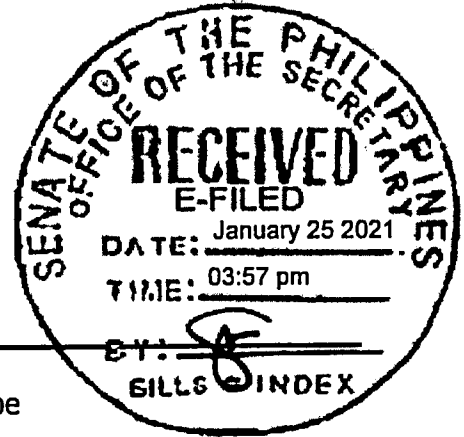


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

SENATE
S. No. 2018



Introduced by Senator Grace Poe

AN ACT
REVISING AND STRENGTHENING THE DEFINITION OF THE CRIME OF RAPE, AMENDING FOR THE PURPOSE ARTICLES 266-A, 266-B AND 266-D, AND REPEALING ARTICLE 266-C OF ACT NO. 3815, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AS AMENDED, AND FOR OTHER PURPOSES

Explanatory Note

The crime of rape is one of the oldest offenses in history. The earliest reference to the crime of rape is in the Code of Hammurabi - a Babylonian legal code dated to the earlier part of the 17th Century B.C.¹ Rape was also recognized as a crime in ancient Egypt², while references to sexual assault can be found in ancient Greece³, Rome⁴, early Hebrew law (as recorded in the Pentateuch)⁵, and early English common law⁶.

But while rape has always been recognized as a crime, the specific way in which it is defined as an offense has developed over time. For example, the Code of Hammurabi treats rape as a crime against property.⁷ But more importantly, rape as a crime against property is also found in English common law - the source of the traditional definition of "carnal knowledge" of a woman through force⁸. Under this definition:

"A woman's reproductive capacity, in the form of her chastity, was considered property and was essential to establishing patriarchal inheritance rights. A woman's sexuality was owned by her father and transferred to the man who became her husband. Rape laws protected the economic interests of men. Therefore, rape

¹ Smith, C. 1974. "History of Rape and Rape Laws". *Women Lawyers Journal*. 60 (4), 188-207.

² Reynolds, J. 1914. "Sex Morals and The Law In Ancient Egypt and Babylon". *Journal of Law and Criminology*. 5(1).

³ Cole, S. 1984. "Greek Sanctions Against Sexual Assault". *Classical Philology*. 79(2). Pp. 97-113.
<http://www.jstor.org/stable/269836?origin=JSTOR-pdf>

⁴ Nguyen, N. 2006. "Roman Rape: An Overview of Roman Rape Laws from the Republican Period to Justinian's Reign Republican Period to Justinian's Reign". *Gender and Law*. 13(1). Retrieved from https://repository.law.umich.edu/mjcl/vol13/iss1/3?utm_source=repository.law.umich.edu%2Fmjcl%2Fvol13%2Fiss1%2F3&utm_medium=PDF&utm_campaign=PDFCoverPages

⁵ Smith, 1974.

⁶ *Ibid.*

⁷ Gold, S. and Wyatt, M. 1978. "The Rape System: Old roles and New Times". 27(4).

⁸ Smith, 1974.

was originally considered the theft of this property. The bodily integrity of the woman was irrelevant.”⁹

Unfortunately, this archaic definition was adopted in numerous criminal statutes, including our own Revised Penal Code. Originally, rape- defined as when a “carnal knowledge” of a woman through force- was classified as a crime against chastity and not against persons.¹⁰ The concept of rape as a crime against chastity has persisted in decisions of the Supreme Court.¹¹

Fortunately, countervailing social forces have caused courts and legislatures to review these archaic concepts and to redefine rape as a crime centered on the lack of consent. In the U.S. setting, this movement was led by academics such as Susan Brownmiller, Andrea Dworkin, Catherine Mackinnon, Sharon Marcus, and Susan Estrich.¹²

As a result, U.S. states have revised their definitions of rape.¹³ However, the degree of adoption of the consent-centered definition of rape has varied across states. A 2011 study found that U.S. state laws on rape¹⁴ could be classified into three:

1. “True consent non-consent states” wherein the state can convict a defendant of at least one sex offense by showing that the victim did not consent to the sexual act;
2. “Contradictory non-consent states” wherein the prosecution is required to show “forcible compulsion” or “incapacity to consent”; *and*.
3. “Force states” wherein the definition of rape is focused force only.

