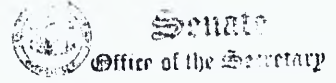


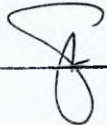
**NINETEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session**)
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'22 JUL -7 P3:19

SENATE

S.B. No. 147

RECEIVED BY. 

INTRODUCED BY SENATOR RISA HONTIVEROS

AN ACT

EXPANDING THE GROUNDS FOR DISSOLUTION OF MARRIAGE, INSTITUTING DIVORCE AND SETTING THE PROCEDURES THEREOF, PROVIDING PROTECTIONS TO THE PARTIES TO THE MARRIAGE AND ITS COMMON CHILDREN, AMENDING FOR THIS PURPOSE EXECUTIVE ORDER NO. 209, OR THE FAMILY CODE OF THE PHILIPPINES

EXPLANATORY NOTE

The International Covenant on Civil and Political Rights (ICCPR),¹ of which the Philippines is a signatory, begins by recognizing that "the inherent dignity of all persons and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."² This Bill was drafted with these fundamental principles in mind, in keeping with the State's policy to guarantee full respect for human rights³ and to ensure the fundamental equality before the law of women and men.⁴

Families are not rigid structures unaffected by the pressures of society. They are diverse and constantly changing, but their essence remains the same: to relate intimately with each other and provide love and support for the growth and development of its members.⁵ The total development of the family can only happen in an environment that is governed by mutual love and respect. It is within this context that absolute divorce is proposed to be reinstated in the Philippines. It is proposed as a legal remedy for marital unions that have ceased to be an environment where spouses can attain true well-being, growth, and self-fulfillment.

Legislation catering to the protection of the fundamental human rights and dignity of persons trapped in failed and irreparable marriages is long overdue.

¹ International Covenant on Civil and Political Rights (ICCPR), GA Res. 2200A (XXI), (1966).

² ICCPR, Preamble.

³ CONST. (1987), art. II, sec. 11 provides: "The State values the dignity of every human person and guarantees full respect for human rights."

⁴ CONST. (1987), art. II, sec. 14.

⁵ Veronica Fenix-Villavicencio, *Our Right to Self-Determination: PILIPINA's Position on the Issues of Divorce and Abortion*, FRIEDRICH-EBERT-STIFTUNG PHILIPPINE OFFICE, 4 (2000), <<http://library.fes.de/pdf-files/bueros/philippinen/50068.pdf>>.

Recognizing the sanctity of family life, the 1987 Constitution mandates the State to protect the family as the basic social institution,⁶ strengthen its solidarity, and actively promote its *total* development.⁷ The International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁸ also obligates the State to provide the *widest possible* protection and assistance to the family.⁹

The State policy in favor of the family should be read alongside the constitutional command of valuing the inherent dignity of every human person.¹⁰ In truth, protecting the family entails safeguarding the equal and inalienable rights of all its members,¹¹ ensuring the fundamental equality before the law of men and women,¹² and defending the children from all conditions prejudicial to their development.¹³ When a marriage totally breaks down and reconciliation is futile, it becomes the duty of the State to afford full relief to the spouses and save children from the pain, stress and agony of witnessing regular marital clashes with no end in sight.

Reality tells us that there are many unhappy, failed or abusive marriages across all Filipino classes. Data show that in most cases, it is the women who are usually at the receiving end of abuse and violence. According to the 2017 National Demographic and Health Survey conducted by the Philippine Statistics Authority, one in four married women aged fifteen to forty-nine years old has experienced spousal violence, whether physical, sexual, or emotional.¹⁴ The same study shows that the biggest perpetrator of physical and sexual violence against women is the husband.¹⁵ Data from the Philippine National Police (PNP) also prove the rising VAW incidence through 2004 to 2012: (1) 8 percent of married women experience sexual violence; (2) 14.4 percent of married women experience physical violence; (3) 3.6 percent of pregnant women experience physical violence. In 2016 alone, the number of VAW cases reported to the PNP amounted to 40,536, about 13 percent higher than the 2015 report at 35,897 cases.¹⁶ It is in the

⁶ CONST. (1987), art. II, sec. 12 provides in part: "The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution."

