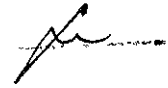


FOURTEENTH CONGRESS OF THE REPUBLIC)
 OF THE PHILIPPINES)
 First Regular Session)

7 DEC 10 2010

SENATE
 S. No. 1949

RECEIVED



Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article II, Section 13 provides:

The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

Worldwide, child pornography is a billion-dollar business and it is a serious concern and problem in the Philippines. New technologies such as the Internet and digital cameras have made child pornography more pervasive and more difficult for authorities to monitor the growing number of both pornographers and their victims. A great number of offenders now use and take advantage of the computer technology to organize, maintain, distribute, and increase the size of their pornographic collections. When these abusive images reach the world of cyberspace, they are irretrievable and can continue to circulate forever, re-victimizing the child as the images are viewed again and again.

The number of Filipino children in the Philippines that have been or are being exploited in child pornography are unknown. But the harm it causes to children is known. There are lasting and complex negative effects, especially psychological harm, on children who have been involved in pornography.

As a State Party to the Convention on the Rights of the Child and the Optional Protocol on the sale of children, child prostitution and child pornography, it is the obligation of the Philippines to prohibit all forms of child pornography and to penalize its perpetrators. The existing laws which prohibit pornography in the Philippines, namely Article 201 of the Revised Penal Code, as amended, and Article 5 of the Special Protection of Children Against Abuse, Exploitation and Discrimination Act, as amended, are inadequate to address the developments in technology which facilitate the

commission and distribution of child pornography. More importantly, it does not provide a definition of child pornography.

Due to gaps in the existing laws, there is a need to propose a bill which would comply with the Philippines' international human rights obligations and provide for the following: define child pornography, address the gaps and limitations of the existing laws, and cover the advances in technology in the prohibited acts, among others.

act *Miriam Defensor Santiago*
MIRIAM DEFENSOR SANTIAGO

Introduced by Senator Miriam Defensor Santiago

1 AN ACT
2 DEFINING CHILD PORNOGRAPHY AND CHILD ABUSE MATERIALS
3 AND PENALIZING ALL FORMS AND MEANS OF COMMISSION

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

6 SECTION 1. *Short Title.* – This Act shall be known as the “Anti-Child
7 Pornography Act of 2007.”

8 SECTION 2. *Declaration of State Policy and Principles.* – It is hereby declared to
9 be the policy of the State to provide special protection to children from all forms of
10 sexual exploitation and sexual abuse, including the exploitative use of children in
11 pornographic performances and materials, as guaranteed under the Convention on the
12 Rights of the Child and its Optional Protocol on the sale of children, child prostitution
13 and child pornography.

14 SECTION 3. *Definition of Terms.* – As used in this Act, the term:

15 a) “Child” – refers to persons below eighteen (18) years of age or those over but
16 are unable to fully take care of themselves or protect themselves from abuse,
17 neglect, cruelty, exploitation or discrimination because of a physical or mental
18 infirmity or condition;

19 b) “Child abuse materials” – refer to materials that describe or depict, whether
20 real or simulated, a child or a representation of a child as a victim of
21 maltreatment in any way that reasonable persons would regard as being, in all
22 the circumstances, offensive. Maltreatment of a child includes, but are not
23 limited to:

- 1 (1) Psychological and physical abuse, neglect, cruelty, torture, sexual abuse
2 and emotional maltreatment;
- 3 (2) Any act by deeds or words which debases, degrades or demeans the
4 intrinsic worth of a child as a human being;
- 5 c) “Child pornography” – refers to pornographic material that describes or
6 visually depicts:
- 7 (1) a child engaged in sexual conduct;
8 (2) a person appearing to be a child engaged in sexual conduct; or
9 (3) simulated images representing a child engaged in sexual conduct;
- 10 d) “Depiction” – refers to manner of generating data from which a visual image,
11 whether still or moving, can be generated;
- 12 e) “Description” – refers to a manner of generating data from which text or
13 sounds can be generated;
- 14 f) “Distribution” – refers to the active dissemination of child pornography and
15 child abuse materials. It includes transmitting child pornography and child
16 abuse materials through a computer system to another person, whether natural
17 or juridical;
- 18 g) “Grooming” – refers to the act of preparing a child for a sexual relationship by
19 communicating pornography to a child. It includes online enticement, or
20 enticement through any other means;
- 21 h) “Indecent” – means indecent according to the standards of an ordinary
22 reasonable person;
- 23 i) “Internet address” – means a website, a bulletin board service, an Internet
24 chat-room or news group or any other Internet or shared network protocol
25 address;
- 26 j) “Internet content host” – a person who hosts or who proposes to host Internet
27 content in the Philippines;
- 28 k) “Internet service provider” – refers to any person who carries on the business
29 of providing access to the Internet by any means;

