

Republic of the Philippines
Congress of the Philippines
Metro Manila

Fifteenth Congress
Second Regular Session

House Bill No. **6170**



INTRODUCED BY GABRIELA WOMEN'S PARTY
REPRESENTATIVES EMMI A. DE JESUS AND LUZVIMINDA C. ILAGAN

Explanatory Note

Rape is no doubt the most horrendous of all forms of sexual violence and is one of the most heinous crimes that can be committed against a person.

It becomes exceptionally appalling when committed by a person with public or moral authority making willful use of his office's authority, resources and facilities, or when committed with the knowledge or even help of the head of a public office or institution to which the perpetrator belongs.

Rape causes immeasurable anguish to the victim and his/her family. Simply put, rape ruins the life of the victim and that of his or her family.

RA 8353, amending the crime of rape in the Revised Penal Code (RPC), reclassified rape from a crime against chastity to that of a crime against persons. Consequently, rape is no longer considered a private crime which cannot be prosecuted, except upon a complaint filed by the aggrieved party. Yet, many victims are still forced to suffer in silence than endure the stigma of a public prosecution where almost always, the victims seem to be the ones on trial.

While RA 8353 did away with the case law requirement of tenacious resistance, courts still have differing interpretations as to resistance and the law still reflects the presumption that the victims have consented to the sexual intrusion when they were not able to put up any amount of resistance. The law needs to zero-in on the absence of consent as a central element in the crime of rape.

What for many may be the most intimate expression of love or of oneness, when done without the consent or against the will of one party, is transformed into that heinous crime called rape. It is the lack of or inability to give consent that violates the victim's body and dignity. It is the lack of or inability to give consent that leaves a lasting mark in the victim's psyche and whole-being.

In the views on the Karen Tayag Vertido vs. Philippines (Communication No. 18/2008) adopted by the CEDAW Committee on July 16, 2010 the CEDAW Committee recommended that the Philippine definition in the anti-rape law should center on the lack of consent as the core of the definition of rape.

Therefore, it is lack of or inability to give consent that is the very essence of the crime of rape.

For a rape victim, each day is a painful reminder of the outrage done on their person perpetrated by a stranger. It is worse when rape is perpetrated by a spouse, father, uncle, adoptive father, step-father, guardian or other next of kin. It is unsettling, confusing, unnerving that someone so loved and trusted would force themselves on you or sell you to another for sex. In *People vs. Cabudbod* (G.R. No. 176348, April 16, 2009), the Cabudbod family adopted the abandoned 11-year-old girl who looked up to them for

care and protection but was hurt and traumatized with the repeated rape by her foster-father and foster-brother.

This proposed bill highlights the essence of the crime of rape in the following manner, to wit:

- 1) It provides for specific and clearer instances of a form of rape called sexual violation which is premised on lack of consent;
- 2) It provides for instances when lack of consent is presumed; and
- 3) It addresses the special situation of those who, by reason of their mental or physical state, are unable to give consent.

Particularly, in providing for instances when lack of consent is presumed, in these instances the onus to prove consent is placed on the accused and not on the victim. Whereas in the past, lack of consent is almost always associated with the presence of force or intimidation or marked resistance from the victim, in this proposed bill, lack of consent is presumed in six (6) instances as follows:

- 1) When the act is attended by force, threat, or intimidation;
- 2) When there is fraudulent machination, grave abuse of authority or moral ascendancy;
- 3) When the victim is deprived of reason or is otherwise unconscious;
- 4) When the victim is incapable of giving consent due to his or her mental or physical state or capacity;
- 5) When the victim is below fifteen years (15) of age or if fifteen (15) years of age and above, but he or she has a mental capacity of that of a fifteen (15) year old or below and the offender is of legal age.
- 6) When the offender is a biological or adoptive parent or a *de facto* parent or a person who has raised the offended parent 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;

Note that in number 2 above, rape is presumed in sexual violation that occurs with attendant fraudulent machination, grave abuse of authority or moral ascendancy. This particular proposal hopes to address the reality that not all forms of resistance or non-consent is expressed in the form of physical resistance. This also reinforces the reality that rape does not only occur among or between strangers and that in fact, peer rape or rape perpetrated by a person known to the victim can be more traumatic for the victim.

This bill clarifies that a non-consensual sexual act committed through fraudulent machination, grave abuse of authority or moral ascendancy is as deplorable as a non-consented sexual act that was perpetrated with the use of force or physical violence.

In number 6 above, this bill also does away with the requisite of proving a legal relationship between parties in cases of rape by related parties as in the case of a rape committed by a parent against his/her child by the specific inclusion of a *de facto* parent or a common-law spouse or live-in partner of the parent of the victim.

The bill also seeks to recognize that other forms of unwanted sexual conduct against males, young boys in particular be recognized as rape. It is not unknown that rape as a hate crime may be perpetuated against LGBTs.

Recently, a university student in Las Piñas was drugged and raped by a group of young men; the commission of the crime was uploaded by the perpetrators in the internet for the public to see, increasing the humiliation and victimization of the offended party. Such acts of recording and public dissemination are not among the circumstances that aggravate the crime of rape in the current rape law.