⁷ CONST. (1987), art. XV, sec. 1. "The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development."

⁸ International Covenant on Economic, Social, and Cultural Rights (ICESCR), GA Res. 2200A (XXI), (1966).

⁹ ICESCR, art. 10(1).

¹⁰ CONST. (1987), art. II, sec. 11 provides: "The State values the dignity of every human person and guarantees full respect for human rights."

¹¹ *Id.*

¹² CONST. (1987), art. II, sec. 14 provides: "The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men."

¹³ Rep. Act. No. 7610 (1992), sec. 2.

¹⁴ PHILIPPINE STATISTICS AUTHORITY (PSA) AND ICF, *Key Findings from the Philippines National Demographic and Health Survey 2017*, 16 (2018).

¹⁵ *Id.*

¹⁶ Philippine Commission on Women, *Violence Against Women (VAW)*, <https://pcw.gov.ph/statistics/201405/statistics-violence-against-filipino-women?wptouch_preview_theme=enabled> (Last on 15 August 2020).

pursuit of their rights that women are pushing for the remedy of absolute divorce as a means to end their abuse.

Studies also show an unprecedented increase in marital dissolutions across the country since the 1960s, from 28,988 Filipino men and 52,187 Filipino women to 330,253 men and 565,802 women as of 2010.¹⁷ This does not include couples from the marginalized sectors who have no access to the courts and end up separating without the benefit of a legal process.¹⁸ Official figures show that Filipino couples rarely availed themselves of these remedies because of the high financial costs, the tedious legal procedure involved, and the lack of any guarantee that their request will be granted.¹⁹

While the Family Code provides for grounds for the dissolution of marriage, the remedies available are painfully restrictive and inadequate. To illustrate, the remedies of annulment²⁰ and declaration of nullity²¹ under the Family Code only allow the dissolution of the marital union on grounds that existed at the time of or prior to the celebration of the marriage, respectively. Legal separation,²² on the other hand, while recognizing the separation on grounds that may have arisen after the celebration of the marriage, does not terminate the marital union. The State's obligation to provide assistance to families necessarily includes ensuring that married couples are able to avail adequate and accessible legal remedies.

It is high time for the Philippines to reinstitute absolute divorce, allowing married spouses in irremediably broken unions to finally start anew. The sanctity of marriage, after all, pertains not to the quantity but to the quality of marital relationships.²³ Justice Mario Victor M.V.F. Leonen articulates this well in his concurring opinion in *Republic v. Manalo*.²⁴

The restrictive nature of our marriage laws tends to reify the concepts of a family which is already far from the living realities of many couples and children. For instance, orthodox insistence on heteronormativity may not compare with the various other "non-traditional" arrangements present in many loving households.

The worst thing we do in a human relationship is to regard the commitment of the other formulaic. That is, that it is shaped alone by legal duty or what those who are

¹⁷ Jeffrey B. Abalos, *Divorce and separation in the Philippines: Trends and correlates*, 36 DEMOGRAPHIC RESEARCH 1515, 1525 (2017).

¹⁸ *Id.* 1526, citing B.T.G. Medina, E.A. de Guzman, A.A. Roldan, and R.M.J. Bautista, *The Filipino family: Emerging structures and arrangements*. Quezon City: Office of Research Coordination, University of the Philippines (1996).

¹⁹ Jeffrey B. Abalos, *Divorce and separation in the Philippines: Trends and correlates*, 36 DEMOGRAPHIC RESEARCH 1515, 1525 (2017).

²⁰ FAMILY CODE, art. 45.

²¹ FAMILY CODE, arts. 35-38.

²² FAMILY CODE, art. 55.

²³ House Bill No. 1599, 15th Cong., Explanatory Note (2010).