- 1 l) “Making available” – refers to placing of child pornography or child abuse
2 materials online for the use of others for whatever purpose, such as creating
3 sites or creating or compiling hyperlinks to sites to facilitate access to the
4 prohibited materials;
- 5 m) “Material” – includes material in any form, or combination of forms, capable
6 of constituting a communication. Materials may include but is not limited to
7 live performance, film, videos, photographs, publications, literature, audio-
8 tapes, or any forms of electronic data;
- 9 n) “Means” – refers to the medium of acquiring or transmitting materials, in
10 person, through post or courier, radio, telecommunication or other forms of
11 communication, Internet, or ephemeral electronic communication, which
12 includes telephone conversations, text messages, chat room sessions,
13 streaming audio, streaming video, and other forms of communication;
- 14 o) “Offensive” – refers to (a) the standards of morality, decency and propriety
15 generally accepted by a reasonable person; and (b) the literary, artistic, or
16 educational merit (if any) of the material; and (c) the general character of the
17 material, including whether it is of a medical, legal or scientific in character;
- 18 p) “Offering” – refers to the act of soliciting others to obtain child pornography
19 by a person who can actually provide or knows someone who can provide it;
- 20 q) “Possession” – without derogating from its ordinary meaning, includes
21 keeping or storing in or on a computer, computer system, or computer data
22 storage medium and also having custody, control or supervision on behalf of
23 another person;
- 24 r) “Proper authorities” – for purposes of this Act, proper authorities shall include
25 the Department of Social Welfare and Development, police or other law
26 enforcement agencies, or the National Bureau of Investigation;
- 27 s) “Sexual conduct or pose” – includes depiction or description, whether
28 simulated or real, of any of the following or similar acts in a way that
29 reasonable persons would regard, as being offensive in all circumstances:

- 1 (1) a sexual organ or anal region of a child;
- 2 (2) the breasts of a female child;
- 3 (3) sexual intercourse, including genital-genital, oral-genital, anal-genital or
- 4 oral-anal;
- 5 (4) masturbation;
- 6 (5) bestiality;
- 7 (6) sadistic or masochistic or other forms of abuse in a sexual context;
- 8 (7) sexual contact involving the direct or indirect fondling or touching of the
- 9 intimate parts of a body, including the breasts, with or without any object;
- 10 (8) the penetration of a vagina or anus with any object, other parts of the
- 11 human body;
- 12 (9) child is in the presence of a person who is engaged in, or is implied to be
- 13 engaged in a sexual conduct or pose;
- 14 t) "Visual depiction" – refers to the manner of generating data from which a
- 15 visual image, whether still or moving, can be generated, such as but not
- 16 limited to data stored on computer diskette or on other electronic means of
- 17 storage, which are capable of conversion into a visual image;

18 SECTION 4. *Prohibited Acts.* – It shall be unlawful for a person to knowingly
19 commit any of the following acts, through any of the means defined under Section
20 3(n) of this Act:

- 21 a) possesses;
- 22 b) views;
- 23 c) downloads;
- 24 d) creates, produces, reproduces, publishes, posts or in any way contributes to, or
- 25 assists in the creation or production of;
- 26 e) hires, employs, uses, persuades, induces or coerces a child to perform in the
- 27 creation or production of;
- 28 f) purchases or in any way takes steps to procure, obtain or access;

- 1 g) sells, offers, advertises, promotes, makes known to others where to find;
2 h) makes available or facilitates online child pornography;
3 i) exhibits, disseminates, distributes, transmits or broadcasts;
4 child pornography or child abuse materials as defined in Section 3 (b, c & n) of this Act.

