

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. **4050**



Introduced by **DIWA Party-list Representative Emmeline Y. Aglipay – Villar**

EXPLANATORY NOTE

The history of laws is a history of rules laid down by the powerful. For centuries, the powerful -- the lawmakers -- were composed almost entirely of men. This is why crimes that have predominantly been committed by men against women have so much historical baggage to unpack. Why the law on rape has traditionally possessed many caveats and qualifications and roadblocks to successful prosecution, when in reality nothing should be more simple -- sexual act committed against one person who did not consent thereto is heinous crime that should be punished. Women have had to scratch and claw for their right to say "no". While the law has made strides, in its current form it still retains hallmarks of the era when women were seen as the property of men and men were seen as having a right to sex.

This bill, based on a draft by the Philippine Commission on Women, seeks to bring the prosecution and definition of rape up to modern standards, no longer placing the onus on the victim's refusal or resistance, or the specifics of the sexual act performed or attempted, but instead placing focus on consent of all parties. The bill acknowledges and elaborates upon the circumstance which are to be considered as inherently coercive; increases the age of statutory rape from twelve to sixteen; and removes the qualifier, which requires that a person in authority must have taken advantage of their position in order for that authority to be considered in the computation of compensation due to the victim. The bill also provides for increased compensation for victims under certain circumstances, such as, when the victims is a minor and/or the offender is HIV or AIDS positive known to the latter. The bill, if passed, shall stand as a reiteration of principles designed to prevent personal and institutional biases from obstructing justice.

Emmeline Y. Aglipay

EMMELINE Y. AGLIPAY – VILLAR
Representative, DIWA Party-list

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AN ACT
AMENDING REPUBLIC ACT 8353,
ALSO KNOWN AS THE ANTI-RAPE LAW OF 1997

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

SECTION 1. Article 266-A of Executive Order No. 209 is hereby amended to read as follows:

SECTION 1. The crime of rape, classified as a Crime Against Persons under Title Eight of Act No. 3815, otherwise known as the Revised Penal Code is hereby amended to read as follows:

“Chapter Three

Rape

~~{Article 266-A. Rape; When And How Committed. – Rape Is Committed~~

~~1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:~~

~~a) Through force, threat, or intimidation;~~

~~b) When the offended party is deprived of reason or otherwise unconscious;~~

~~c) By means of fraudulent machination or grave abuse of authority; and~~

~~d) When the offended party is under twelve (12) years of age or is demented though none of the circumstances mentioned above be present.~~

~~2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.]~~

Article 266-A. Rape: *When and How Committed.* -

(1) Rape is a sexual assault characterized by a lack of consent. Sexual assault takes place when the bodily integrity of a person is violated by another by means of sexual conduct. Consent is lacking when it is not voluntary and unequivocal.

The following is a non-exclusive list of acts that constitute sexual assault: when one has carnal knowledge of another without their consent; a man who touches or inserts his penis into the female's inner or outer vaginal labia, without her consent; a man who touches or inserts his penis into another person's mouth or anal orifice, without the person's consent; a person who touches or inserts any instrument or object, including a finger, into the genital or anal orifice of another person, without the latter's consent.

(2) Any sexual act committed where at least one partner does not consent shall be considered rape, and this shall include, but not be limited to, instances characterized by the following:

- (A) The presence of coercive or other similar circumstances rendering the complainant incapable of giving consent:
 - (i) The use of force or detention, whether to the offended party directly or to another in order to coerce the offended party;
 - (ii) Threat or intimidation, whether to the offended party directly or to another in order to coerce the offended party;
 - (iii) Fraudulent machination;
 - (iv) Abuse of authority;
 - (v) When the offended party is under the influence of intoxicating liquor or any drug or other substance which mentally incapacitates;
- (B) When the offended party is under sixteen (16) years of age;
- (C) When the offended party is demented or is deprived of reason and was not in his/her lucid interval during the sexual act;

(D) When the offended party is unconscious or asleep for any reason.

(3) Rape is deemed consummated when the victim's genital, mouth, or anal orifice is touched by the sexual organ or any part of the body or any object used to commit sexual assault as defined above.