In the Philippine context, the first efforts to amend the definition of rape were triggered by our ratification of the United Nations Convention on the Elimination of all Forms of Discrimination Against Women (UN-CEDAW).¹⁵ The first bill seeking to amend the definition of rape was filed in the 8th Congress by Rep. Raul Roco.¹⁶ However, serious lobbying for the passage of the bill started in the 9th Congress through the initiative of the *Samasamang Inisyatiba ng Kababaihan sa Pagbabago ng Batas at Lipunan* (SIBOL), a coalition of eleven (11) women’s groups who pushed for a women’s legislative agenda.¹⁷ These efforts culminated in the 10th Congress with

⁹ Tracy, C. “Rape and Sexual Assault in the Legal System”. Presented to the National Research Council of the National Academies Panel on Measuring Rape and Sexual Assault in the Bureau of Justice Statistics Household Surveys Committee on National Statistics June 5, 2012

¹⁰ Supreme Court of the Philippines. *People of the Philippines vs. Edgar Jumawan*. G.R. No. 187495. 21 April 2014. See also Feliciano, M. 2005. “Women and the Law and Children’s Rights –The Philippine Experience.”. *Philippine Judicial Journal*. 7 (23).

¹¹ Sta. Maria, A. “An Analysis of Supreme Court decisions on Rape and Sexual Assault Assessing their compliance with the Convention on the Elimination of Discrimination against Women (CEDAW) mandate to eliminate Gender Discrimination and promote Gender Equality” *Archium Ateneo* (2019).

¹² Tandon, U. and Luthra, S. 2016. “Rape: Violation of the Chastity or Dignity of Woman? A Feminist Critique of Indian Law” *FICHL Policy Brief Series No. 51 (2016)*. Retrieved from <https://dx.doi.org/10.2139/ssrn.2821495>

¹³ Tracy C. 2012.

¹⁴ Decker, J. and Baron, P. 2011. “No still means yes: the Failure of the Non-Consent Reform Movement in American Rape and Sexual Assault Law. *The Journal of Criminal Law and Criminology*. 101 (4). Retrieved from <http://www.istor.org/stable/23150015>

¹⁵ Sta. Maria, 2019. See also *People of the Philippines vs. Salvador Tulagan*.

¹⁶ Lavides, M. 1999. “The Congressional Committee and Philippine Policy Making: The Case of the Anti-Rape Law.” *The Philippine Journal of Public Administration*. 28(3&4).

¹⁷ *Ibid*.

the enactment of Republic Act No. 8353, otherwise known as "*The Anti-Rape Law of 1997*". R.A. No. 8353 introduced the following substantial amendments to the definition of Rape:

1. It reclassified rape as a crime against persons and removed it from the ambit of crimes against chastity.¹⁸
2. It added a separate offense of rape by sexual assault. Notably, the crime of rape as sexual assault is genderless and includes the insertion of objects or instruments in the mouth or anal orifice as one of its elements.¹⁹

But while the enactment of the Anti-Rape Law of 1997 was a landmark achievement, it bears several provisions which are discriminatory towards women. This may be due to legislative compromises which were necessary for its passage but detrimental to its intent. The bill which was reported out of the House Committee was not the version which was preferred by women's issue advocates.²⁰ Some criticized aspects of the current law include:

1. The concept of consent is not found.²¹
2. The setting of the minimum age of sexual consent at 12 years old.²²
3. Retention of the provision on marital pardon, which provides that subsequent valid marriage between the (offender and the) offended party shall extinguish the criminal action of rape or the penalty imposed. Furthermore, in case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty.²³
4. The absence of resistance can be considered a requirement in proving a case of rape before the courts.²⁴
5. The idea that only penile penetration of the vagina is considered as "carnal knowledge", with offenses related to the insertion of a finger or an object into the oral or anal orifice being classified as mere "sexual assault, as well as the differing penalties attributed for each offense. In fact, the Supreme Court has openly called upon the Senate President and the Speaker of the House of Representatives to "revisit the archaic definition given to carnal knowledge".²⁵

The present measure addresses these concerns through the following proposed amendments:

¹⁸ *People of the Philippines vs. Edgar Jumawan*.