5 SECTION 5. *Luring or Grooming.* – It shall be unlawful for a person (the sender)
6 who through:

7 a) online enticement

8 (1) uses the Internet to transmit a communication to a person who is, or who
9 the sender believes to be, under eighteen (18) years of age;

10 (2) the communication includes materials that are indecent or obscene; and

11 (3) with the intention of making it easier to procure the recipient to engage in,
12 or submit to, sexual activity with the him or her or a third party; or

13 b) any other means of enticement transmits a communication to another person
14 where (1), (2) and (3) are present;

15 SECTION 6. *Duty and Liability of an Internet Service Provider.* – An internet
16 service provider shall:

17 a) prevent access or transmittal of prohibited materials by any person, and shall
18 install a blocking system to prevent access to such materials;

19 b) report the presence thereof, as well as the particulars of the person
20 maintaining or hosting or distributing or in any manner contributing to the
21 Internet address, to the proper authorities; and

22 c) preserve such evidence for purposes of investigation and prosecution by the
23 relevant authorities;

24 An Internet service provider shall, upon request by proper authorities, furnish the
25 particulars of users who gained or attempted to gain access to an Internet address that
26 contains prohibited materials.

1 SECTION 7. *Duty and Liability of Internet Content Host.* – An Internet content
2 host shall –

- 3 a) not host any prohibited materials on its Internet address;
- 4 b) immediately report the presence of prohibited materials, as well as the
5 particulars of the person maintaining, hosting, distributing or in any manner
6 contributing to such Internet address, to the proper authorities; and
- 7 c) preserve such evidence for purposes of investigation and prosecution by the
8 relevant authorities.

9 An internet content host shall, upon request by proper authorities, furnish the
10 particulars of users who gained or attempted to gain access to an Internet address that
11 contains the prohibited materials.

12 SECTION 8. *Duty to Provide Blocking Systems or Software.* – The following
13 persons and establishments shall also have the duty to install blocking software to prevent
14 transmittal or access to the prohibited materials:

- 15 a) Internet café establishments;
- 16 b) Private and public educational institutions;
- 17 c) Public and private offices.

18 SECTION 9. *Duty to Report.* – Photo developers, IT professionals, Internet
19 Service Providers, Internet Content Host, credit card companies and banks have the duty
20 to report any suspected child pornography materials or transaction to the proper
21 authorities.

22 SECTION 10. *Facilitating of Unlawful or Prohibited Acts.* – It shall be unlawful
23 for a person to knowingly facilitate the commission of any of the prohibited or unlawful
24 acts under any of the provisions of this law.

25 SECTION 11. *Providing Venue for Commission of Prohibited Acts.* – It shall be
26 unlawful for a person to knowingly provide a venue for the commission of the prohibited
27 acts, such as but not limited to dens, private rooms, cubicles in Internet cafés, cinemas,

1 secluded areas in residential houses or in establishments purporting to be a legitimate
2 business.

3 SECTION 12. *Attempt to Commit Any of the Prohibited Acts.* – Any attempt to
4 commit any of the prohibited acts shall be punished by a penalty two (2) degrees lower
5 than that prescribed for the consummated acts.

6 SECTION 13. *Qualified Circumstances.* – The prohibited acts are qualified when
7 committed by:

- 8 a) A syndicate, or in large scale. Prohibited acts are deemed committed by a
9 syndicate if carried out by a group of three (3) or more persons conspiring or
10 confederating with one another. It is deemed committed in large scale if
11 committed against three (3) or more persons, individually or as a group;
- 12 b) Ascendants, guardian, a person who has custody of the child, or relatives of
13 the child within the third degree of consanguinity or affinity;
- 14 c) Public officer or employee;
- 15 d) A person who knowingly provides a venue for the commission of the
16 prohibited acts, such as but not limited to dens, private rooms, cubicles,
17 cinemas, secluded areas in residential houses or in establishments purporting
18 to be a legitimate business.

19 SECTION 14. *Prosecution of Cases.* – Any person who has personal knowledge
20 of the commission of any offense under this Act, the child, parents, legal guardian, or
21 siblings, may file a complaint.

22 SECTION 15. *Venue.* – A criminal action arising from a violation of this Act shall
23 be filed where the offense was committed, or where any of its elements occurred, or
24 where the child is found or actually resides at the time of the commission of the offense:
25 Provided, that the court where the criminal action is first filed shall acquire jurisdiction to
26 the exclusion of the other courts.

