

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

22 AUG 16 P2:39

SENATE
S. No. 1188

RECEIVED BY: 

Introduced by Senator Christopher Lawrence "Bong" T. Go

AN ACT
AMENDING SECTION 5 OF REPUBLIC ACT NO. 7610, OTHERWISE KNOWN
AS THE "SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE,
EXPLOITATION, AND DISCRIMINATION ACT"

EXPLANATORY NOTE

The 1987 Constitution, Article XV, Section 3 (2) declares that the State shall defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.

In *People v. Tulagan*,¹ the Supreme Court lamented the incongruent penalties for acts of lasciviousness committed against a child in which acts of lasciviousness committed against a child below (twelve) 12 years of age is punished less severely than the same acts committed against a child who is between twelve (12) to eighteen (18) years of age, to wit:

"Over and above the foregoing, we observe that despite the clear intent of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty for violation of Section 5(b) of R.A. No. 7610 [reclusion temporal medium] when the victim is under 12 years old is lower compared to the penalty [reclusion temporal medium to reclusion perpetua] when the victim is 12 years

¹ G.R. No. 227363, 12 March 2019.

old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31, Article XII of R.A. No. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum, whereas as the minimum term in the case of the older victims shall be taken from *prision mayor* medium to *reclusion temporal* minimum. It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints, but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law. Thus, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child."

This law takes into consideration the foregoing observation and clarifies, once and for all, the legislative intent of R.A. No. 7610.

In light of the foregoing, the immediate passage of the bill is sought.


SENATOR CHRISTOPHER LAWRENCE "BONG" T. GO



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

1 Section 1. Section 5, Article III of Republic Act No. 7610, otherwise known as
2 the "Special Protection of Children Against Abuse, Exploitation, and Discrimination
3 Act," as amended, is hereby further amended to read as follows:

4 "Section 5. *Child Prostitution and Other Sexual Abuse.* –
5 Children, whether male or female, who for money, profit, or any other
6 consideration or due to the coercion or influence of any adult,
7 syndicate or group, indulge in sexual intercourse or lascivious conduct,
8 are deemed to be children exploited in prostitution and other sexual
9 abuse.

10 "The penalty of *reclusion temporal* in its medium period to
11 reclusion perpetua shall be imposed upon the following:

12 (a) Those who engage in or promote, facilitate or induce child
13 prostitution which include, but are not limited to, the following:

14 (1) Acting as a procurer of a child prostitute;

1 (2) Inducing a person to be a client of a child prostitute
2 by means of written or oral advertisements or other similar
3 means;

4 (3) Taking advantage of influence or relationship to
5 procure a child as prostitute;

6 (4) Threatening or using violence towards a child to
7 engage him as a prostitute; or

8 (5) Giving monetary consideration goods or other
9 pecuniary benefit to a child with intent to engage such child in
10 prostitution.

11 (b) Those who commit the act of sexual intercourse of lascivious
12 conduct with a child exploited in prostitution or subject to other sexual
13 abuse; *Provided*, That when the victims is under twelve (12) years of
14 age, the perpetrators shall be prosecuted under Article 335, paragraph
15 3, for rape and Article 336 of Act No. 3815, as amended, the Revised
16 Penal Code, for rape or lascivious conduct, as the case may be:
17 *Provided*, That the penalty for lascivious conduct when the victim is
18 under twelve (12) years of age shall be reclusion temporal in its
19 medium period **TO RECLUSION PERPETUA**; and

20 (c) Those who derive profit or advantage therefrom, whether as
21 manager or owner of the establishment where the prostitution takes
22 place, or of the sauna, disco, bar, resort, place of entertainment or
23 establishment serving as a cover or which engages in prostitution in
24 addition to the activity for which the license has been issued to said
25 establishment."

26 **Sec. 2. Coverage.** – This Act shall not be applicable to those accused who are
27 charged with violation of Sec. 5, Article III of R.A. No. 7610 through an Information
28 filed before the courts prior to the effectivity of this Act and are undergoing trial,
29 regardless of the stage thereof.

30 This Act shall only be applicable to acts committed after its effectivity.

1 No accused shall be convicted and penalized with the higher penalty under
2 this Act where the same would violate the constitutional proscription against *ex post*
3 *facto* laws.

4 Sec. 3. *Implementing rules and regulations.* – The Department of Justice, in
5 coordination with the Supreme Court, shall formulate and promulgate, in accordance
6 with applicable laws and rules, such rules or regulations as are necessary to
7 implement the provisions of this Act.

8 Sec. 4. *Separability clause.* – If for any reason any part or provision of this Act
9 is declared invalid or unconstitutional, the remaining parts or provisions not affected
10 thereby shall remain in full force and effect.

11 Sec. 5. *Repealing clause.* – All laws or parts of laws, presidential decrees,
12 executive orders, circulars, rules and regulations contrary to or inconsistent with the
13 provisions of this Act are hereby repealed or amended accordingly.

14 Sec. 6. *Effectivity.* – This Act shall take effect fifteen (15) days after its
15 publication in the Official Gazette or in a newspaper of general circulation.

Approved,