¹⁹ Article 266-B (2) of the Revised Penal Code as Amended by R.A. No. 8353.

²⁰ Lavides, M. 1999.

²¹ Philippine Commission on Women (PCW). "Amending the Anti-Rape Law". Retrieved from <https://pcw.gov.ph/amending-the-anti-rape-law/>

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Supreme Court of the Philippines. *People of the Philippines vs. Rolando Bagsic Y Valenzuela*. G.R. No. 218404. 23 December 2017.

1. The distinction between rape and sexual assault shall be deleted. Rape shall now be defined under a single offense characterized by the following elements:
 - (a) Insertion, or causing the insertion of, a person's penis, tongue, finger, or any object or instrument into another person's inner or outer labia, anal orifice, or mouth under any of the following circumstances:
 - When the offended party did not indicate full and effective consent before or during the sexual act;
 - When the offended party withdraws full and effective consent;
 - When the offended party is incapable of indicating full and effective consent due to being deprived of reason or otherwise unconscious;
 - When the consent was obtained by the offender through the use of violence, force, threat, intimidation, deception, or abuse of authority or moral ascendancy;
 - When the offended party, through overt verbal or physical acts, manifests resistance to the sexual act; or
 - When the offended party is under sixteen (16) years of age or is incapable of giving full and effective consent by reason of physical, mental, or psychological disability, even though none of the circumstances mentioned above are present;
2. On the issue of whether force, resistance, or consent shall be the determining factor in a case of rape, we have opted to adopt a differentiated approach.²⁶ This means that the acts under the first paragraph can be considered rape if any or all of these factors (lack of consent, force, resistance) are present.
3. We have included a simple definition of consent as "words or overt actions by a person which are freely given and demonstrate willingness to participate in sexual activity."²⁷
4. We have included withdrawal of consent during sexual activity as one of the circumstances wherein rape can occur. This is to address the bias against victims of rape who withdrew their consent in the middle of sexual activity which they previously consented to.²⁸

²⁶ On the concept of rape as a differentiated offense, see Tadros, V. 2006. "Rape Without Consent". *Oxford Journal of Legal Studies*. 26(3).

²⁷ Harris, L. "Towards a Consent Standard in the Law of Rape". *The University of Chicago Law Review*. 42(3). Pp. 613-645. Retrieved from <http://www.jstor.org/stable/1599234>

²⁸ Lyon, M. 1973. "No Means No? Withdrawal of Consent During Intercourse and the Continuing Evolution of the Definition of Rape". *The Journal of Law and Criminology*. 95(1). Pp. 277-314. Retrieved from

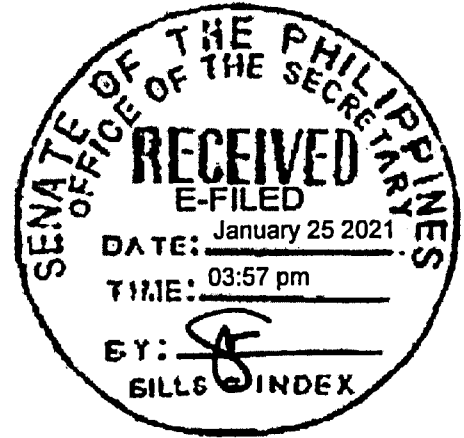
5. We have raised the age of sexual consent to 16 years of age.
6. The act of rape will now be penalized by a single offense- *reclusion perpetua*.
7. The following acts shall neither mitigate nor expunge the penalty imposed against rape:
 - (a) When the offender is the legal husband of the victim;
 - (b) When the offender and the offended party have previously had a relationship or engaged in prior sexual activity;
 - (c) When the offended party did not manifest resistance against the act through verbal or physical action; and
 - (d) When the spermatozoa from the offender are not found in the offended party's orifice during forensic examination
8. Finally, we have repealed the provision on marital forgiveness.

