



REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

COMMISSION ON HUMAN RIGHTS
OFFICE OF THE EXECUTIVE DIRECTOR

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REC. NO.

Position Paper on House Bill No. 7513 or the Proposed Measure for the Protection of Children during Unsafe Hours

The Commission on Human Rights ("Commission", for brevity) pursuant to its constitutional mandate to recommend to Congress effective measures to promote human rights submits this position paper on the proposed measure for the protection of children during unsafe hours or House Bill (HB) No. 7513.

Commission's Position

The Commission supports the intention and purposes for which the bill was conceptualized, however we must maintain that imposing penalties for violating the curfew imposed on children may be considered a status offense, to which the Convention on the Rights of the Child prohibits. General Comment No. 10 (2007)¹ of the Committee on the Rights of the Child urges States-Parties to the convention to abolish status offenses to uphold equal treatment under the law for children and adults.

The Philippines ratified the Convention on the Rights of the Child (CRC) in August 1990. The CRC explicitly states 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 interest of the child shall be a primary consideration.² As State party to the Convention, the Philippines is mandated to promote and protect the rights enshrined therein through legislation of pertinent laws. The 1987 Constitution provides that the State shall defend the *right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development.*

The United Nations Guidelines for the Prevention of Juvenile Delinquency, (Riyadh Guidelines) provides in Section 56 that "*in order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offense or not penalized if committed by an adult is not considered an offense or not penalized if committed by a young person.*"

This provision of status offenses is likewise translated in Section 57 of the

¹ Children's Rights in Juvenile Justice, Committee on the Rights of the Child, CRC/C/GC/10

² Article 3.1 International Convention on the Rights of the Child

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Juvenile Justice and Welfare Act or RA 9344. Said law defines Status Offense as “offenses which discriminates against a child, while an adult does not suffer any penalty for committing similar acts,” such as “curfew violations, truancy, parental disobedience and the like.”³ That being said, the implementation of curfew may violate the children’s right to non-discrimination, freedom of movement and freedom of association.⁴

Second, Republic Act 9344, as amended by Republic Act 10630⁵ provides for the procedure of handling of child-at risk (CAR). Under this law, a child found violating a curfew ordinance, as well as light ordinances and misdemeanors against public order and safety such as but not limited to disorderly conduct, public scandal, harassment, drunkenness, public intoxication, littering, etc. is considered a “child-at-risk” not as “child in conflict with the law.” Section 57A of the same law states that no penalty shall be imposed on children for violations of ordinances enacted by local governments concerning juvenile status offenses such as curfew violations, and they shall instead be brought to their residence or to any barangay official at the barangay hall to be released to the custody of their parents. Appropriate intervention programs shall be provided to these children and their parents or guardians.

In the recent decision of the Supreme Court, G.R. No.225442, *Samahan ng mga Progresibong Kabataan (SPARK) vs. Quezon City, City of Manila and Navotas City*, promulgated on August 9, 2017, the Court has the opportunity to explain that R.A. 10630 repeals all ordinances inconsistent with the law and that minors caught in violation of curfew ordinances are children at risk and, therefore covered by its provisions.

House Bill 7513 seeks to enforce curfew for children during unsafe hours from ten o’clock in the evening to five o’clock in the morning. However, the bill provides for exceptions to the application of curfew when minors are accompanied by a parent or guardian, traveling in a vehicle due to long distance between school and abode, and those attending a school, religious, or organized activity by government or private institution. Some of these exemptions are seen to be prone to discriminatory enforcement in areas where low income families abound and are often susceptible to more aggressive implementation of such policies. In addition, the bill, although seeking for the protection of children, makes street-dwelling families more vulnerable to the penalties and offenses, when proper intervention for these families may be more appropriate.

The Commission is concerned that in ensuring protection of the rights of children during unsafe hours, the government may, at the same time, albeit, inadvertently, be violating certain standards and measures in place

³ Sec. 4(r) of RA 9344

⁴ Discrimination: Youth Curfews and Children’s Rights. Child Rights International Network. September 8, 2015

⁵ An Act Strengthening the Juvenile Justice System in the Philippines, amending for the purpose RA 9344

for ensuring the best interest of children and the general welfare of all concerned.

Recommendations

We recognize the importance of pursuing the intentions of this bill and therefore, submits the following recommendations:

1. A child violating a curfew, as well as other light ordinances and misdemeanors against public order and safety should be considered a “child-at-risk,” not as “child in conflict with the law.” These children at risk are considered vulnerable to and are at risk of committing criminal offenses because of personal, family, and social circumstances.⁶ Proper intervention should therefore be implemented not only in favor of the children at risk but also those of their families or guardians.
2. The implementation of this bill, when it becomes into a law, should operate to ensure uniformity of application in all local government units, whether or not ordinances are in place, seeking to impose curfew to their minor constituents.
3. It is recommended that, upon development of the detailed reach out protocol, the Council for the Welfare of Children shall cascade the same to local government units implementing curfew ordinances for integration to ensure standard procedures are followed for *children at risk*.
4. Under Section 7, there is a limitation wherein law enforcement and barangay personnel are strictly prohibited from using vulgar or profane words, making sexual advances or sexual harassment or abusing the child; displaying the use of firearm, etc. These actions are never allowed in all circumstances and hence it might be best to remove the clause “*within this period*” as it sends a wrong signal that only during these instances are law enforcement and barangay personnel expected to restrain from committing deplorable acts.
5. Implementation of reach out protocols should include community-based intervention programs that will address the specific psychological, emotional, and educational needs of minor offenders.⁷ The reach out protocol can include, even prior to rescuing a violator, counselling programs for children and parents, values-oriented activities and alternative education for children as part of preventive measures of curfew implementation.

⁶ Section 4 (d), Juvenile Justice and Welfare Act, RA 9344

⁷ Position Paper on the Enforcement of Curfew Among Minors, Commission on Human Rights, 26 July 2016

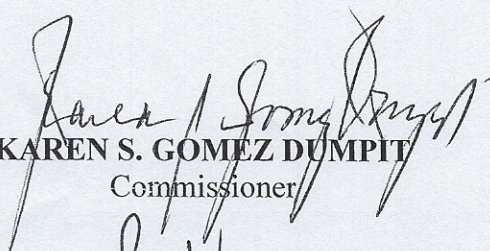
6. It is necessary for every barangay to develop and implement the Comprehensive Local Juvenile Intervention Program (CLJIP) which will collect, analyze, validate, and identify data, major problems and the overall situation of children at risk pursuant to Republic Act (RA) 9344 as amended by RA 10630.
7. Reinforce parental responsibility and supervision on the implementation of curfew policies for minors grounded on a child's vulnerability and public interest in protecting their rights and welfare.
8. It may also be prudent to develop legislations that will prosecute adults who are found to be encouraging or inducing children to commit crimes therefore contributing to the delinquency of a minor.⁸

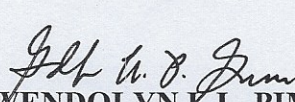
In conclusion, the Commission on Human Rights reiterates its support to the intention and purpose of the bill but in the process of ensuring protection to children at risk, government must ensure a holistic intervention program for the children and their families thru government actions, policies and legislations that remain consistent with the objectives and spirit of the Convention on the Rights of the Child.

ISSUED this 29th day of October 2018, Quezon City, Philippines.

(On Official Travel)

JOSE LUIS MARTIN C. GASCON
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⁸ England, Deborah, Parental Responsibility for a Child's Criminal Actions.
<https://www.criminaldefenselawyer.com/resources/criminal-defense/juvenile/parents-responsibility-childs-criminal-actions> (Accessed on September 26, 2018).