²⁴ *Republic v. Manalo*, G.R. No. 221029, April 24, 2018

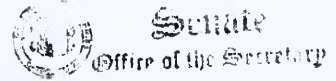
<<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64093>> .

dominant in government regard as romantic. In truth, each commitment is unique, borne of its own personal history, ennobled by the sacrifices it has gone through, and defined by the intimacy which only the autonomy of the parties creates.


RISA HONTIVEROS
Senator

**NINETEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session**

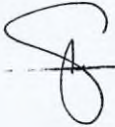
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'22 JUL -7 P3:19

SENATE

S.B. No. 147

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INTRODUCED BY SENATOR RISA HONTIVEROS

**AN ACT
EXPANDING THE GROUNDS FOR DISSOLUTION OF MARRIAGE, INSTITUTING
DIVORCE AND SETTING THE PROCEDURES THEREOF, PROVIDING
PROTECTIONS TO THE PARTIES TO THE MARRIAGE AND ITS COMMON
CHILDREN, AMENDING FOR THIS PURPOSE EXECUTIVE ORDER NO. 209, OR
THE FAMILY CODE OF THE PHILIPPINES**

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 entitled as the “Dissolution of Marriage
2 Act”.

3 Sec 2. *Declaration of Policy.* – While the State continues to recognize the sanctity
4 of family life and endeavors to protect and strengthen the family as a basic autonomous
5 social institution, it is also duty-bound to safeguard the dignity of every human person,
6 guarantee full respect for human rights, and ensure the fundamental equality before the
7 law of men and women.

8 The State vows to protect the equality of men and women in all matters relating
9 to marriage and family relations. This includes ensuring their right to enter into and leave
10 marriages without prejudice to personal or religious beliefs.

11 Recognizing that a person’s well-being is a human rights concern, the State
12 commits to promote and protect the well-being of all persons. It is a commitment that
13 should extend to circumstances whereby this well-being is being compromised by the
14 inability to break free from irremediably broken marriages and start anew in healthier
15 family and living arrangements.

16 Finally, cognizant of its recognized policy to safeguard children from all forms of
17 abuse and neglect, the State shall likewise protect children from the pain, stress, and
18 agony of witnessing regular marital clashes with no end in sight. The best interests of
19 children shall be the paramount consideration in all matters concerning them.

20 Towards this end, the State shall adopt a divorce policy in keeping with the
21 fundamental freedoms guaranteed under the Constitution, the rights guaranteed under

1 the Magna Carta for Women, the provisions of the Universal Declaration of Human Rights,
2 the International Convention of Civil and Political Rights, the Convention on the
3 Elimination of All Forms of Discrimination against Women, Convention on the Rights of
4 the Child, and other International Human Rights Instruments of which the Philippines is
5 a party.

6 Sec. 3. *Guiding principles.* – The following shall be the guiding principles of the
7 Act:

- 8 A. Recognizing the family as the foundation of the nation, the State shall afford
9 the family necessary protection and assistance to ensure that it is an
10 environment conducive to the growth and well-being of all its individual
11 members so that it can fully assume its responsibilities within the
12 community.
- 13 B. The inherent dignity and the equal and inalienable rights of all members of
14 the family, the protection of all persons from abuse and violence, gender
15 equality, and the best interests of children are the fundamental guiding
16 principles of this legislation and shall be read alongside the responsibility of
17 the State to protect and strengthen the family as an autonomous social
18 institution.
- 19 C. Absolute divorce shall be judicially decreed based on grounds that existed
20 after the celebration of a valid marriage.
- 21 D. The State shall assure that the court proceedings for the grant of absolute
22 divorce shall be affordable, expeditious, and inexpensive, particularly for
23 indigent litigants.
- 24 E. A divorce decree shall include provisions for the care and custody of
25 children, termination, and liquidation of the conjugal partnership of gains
26 or the absolute community, and spousal support for the aggrieved spouse.
27 In resolving issues of child custody, visitation, and support, issues of sexual
28 orientation, gender identity or expression, and sexual characteristics will not
29 be made a factor in deciding the award/s.
- 30 F. In the invocation of the grounds for absolute divorce, the provisions of this
31 act shall not be construed as permitting any form of discrimination on the
32 basis of age, racial or ethnic origin, religious belief or activity, political
33 inclination or conviction, social class, sex, gender, sexual orientation,
34 gender identity and expression, sexual characteristics, marital or
35 relationship status, disability, HIV status, health status or medical history,
36 language, physical features, or other status.