1 SECTION 16. *Penalties and Sanctions.* – The following penalties and sanctions
2 are hereby established for the offenses enumerated in this Act:

3 a) Any person found guilty of possessing, viewing, downloading, creating,
4 reproducing, purchasing or in any way taking steps to procure, obtain or
5 access for personal use any of the prohibited materials shall suffer the penalty
6 of *arresto mayor* in its maximum period and a fine of Fifty Thousand Pesos
7 (P50,000.00).

8 b) Any person found guilty of possessing, downloading, purchasing, creating,
9 producing, reproducing, publishing, posting child pornographic and abuse
10 materials with the intent of selling or distributing them or any person found
11 guilty of ‘making available’ child pornography shall suffer the penalty of
12 *prision correccional* in its minimum period and a fine of One Hundred
13 Thousand Pesos (P100,000.00);

14 c) Any person found guilty of selling, offering, advertising, promoting, making
15 known to others where to find child pornography and abuse materials shall
16 suffer the penalty of *prision correccional* in its maximum period and a fine of
17 Two Hundred Thousand Pesos (P200,000.00);

18 d) Any person found guilty of exhibiting, disseminating, distributing,
19 transmitting or broadcasting child pornography and abuse materials shall
20 suffer the penalty of *reclusion temporal* in its maximum period and a fine of
21 Five Hundred Thousand Pesos (P500,000.00);

22 e) Any person found guilty of hiring, employing, using, persuading, inducing, or
23 coercing a child to perform in the creation or reproduction of child
24 pornographic and abuse materials shall suffer the penalty of *prision*
25 *correccional* in its maximum period and a fine of Two Hundred Thousand
26 Pesos (P200,000.00);

27 f) Any person guilty of luring or grooming a child as provided in Section 5 of
28 this Act shall suffer the penalty of *arresto mayor* in its maximum period and a
29 fine of Fifty Thousand Pesos (P50,000.00);

- 1 g) The owner, head, president, partner, managers or responsible officer of any
2 Internet Service Provider or Internet content host who participated in the
3 commission of the offense or who shall knowingly permit or fail to prevent its
4 commission shall suffer the penalty of *reclusion temporal* in its minimum
5 period and a fine of Five Hundred Thousand Pesos (P500,000.00);
- 6 h) Any person found guilty of qualified acts, where applicable, shall be punished
7 with a penalty one (1) degree higher than that prescribed for the offense;
- 8 i) If the offender is a foreigner, he or she shall be immediately deported after
9 serving his or her sentence and be barred permanently from entering the
10 country;
- 11 j) Any person guilty of facilitating the commission of any prohibited acts shall
12 be punished with a penalty one (1) degree lower than that prescribed for the
13 offense;
- 14 k) Any attempt to commit any of the prohibited acts shall be punished with a
15 penalty two (2) degrees lower than that prescribed for the consummated acts;
- 16 l) Any business establishment used in the commission of the prohibited acts
17 provided shall be immediately closed, the authority or license to operate
18 cancelled, without prejudice to the forfeiture of the proceeds and investments,
19 without prejudice to the prosecution of the owner, head, president, partner,
20 managers or responsible officer who participated in the commission of the
21 offense or who shall knowingly permit or fail to prevent its commission;

22 SECTION 17. *Confiscation and Forfeiture of the Proceeds and Instruments*
23 *Derived from Acts Prohibited Under this Law.* – In addition to the penalty imposed for
24 the violation of this Act, the court shall order the confiscation and forfeiture, in favor of
25 the government, of all the proceeds and properties derived from the commission of the
26 crime, unless they are the property of a third person not liable for the commission of the
27 prohibited acts.

1 SECTION 18. *Trust Fund.* – All fines imposed under this Act and the proceeds
2 and properties forfeited and confiscated shall accrue to a Trust Fund to be administered
3 and managed by the Inter-Agency Council against Child Pornography to be used
4 exclusively for programs that will prevent acts prohibited under this law and to protect,
5 heal and reintegrate the child into the mainstream of society. Such programs shall
6 include, but not limited to, the following:

- 7 a) Provision for mandatory services including counseling, free legal services,
8 medical or psychological services, livelihood and skills training; and
9 educational assistance to the child;
- 10 b) Sponsorship of a national research program on child pornography and other
11 acts covered by the law and the establishment of a data collection system for
12 monitoring and evaluation purposes;
- 13 c) Provision of necessary technical and material support services to appropriate
14 government agencies and non-government organizations (NGOs);
- 15 d) Sponsorship of conferences and seminars to provide venue for consensus
16 building amongst the public, the academe, government, NGOs and
17 international organizations; and
- 18 e) Promotion of information and education campaign.

