

10 JUL -7 P3:55

SENATE

Senate Bill No. 711

RECEIVED BY 

INTRODUCED BY SEN. JINGGOY EJERCITO ESTRADA

EXPLANATORY NOTE

Prostitution has pernicious effects and destroys our moral fiber. That something concrete ought to be done about it goes without saying.

While it is true that concerted efforts may not sufficiently and completely eradicate this deleteriously societal menace, a critical review of archaic laws and policies should be undertaken, if only to put appropriate governmental initiatives in their proper perspective.

Of these many laws up for scrutiny and amendment, the repeal of Articles 202 and 341 of the Revised Penal Code is a crucial step. These Articles, remained untouched for so many years, sadly treat sex workers and other individuals exploited into prostitution as criminal perpetrators instead of victims.

Not only is this perspective misplaced but it is clearly and morally repugnant and abhorrent. It is about time this anomaly should be critically addressed.

The proposed measure focuses on this concern. It seeks not only to decriminalize prostitution but more importantly provide for the victims adequate protection by:

- a) upholding the human rights of persons exploited in prostitution;
- b) enjoining local government units and appropriate government agencies to curb the same; and
- c) creating a National Anti-Prostitution Council that will develop a program addressing prostitution and the various needs of exploited persons, among others.

Through this bill, archaic policies may finally be corrected paving the way for a more invigorated approach in our campaign against prostitution.


JINGGOY EJERCITO ESTRADA
Senator

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AN ACT

ADDRESSING THE SYSTEM OF PROSTITUTION, IMPOSING PENALTIES ON ITS PERPETRATORS, PROVIDING PROTECTIVE MEASURES AND SUPPORT SERVICES FOR ITS VICTIMS, AND DECRIMINALIZING VAGRANCY, REPEALING FOR THE PURPOSE ARTICLES 202 AND 341 OF THE REVISED PENAL CODE AND AMENDING R.A. 9208, AND FOR OTHER PURPOSES

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

SECTION 1. Short Title. - This Act shall be known as "*The Anti-Prostitution Act of 2010.*"

SEC. 2. Declaration of Policies. -The State:

(a) In accordance with the relevant international instruments, particularly, the Universal Declaration on Human Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Rights of the Child, Convention Against Transnational Organized Crime including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and other international human rights instruments of which the Philippines is a party, declares its commitment to end the continuing sexual exploitation of women, men, and children and all forms of gender-based violence by creating an enabling environment where the human rights of women and children are promoted, protected, and fulfilled;

(b) recognizes prostitution as a human rights violation that calls for coordinated and sustained response from all agencies of government as well as non-governmental organizations that comprehensively addresses the factors that perpetuate sexual exploitation;

(c) recognizes that women and children are systematically victimized by and in the system of prostitution and must, therefore be given protection and support by the State, instead of being treated as offenders;

(d) recognizes that eliminating prostitution is essential for women and children to genuinely and meaningfully participate in nation-building; and

(e) recognizes that the law on vagrancy has outlived its usefulness and that vagrants should be looked upon not as common criminals but as victims of their ill circumstance.

SEC. 3. Definition of Terms. - The following terms are defined for purposes of this Act:

(a) *Prostitution* - any act, transaction, scheme or design involving the use **OR EXPLOITATION** of a person, whether through the performance of such act or mere demonstration thereof, whether woman, man or child, for the sexual gratification or pleasure of another in exchange for money or checks, profit or other consideration, or any act that promotes or facilitates the accomplishment of the said act, transaction, scheme or design;

(b) *Person exploited in prostitution* - refers to a woman, man or child used, exploited or employed for another person's sexual gratification or pleasure and for the monetary gain or profit of others;

(c) *Child* - refers to any person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

(d) *Sexual exploitation* - refers to the practice by which women are sexually subjugated through abuse or violation, either overt or covert, of women's sexuality and physical or mental integrity, as a means of achieving power and domination, including gratification, financial gain, and advancement;

(e) *Sexual act* -.refers to sexual intercourse, including genital-to-genital, oral-to-genital, anal-to-genital, or oral-to-anal intercourse or contact, insertion of any instrument or object into the genital or anal orifice of any person, bestiality, masturbation, sadistic or masochistic abuse, exhibition of the genitals or pubic area of any person, and other acts of a sexual nature, whether the same is made between persons of the same or opposite sex;

(f) *Establishment* - refers to any business or enterprise, including, but not limited to, sauna, bath, massage parlor, discotheque, bar, restaurant, resort, lodging house, motel, hotel, theater, ship, vessel, cab or taxi, or any other vehicle, or any dwelling, house, jail, detention center, structure or building serving as a cover or venue for prostitution, or any group, association or organization that engages in prostitution activities;

(g) *Cult* - refers to, but not limited to fanatic groups that entice, recruit, and condition any person to become sexual offerings in organizational rituals or in other circumstances as part of membership requirements.

