

THIRTEENTH CONGRESS }
OF THE REPUBLIC OF THE PHILIPPINES }
Third Regular Session }

7 JAN 31 1955

SENATE 2588 RECEIVED BY: TWA

Introduced by Senator M.A. Madrigal

EXPLANATORY NOTE

It is the policy of the State to promote and protect the physical, moral, spiritual, intellectual and social well-being of our children. However, despite this policy, the laws in place are insufficient to provide the proper framework upon which the rights of our children may be protected against sexual exploitation, especially against child pornography.

Child pornography is a blatant disregard of the fundamental rights of the child and is considered among the worst forms of child exploitation. There are factors that make child pornography widespread and rampant in the country, primarily because of the absence of a specific law to prohibit the production of child pornographic materials. Due to poverty, even parents sell their children to pedophiles.

As a signatory to the Convention on the Rights of the Child and the Optional Protocol on the sale of children, child prostitution and child pornography, the Philippines is bound by its international commitment to criminalize acts which are detrimental to the achievement of the best potential of the children.

The Bill seeks to comply with this obligation by punishing individuals and corporations as well as its officers who engage in child pornography. Under this measure, even the parents who induce or coerce their child to participate in pornography will be penalized.

Moreover, the mere possession of a child pornographic material, as well as divulging or publishing information concerning a child who is a victim of pornography, is made punishable. This act is already punishable in most European countries and even our neighboring country Singapore. The United States and other countries have legislated similar bills making mere possession of child pornographic materials a criminal offense. The Philippines, which is now regarded as the second largest producer of child pornographic materials in the world, must take a giant leap in order to curtail, if not totally eliminate, this multi-billion dollar industry.

For these reasons, the passage of this bill is earnestly sought.


M. A. MADRIGAL

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SENATE

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**AN ACT PROHIBITING CHILD PORNOGRAPHY,
IMPOSING PENALTIES FOR THE COMMISSION THEREOF
AND FOR OTHER PURPOSES**

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

Section 1. Short Title. This Act shall be known as the "Anti-Child Pornography Act of 2007."

Section 2. Declaration of State Policy. It is the State's policy to:

- a. Guarantee the rights of every child from all forms of neglect, cruelty, and other conditions prejudicial to their development;
- b. Protect the child from all forms of exploitation and abuse, such as:
 - (i) the exploitative use of a child or children in pornographic performances and materials; and
 - (ii) the inducement or coercion of a child to engage in or perform any sexual activity or practices, through whatever means; and
- c. Comply with the country's two international treaties concerning the rights of children namely, the Convention on the Rights of the Child and the 2nd Optional Protocol to the Convention on the Rights of the Child.

Section 3. Definition of Terms. For purposes of this Act, the following terms shall be defined as follows:

- a. **Child** – refers to a person below fifteen (15) years of age or those over but is unable to fully take care of oneself from abuse, neglect, cruelty, exploitation, or discrimination, because of a physical or mental disability or condition.
- b. **Sexual Exploitation** – refers to the participation of a child in the production of pornographic materials.
- c. **Child Pornography** – refers to any visual or audio representation of a child or a person depicted as one, engaging in real or simulated explicit sexual activities. It may include the depiction of a child in whatever means that would result in the manifestation of any form of prurient interest. The representation shall be in whatever form of computer graphics or by any electronic or mechanical means, including the use of information technology and the Internet.
- d. **Internet Service Provider**- refers to a company which provides Internet access for individuals, organizations, and companies. An Internet Service Provider usually has multiple access methods, including dial-up, Wireless Local Area Networks (Wi-Fi), Digital Subscriber Line (DSL), and cable modem.
- e. **Person** – refers to any natural or juridical entity.

- f. The Department – refers to the Department of Social Welfare and Development.
- g. Commercial Use – shall mean pornographic materials of such quantity intended for sale and with the end view of making a profit. Three or more pornographic materials of each kind or issue shall be *prima facie* evidence that the same is for Commercial Use.
- h. Personal Use – shall refer to pornographic materials for private use and purpose and not intended for sale.

Section 3. Unlawful or Prohibited Acts. It shall be unlawful for any person to commit any of the following acts:

- a. To induce or recruit a Child to participate in the production of pornographic materials;
- b. To produce, through any means, including the use of computer graphics electronic or mechanical means any child pornographic material as defined in section 3 (c) hereof;
- c. To publish, sell, distribute, broadcast, export and import for Commercial Use through any means, such as but not limited to, writings and pictures, books, magazines, billboards, tabloids, comics, posters, cards, calendars, decals, stickers, paintings, photographs, television shows, motion pictures, computer graphics or by any electronic or other means including the use of information technology such as mobile phones and the Internet, child pornographic materials as defined in section 3 (c) hereof;
- d. To possess any child pornographic material as defined in this Act, with or without the intent to publish, sell, distribute and broadcast;
- e. To export or import such material for Personal Use;
- f. To disclose to the media and the public the name, address, telephone number, school, or other identifying information of a child who is or is alleged to be a victim of Sexual Exploitation, or an immediate family of the child.
- g. To publish or cause to be published in any format the name, address, telephone number, school, or other identifying information of a child who is or is alleged to be a victim of Sexual Exploitation, or an immediate family of the child.

Section 4. Prosecution of Cases. Any person who has personal knowledge of the commission of any of the offenses under this Act, including but not limited to the child, parents, siblings, legal guardian, the Department, or police officers may file a complaint against the persons committing such offense.

Section 5. Responsibility of Internet Service Providers. All Internet Service Providers (ISPs) shall notify the proper law enforcement agency after learning that a website containing child pornography exists on its server. If an ISP willfully fails to report the said websites and violators or cooperate in the investigation of said violators, then they will be penalized in accordance to Section 7 thereof.

