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Republika ng Pilipinas
Komisyon ng Karapatang Pantao ng Pilipinas
(Commission on Human Rights of the Philippines)

POSITION PAPER
HOUSE BILL NOS. 3370 and 3867
Fourteenth Congress

The Philippines is a State Party to the Convention on the Rights of the Child. As a State Party, the Philippine Government must comply with its obligations under the said Convention. Enshrined in the Convention is the guiding principle of the *"best interests of the child"* under Article 3 thereof, which provides that: *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*

Are House Bill Nos. 3370 and 3876 in accordance with the best interests of the child?

The Position of the Commission on Human Rights is that House Bill Nos. 3370 and 3876 are not in accordance with the best interests of the child, for the following reasons:

I. The United Nations Committee on the Rights of the Child, in its Concluding Observations on the second periodic report of the Philippines, particularly on paragraph 90 thereof, stated that:

"90. The Committee urges the State party to ensure that its legislation and practice concerning juvenile justice is in full compliance with the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice

System. In this regard the Committee recommends the State party in particular:

(a) To adopt, as a matter of urgency, a proposed bill on Comprehensive Juvenile Justice System and Delinquency Prevention Programme and raise the minimum age of criminal responsibility to an internationally acceptable level x x x"

The Philippine Government already complied with this particular recommendation of the United Nations Committee on the Rights of the Child when it enacted Republic Act No. 9344 into law increasing the minimum age of criminal responsibility from above nine (9) years to fifteen (15) years of age. The Philippine Government cannot backtrack from its international commitments on human rights, for such would be detrimental to the best interests of the child.

II. The thrust of Republic Act No. 9344 is the application of the principle of restorative justice in all the laws, policies and programs applicable to children in conflict with the law. To lower the minimum age of criminal responsibility would be punitive and not in harmony with the principle of restorative justice.

III. The proposed minimum age of criminal responsibility, of over nine (9) years, as for House Bill No. 3867, and ten (10) years or under, as for House Bill No. 3370, is too low and is not within the internationally acceptable level.

IV. Lowering the minimum age of criminal liability is not the solution to juvenile delinquency; but foremost is that the Government must ensure that children are provided with their basic needs such as food and education, which will certainly prevent children from committing theft, robbery, drug-related offenses, and other crimes. Besides, Section 18 of Republic Act No. 9344 states that a comprehensive juvenile intervention program shall be instituted in local government units from the barangay to the provincial level; and that local government units shall set aside an amount necessary to implement their respective juvenile intervention program in their annual budget. If only this particular provision of law will be complied with, the Congress will have no reason to fear that children will be used by syndicates in the commission of crime because prevention programs are in place. Sad to say, however, not all local government units have instituted a comprehensive juvenile intervention program.

V. The proliferation of pornographic materials on the streets, which materials are easily accessible to children, tempts them to commit sexual offenses. Instead of lowering the minimum age of criminal responsibility, the most effective means to deter children from committing sexual offenses is that the Government must combat child pornography.

VI. In a jail visitation conducted by the Commission on Human Rights in Butuan City Jail on January 24, 2008, there were seven (7) children in conflict with the law detained. On the same date, the Commission likewise visited the Agusan del Norte Provincial Jail and there were two (2) children detained. Again, the Commission found six (6) children detained in Tacloban City Jail during its visit on June 12, 2008. In addition, based on the Jail Visitation Reports of the CHR Regional Offices, there were seven (7) children detained in La, Trinidad Benguet Municipal Jail as of January 2008; nine (9) children detained in Baguio City Jail as of March 2008, and two (2) children detained in Calbayog City Jail as of June 2008. The children are in jail because there are no youth homes established in those areas. Republic Act 9344, however, prohibits the detention of children in jail, and mandates the local government units to build youth homes. Clearly, the law is not being properly implemented. Before Congress can evaluate the necessity of amending R.A. 9344, first of all, the law must have been properly implemented. If the law is not being properly implemented by the Government, then the time is not yet ripe to seek the amendment of the law.

VII. The Commission on Human Rights was able to send a delegation to observe the Universal Periodic Review for the Philippines held in Geneva, Switzerland on April 11, 2008. The United Nations Human Rights Council raised concern regarding the human rights situation of Filipino children detained in jails. The delegation from the Philippine Government answered that the country now has the Juvenile Justice and Welfare law. If the minimum age of criminal liability would be lowered, there would be more children in jail, and the Government would be held answerable before the United Nations.