In view of the foregoing, immediately approval of this measure is eagerly sought.


GRACE POE

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

SENATE
S. No. 2018



Introduced by Senator Grace Poe

AN ACT
REVISING AND STRENGTHENING THE DEFINITION OF THE CRIME OF RAPE, AMENDING FOR THE PURPOSE ARTICLE 266-A AND 266-D, AND REPEALING ACT 266-C OF ACT NO. 3815, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AS AMENDED, AND FOR OTHER PURPOSES

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

1 SECTION 1.— Article 266-A of Act No. 3815, otherwise known as the Revised
2 Penal Code, as amended, is hereby further amended as follows:

3 "Art. 266-A. *Rape, When and How Committed.* – Rape is committed ~~by~~ **BY**
4 **A PERSON WHO SHALL INSERT, OR CAUSE THE INSERTION OF, THEIR**
5 **PENIS, TONGUE, FINGER, OR ANY OBJECT OR INSTRUMENT INTO**
6 **ANOTHER PERSON'S INNER OR OUTER LABIA, ANAL ORIFICE, OR MOUTH**
7 **UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:**

8 (a) **WHEN THE OFFENDED PARTY DID NOT INDICATE FULL AND**
9 **EFFECTIVE CONSENT BEFORE OR DURING THE SEXUAL ACT;**

10 (b) **WHEN THE OFFENDED PARTY WITHDRAWS FULL AND**
11 **EFFECTIVE CONSENT;**

12 (c) **WHEN THE OFFENDED PARTY IS INCAPABLE OF INDICATING**
13 **FULL AND EFFECTIVE CONSENT DUE TO BEING DEPRIVED OF**
14 **REASON OR OTHERWISE UNCONSCIOUS;**

15 (d) **WHEN THE CONSENT WAS OBTAINED BY THE OFFENDER**
16 **THROUGH THE USE OF VIOLENCE, FORCE, THREAT,**

1 INTIMIDATION, DECEPTION, OR ABUSE OF AUTHORITY OR
2 MORAL ASCENDANCY;

3 (e) WHEN THE OFFENDED PARTY, THROUGH OVERT VERBAL OR
4 PHYSICAL ACTS, MANIFESTS RESISTANCE TO THE SEXUAL ACT;
5 OR

6 (f) WHEN THE OFFENDED PARTY IS UNDER SIXTEEN (16) YEARS OF
7 AGE OR IS INCAPABLE OF GIVING FULL AND EFFECTIVE
8 CONSENT BY REASON OF PHYSICAL, MENTAL, OR
9 PSYCHOLOGICAL DISABILITY, EVEN THOUGH NONE OF THE
10 CIRCUMSTANCES MENTIONED ABOVE ARE PRESENT.

11 FOR THE PURPOSE OF THIS ACT, "FULL AND EFFECTIVE
12 CONSENT" SHALL REFER TO WORDS OR OVERT ACTIONS BY A
13 PERSON WHICH ARE FREELY GIVEN AND DEMONSTRATE
14 WILLINGNESS TO PARTICIPATE IN SEXUAL ACTIVITY."

15 ~~["1) By a man who shall have carnal knowledge of a woman under any of
16 the following circumstances:~~

17 ~~"a) Through force, threat, or intimidation;~~

18 ~~"b) When the offended party is deprived of reason or otherwise
19 unconscious;~~

20 ~~"c) By means of fraudulent machination or grave abuse of authority; and~~

21 ~~"d) When the offended party is under twelve (12) years of age or is
22 demented, even though none of the circumstances mentioned above be
23 present.~~

24 ~~"2) By any person who, under any of the circumstances mentioned in paragraph
25 1 hereof, shall commit an act of sexual assault by inserting his penis into
26 another person's mouth or anal orifice, or any instrument or object, into the
27 genital or anal orifice of another person."~~

28 SEC. 2. Article 266-B of the Revised Penal Code, as amended, hereby amended
29 to read as follows:

30 **"ARTICLE 266-B. PENALTY. – ANY PERSON WHO COMMITS THE**
31 **CRIME OF RAPE SHALL BE PUNISHED BY RECLUSION PERPETUA."**