1 Sec. 4. *Definition of Terms.*

- 2 A. *Absolute divorce* refers to the legal termination of a marriage by a court in
3 a legal proceeding, requiring a petition or complaint for divorce by one
4 party, which will have the effect of returning both parties to the status of
5 single for all legal intents and purposes, including the right to contract a
6 subsequent marriage;
- 7 B. *Child* refers to a common child of the spouses below eighteen (18) years of
8 age or eighteen (18) years and older but who is incapable of taking care of
9 oneself as defined under Republic Act No. 7610, as amended, and shall
10 include an offspring by legal adoption or one whose custody and care is
11 judicially decreed to be given to a guardian;
- 12 C. *Child custody* refers to the parental authority and care of a child as decreed
13 by a proper court when the parents of the child are divorced;
- 14 D. *Support* refers to the amount indispensable for sustenance, dwelling,
15 clothing, medical attendance, education and transportation, in keeping with
16 the financial capacity of the family. The education of the person entitled to
17 be supported shall include his schooling or training for some profession,
18 trade or vocation, even beyond the age of majority. Transportation shall
19 include expenses in going to and from school, or to and from place of work;
- 20 E. *Proper court* refers to the proper family court established under Republic
21 Act No. 8369 or the "Family Courts Act of 1997", which shall exercise
22 jurisdiction both over the absolute divorce proceeding and the persons of
23 the petitioner and respondent spouses;
- 24 F. *Marital infidelity* refers to the extramarital sexual relations of a spouse;
- 25 G. *Separation* refers to the absolute cessation of marital relations, duties, and
26 rights, with the intention of perpetual separation.

27 Sec. 5. *Grounds.* – The following are the grounds for a judicial decree of absolute
28 divorce:

- 29 A. Five continuous years of separation, with or without a judicial decree of
30 separation; *Provided*, that when the spouses are legally separated by
31 judicial decree under Article 55 of the Family Code of the Philippines, a two
32 (2) years period from the time of the issuance of the decree of legal
33 separation will suffice;
- 34 B. The commission of the crime of rape by the respondent-spouse against the
35 petitioner-spouse, whether before or after the celebration of marriage;

1 C. The grounds for legal separation under article 55 of the Family Code or any
2 other special law; *Provided*, that, physical violence or grossly abusive
3 conduct under article 55(1) need not be repeated; *Provided* further, that,
4 lesbianism and homosexuality per se under article 55(6) shall not be a
5 ground, unless either or both spouses commit marital infidelity;

6 D. A final decree of absolute divorce validly obtained in a foreign jurisdiction;

7 E. Irreconcilable marital differences or irreparable breakdown of the marriage,
8 despite earnest efforts at reconciliation.

9 *Sec. 6. Procedure for obtaining absolute divorce.* – The established and recognized
10 procedures for securing legal separation, annulment of marriage and voiding of a
11 marriage under the Family Code of the Philippines, as far as practicable, shall govern the
12 process of obtaining a judicial decree of absolute divorce from the proper family court
13 which shall be commenced by the filing of a verified petition for absolute divorce by
14 the petitioner-spouse or petitioner-spouses. A petition for absolute divorce may be filed
15 separately or jointly by the spouses on the basis of Section 5 of this Act. A joint petition
16 filed by both spouses with common children should be accompanied by a joint plan for
17 parenthood which provides for the support, parental authority, custody, and living
18 arrangements of the common children. If the court determines that the joint plan for
19 parenthood is adequate to protect the rights and interests of the common children, the
20 court shall approve the joint plan for parenthood together with the grant of a divorce
21 decree if warranted.

22 All creditors of the absolute community or of the conjugal partnership of gains, as
23 well as the personal creditors of the spouses, shall be listed in the petition for absolute
24 divorce.