(4) Evidence in Rape - The following principles apply in appreciation of evidence for rape cases:

- (A) No evidence of commission of force or violence is required for conviction.
- (B) No proof of penetration is required for conviction.
- (C) There is no requirement for any party to have sustained an injury in order for there to be a conviction.
- (D) Findings of post-traumatic stress disorder, rape trauma syndrome and the like among offended parties of sexual violence shall be admitted as proof of lack of consent.
- (E) *Rape shield* - The past sexual conduct of the rape victim shall be absolutely prohibited from being presented as evidence in court and shall not be admitted as evidence.
- (F) There shall be no standard form or criteria of human behavioural response from the offended party in order to prove lack of consent.
- (G) Failure to immediately report the crime to the authorities shall not destroy the credibility of the complaint.
- (H) *Res gestae* evidence shall be admitted as evidence since the very first persons to whom the private complainant related the rape incident while in a state of trauma are crucial witnesses.
- (I) Positive medico-legal findings of injury shall be admitted as evidence while absence of hymen lacerations shall not disprove sexual abuse.
- (J) Medico-legal and police stations should ensure proper DNA collection of samples, DNA analysis and courts shall admit these reports as evidence."

~~["Article 266 B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.~~

~~"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.~~

~~"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become reclusion perpetua to death.~~

~~"When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion perpetua to death.~~

~~"When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.~~

~~"The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:~~

~~"1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;~~

~~"2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;~~

~~"3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;~~

~~"4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;~~

~~"5) When the victim is a child below seven (7) years old;~~

~~"6) When the offender knows that he is afflicted with the Human Immune-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;~~

~~"7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;~~

~~"8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;~~

~~"9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and~~

~~"10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.~~

~~"Rape under paragraph 2 of the next preceding article shall be punished by prison mayor.~~

~~"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prison mayor to reclusion temporal.~~

~~"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be reclusion temporal.~~

~~"When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be reclusion temporal to reclusion perpetua.~~

~~"When by reason or on the occasion of the rape, homicide is committed, the penalty shall be reclusion perpetua.~~

~~"Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/ qualifying circumstances mentioned in this article.~~

"Article 266-B. *Penalty and Compensation in Rape*– The penalty for the crime of rape shall be reclusion perpetua. The compensation to be awarded shall be commensurate with the gravity of the violations of the complainant's rights, as determined by the courts.

The following circumstances shall be considered as warranting higher compensation:

- (1) Whenever the rape is committed with the use of a deadly weapon;
- (2) Whenever the rape was committed by two or more persons;
- (3) When by reason or on the occasion of the rape, the victim has become insane or has developed a psychological;
- (4) When the rape is attempted and a homicide is committed by reason or on the occasion thereof;
- (5) When by reason or on the occasion of the rape, homicide is committed;
- (6) When the offender is a biological or adoptive parent or a de facto parent or a person who has raised the offended party without the benefit of legal adoption, ascendant, step-parent, de facto or legal guardian, relative by

consanguinity or affinity within the third civil degree, or the common-law spouse or live-in partner of the parent of the victim;

(7) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

(8) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

(9) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

(10) When the victim is below eighteen (18) years old, and such circumstance warrants increasingly higher penalties as the age of the victim decreases;

(11) When the offender knows that he is afflicted with Human Immuno Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually-transmissible disease;

(12) When committed by persons of public or moral authority such as:

(a) Any member of the armed forces of the Philippines or paramilitary units thereof or the Philippine National Police or any law enforcement agency or penal institution;

(b) Any elected official or appointed official performing a public function;

(c) Any person with moral ascendancy or possessing significant political or religious influence;

(13) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

(14) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime;

(15) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime; and

(16) When the act of rape is documented through any kind of media, and the documented act of rape has been disseminated to the public such as the Internet or via other telecommunications device or mechanism."

Article 266-C. *No defense, exemption, or extinguishment of crime or penalty in Rape* - Subsequent forgiveness, marriage or other form of relationship between the victim and the offender shall not constitute a defense to a charge of rape and shall not, in any manner or degree, extinguish the crime or the penalty."

"Article 266-D. *Right to Appeal in Certain Cases* -There shall be a right to appeal of victims of rape in cases of acquittals that are anchored on gender myths and biases."

SECTION 2. *Separability Clause.* – If any provision or part of this Act is declared void or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 3. *Repealing Clause.* –Article 266 of Act No. 3815, as amended by Republic Act 8353, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

SECTION 4. *Effectivity Clause.*-This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,