19 SECTION 19. *Inter-Agency Council Against Child Pornography.* – There is
20 hereby established an Inter-Agency Council Against Child Pornography, to be composed
21 of the Secretary of the Department of Justice as Chairperson and the following as
22 members:

- 23 a) Secretary, Department of Labor and Employment;
- 24 b) Director-General, Philippine National Police;
- 25 c) Director, National Bureau of Investigation;
- 26 d) Executive Director, Council for the Welfare of Children;
- 27 e) Secretary, Department of Social Welfare and Development;

1 f) Three (3) representatives from children’s NGOs. These representatives shall
2 be nominated by the government agency representatives of the Council, for
3 appointment by the President for a term of three (3) years.

4 The members of the Council may designate their permanent representatives
5 who shall have a rank not lower than an assistant secretary or its equivalent to
6 meetings, and shall receive emoluments as may be determined by the Council
7 in accordance with existing budget and accounting, rules and regulations.

8 SECTION 20. *Functions of the Council.* – The Council shall have the following
9 powers and functions:

- 10 a) Formulate a comprehensive and integrated program to prevent and suppress
11 child pornography;
- 12 b) Promulgate rules and regulations as may be necessary for the effective
13 implementation of this Act;
- 14 c) Monitor and oversee the strict implementation of this Act;
- 15 d) Coordinate the programs and projects of the various member agencies to
16 effectively address the issues and problems related to child pornography;
- 17 e) Coordinate the conduct of massive information dissemination and campaign
18 on the existence of the law and the various issues and problems related to
19 child pornography through the LGUs, concerned agencies, and NGOs;
- 20 f) Secure from any department, bureau, office, agency , or instrumentality of the
21 government or from NGOs and other civic organizations such assistance as
22 may be needed to effectively implement this Act;
- 23 g) Develop the mechanism to ensure the timely, coordinated, and effective
24 response to cases of child pornography;
- 25 h) Recommend measures to enhance cooperative efforts and mutual assistance
26 among foreign countries through bilateral and/or multilateral arrangements to
27 prevent and suppress international child pornography;

1 i) Exercise all the powers and perform such other functions necessary to attain
2 the purposes and objectives of this Act.

3 SECTION 21. *Secretariat of the Council.* – The Department of Justice shall
4 establish the necessary Secretariat for the Council.

5 SECTION 22. *Reporting Requirements.* —The Council shall submit to the
6 President of the Philippines and to Congress and annual report of the policies, programs
7 and activities relative to the implementation of this Act.

8 SECTION 23. *Funding.* – The heads of the departments and agencies concerned
9 shall immediately include in their programs and issue such rules and regulations to
10 implement the provisions of this Act, the funding of which shall be included in the
11 General Appropriations Act.

12 SECTION 24. *Implementing Rules and Regulations.* – The Council shall
13 promulgate the necessary implementing rules and regulations within six (6) months from
14 the effectivity of this Act.

15 SECTION 25. *Suppletory Effect of Other Special Laws.* – The provisions of
16 Republic Act No. 7610 and other special laws shall have a suppletory effect unless
17 otherwise inconsistent with this Act. *Provided that*, no provision of this Act or any other
18 law shall be interpreted contrary to the best interests of the child.

19 SECTION 26. *Repealing Clause.* – Section 9 of Republic Act No. 7610, all laws,
20 acts, presidential decrees, executive orders, administrative orders, rules and regulations
21 inconsistent with or contrary to the provisions of this Act are deemed amended, modified
22 or repealed accordingly.

23 SECTION 27. *Separability Clause.* – If any provision of this Act is held invalid or
24 unconstitutional, the remainder of the Act or the provision not otherwise affected shall
25 remain valid and subsisting.

1 SECTION 28. *Effectivity Clause.* – This Act shall take effect fifteen (15) days
2 after its publication in at least two (2) newspapers of general circulation.

3 Approved,