

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



SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 4279

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

EXPLANATORY NOTE

There is no international consensus with regard to how governments should tackle the issue of prostitution, broadly understood here to mean the sale of sexual intercourse or sexual acts. There are many groups that call for the complete abolition of prostitution, seeing the same as a source of inequality and exploitation and an adjunct to human trafficking. Others, such as Amnesty International, believe that legalizing voluntary sex work is the best way to reduce the harms and dangers of the sex industry.

There are a few places where there is common ground: first, is that those who provide the sexual services in prostitution, usually women and often children, should not be subject to criminal liability. Second, is that prostitution involving minors must be completely eradicated. This bill, based in part on House Bill No. 98 by the honorable Representatives de Jesus and Brosas, seeks to achieve those goals.

But it's also important to take into account the validity of issues raised across the spectrum of approaches to the issue of prostitution. The difference in approaches can partly be explained by a difference in focus: entities such as Amnesty International are explicitly focused on sex work that is consensual, while abolitionist groups are focused on situations wherein women and children are exploited in prostitution, coerced through force, threat, deception, or through desperate circumstance.

This bill, in seeking to deal with prostitution in the Philippine setting, explicitly removes from the ambit of criminal prosecution the sexual activities of consenting adults that do not involve a person exploited in prostitution, regardless of whether the same involves the exchange of compensation. Nevertheless, this bill still deems punishable sex work engaged in for the profit or monetary gain of others, holding both patrons and facilitators liable, because such arrangements lend themselves too easily to exploitation, and are not susceptible to consistent and accurate supervision given the government's current infrastructure. While this stance is abolitionist in nature, it is important to heed the reservations raised regarding the

enforcement of such measures making life more perilous for those the State seeks to protect, and as such this bill provides strict guidelines for its enforcement, as well as a means for those who have been exploited in prostitution to participate in policy formation.

Emmeline Y. Villar

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AN ACT
AN ACT REPEALING ARTICLES 202 AND 341 OF THE REVISED PENAL CODE
AND INSTITUTING A SYSTEM OF PROTECTION FOR VICTIMS OF
PROSTITUTION
AND FOR OTHER PURPOSES

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

SECTION 1. Short Title- This Act shall be known as "The Anti-Prostitution Act of 2016"

SECTION 2. Declaration of Policies- The State:

- (a) declares its commitment to end the continuing sexual exploitation of women and children and all forms of gender-based violence by comprehensively addressing the factors that perpetuate sexual exploitation;
- (b) recognizes prostitution as a human rights violation which calls for coordinated and sustained response from all agencies and at all levels of government;
- (c) recognizes that women and children are victimized by the system of prostitution and must therefore be given protection and support by the State, instead of being treated as criminals;
- (d) recognizes that eliminating prostitution requires the abolition of the patriarchal ideology that perpetuates the view of women as objects for commodification; and
- (e) recognizes international commitments, 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, declaring 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 observe, protected, and fulfilled.

SECTION 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 of a person by another, whether through the performance of such act or mere demonstration thereof, for sexual intercourse, lascivious conduct or for sexual gratification in exchange for money or checks profit or any 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, pleasure or exploitation and for the monetary gain or profit of others.

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

(d) Prostitution Den- refers to any business or enterprise, including but not limited to, sauna, bath, massage parlour, discotheque, bar, restaurant, resort, lodging house, motel, hotel, theatre, ship, vessel, cab or taxi, or any other vehicle, or any dwelling, house, jail, detention center, structure or building, or any group, association, organization, or services such as escort services, serving as a cover or venue for, or which engages in prostitution activities as defined in Section 4 of this Act.

(e) Sexual Act- refers to sexual intercourse, including genital-to-genital, oral-to-genital, anal-to-genital, or 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 presumed to be of sexual nature, whether the same is made between persons of the same or opposite sex.

(f) Sexual exploitation- refers to the practice by which a person is sexually subjugated through abuse or violation, either covert or overt, of a person's sexuality and physical or mental integrity as a result of being subjected to threat, deception, coercion, abduction, force, abuse of authority, debt bondage, fraud or through abuse of her/his vulnerability as a means of achieving gratification, financial gain, and advancement.

(g) Public Officers — refers to any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class.