VIII. The Commission on Human Rights visited the Regional Rehabilitation Center for Youth in Region XI under the administration of the Department of Social Welfare and Development on July 3, 2008; and the Operation Second Chance in Cebu City under the administration of the Bureau of Jail Management and Penology on July 11, 2008. The children in conflict with the law were interviewed on how Republic Act No. 9344 affects them, and these are some of the responses of the children:

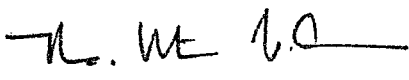
- He does not want 9-10 years old to go to jail; and he does not want to go to jail together with adult offenders. He is grateful to the Government for R.A. 9344.
- He likes the law. The law is a big help.
- *Kung hindi dahil sa batas na ito, doon ako pupulutin sa jail. Nagustuhan ko ang R.A. 9344. Masaya na ako dahil maraming nakinabang sa R.A. 9344 at maraming nagbabago dahil sa batas na 9344.*
- *Bigyan ng pagkakataon magbago ang bata na lumabag sa batas.*
- *Nagbibigay ang batas ng proteksyon sa karapatan namin.*

For these reasons, the Commission on Human Rights finds House Bill Nos. 3370 and 3876 not to be in accordance with the best interests of the child; and therefore, is not supporting their passage into law.

August 5, 2008, Quezon City.


LEILA M. DE LIMA
Chairperson


CECILIA RACHEL V. QUISUMBING
Commissioner


MA. VICTORIA V. CARDONA
Commissioner



Republic of the Philippines
House of Representatives
Quezon City

COMMITTEE ON JUSTICE

30 July 2008

HON. LEILA DE LIMA
Chairperson
Commission on Human Rights
SAAC Bldg., UP Complex, Commonwealth Ave.,
Diliman, Quezon City
Tel: 928-5655/926-6188

Dear Chairperson DE LIMA,

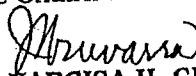
The Committee on Justice has scheduled for initial consideration House Bill Nos. 3370 and 3867 re: "Amending Republic Act No. 9344, otherwise known as Juvenile Justice Welfare Act of 2006", authored by Reps. Domogan and Escudero.

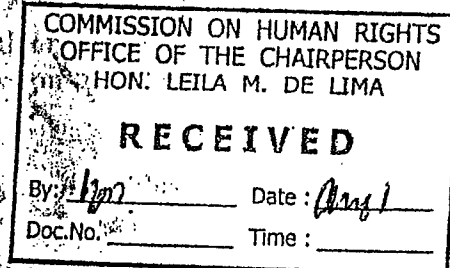
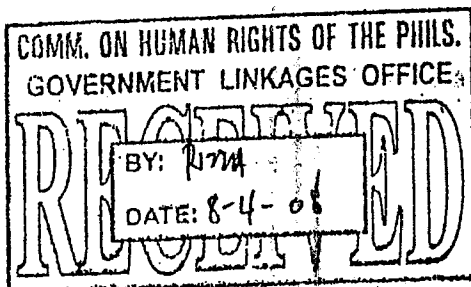
In this regard, we would like to invite you to the meeting to share your views, comments and recommendations on the matter. The meeting is on August 6, 2008, (Wednesday), 9:30 in the morning at Conference Room No. 5, Mitra Bldg., House of Representatives, Quezon City. May we also request that your official position paper/s be submitted on or before the scheduled meeting.

Thank you for your usual cooperation.

Very truly yours,

For the Chairman:


ATTY. NARCISA H. GUEVARRA
Committee Secretary



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Diliman, Quezon City

FOURTEENTH CONGRESS
First Regular Session

House Bill No. 3370

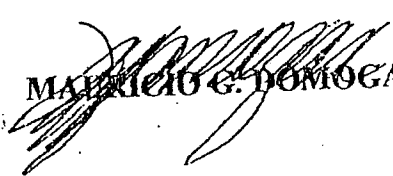
EXPLANATORY NOTE

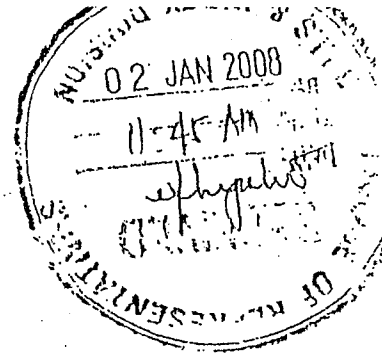
This bill intends to lower the minimum age of criminal liability of a child offender from fifteen (15) years of age to ten (10) years of age.