25 *Sec. 7. Indigent litigants.* – Upon application by the petitioner-spouse and
26 presentation of evidence of indigency, the court shall waive the payment of filing fees
27 and other costs of litigation and shall appoint a counsel de *oficio* and assign social
28 workers, psychologists, and psychiatrists, preferably from appropriate government
29 agencies, to assist the petitioner and the common children of the parties.

30 In evaluating evidence of indigency, the court may take into consideration the petitioner's
31 income, property, and capacity to afford the services of counsel after considering his or
32 her basic necessities for himself or herself and his or her family. The court may also
33 consider if the petitioner is from a marginalized group or entity and is not financially able
34 to afford the services of counsel under the circumstances, such as in the case of farmers,
35 indigenous peoples, victims of gender violence, and other similar causes.

1 Sec. 8. *When a divorce is secured in any other country.* – Either or both spouses
2 shall seek judicial recognition or enforcement of the foreign decree terminating a
3 marriage in accordance with existing laws and rules; *provided*, that the spouse who did
4 not participate in the divorce proceedings may seek relief in the proper court with respect
5 to the incidents of the judgment.

6 Sec. 9. *Effects of absolute divorce.* – The decree of absolute divorce shall have the
7 following effects:

8 A. The marriage bonds shall be dissolved and the divorced spouses shall have
9 the right to contract marriage again.

10 B. The custody of the minor children, and the visitation rights of the spouse
11 not granted primary custody, shall be decided by the proper court in
12 accordance with the best interests of the children, subject to the provisions
13 of Article 213 of the Family Code of the Philippines, taking into consideration
14 that no child under seven (7) shall be separated from the mother unless the
15 proper court finds compelling reasons to order otherwise. A child over the
16 age of seven (7) should be asked for his or her opinion regarding custody
17 and visitation rights, and this opinion should be given full consideration by
18 the court in accordance with the best interest of the child. In no case will
19 child custody be given to the offender-spouse when the ground/s for the
20 divorce falls under Article 55, paragraphs (1), as herein modified, (2), (3),
21 (4), (5), (7), (8), (9), and (10) of the Family Code of the Philippines.

22 C. Unless otherwise agreed upon in a marriage settlement executed before the
23 celebration of the marriage, the conjugal partnership of gains or the
24 absolute community shall be dissolved and liquidated, and the assets shall
25 be divided between the spouses, excluding the paraphernal or exclusive
26 properties of either spouse, in accordance with the Family Code of the
27 Philippines. The partition and distribution of the properties of the spouses,
28 upon the option of the spouses, shall be recorded in the appropriate civil
29 registry and registries of property, otherwise the same shall not affect third
30 persons.

31 D. The liabilities of the spouses to creditors for family expenses shall remain
32 solidary.

33 E. Donations by reason of marriage shall remain valid, except that if the donee
34 is an offender-spouse under article 55, paragraphs (1), as herein modified,
35 (2), (3), (4), (5), (7), (8), (9), and (10) of the Family Code of the Philippines,
36 such donations made to said donee are revoked by operation of law;

1 F. Either spouse may revoke the designation of the other spouse as beneficiary
2 in any insurance policy, even if such designation be stipulated as
3 irrevocable.

4 G. With respect to testate and intestate succession, the divorced spouses shall
5 no longer be compulsory heirs to one another.

6 H. The legitimate, legitimated, and adopted children of divorced parents shall
7 retain their legal status and legitimacy. Children conceived or born prior to
8 the finality of the divorce decree shall be considered legitimate.

9 Sec. 10. *Support.* – The proper court shall provide for child support pursuant to
10 the pertinent provisions of the Family Code. The court shall give paramount consideration
11 to the best interest of the children in accordance with article 194 of the Family Code of
12 the Philippines.

13 The proper court shall provide for spousal support; provided, that, the spouse who
14 gave cause for divorce shall not be entitled to spousal support.

15 In considering the award of support, the proper court shall consider relevant
16 circumstances of the case and of the parties. On application of either party, the proper
17 court may decree an increase or decrease in the amount of support upon a showing of
18 a substantial and material change of circumstances.

