and*
2 *Facilities.* – In order to supervise the strict observance of relevant laws and regulations
3 in places of detention and imprisonment, the Commission on Human Rights (CHR)
4 shall regularly visit and inspect the various women detention or prison cells and
5 facilities, which shall be made without prior announcement to the agency or facility
6 concerned. Provided, however, that independent women organizations may likewise
7 inspect such places, with prior coordination with the CHR.

8 A detained or imprisoned woman shall have the right to communicate freely
9 and in full confidentiality with the persons who visit and inspect the places of
10 detention or imprisonment in accordance with the preceding paragraph of this
11 section, subject to reasonable conditions to ensure security and order in such places.

12 *Sec. 9. Recruitment and Training of Police, Military, and Prison Personnel.* –
13 Each detention/prison institution shall recruit an adequate number of women police
14 officers to specialize in cases of violence against women. All detention or prison
15 personnel of the government agencies referred to in Section 3 hereof shall receive
16 mandatory training and information about unlawful discrimination, sexual
17 harassment and standards for the protection of women's rights, and how to respect
18 and enforce them properly, which shall be conducted by the CHR or by duly registered
19 non-governmental organizations in the field of women's rights.

20 *Sec. 10. Complaints of Alleged Abuse against Women in State Custody.* – A
21 detained or imprisoned woman or her counsel shall have the right to make a complaint
22 regarding her treatment or violation of her rights, in particular in cases of sexual abuse,
23 torture or other cruel, inhumane or degrading treatment, to the authorities
24 responsible for the administration of the place of detention or imprisonment or other
25 proper authorities. In those cases where neither the detained or imprisoned person
26 nor his counsel is able to exercise her rights under this Section, a member of the family
27 of the detained or imprisoned woman or any other person who has knowledge of the
28 case may exercise such rights. Confidentiality concerning the complaint shall be
29 maintained if so requested by the complainant.

30 Every complaint shall be promptly dealt with and replied to without undue
31 delay. Neither the detained or imprisoned woman nor any complainant under the
32 preceding paragraph of this Section shall suffer prejudice for making a complaint.

1 Sec. 11. *Duty to Report Alleged Abuse against Women in State Custody.* –
2 Prison officials and employees who have reason to believe that a violation of this Act
3 has occurred or is about to occur shall have the duty to report the matter to their
4 superior authorities and, where necessary, to other appropriate authorities.

5 Any other person who has grounds to believe that a violation of this Act has
6 occurred or is about to occur shall have the right to report the matter to the superiors
7 of the officials involved as well as to other appropriate authorities.

8 Sec. 12. *Accountability of the Head of the Prison Institution.* –

9 (a) The respective heads of institutions responsible for the custody of women
10 detainees/prisoners shall take effective steps to protect women detainees who
11 report rape, sexual harassment, and other forms of abuses, threats, reprisals or
12 intimidation.

13 (b) The immediate respective heads of the detention or prison institutions are
14 *prima facie* presumed to have knowledge of the abuse committed against the
15 women prisoners if:

- 16 i. A complaint has been made before him or such other authority
17 designated to receive such complaint, or if abuse was openly
18 performed or well-known among her co-inmates or prison
19 personnel; and
20 ii. The head of the detention or prison institution has failed to act on
21 the same.

22 Sec. 13. *Investigation of Alleged Abuse against Women in State Custody.* – All
23 complaints of rape, sexual abuse, torture or any unlawful advancement or violation of
24 the rights provided in this Act, committed by any person against a woman detainee or
25 prisoner must be investigated promptly and independently by the CHR. A medical
26 examination and adequate legal services should be provided immediately for any
27 woman in custody who alleges that she has been abused.

28 Whenever the abuse has resulted to death or unexplainable disappearance of a
29 detained or imprisoned woman, an inquiry into the cause of death or disappearance
30 shall be conducted by the CHR, at its own instance or at the instance of a member of
31 the family of such woman or any person who has knowledge of the case. When
32 circumstances so warrant, such an inquiry shall be held on the same procedural basis
33 whenever the death or disappearance occurs shortly after the termination of the

1 detention or imprisonment. The findings of such inquiry or a report thereon shall be
2 made available upon request, unless doing so would jeopardize an ongoing criminal
3 investigation.

4 Sec. 14. *Penalty Clause.* – Any person who shall be guilty of violation of this Act
5 shall suffer a penalty of six (6) months and one (1) day but not exceeding six (6) years,
6 without prejudice to other criminal and administrative charges for which he may be
7 held liable.

8 Sec. 15. *Mandatory Evaluation and Reporting.* – Every four (4) years, each of
9 the governmental agencies cited in Section 3, as well as CHR and duly registered
10 nongovernmental organizations in the field of women's rights, shall conduct a
11 mandatory review of the implementation of this Act and submit a report of its findings
12 to Congress.

13 Sec. 16. *Separability Clause.* - If any provision of this Act is declared invalid or
14 unconstitutional, the provisions not affected thereby shall continue to be in full force
15 and effect.

16 Sec. 17. *Repealing Clause.* - All laws, executive orders, presidential decrees,
17 presidential proclamations, letters of instruction, rules and regulations or parts
18 thereof inconsistent with the provisions of this Act are hereby repealed or modified
19 accordingly.

20 Sec. 18. *Effectivity.* - This Act shall take effect fifteen (15) days following its
21 publication in the Official Gazette or in two (2) newspapers of general circulation in
22 the Philippines.

Approved,