A number of considerations for this proposed bill are set forth hereto:

1. The present minimum age of fifteen (15) for criminal liability is NOT in accord with today's present reality. In these times children aged 10 to 14 or even as low as 9 years, most often are highly informed and usually know what they are doing and are much aware of the consequences of their actions. The massive influence of modern communications like movies, visual - aural literature, radio and TV coverages on almost any subject to include criminal acts cum violence such as revengeful murders, rapes, robberies, and criminal episodes, have given them vivid and more matured outlooks, perspectives and judgements than children of the same age level some 15 to 20 years earlier. Such influences have given them enough knowledge to make them freely and advertently do criminal acts against society;
2. Limiting criminal liability to fifteen (15) years and hence exempting those within the age brackets of 10 to 14 from said criminal liability could be used by unscrupulous minds to justify the offender's criminal acts and thus become his grounds and defense which would be unfair to innocent victims;
3. Exempting a child or teen-age offender aged 10 to 14 could be a ground for criminals and/or terrorists to exploit these minors for commission of crimes.
4. Moral law demands moral responsibility on children who have reached the age of reason, normally 7 years. If the civil law of our country limits it to age 15, there exists a disparity of age for liability. At least for the civil law to lower such liability age to 10 would come close to the moral liability age of 7 considering the fact that civil law is generally an expression of the higher law which is the moral law.

In consideration of all the above reasons, approval of this measure is urgently sought.


MARICEL G. DOMOGAN



Diliman, Quezon City

FOURTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 3370

Introduced by
HON. MAURICIO G. DOMOGAN

AN ACT AMENDING SECTION 6 AND SECTION 20 OF REPUBLIC ACT NO. 9344, OTHERWISE KNOWN AS THE "JUVENILE JUSTICE AND WELFARE ACT OF 2006", AND FOR OTHER PURPOSES

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

SECTION 1. Section 6 of Republic Act No. 9344 entitled the "Juvenile Justice and Welfare Act of 2006" is hereby amended to read as follows :

"Sec. 6. *Minimum Age of Criminal responsibility* — A Child **TEN (10)** years of age or under at the time commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above **TEN (10)** years old but below **FIFTEEN (15)** years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance to existing laws"

SECTION 2. Section 20 of the same Act is likewise amended to read as follows:

"Sec. 20. *Children below the Age of Criminal Responsibility.* It has been determined that the child taken into custody is **TEN (10)** years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child and to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organization; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC) or a local social welfare and

Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603 otherwise known as "The Child and Youth Welfare Code"

SECTION 3. All laws, executive orders, decrees, rules and regulations or parts thereof which are inconsistent with any of the provisions of this Act are hereby repealed or modified accordingly.

SECTION 4. This Act shall take effect upon approval.

Approved.

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

Fourteenth Congress
First Regular Session

HOUSE BILL NO. 3867

Introduced by Honorable Salvador H. Escudero III

EXPLANATORY NOTE

This bill seeks to restore the criminal liability of children aged below eighteen (18) years, amending for the purpose Republic Act (RA) No. 9344, otherwise known as the *Juvenile Justice and Welfare Act of 2006*.

Under RA 9344, all children in conflict with the law, aged fifteen (15) years of age and below, as well as those aged above fifteen (15) but below eighteen (18) who acted without discernment, are exempt from criminal liability. Before they are released to their families and the communities, these children undergo psycho-social reformation to imbue in them the proper values and understanding. Due to severe lack of institutions, however, these children in conflict with the law are being released without undergoing intervention programs. Hence, the recidivist attitude of many children in conflict with the law.

Further, such children become vulnerable to exploitation by criminal syndicates who are now aware of these limitations in our juvenile justice system.

With this bill, children in conflict with the law will no longer be exempt from criminal liability.

In view of the foregoing, the approval of this bill is highly recommended.