19 In case the respondent-spouse is an OFW, a copy of the order to grant spousal
20 support, if any, and child support shall be furnished to the Philippine Overseas
21 Employment Administration (POEA) and the Department of Migrant Workers (DMW).

22 Sec. 11. *Custody and support pendente lite.* – During the pendency of the action
23 and in the absence of adequate provisions in a written agreement between the spouses,
24 the court, upon application of the proper party, shall provide for the support of the
25 spouses and the custody and support of their common children. The court shall give
26 paramount consideration to the best interest of the children, as well as their choice of
27 the parent with whom they wish to remain, in accordance with the Family Code of the
28 Philippines. It shall also provide the appropriate visitation rights of the other parent.

29 Sec. 12. *Recognition of reconciliation.* – If the spouses have agreed to reconcile
30 during the pendency of the divorce proceedings or before the finality of judgment of
31 divorce, a corresponding joint manifestation under oath duly signed by them shall be filed
32 with the same court where the petition for absolute divorce was filed, with the interests
33 of the children duly protected. Upon filing of the joint manifestation of reconciliation, the
34 divorce proceedings shall thereby be terminated at whatever stage.

35 The court's order containing the foregoing shall be recorded in the proper civil
36 registries.

1 Sec. 13. *Penalties.* – Any person in default of providing court-ordered child support
2 and/or court-ordered spousal support, shall be punished by *prision mayor* and shall be
3 fined in the amount of one hundred thousand pesos (php 100,000.00) to not more than
4 three hundred thousand pesos (php 300,000.00) on top of unpaid child support and/or
5 spousal support with compounding legal interest computed from date of default until full
6 payment. Interest due on the principal amount accruing as of judicial demand shall
7 separately earn legal interest from the time of judicial demand until full payment.

8 Notwithstanding other laws to the contrary, the court shall order an appropriate
9 percentage of the income or salary of the respondent to be withheld regularly by the
10 respondent's employer for the same to be automatically remitted directly to the other
11 spouse. Failure to remit and/or withhold or any delay in the remittance of support to
12 the other spouse and/or their common children without justifiable cause shall render
13 the respondent or his or her employer liable for indirect contempt of court.

14 Sec. 14. *Appeals.* – A decree of divorce validly obtained is final and executory
15 insofar as the capacity to remarry is concerned. Orders for child support, child custody
16 and spousal support are immediately executory pending appeal. Either of the parties
17 may file at any time for a motion to review orders of child support, custody, and spousal
18 support, on the ground of a material change in the factual circumstances upon which the
19 orders of child support, custody and spousal support were predicated. The court that
20 granted the decree of divorce shall have jurisdiction over the motions for review.

21 Sec. 15. *Implementing rules and regulations.* – The Department of Justice (DOJ)
22 as lead agency, together with the Department of Social Welfare and Development
23 (DSWD), the Philippine Commission on Women (PCW), the National Youth Commission
24 (NYC), Children's Welfare Commission, the Office of the Solicitor General, two
25 representatives from women's organizations with proven track record in women and
26 gender rights advocacy identified by the PCW, two representatives from children's
27 organizations with proven track record in child rights advocacy to be identified by the
28 NYC, and two gender and family law experts from the UP Law Center shall promulgate
29 the Implementing Rules and Regulations (IRR) within sixty (60) days after the effectivity
30 of this Act.

31 Sec. 16. *Repealing Clause.* – All other laws, decrees, executive orders, issuances,
32 rules and regulations, or part thereof inconsistent with this Act are hereby likewise
33 repealed or amended accordingly.

34 Section 17. *Separability Clause.* – If, for any reason, any section or provisions of
35 this Act is declared unconstitutional or invalid, the other sections or provisions not
36 affected thereby shall remain in full force and effect.

1 Sec. 18. *Effectivity Clause.* – This Act shall take effect after fifteen (15) days upon
2 publication in at least two (2) newspapers of general circulation.

Approved,