SEC. 4. Acts of Prostitution. - Prostitution is a crime committed by:

(a) Any person who gives or delivers money or any other consideration in exchange for the actual performance or mere demonstration of a sexual act by a person exploited in prostitution, regardless of whether the person giving or delivering money or any other consideration is the recipient of such a sexual act;

(b) any person who is a recipient of a sexual act, whether such a recipient has given or delivered money or any other consideration for the procurement of a

person exploited in prostitution; Provided, however, that for purposes of this Section, being a recipient shall include persons or crowds before whom a person exploited in prostitution has actually performed or merely demonstrated the sexual act;

(c) Any person who offers another for sexual exploitation in exchange for money or any other consideration;

(d) any person who induces, persuades, entices, compels, kidnaps, recruits or in any manner procures or causes a person to serve in an establishment knowing that the same is involved in prostitution activities or when s/he has reasonable cause to believe that such establishment is involved in said activities;

(e) any person who organizes or arranges travel tours and/or tourism related activities that involve the sexual exploitation of any person or the escort services of any person who is expected to perform the sexual acts as defined in this Act;

(f) any person who as part of cult or religious obligation uses, entices, recruits, or offers any person as sexual offering or favor to other members of the cult or religious organization;

(g) any person who uses information technology or any form of media for the purposes of prostitution;

(h) any person who derives profit or advantage from any of the prohibited acts defined in this Section as owner, operator, manager, head, director, officer or agent of the establishment where the prostitution activity takes place, or of the establishment serving as a cover or venue for such prostitution activity, or aiding another establishment or person involved in any prostitution activity;

(i) any person who leases, subleases, or in any manner allows the use of any dwelling, house, structure, building, land or any other property knowing that the lessee/sub lessee intends to use or uses it for prostitution activities as defined in this Section. For the purposes of this paragraph, the owner of the dwelling, house structure, building, land or any other property used for prostitution and his/her agent shall be presumed to have knowledge that the place is being used or intended to be used or intended to be used for prostitution unless s/he disproves it;

(j) any member of the military or police establishment, or any government official or employee, or any person in authority who commits, causes, or promotes, facilitates, allows, or tolerates the commission of any of the acts defined in this Section, or who, in any manner, provides protection to the perpetrators of the said acts;

(k) any official or employee of any jail or detention center or any person connected thereto who commits, causes, promotes, facilitates, allows or tolerates the commission of any of the acts defined in this section upon inmates or who, in any manner, provides protection to the perpetrators of the said act.

For purposes of this Section, it is understood that the prohibited acts of prostitution may be committed in any establishment as defined in Section 3 (f) above or in any other place not otherwise mentioned in Section 3(f). Furthermore, an attempt to commit any of the acts defined in this Section is also prohibited.

SEC. 5. *Persons Exploited in Prostitution as Victims.* - Any woman, man or child, regardless of sexual orientation or gender identity, used or employed for another person's sexual gratification, pleasure and/or exploitation and for the monetary gain or profit of others, as defined in Section 4 of this Act, shall be treated as victims of prostitution. As such, they shall not incur any criminal liability under this Act, except those penalized under Section 6 (b) of this Act.

In addition, the consent of the person exploited in prostitution to the commission of any of the acts defined in Section 4 of this Act shall not in any way exempt the offender from, or mitigate his/her, criminal liability.