1 ~~[Rape under paragraph 1 of the next preceding article shall be punished by~~
2 ~~reclusion perpetua.~~

3 ~~"Whenever the rape is committed with the use of a deadly weapon or by two~~
4 ~~or more persons, the penalty shall be reclusion perpetua to death.~~

5 ~~"When by reason or on the occasion of the rape, the victim has become insane,~~
6 ~~the penalty shall become reclusion perpetua to death.~~

7 ~~"When the rape is attempted and a homicide is committed by reason or on the~~
8 ~~occasion thereof, the penalty shall be reclusion perpetua to death.~~

9 ~~"When by reason or on the occasion of the rape, homicide is committed, the~~
10 ~~penalty shall be death.~~

11 ~~"The death penalty shall also be imposed if the crime of rape is committed with~~
12 ~~any of the following aggravating/qualifying circumstances:~~

13 ~~"1) When the victim is under eighteen (18) years of age and the offender is a~~
14 ~~parent, ascendant, step parent, guardian, relative by consanguinity or affinity within~~
15 ~~the third civil degree, or the common-law spouse of the parent of the victim;~~

16 ~~"2) When the victim is under the custody of the police or military authorities or~~
17 ~~any law enforcement or penal institution;~~

18 ~~"3) When the rape is committed in full view of the spouse, parent, any of the~~
19 ~~children or other relatives within the third civil degree of consanguinity;~~

20 ~~"4) When the victim is a religious engaged in legitimate religious vocation or~~
21 ~~calling and is personally known to be such by the offender before or at the time of the~~
22 ~~commission of the crime;~~

23 ~~"5) When the victim is a child below seven (7) years old;~~

24 ~~"6) When the offender knows that he is afflicted with the Human Immuno-~~
25 ~~Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other~~
26 ~~sexually transmissible disease and the virus or disease is transmitted to the victim;~~

27 ~~"7) When committed by any member of the Armed Forces of the Philippines or~~
28 ~~para-military units thereof or the Philippine National Police or any law enforcement~~
29 ~~agency or penal institution, when the offender took advantage of his position to~~
30 ~~facilitate the commission of the crime;~~

31 ~~"8) When by reason or on the occasion of the rape, the victim has suffered~~
32 ~~permanent physical mutilation or disability;~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

~~"9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; an~~

~~"10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.~~

~~"Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.~~

~~"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision mayor to reclusion temporal.~~

~~"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion temporal.~~

~~"When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to reclusion perpetua.~~

~~"When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.~~

~~"Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/ qualifying circumstances mentioned in this article.~~

SEC. 3. Article 266-D of the Revised Penal Code is hereby further amended to read as follows:

"Article 266-D. ~~[Presumptions]~~. **CIRCUMSTANCES NOT ACCEPTED. – THE FOLLOWING CIRCUMSTANCES SHALL NEITHER BE CONSIDERED AS MITIGATING CIRCUMSTANCES NOR EXEMPT THE OFFENDER FROM CRIMINAL UNDER THIS ACT:**

- 1. WHEN THE OFFENDER IS THE LEGAL HUSBAND OF THE VICTIM;**
- 2. WHEN THE OFFENDER AND THE OFFENDER PARTY HAVE PREVIOUSLY HAD A RELATIONSHIP OR ENGAGED IN PRIOR SEXUAL ACTIVITY;**
- 3. WHEN THE OFFENDED PARTY DID NOT MANIFEST RESISTANCE AGAINST THE ACT THROUGH VERBAL OR PHYSICAL ACTION; AND**
- 4. WHEN THE SPERMATOZOA FROM THE OFFENDER ARE NOT FOUND IN THE OFFENDED PARTY'S ORIFICE DURING FORENSIC**

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

EXAMINATION.”

~~[Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A]~~

SEC. 4. *Separability Clause.* -If any part, section or provision of this Act is held invalid or unconstitutional, other provisions not affected thereby shall remain in full force and effect.

SEC. 5. *Repealing Clause.* - Article 366-C of the Revised Penal Code is hereby repealed in its entirety. All other laws, decrees, orders, issuances and rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 6. *Effectivity.* -This Act shall take effect fifteen (15) days after its publication in the Official *Gazette* or in a newspaper of general circulation.

Approved,