SECTION 4. Punishable Acts- Prostitution is a crime committed by:

- (a) Giving, conveying or delivering 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 the sexual act; 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, provided, further, that the actual performance of the acts by the person exploited in prostitution is not a requirement for the offender to be prosecuted under this provision;
- (b) Recruiting, inducing, persuading, enticing, compelling, kidnapping, transporting or in any manner procuring a person for the purposes of exploiting a person in prostitution or facilitating the occurrence of prostitution;
- (c) By causing a person to work in an establishment knowing that the same is involved in prostitution activities or when she/he has reasonable cause to believe that such establishment is involved in the said activities;
- (d) Deriving profit or advantage from any of the acts defined in this Section as owner, operator, manager, head, director, office or agent of an 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;
- (e) Any manner or under any pretext advertising, organizing, arranging, managing, promoting or facilitating the commission of any of the acts prohibited under this Act; *provided*, that mere ownership of the building or land where the acts take place shall not be considered to be punishable if not coupled with other acts in this section;
- (f) Using, enticing, recruiting, or offering another person as a sexual offering or favour to another, as part of a perceived duty, obligation, or in order to win favor as a member of an organization such as a church, club, cult, or group of friends -- or when such is done in order to become a member or to impress such an organization;
- (j) Using telecommunication or information technology to promote or facilitate any of the acts defined in this Section;
- (k) When any member of the military or police establishment, or any government official or employee, or any person in authority facilitates, tolerates, or allows the commission of any of the acts defined in this Section or, in any manner, provides protection to the perpetrators of the said acts;
- (l) Leasing, subleasing, or in any other manner allowing the use of any dwelling, house, structure or building knowing that the lessee/sub-lessee intends to use or uses it for prostitution activities as defined in this section, or continues with the lease, sublease or any other arrangement for its use knowing that the place is being used for prostitution.

Nothing in this Act is intended to regulate or penalize the sexual activities of consenting adults that do not involve a person exploited in prostitution, regardless of whether the same

involves the exchange of compensation. Any laws to the contrary are hereby explicitly repealed.

SECTION 5. Committing child prostitution- Child prostitution is committed by:

- (a) any person who acts as a procurer of a child for prostitution;
- (b) any person who induces another to be a client of a child prostitute;
- (c) any person who threatens or uses violence towards a child or any other person, in order to engage the child as a prostitute;
- (d) any person who gives monetary consideration, goods or other pecuniary benefits to a child or to another, with the intent to engage such child in prostitution or in order to engage in a sexual act with such child;
- (e) any person who commits the act of sexual intercourse with a child exploited in prostitution or subjected to other sexual abuse.

SECTION 6. Attempt to commit child prostitution. There is an attempt to commit child prostitution when a person knowingly receives personal services from a child in a sauna parlour or bath, massage clinic, health club or any other similar establishment.

SECTION 7. Who may commit the prohibited acts. The acts defined in Section 4 of this Act may be committed by any natural or juridical person or group of persons.

SECTION 8. Person Exploited in Prostitution as Victims. Any woman, man or child used or employed for another person's sexual gratification, pleasure 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 to the extent referred to under Section 10(b) hereof.

SECTION 9. Consent of victim immaterial. 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 her/his, criminal liability.

SECTION 10. Knowledge that Person is Exploited in Prostitution is Presumed. Any person committing any of the acts defined in Section 4 (a) is presumed to know that he or she is committing them with a person exploited in prostitution if these take place in a sauna parlour or bath, massage clinic, health club or any other similar establishment.

SECTION 11. Civil Liability for prostitution. Persons exploited in prostitution may bring a civil action for damages against the persons allegedly responsible for their exploitation. Such civil action shall be independent of any criminal proceedings and a preponderance of evidence shall suffice support such action.

SECTION 12. Applicability of Republic Act No.7309 and Republic Act No.6981. Persons exploited in prostitution shall be covered by the Witness Protection, Security and Benefit Act,

or Republic Act No. 6981. They may also file claims with the Board of Claims created under Republic Act 7309. For the purpose of the application of Republic Act No. 7309, persons exploited in prostitution shall be deemed victims of violent crimes under Section 3, paragraph (d) thereof.

SECTION 13. Responsibilities of government agencies in anti-prostitution efforts. -

Local government units shall exercise their powers to curb prostitution within their respective jurisdictions. Their responsibility shall include conducting education and public information campaign against prostitution and to eradicate the negative views attached to persons forced into prostitution. Local Government Units may employ elements of the National Bureau of Investigation or the Philippine National Police 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.

The NBI and PNP shall continuously conduct surveillance and monitor establishments to prevent prostitution. They shall promptly investigate any establishment suspected to be engaged in activities constituting prostitution under Section 4 of this Act 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.

The Department of Tourism (DOT) shall undertake corrective and enforcement measures to stop activities in tourism constituting, promoting or facilitating prostitution.

The Department of Information and Communications Technology and the National Bureau of Investigation shall take down advertisements disseminated online or through cellphone SMS that promote or suggest prostitution.

SECTION 14. Liability of local government units. Provinces, cities and municipalities shall be liable for damages 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.

The responsible authorities shall be deemed to have knowledge of the prostitution activities when the same are common knowledge in the community.

SECTION 15. Requirements for hotels, motels and lodging houses. Notwithstanding any legislation, ordinance or rule to the contrary, every motel or lodging area shall:

- (a) Maintain a reception and registration area for guests and patron that is readily within the public view;
- (b) Strictly require the registration of every guest and patron in the reception and registration area referred to above, and for this purpose keep a registration book at all times;
- (c) Maintain open garages, or those which do not have doors or any closing mechanism;

(d) Maintain good lightning in all its entrances, exits, driveways and garages.

No hotel, motel or lodging 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 months from the effectivity of this Act to comply with this provision.

SECTION 16. Human rights of persons exploited in prostitution.(1) Persons exploited in prostitution have human rights which 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 legitimate concerns, and
- (j) the right to be consulted on any governmental initiative affecting them

(2) Persons exploited in prostitution shall be entitled to protection and assistance from the PNP and other law enforcement bodies, without requiring the persons exploited in prostitution to cooperate in the investigation or prosecution in any other offense other than that for which they have requested protection or assistance. Allegations of sexual violence shall be duly investigated and shall not be treated differently due to the fact that the offended party is exploited or engaged in prostitution.

(3) Persons exploited in prostitution shall not be deported, even if they do not have the necessary documentation to legally remain in the country. In such a case, they shall be given a grace period of no less than four (4) months and assistance from the government in the event that they wish to remain in the country.

(4) Persons exploited in prostitution shall not be detained on the occasion of or 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 establishments, 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.

(5) No person shall act to shame or conduct a campaign aimed at shaming persons exploited in prostitution by publicly revealing them as such or by spreading their names or photographs or images of them. 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 that violates the dignity and other human rights of the persons exploited in prostitution, shall suffer the penalty of imprisonment for 6 months. 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 (Php500,000). 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.

SECTION 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 (f) of this Act. A law enforcement officer who resorts to this method shall be punished under Section 4 (a) of this Act.

SECTION 18. Enforcement of labor laws and regulations. The Bureau of Working Conditions of the Department of Labor and Employment and its regional, provincial and district offices shall conduct, in coordination with the local government officials and relevant agencies, quarterly monitoring of all establishments to ensure that they comply with the minimum wage law and other laws on labor standards. Quarterly monitoring reports shall be submitted to the chief executives of provinces, cities, and municipalities for their appropriate action. Copies shall also be furnished to the Anti-Prostitution Council created under this Act.

SECTION 19. The National Anti-Prostitution Council. There shall be a National Anti-Prostitution Council composed of the Department of Social Welfare and Development as lead agency, the Philippine Commission on Women, the Department of Labour and Employment, the TESDA, the Department of Health, the Department of Interior and Local Government, the Department of Justice, the National Bureau of Investigation, the Philippine National Police, three (3) non-government organizations (NGOs) selected by NGOs providing support services to victims of prostitution, and five(5) representatives of persons exploited in prostitution, three (3) of whom must have been persons exploited in prostitution. The National Anti-Prostitution Task Force shall perform the following functions, provided that

nationwide consultations with persons exploited in prostitution must be conducted prior to the implementation of any new programs or policies:

(a) 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 and on human rights of women in prostitution, crisis intervention services, educational assistance, and socioeconomic assistance such as sustainable livelihood skills training and financial support for small-scale businesses, among others;

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

(c) Ensure that units are created 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;

(d) Ensure that relevant government agencies work in close coordination with each other in addressing prostitution and the needs of persons exploited in prostitution;

(e) 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;

(f) Ensure that local counterparts of the Task Force are created in every municipality, city and province; and

(g) Promulgate, when necessary, rules and regulations for the effective implementation and enforcement of this Act.