SEC. 6. *Penalties and Sanctions.* -

(a) any person found guilty of the acts defined in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One Million Pesos (P1,000,000.00) but not more than Two Million Pesos (P2,000,000.00);

(b) any person guilty of the acts defined in Section 4 who is also exploited in prostitution or had been exploited in prostitution shall suffer the penalty of imprisonment of ten (10) years for the first offence and fifteen (15) years for the succeeding violations and a fine of not less than Five Hundred Thousand Pesos (P500,000.00) but not more than One Million Pesos (P1,000,000.00);

(c) any person guilty of attempting to commit any of the prohibited acts shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five Hundred Thousand Pesos (P500,000.00) but not more than One Million Pesos (P1,000,000.00);

(d) when the offender is any establishment as defined in this Act, the penalty shall be imposed upon the owner and operator or manager, or the directors and officers, or the responsible officers or agents of the establishment, corporation, partnership, or association found to be engaged in any of the acts defined in Section 4 of this Act.

In addition, the establishment, corporation, partnership or association shall be immediately closed and its registration and/or license to operate shall be revoked. A sign with the words "off limits" shall be conspicuously displayed outside the establishment by the Department of Social Welfare and Development for such period as the Department may determine which shall not be less than one year. The unauthorized removal of such sign shall be punishable by imprisonment of six months.

(e) when the offender is a foreigner, s/he shall be deported immediately after service of sentence and permanently barred from entry into the country;

(f) any person found guilty of committing or attempting to commit any of the prohibited acts under Section 4 shall, in addition to the penalties stated in this section, undergo, counseling, rehabilitation and mandatory education on the human rights situation of victims of prostitution with DSWD for a period of not less than three (3) months but not longer than one (1) year with the DSWD. The DSWD shall submit to the court a report on the rehabilitation of the offender.

SEC. 7. Civil Liability for Prostitution. - Persons exploited in prostitution may file independent civil cases for damages against the persons, natural or juridical, responsible for their exploitation.

Provinces, cities and municipalities shall be liable for damages, in addition to any other criminal or administrative liability under existing laws, to persons exploited in prostitution when it is proven that the responsible authorities had knowledge or were informed of the activities constituting prostitution but did not take proper action within a reasonable period of time. For purposes of this Section, the responsible authorities shall be deemed to have knowledge of the prostitution activities when the same are common knowledge in the community.

SEC. 8. Prosecution of Cases. - Any person who has personal knowledge of the commission of any offense under this Act, or the person exploited in prostitution, the parents, spouse, siblings, children or legal guardian, or the law enforcement agencies, or the Task Force created under this Act may file a complaint for prostitution.

SEC. 9. Immunity of government and DSWD-accredited NGOs from undue interference. - Members of the National Anti-Prostitution Council and DSWD-accredited non-governmental organizations that are involved in the implementation of anti-prostitution programs are granted immunity from suit and other legal proceeding in connection with the enforcement of said programs.

SEC. 10. Venue. - A criminal action arising from a violation of this Act shall be filed where the offense was committed, or where any of its elements occurred, or where the person exploited in prostitution actually resides at the time of the commission of the offense; provided, that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts.

SEC. 11. Prescriptive Period. - Cases under this Act shall prescribe in TWENTY (20) years. The prescriptive period shall commence to run from the day on which the person exploited in prostitution is delivered or released from the situation of exploitation and shall be interrupted by the filing of the complaint or information and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.

SEC. 12. Exemption from Filing Fees. -When the victim of prostitution institutes a separate civil action from the recovery of civil damages, s/he shall be exempt from the payment of filing fees.

SEC. 13. Confiscation and Forfeiture of the Proceeds and Instruments Derived from Prostitution.- In addition to the penalty imposed for the violation of this Act, the Court shall order the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act: *Provided*, however, that all awards for damages shall be taken from the personal and separate properties of the offender: *Provided*, further, that if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

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

SEC. 14. Trust Fund. - All fines imposed under this Act and the proceeds and properties forfeited and confiscated pursuant to Section 12 hereof shall accrue to a Trust Fund to be administered by the Council to be used exclusively for programs that will prevent prostitution and protect, heal and reintegrate prostituted persons into the mainstream of society. Such programs shall include but not limited to those provided for under Section 20 of this Act.

SEC. 15. Human rights of persons exploited in prostitution. -

Persons exploited in prostitution have human rights that must be respected, protected and promoted by all branches, agencies and instrumentalities of the government in law enforcement drives, criminal prosecution, civil suits, service provision, and program development and implementation. These rights include, but are not limited to:

- (a) the right to be treated as human beings;
- (b) the right to dignity and security of person;
- (c) the right against any form of discrimination;
- (d) the right to equal protection of the law;
- (e) the right to be protected from abuse and exploitation;
- (f) the right to seek redress for violations of their rights and to have their complaints appropriately addressed;
- (g) the right to fair and humane treatment;
- (h) the right to sensitive and appropriate legal, health, and other social services;
- (i) the right to organize themselves and fight for their
- (j) the right to be consulted on any governmental initiative legitimate concerns; and affecting them.