Section 6. Penalties and Sanctions. The following penalties and sanctions are hereby established for offenses enumerated in this Act:

- a. Any person found guilty of committing any of the acts enumerated in section 4 (a) and (b) shall suffer the penalty of life imprisonment and a fine of not less than Two Million Pesos (PhP 2,000,000.00) but not more than Five Million Pesos (PhP 5,000,000.00).
- b. Any person found guilty of committing any of the acts enumerated in section 4 (c) shall suffer the penalty of Twelve (12) Years and One day to Twenty (20) years and a fine of not less than One Million Pesos (PhP 1,000,000.00) but not more than Two Million (PhP 2,000,000.00) Pesos.
- c. Any person found guilty of committing the act defined in section 4 (d) and (e) shall suffer the penalty of Six (6) Years and one day to Twelve (12) years and a fine of not less than Five Hundred Thousand Pesos (PhP 500,000.00) but not more than One Million Pesos (PhP 1,000,000.00).
- d. Any officers of the law, prosecutor office or the Court found guilty of committing the act defined in section 4 (f) shall suffer the penalty of Six (6) months and one day to One (1) year and a fine of not less than One Hundred Thousand Pesos (PhP 100,000.00) but not more than Three Hundred Thousand Pesos (PhP 300,000.00) with the accessory penalty of perpetual disqualification from holding any public office.
- e. Any person found guilty of committing the act defined in section 4 (g) shall suffer the penalty of One (1) month and One (1) day to Six (6) Months and a fine of not less than One Hundred Thousand Pesos (PhP 100,000.00) but not more than Three Hundred Thousand Pesos (PhP 300,000.00).
- f. If the offender is a juridical person, the penalty shall be imposed upon the owner, manager, partner, member of the board of directors, and any responsible officer, who participated in the commission of the crime or shall have knowingly permitted or failed to prevent its commission.
- g. If the offender is a foreigner, he shall be immediately deported after the complete service of his sentence and shall forever be barred from entering the country.
- h. Any Internet Service Providers found guilty of committing the act enumerated in section 6 shall suffer the penalty of forfeiture of license and a fine of not less than Two Million Pesos (PhP 2,000,000.00) but not more than Five Million Pesos (PhP 5,000,000.00).

Section 7. Confidentiality. The right to privacy of the child shall be ensured at all times in whatever stage of the investigation or judicial proceedings. The following rules shall be observed in the investigation, prosecution and trial for violation of this Act, taking into consideration the best interest of the child:

- a. The Judge, Prosecutor, or any officer of the law shall conduct a closed-door investigation, prosecution or trial.

- b. Any record regarding a child shall be confidential and kept under seal. Except upon written request and order of the court, a record shall be released only to the following:
- i. Members of the court staff for administrative use;
 - ii. The prosecuting attorney;
 - iii. Defense counsel;
 - iv. The guardian *ad litem*;
 - v. Agents of investigating law enforcement agencies; and
 - vi. Other persons as determined by the court.
- c. Any child pornographic materials that are part of the court record shall be under a protective order that provides as follows:
- i. Child pornographic materials may be viewed only by parties, their counsel, their expert witness, and the guardian *ad litem*.
 - ii. No child pornographic material, or any portion thereof, shall be divulged to any other person, except as necessary for the investigation, prosecution or trial.
 - iii. No person shall be granted access to the child pornographic material or any part thereof unless he signs a written affirmation that he has received and read a copy of the protective order; that he submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he will be subject to the contempt power of the court.
 - iv. No tape shall be given, loaned, sold, or shown to any person except as ordered by the court.

Section 8. Protective Custody of the Child. The child shall be immediately placed under the custody of the Department if the parents or legal guardian are the accused or they are unwilling or unable to provide care and protection to the child. To ensure the recovery, rehabilitation, and reintegration of the child into the mainstream of society, the Department shall make available the following services to the child and his family or legal guardian:

- a. Emergency shelter or appropriate housing;
- b. Counseling;
- c. Free legal services which shall include information about the victims' rights and the procedure for filing complaints, and other legal remedies available to them;
- d. Medical and Psychological services;
- e. Educational Assistance; and
- f. Livelihood Assistance.

Section 9. Lead Agency. The Department shall be the lead agency to monitor the compliance of the provisions of this act. It shall formulate policies and programs that will promote awareness and education against Child Pornography.

Section 10. Funding. The Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR) shall allocate from their respective earnings the amount of Twenty Five Million Pesos (PhP 25, 000,000.00) each which shall accrue to a special account in the Department for the proper implementation of this Act.

Section 11. Confiscation and Forfeiture of the Proceeds derived from Child Pornography. In addition to the penalty imposed under this Act, the court shall order the confiscation and forfeiture, in favor of the government, of all proceeds and properties derived from and used in the commission of the offenses under Section 4 (b), (c), (d) and (e) of this Act.

When the proceeds, properties and instruments of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly by the offender or it has been concealed, removed, converted, or transferred to prevent the same from being found or forfeited, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instrument of the offense.

All proceeds derived from the offense of child pornography shall accrue to the special account in the Department mentioned above.

Section 12. Implementing Rules and Regulations. Within thirty (30) days from the effectivity of this Act, the Department, with the Department of Justice and other government agencies and Non-Government Organizations, after due consultation, shall promulgate the necessary rules and regulations for the implementation of this Act.

Section 13. Separability Clause. If any part of this Act is declared unconstitutional or invalid, the other provisions not affected thereby shall continue to be in full force and effect.

Section 14. Repealing Clause. All laws, decrees, rules and regulations or parts thereof inconsistent with this Act are hereby repealed, modified or amended accordingly.

Section 15. Effectivity. This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved.