

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS

Second Regular Session

House Bill No. **5313**

Introduced by **HON. ROZZANO RUFINO B. BIAZON**

EXPLANATORY NOTE

The controversy wrought by the impeachment complaint against incumbent President Gloria Macapagal-Arroyo and by the question of the admissibility of the alleged wiretapped material as evidence in the committee hearings in the House of Representatives, brings to fore the inadequacy of our wiretapping law. Indeed, for several reasons not least of which concerns our Constitutional right to public information, and our security as residents of this country, Republic Act No. 4200 should be amended.

Firstly, the din created by the debates within and without the halls of Congress has blurred and placed in the backseat the spirit of our Constitution. Article III Section 7 of the 1987 Constitution says, "The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

Secondly, the kind of society we live in begs for some consideration in matters where the security and the very lives of our citizens are in danger. The crime of kidnapping, for instance, is a constant scourge to our economy and society that often happens because it presents a profitable, and relatively low-risk, means of livelihood for unscrupulous people who also have the wherewithal to carry out this crime. Eliminating the crime has proven to be quite elusive to the past several administrations and quite understandably very frustrating to certain sectors of our society.

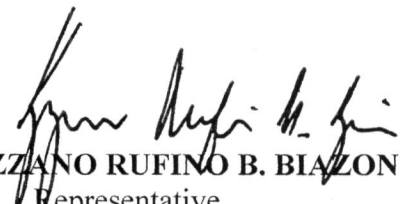
In kidnapping cases victims are always at the mercy of the perpetrators of the crime, and time is an essential element. The perpetrators of the heist are always initiating the communication. Proving the crime is almost always difficult, if not impossible, due to several factors, most especially because of the time constraint, and inadmissibility of wiretapped evidence. Seeking a court order and requesting the assistance of the concerned peace officer to be able to wiretap conversations between the criminals and family of the victims, and perhaps between/among the criminals themselves, may not be entirely feasible. There is, thus, a need to grant this capability, without need of a court order, to the family of the victim, or to a person authorized by the family to do so. The wiretapped material should then also be admissible as evidence in court.

Thirdly, due to the Filipino's penchant for specificity, there is a need then to specify which agency/ies of the government may be authorized to wiretap. Section 3 of RA 4200 says any peace officer may be authorized, but the mandates of our peace and order institutions do not contain such a provision. Logically, it is the NBI, PNP and the AFP who should have the skills and be given the authority to do so.

Fourthly, a provision for the methods of authentication of the wiretapped material should be included so that such material may be acceptable as evidence even in the absence of testimony by the owner of the voices in the recording. To avoid suspicions of cover-up, or any untoward actions on the part of the government or any of its officials and employees, wiretap material whose contents are deemed to be of national interest, or whose voices are determined to belong to any government official shall be acceptable as evidence in court.

To address these shortcomings and problems posed by the weaknesses of the law, this bill proposes to amend RA No. 4200.

For the restoration of our dignity as a people, passage of this bill is earnestly sought.



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AN ACT
AMENDING REPUBLIC ACT NUMBERED FORTY-TWO HUNDRED,
OTHERWISE KNOWN AS THE WIRETAPPING LAW

Section 1. Section 1 of Republic Act numbered forty-two hundred is hereby amended to read as follows:

“Section 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, OR BY ANY MEANS AVAILABLE, to secretly overhear, intercept or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder, OR ANY FORM OF TECHNOLOGY OR DEVICE THAT INTERCEPTS AND/OR MAKES RECORDINGS OF COMMUNICATION OR SPOKEN WORD POSSIBLE;

Section 2. Section 3 of the same Act is hereby amended to read as follows:

“Section 3. A. Nothing contained in this Act, however, shall render it unlawful or punishable for [any peace officer] DESIGNATED PERSONNEL OF THE NATIONAL BUREAU OF INVESTIGATION, PHILIPPINE NATIONAL POLICE, OR THE INTELLIGENCE SERVICE OF THE ARMED FORCES OF THE PHILIPPINES, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security x x x”

x x x

B. IT SHALL ALSO NOT BE UNLAWFUL OR PUNISHABLE FOR FAMILY MEMBERS OR ANY PERSON AUTHORIZED BY FAMILY MEMBER/S OF VICTIM/S OF KIDNAPPING TO EXECUTE ANY OF THE ACTS DECLARED TO BE UNLAWFUL IN SECTIONS 1 AND 2 OF THIS ACT AT ANY POINT DURING AND/OR AFTER THE COMMISSION OF THE CRIME OF KIDNAPPING. SUCH WIRETAPPED MATERIAL, OR ANY PORTION THEREOF, SHALL BE ADMISSIBLE AS EVIDENCE IN COURT.

All recordings made under court authorization, shall, within forty-eight hours after the expiration of the period fixed in the order OR UNDER THE CIRCUMSTANCES WARRANTED UNDER THE PRECEDING PARAGRAPH, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the [peace officer] AUTHORIZED PERSONNEL granted such authority' OR OF THE PERSON DESCRIBED IN THE PRECEDING PARAGRAPH stating the number of recordings made, the date and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

Section 3. Section 4 of RA No. 4200 is hereby amended to read as follows:

“Section 4. Any communication or spoken word, or the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or any information therein contained obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation, EXCEPT IN THE FOLLOWING CASES: A) WHERE THE PERSONS WHOSE CONVERSATIONS WERE RECORDED WERE GOVERNMENT OFFICIALS; AND B) WHERE THE SUBJECT OF CONVERSATION CONCERNS NATIONAL OR PUBLIC INTEREST.

Section 4. Additional Sections 5 and 6 are hereby added as follows:

“Section 5. THE REGULATION OF THE ACQUISITION, IMPORTATION, DISTRIBUTION AND/OR SALE OF ANY WIRETAP/INTERCEPT EQUIPMENT SHALL BE THE SOLE DUTY AND RESPONSIBILITY OF THE NATIONAL TELECOMMUNICATIONS COMMISSION UPON RECOMMENDATION BY THE DEPARTMENT OF JUSTICE.

“Section 6. AUTHENTICATION OF WIRETAPPED MATERIAL MAY BE UNDERTAKEN BY AGENCIES ACCREDITED BY THE DEPARTMENT OF JUSTICE. NEW TECHNOLOGIES AND METHODS FOR AUTHENTICATION OF SUCH MATERIAL SHALL BE CONSIDERED ESPECIALLY IF THE SAME HAS BEEN ACKNOWLEDGED BY COURTS IN OTHER COUNTRIES.”

Section 5. The sections of Republic Act No. 4200 are hereby renumbered accordingly.

Section 6. All laws inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

Section 7. The Secretary of the Department of National Defense, the Commissioner of the National Telecommunications Commission and the Secretary of Justice shall promulgate the implementing rules and regulations of this Act within sixty (60) days from its effectivity.

Section 8. This Act shall take effect fifteen (15) days after publication in the Official Gazette or in two (2) national newspapers of general circulation.

Approved,