Persons exploited in prostitution shall not be detained on the occasion of on by reason of a raid or in the name of law enforcement. There shall be at least one social worker or one representative from a non-governmental organization known to be working with women exploited in prostitution present during raids.

During raids of establishment, and at any stage of the investigation, prosecution and trial of complaints for violation of this Act, law enforcers, prosecutors and judges shall not disclose to the public the name, personal circumstances and other information that will establish the identity of the person exploited in prostitution, unless the latter consents thereto in writing.

It shall also be the duty of law enforcers to ensure that persons exploited in prostitution are not exposed to the media on the occasion of a raid. Law enforcers who allow or facilitate the exposure to the media of persons exploited in prostitution shall suffer the penalty of six (6) months imprisonment, without prejudice to the filing of other criminal, civil and administrative charges under applicable laws.

SEC. 16. Confidentiality.- It shall be the responsibility of any journalist, reporter, editor, publisher or producer of print and broadcast media to protect the identity and privacy of persons exploited in prostitution, most particularly on the occasion of a raid or rescue operation. Any journalist, reporter, editor, publisher or producer of print and broadcast media who exposes to the public the identity of any person exploited in prostitution without her or his consent thereto in writing, or causes the publication of any picture or video that violates the dignity and other human rights of the person exploited in prostitution, shall suffer the penalty of imprisonment of six (6) years and a fine of not less than Five Hundred Thousand Pesos (P500,000.00) but not more than One Million Pesos (P1,000,000.00). In addition, the owner or publisher of the print or broadcast media found guilty of the violation shall pay a fine of Five Hundred Thousand Pesos (P500,000.00). This shall be without prejudice to the right of persons exploited in prostitution to file a civil action for damages for the violation of their human rights or for any injury caused them by the publication.

SEC. 17. Entrapment Prohibited. - Law enforcers shall not use entrapment as a method in law enforcement activities when the same will involve the sexual exploitation of persons as defined in Section 3(b) of this Act. A law enforcement officer who resorts to this method shall suffer the penalty of eight (8) years imprisonment.

SEC. 18. Requirements for Hotels, Motels and Lodging Houses. -

Notwithstanding any legislation, ordinance or rule to the contrary, every hotel, motel or lodging area shall:

- (a) maintain a reception and registration area for guests and patrons that is readily within the public view;
- (b) maintain open garages, or those that do not have doors or any closing mechanism;
- (c) maintain good lighting in all its entrances, exits, driveways and garages;

No hotel, motel or lodging house shall be allowed to operate in any part of the Philippines without complying with the preceding requirements.

For the purpose of this Section, hotels, motels and lodging houses already operating shall have six (6) months from the effectivity of this Act to comply with this provision. Failure of any hotel, motel and lodging house to comply with this Section shall result in the cancellation of their license or permit to operate.

SEC. 19. Responsibilities of Local Government Units in Anti-Prostitution Efforts. - Local government units shall exercise their powers to curb prostitution within their respective jurisdictions. It shall be unlawful for any local government unit to issue licenses or permits for the operation of any establishment that is used or intended to be used for any prostitution activity. Any such license or permit already issued prior to the effectivity of this Act shall be deemed automatically revoked or cancelled and shall not be renewed.

The responsibility shall include conducting public information campaign against prostitution, carrying out rescue operations and ensuring the safety or security of victims of prostitution.

Local government units may employ elements of the National Bureau of Investigation (NBI) or the Philippine National Police (PNP) as provided for under Republic Act No. 6975 as amended by Republic Act No. 8551. The national government shall ensure that local government units conscientiously engage in anti-prostitution activities, provide support for the same, and intervene when necessary.