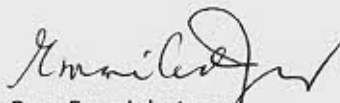
Hence, among the proposed amendments are:

- 1) To redefine the crime of rape revolving around the element of the absence or lack of consent;
- 2) To enumerate circumstances where there is a presumption of lack of consent, which places upon the accused the onus probandi or burden of proof that his sexual acts or sexual intercourse with the victim is consensual;
- 3) The inclusion of "finger or other parts of the body" in rape cases where there is non-penile penetration, consistent with existing jurisprudence;
- 4) Repeal of 266-C which pardons the rapist if he subsequently marries the victim or the rapist-husband if pardoned by the wife;
- 5) Repeal of 266-D which provides that any physical overt act manifesting resistance or that the victim is so situated that he/she is incapable of giving consent may be accepted as evidence in the prosecution of the crime;
- 6) Additional aggravating circumstances are specified, as follows:
 - a) the act of media recording of the act of rape as well as the dissemination thereof; and
 - b) the expansion of the definition of perpetrators with positions of moral or public authority

Notwithstanding the stigma of being a victim, being violated and all, some women brave their experience and fight their battle. However, not everyone fought up to the end. Most succumbed to fear and trauma for recounting each and every single act done against their will and against their person. They retreat for being raped once more in the public during trials. Tribulations are created in different forms, most are sugar-coated and deceiving. Only braver women kept their heads up but not all rape victims end up victors.

While all rape victims are not as brave as Karen Vertido, women who would want to seek justice through the judicial system deserve remedies.

Hence, amendments to the 1997 Anti-Rape Act are hereby proposed. The immediate passage and affectivity of the proposed bill is requested.



Rep. Emmi de Jesus
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INTRODUCED BY GABRIELA WOMEN'S PARTY
REPRESENTATIVES EMMI A. DE JESUS AND LUZVIMINDA C. ILAGAN

AN ACT AMENDING CHAPTER 3 OF REPUBLIC ACT 8353,
ALSO KNOWN AS THE ANTI-RAPE LAW OF 1997

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. The Title Eight of the said Code, Chapter Three on Rape, shall 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, even 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

SECTION 1. RAPE: WHEN AND HOW COMMITTED. – RAPE IS COMMITTED:

1) BY ANY PERSON WHO SHALL HAVE SEXUAL INTERCOURSE WITH ANOTHER PERSON WITHOUT THE LATTER'S CONSENT.

2) BY ANY PERSON WHO SHALL SEXUALLY VIOLATE ANOTHER PERSON BY COMMITTING ANY OF THE FOLLOWING:

- A) INSERTING HIS PENIS INTO ANOTHER PERSON'S MOUTH OR ANAL ORIFICE OR CUNNILINGUS;
- B) INSERTING A FINGER OR ANY PART OF THE BODY INTO THE VICTIM'S GENITAL OR ANAL ORIFICE; AND
- C) INSERTING AN INSTRUMENT OR OBJECT INTO THE VICTIM'S GENITAL OR ANAL ORIFICE;

SECTION 2. PRESUMPTION OF LACK OF CONSENT - LACK OF CONSENT IS PRESUMED UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

- a) WHEN THE ACT IS ATTENDED BY FORCE, THREAT, OR INTIMIDATION;
- b) WHEN THERE IS FRAUDULENT MACHINATION, GRAVE ABUSE OF AUTHORITY OR MORAL ASCENDANCY;
- c) WHEN THE VICTIM IS DEPRIVED OF REASON OR IS OTHERWISE UNCONSCIOUS;
- d) WHEN THE VICTIM IS INCAPABLE OF GIVING CONSENT DUE TO HIS OR HER MENTAL OR PHYSICAL STATE OR CAPACITY;
- e) WHEN THE VICTIM IS BELOW FIFTEEN YEARS (15) OF AGE OR IF FIFTEEN (15) YEARS OF AGE AND ABOVE, BUT HE OR SHE HAS A MENTAL CAPACITY OF THAT OF A FIFTEEN (15) YEAR OLD OR BELOW AND THE OFFENDER IS OF LEGAL AGE.
- f) WHEN THE OFFENDER IS A BIOLOGICAL OR ADOPTIVE PARENT OR A DE FACTO PARENT OR A PERSON WHO HAS RAISED THE OFFENDED PARENT 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;

SECTION 3. WHEN IS RAPE DEEMED CONSUMMATED. - 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 RAPE AS DEFINED IN SECTION1, NUMBER 2;

Article 266-B. Penalties. – 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 **OR HAS DEVELOPED A PSYCHOLOGICAL DISORDER**, the penalty shall be *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;]

1) 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;

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 Human Immuno-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;]

7) 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, WHEN THE OFFENDER TOOK ADVANTAGE OF HIS POSITION TO FACILITATE THE COMMISSION OF THE CRIME;

b) ANY ELECTED OFFICIAL OR APPOINTED OFFICIAL PERFORMING A PUBLIC FUNCTION, WHEN THE OFFENDER TOOK ADVANTAGE OF HIS POSITION TO FACILITATE THE COMMISSION OF THE CRIME;

c) ANY PERSON WITH MORAL ASCENDANCY OR POSSESSING SIGNIFICANT POLITICAL OR RELIGIOUS INFLUENCE, WHEN THE OFFENDER TOOK ADVANTAGE OF HIS POSITION OR INFLUENCE 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;

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; and

11) 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 CELLULAR PHONE SMS.

[Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prision 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 also be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article.

Article 266-C. Effect of Pardon. – The subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed.

In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action Republic Act No. 8353 or the penalty: Provided, That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void ab initio.

Article 266-D. Presumptions. – Any physical overt act manifesting resistance against the act of rape in any degree from the offended party, or where the offended party is so situated as to render her/him incapable of giving valid consent, may be accepted as evidence in the prosecution of the acts punished under Article 266-A.]

SEC. 3. Separability Clause. – If any part, section, or provision of this Act is declared invalid or unconstitutional, the other parts thereof not affected thereby shall remain valid.

SEC. 4. Repealing Clause. – Article 335 of Act No. 3815, as amended, 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.

SEC. 5. Effectivity. – This Act shall take effect fifteen (15) days after completion of its publication in two (2) newspapers of general circulation.

Approved,