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SENATE

Senate Bill No. 457



INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

The Constitution, Article 2, Section 13 provides:

“Section 13. The State recognizes the vital role of the youth in nationbuilding 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 affairs and civic affairs.”

The people abhor child abuse, for it creates a climate of fear that affects society.

The effects of child abuse are long term and may even last a lifetime for the victims. More often than not, victims remain under physical and psychological threats, especially if the perpetrators are not brought to justice.

In keeping with the mandate of the Constitution and the precepts of the United Nations Conventions of the Child, this bill seeks to protect the rights and welfare of children by establishing a victim's bill of rights for children.



JINGGOY EJERCITO ESTRADA
Senator

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AN ACT
PROTECTING THE RIGHTS OF CHILDREN WHO ARE VICTIMS OF CRIME
AND ESTABLISHING A VICTIM'S BILL OF RIGHTS FOR CHILDREN

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

SECTION 1. Short Title - This title may be cited as the "**Bill of Rights for Children Victims Act.**"

SEC. 2. The Rules of Court, Rule 130, Sections 20 is hereby amended to read as follows:

Section 20. *Witnesses; their qualifications* - Except as provided in the next succeeding section, all persons who can perceive, and perceiving can make known their perception to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law shall not be a ground for disqualification.

A CHILD IS PRESUMED TO BE COMPETENT. IF THE CHILD'S COMPETENCY IS QUESTIONED, THE COURT SHALL DETERMINE WHETHER THE CHILD IS MENTALLY CAPABLE OF UNDERSTANDING THE NATURE OF THE QUESTIONS PUT TO THE CHILD, WHETHER THE CHILD IS ABLE TO FORMULATE INTELLIGENT ANSWERS AND COMMUNICATE IMPRESSIONS AND RECOLLECTIONS REGARDING THE INCIDENT ABOUT WHICH THE CHILD IS TO TESTIFY, AND WHETHER THE CHILD CAN UNDERSTAND THE RESPONSIBILITY TO TELL THE TRUTH.

SEC. 3. Testimony - A court may, upon its own motion, or motion of any party, order that testimony of a child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court. Only the judge, parties, counsel, persons necessary to operate the equipment, and any person whose presence, in the opinion of the court, would contribute to the welfare and well-being of the child, may be present in the room with the child during the child's testimony.

In addition, the court may require a party be sequestered in an adjacent room or behind a screen or mirror that permits the party to see and hear the child during the child's testimony, but does not allow the child to see or hear the party. However, if a party is so sequestered, the court shall take measures to insure that the party and counsel can confer during testimony, and that there be an opportunity for cross examination.

SEC. 4. Recorded depositions- The court--

- a) may, upon motion of a party, order that the testimony of a child be taken by recorded deposition for use at trial; and
- b) may order such depositions to be conducted in the same manner as trial testimony.

SEC. 5. Statements of sexual abuse- The court may upon motion of a party admit into evidence the recorded statements of a child describing sexual conduct performed with or on the child if the court determines that the recorded statements substantially comport with the requirements of admission under the rules of evidence.

SEC. 6. Anatomical dolls - The court may permit the use of anatomical dolls, puppets, and other appropriate children's dolls or toys which the court in its discretion, determines may aid the testimony of a child in describing sexual conduct performed with or on the child.

SEC. 7. Limits on interviews- The court shall take all reasonable steps to limit the number of interviews of a child witness by prosecutors, defense counsel, child psychologists, and other expert witnesses, and all others, who, in the opinion of the court shall have the right to interview the child, in conjunction with proceedings before the court.

SEC. 8. Privacy/address protection- The identity of the child victim or any information reasonably likely to disclose the identity of the child shall not be released to the public by any public employee except as authorized by the court. To protect the child's welfare, name and identifying biological information including any report, paper, picture, photograph court file, or other document that identifies the victim, shall not appear on the information or indictment or any other public record, and instead a non-descriptive designation shall appear on such public records. These provisions do not apply to the release of such information to the accused or accused's counsel.

Except as provided in this rule, reports of child abuse or neglect and the name and address of any child, family, or informant or any other identifying information contained in such reports shall be confidential and shall not be public information. In a prosecution for a criminal offense where the alleged victim of the offense is a minor under 18 years of age, the court may exclude from the proceedings while the victim is testifying, all persons, who, in the opinion of the court, do not have a direct interest in the case. The court should ensure that addresses of the child victims and witnesses are not made public or available to the defense, absent a clear need as determined by the court.

SEC. 9. Use of Multi-disciplinary Assessment Teams- The confidentiality requirements of Section 8 shall not impede the efforts of any court to utilize the services of multidisciplinary assessment teams in child victimization cases.

SEC. 10. Extension of Child Statute of Limitations- There is no limitation of time within which a prosecution must be commenced for any sex offense involving a victim under 18 years of age, regardless of whether it involves force or serious physical injury or death. If at any time when any cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the time during which the criminal action is pending shall not be deemed or taken as any part of the time limited for the commencement of the civil action. As used in this subdivision, a criminal action is pending until its final adjudication in the trial court.

SEC. 11. Guardian ad litem- The court shall appoint a *guardian ad litem* to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging neglect or dependency. In any other case, the court may appoint a *guardian ad litem* to protect the interests of the minor when the court feels that such an appointment is desirable. The court may appoint the *guardian ad litem* on its own motion.

SEC.12. Child attendant- A child less than 18 years of age, while testifying at or attending a judicial proceeding, shall have the right to be accompanied by a parent, a victim/witness counselor, or other adult designated by the court. The accompanying person may be placed side by side with the child at the discretion of the presiding judge or court officer. Such support person shall not provide the witness with an answer to any question or otherwise participate in such proceedings. The attendant shall act as a friend of the court, to advise the judge, whenever appropriate, of the child's ability to understand and cooperate with any court proceedings and to explain, in language understood by the child, all proceedings in which the child will be involved; to assist the child and the child's family in coping with the emotional impact of the crime and subsequent criminal proceedings in which the child will be involved; and to advise the district attorney concerning the ability of a child witness to cooperate with the prosecution and potential effects of the proceedings on the child.

SEC. 13. Speedy trial- In any action for a prosecution involving a dangerous crime against children, the prosecutor shall file a certificate stating that the case is of special public importance. The clerk shall immediately furnish a copy of the certificate to the presiding judge and, after receiving the copy, the chief judge shall immediately designate a judge to hear and determine the action. The judge designated shall, consistent with rules of criminal procedure, expedite the action and the action shall take precedence over prosecution of any other proceeding.

The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of his or her involvement in the proceeding. In cases in which a judge is deciding whether to grant a continuance, the judge shall take into consideration the age of the alleged victim. When possible the

court shall consider the consolidation of matters in which children are victims or witnesses.

SEC. 14. *Child Abuse Reporting* - Any physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child caring personnel, resident, intern, chiropractor, dentist, optometrist, health professional, peace officer, mental health professional, or other person who knows or has reasonable cause to believe that a child is an abused or neglected child, shall report or cause a report to be made to appropriate authorities. Reporters shall be immune from liability under this section.

SEC.15. *Child Care Worker Employee Background Check* - Each agency of the government hiring individuals in the educational, correctional, child abuse investigation, childcaring, child-placing, and other fields determined to have supervisory or disciplinary authority over children, shall require a report of the criminal history of specified employees.

SEC. 16. *Separability Clause* - If any provision or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 17. *Repealing Clause* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provision of this Act is hereby repealed, modified or amended accordingly.

SEC. 18. *Effectivity Clause* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,