SEC. 20. *The National Anti-Prostitution Council.* - There shall be a National Anti-Prostitution Council composed of the Department of Social Welfare and Development as the lead agency and shall have as members the following:

- (a) Department of Social Welfare and Development (DSWD) as lead agency
- (b) National Commission on the Role of Filipino Women (NCRFW)
- (c) Department of Labor and Employment (DOLE)
- (d) Technical Education and Skills Development Authority (TESDA)
- (e) National Economic Development Authority (NEDA)
- (f) Department of Health (DOH)
- (g) Department of Interior and Local Government (DILG)
- (h) Department of Justice (DOJ)
- (i) Department of Tourism (DOT)
- (j) National Bureau of Investigation (NBI)
- (k) Philippine National Police (PNP)
- (l) three (3) Non-government organizations (NGOs) to be selected by NGOs providing support services to victims of prostitution
- (n) three (3) representatives of persons exploited in prostitution.

The National Anti-Prostitution Council shall perform the following functions:

i. develop a program addressing prostitution and the needs of persons exploited in prostitution and those vulnerable to be exploited in prostitution. The program shall include public information and education campaign against prostitution, crisis intervention service, education assistance, socio-economic assistance such as sustainable livelihood skills training and financial support for scale businesses, and integration and complete after-care programs for persons exploited in prostitution, among others;

ii. identify and, if necessary, create centers in strategic places all over the Philippines that will provide health services, including counseling and therapy, temporary shelter and other crisis intervention services to persons exploited in prostitution. The rape crisis centers established under Republic Act No. 8505 and the hospital-based protection units for women and children may also serve as centers servicing persons exploited in prostitution. Each center shall establish a network of health care and other service providers to address the needs of persons exploited in prostitution;

iii. ensure that units are created or identified within relevant government agencies, particularly those composing the Council, that shall focus on addressing prostitution and the needs of persons exploited in prostitution. This shall include units within the National Prosecution Service Offices in local

government units that shall specifically focus on the prosecution of offenders under this Act;

iv. ensure that relevant government agencies work in close coordination with each other in addressing prostitution and the needs of persons exploited in prostitution;

v. develop and implement a training program for law enforcers, public prosecutors, judges, government lawyers, government health care providers, social workers and barangay officials that aims to increase their understanding of prostitution as a system, and equip them with the perspective and skills to appropriately address the needs of persons exploited in prostitution, respect, protect and promote their human rights, and pursue the prosecution of offenders;

vi. ensure that local counterparts of the council are created in every municipality, city and province:

vii. undertake and lead the prosecution of any violation of this Act; and

viii. promulgate, when necessary, rules and regulations for the effective implementation and enforcement of this Act.

ix. continuously conduct surveillance and monitor establishments to prevent prostitution. They shall promptly investigate any establishment suspected to be engaged in prostitution and shall take appropriate measures, in coordination with the local government unit concerned and other relevant government agencies for the speedy prosecution of the offenders.

x. undertake corrective and enforcement measures to stop activities in tourism constituting, promoting or facilitating prostitution in consultation with government agencies and non-governmental organizations (NGOs) working for the elimination of prostitution.

SEC. 21. Mandatory Services to Victims of Prostitution. - To ensure healing, recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies, particularly the members of the Council, shall make available the following services to trafficked persons:

(a) Counseling;

(b) Free legal services which shall include information about the victim's rights, the procedure for filing complaints, claiming compensation and other legal remedies to them;

(c) Emergency shelter or appropriate housing;

(d) Medical or psychological services;

(e) Livelihood and skills training; and

SEC. 22. Appropriations. - The amount necessary to carry out the provisions of this Act is hereby authorized to be appropriated in the General Appropriations Act of the year following the enactment of this law and every year thereafter.

All local government units are likewise mandated to allot not less than five percent (5%) of their gender and development (GAD) budget and not less than five percent (5%) of the local development fund of local government units (LGUs) for programs, projects and activities aimed to control prostitution activities within their jurisdiction, including the development and conduct of deterrent information campaigns directed to potential and actual buyers of prostitution sex.

SEC. 23. - *Implementing Rules and Regulations.* - The Council shall promulgate the necessary implementing rules and regulation within sixty (60) days from the effectivity of this Act.

SEC. 24. *Separability Clause.* - If any provision of this Act is declared invalid or unconstitutional the remaining provisions not affected thereby shall continue in full force and effect.

SEC. 25. *Repealing Clause.* - Articles 202 and 341 of the Revised Penal Code are hereby repealed. All other laws, decrees, ordinances and rules inconsistent with the provisions of this Act are hereby modified or repealed accordingly.

SEC 26. *Effectivity Clause.* - This Act shall take effect upon completion of its publication in at least two (2) national newspapers of general circulation.

Approved,