SECTION 20. 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 Anti-Prostitution Council, shall make the following services available to victims of prostitution:

(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; and
- (e) Livelihood and skills training.

SECTION 21. Penalties and Sanctions.

(a) Any person found guilty of knowingly committing any of the acts defined in Section 4 (a) shall suffer the penalty of imprisonment of six (6) to twelve (12) years and a fine of no less than two hundred thousand pesos (P200,000). If the person exploited in prostitution is a child, the penalty to be imposed shall be life imprisonment without prejudice to the filing of other criminal charges under other applicable laws.

(b) Any person found guilty of any of the other acts defined in Section 4 shall suffer the penalty of imprisonment of twenty (20) years. If the person exploited in prostitution is a child, the penalty to be imposed shall be life imprisonment without prejudice to the filing of other criminal charges under other applicable laws. A fine of not less than one million pesos (P1,000,000) but not more than two million pesos (P2,000,000) shall also be imposed upon the owner, operator or manager, or the directors and officers, of the establishment, corporation, partnership or association found to be engaged in any of the acts defined in Section 4. In addition, the establishment, corporation, partnership or association shall be immediately closed and its registration and/or license to operate shall be revoked, without prejudice to the filing of other charges under other applicable laws.

(c) 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 five (5) years for the first offense and imprisonment of twelve (12) years and 1 day to fourteen (14) years and 8 months for the succeeding violations, and a fine of not less than five hundred thousand pesos (PhP 500, 000) but not more than one million pesos (PhP1,000,000).

(d) The penalty of life imprisonment and a fine of one million pesos (PhP1,000,000) but not more than two million pesos (PhP2,000,000) shall be imposed on any person guilty of any of the acts penalized under this Act who is a member of the police or military establishment, or a government official or employee. In addition, the offender shall be perpetually disqualified from holding any appointive position or from running for any elective position in government.

(e) The penalty of life imprisonment and a fine of three million pesos (PhP3,000,000) but not more than five million pesos (PhP5,000,000) shall be imposed on the offender who is a leader or a person exercising authority in a religious group, sect or cult.

(f) When the offender is a foreigner, he/she shall be deported immediately after service of sentence and permanently barred from entry into the country.

(g) Any person found guilty of an attempt to commit child prostitution shall suffer the penalty of imprisonment of seventeen (17) years, without prejudice to the filing of other criminal charges under other applicable laws. A fine of no less than five hundred thousand pesos (PhP500,000) but not more than one million pesos (PhP1,000,000) shall further be imposed upon the owner, manager, or operator of the establishment.

In addition to the penalty of imprisonment and fine, any person who is found guilty of any of the acts provided under Section 4 and 5 of this Act shall undergo a rehabilitation program and community service with the Department of Social Welfare and Development (DSWD) which shall not be shorter than three months nor longer than one year, provided that only first-time offenders shall undergo such rehabilitation and community service program. The DSWD shall submit to the court a report of the rehabilitation and community service of the offender.

Public officers found guilty of an attempt to commit child prostitution shall, in addition to the penalty provided for the same, shall suffer the penalty of permanent absolute disqualification.

(h) Any person found guilty of the acts prohibited by Sec. 16 shall suffer the penalty of imprisonment for six (6) months and a fine of no less than fifty thousand pesos (PhP50,000) but no more than two hundred thousand pesos (PhP200,000), without prejudice to the filing of other criminal, civil, and administrative charges under applicable laws.

SECTION 21. Appropriation. 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 (5%) percent of their gender and development (GAD) budget and not less than five (5%) percent of the local development fund of local government units (LGUs) for programs, projects and activities aimed to control prostitution activities within their jurisdiction.

SECTION 22. 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.

SECTION 23. Suppletory Application. The provision of the Revised Penal Code shall have suppletory application to this Act.

SECTION 24. Repealing Clause. Articles 202 and 341 of the Revised Penal Code are hereby repealed. All other laws, decrees, executive orders, administrative orders, ordinances and rules inconsistent with or contrary to the provisions of this Act are hereby deemed amended, modified or repealed accordingly.

SECTION 25. Effectivity Clause. This Act shall take effect fifteen (15) days following its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation.

Approved,