SALVADOR H. ESCUDERO III

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

Fourteenth Congress
First Regular Session

HOUSE BILL NO. **3867**

Introduced by Honorable Salvador H. Escudero III

AN ACT
RESTORING THE CRIMINAL LIABILITY OF A PERSON UNDER EIGHTEEN
YEARS OF AGE, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9344,
OTHERWISE KNOWN AS THE JUVENILE JUSTICE AND WELFARE ACT OF 2006.

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

SECTION 1. Section 6 of Republic Act No. 9344, otherwise known as the *Juvenile Justice and Welfare Act of 2006*, is hereby amended to read as follows:

"Sec. 6. *Minimum Age of Criminal Responsibility.* — A child fifteen (15) years of age or under BUT OVER NINE (9) YEARS OF AGE WHO WAS DECLARED BY THE COURT TO HAVE ACTED WITHOUT DISCERNMENT at the time of the commission of the offense shall be exempt from criminal liability. [However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.]

A child above fifteen (15) years but below eighteen (18) years of age [shall likewise be exempt from criminal liability and be subjected to an intervention program unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriated proceedings in accordance with this Act.] OR A CHILD FIFTEEN (15) YEARS OF AGE OR UNDER BUT OVER NINE (9) YEARS OF AGE WHO WAS DECLARED BY THE COURT TO HAVE ACTED WITH DISCERNMENT AT THE TIME OF THE COMMISSION OF THE OFFENSE SHALL NOT, IF FOUND GUILTY OF THE OFFENSE CHARGED, BE SENTENCED TO ANY PENALTY.

THE SENTENCE IS SUSPENDED AND THE CHILD IS ORDERED COMMITTED TO A REFORMATORY INSTITUTION; PROVIDED, THAT IF THE CHILD BECOMES INCORRIGIBLE WHILE IN THE REFORMATORY INSTITUTION, THE CHILD SHALL BE RETURNED TO THE COURT FOR THE IMPOSITION OF THE PROPER PENALTY.

[The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.]

SEC. 2. Section 20 of Republic Act No. 9344 is hereby repealed as follows:

[Sec. 20. *Children Below The Age of Criminal Responsibility.* --- If it has been determined that the child taken into custody is fifteen (15) years old or below, the authority which will have an initial contact with the child has the duty to immediately release the child to the custody of his parents or guardian, or in the absence thereof, the child's nearest relative. Said authority shall give notice to the local social welfare and development officer who will determine the appropriate programs in consultation with the child or to the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following: a duly registered nongovernmental or religious organizations; a barangay official or a member of the Barangay Council for the Protection of Children (BCPC); a local social welfare and development officer; or when and where appropriate, the DSWD. If the child referred to herein has been found by the Local Social Welfare and Development Office to be abandoned, neglected or abused by his parents, or in the event that the parents will not comply with the prevention program, the proper petition for involuntary commitment shall be filed by the DSWD or the Local Social Welfare and Development Office pursuant to Presidential Decree No. 603, otherwise known as "The Child and Youth Welfare Code."]

SEC. 3. Sec. 22 is hereby amended to read as follows:

"Sec. 22. *Duties During Initial Investigation.* -- The law enforcement officer shall, in his/her investigation, determine where the case involving the child in conflict with the law should be referred.

The taking of the statement of the child shall be conducted in the presence of the following: (1) child's counsel of choice or in the absence thereof, a lawyer from the Public Attorney's Office; (2) the child's parents, guardian, or nearest relative, as the case may be; and (3) the local social welfare and development officer. In the absence of the child's parents, guardian, or nearest relative, and the local social welfare and development officer, the investigation shall be conducted in the presence of a representative of an NGO, religious group, or member of the BCPC.

[After the initial investigation, the local social worker conducting the same may do either of the following:

(a) Proceed in accordance with Section 20 if the child is fifteen (15) years or below or above fifteen (15) but below eighteen (18) years old, who acted without discernment; and

(b) If the child is above fifteen (15) years old but below eighteen (18) and who acted with discernment, proceed to diversion under the following chapter.]

SEC. 4. If for any reason, any section or provision of this Act is declared unconstitutional or invalid by the Supreme Court, the other sections or provisions hereof not affected by such declaration shall remain in force and effect.

SEC. 5. All existing laws, orders, decrees, rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 6. This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,