Recent Amendments and Legislation Affecting the Revised Penal Code of the Philippines

Jose Arturo C. De Castro[*]
Arianne Vanessa Josephine T. Jimenez[**]

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[*] '03 J.D., *with honors*, Ateneo de Manila University School of Law. The Author worked as a Presidential Staff Officer and Director IV for the Office of the Executive Secretary from 2003 to 2004, and from 2004 to 2005, respectively. He was also a former Prosecution Attorney under the Office of the Provincial Prosecutor, Bulacan Province, and previously held the position of Assistant Secretary for the Department of Justice from 2006 to 2010. He was previously a partner at the De Castro & Cagampang-De Castro Law Firm from 2010 to 2013. He is also a Professor at the Ateneo de Manila University School of Law. He is currently a candidate for a Master of Laws degree at the University of California-Berkeley Law School. The Author previously wrote *The Philippine Renewable Energy Act of 2008: Law, Policy, and Promise of Renewables in the Philippines*, 54 ATENEO L.J. 343 (2009) & *The Nature-Based Classification of Crimes: Issues and Clarifications*, 54 ATENEO L.J. 549 (2009).

[**] '09 J.D., Ateneo de Manila University School of Law. The Author is a professor at the De La Salle University. She previously worked in the Supreme Court of the Philippines as Court Attorney under Former Associate Justice, and later on Chief Justice, Renato C. Corona from 2009 to 2012. She also previously worked under Associate Justice Martin S. Villarama, Jr. from 2012 to 2013. She is currently a candidate for a Master of Laws degree at the University of California-Berkeley Law School.

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I. INTRODUCTION

Act No. 3815, otherwise known as the Revised Penal Code (RPC),[1] continues to be at the center of Philippine Criminal Law despite the lapse of more than 81 years since its passage in 1932.[2] The RPC's longevity as a masterpiece of criminal legislation is due in part to its being such an extensive compilation of penal laws, and in part to its being a distillation of the Philippine experiences under the Spanish and American regimes.[3] That is not to say, however, that the RPC remained as it was, unchanged since its date of effectivity. The different repositories of legislative power throughout our country's history did their part in introducing changes[4] aimed at improving and updating specific provisions of the RPC. For the most part, however, the RPC has endured and continued to serve its purpose of providing the State with a means to ensure justice, peace, and order in the nation.

1. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).

2. *Id.* art. 1.

3. LUIS B. REYES, THE REVISED PENAL CODE: CRIMINAL LAW BOOK ONE 1 (18th ed. 2012) [hereinafter REYES, BOOK ONE].

4. *See* An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes [Comprehensive Dangerous Drugs Act of 2002], Republic Act No. 9165 (2002) & Prescribing Stiffer Penalties on Illegal Gambling, Presidential Decree No. 1602, as Amended (1978).

Efforts to overhaul, revise, and update the RPC have been revived recently, with the Department of Justice (DOJ) constituting a Criminal Code Committee on April 2012 to review the RPC and to come up with a Philippine Code of Crimes under the assumption that the RPC was already "antiquated,"[5] and with the objective of developing a "simple, organic, and a truly Filipino"[6] criminal code.[7] The Criminal Code Committee has completed its revisions insofar as Book I of the RPC is concerned.[8] The body of work has recently been sponsored as House Bill No. 2300 by the current Chairman of the Committee on Justice of the House of Representatives.[9] The Criminal Code Committee is still continuing its work as regards Book II of the RPC, and is expected to finish its revision of Book II by the end of the year, for sponsorship and consolidation with House Bill No. 2300 in the House of Representatives.[10] The Chairman of the House Committee on Justice is hopeful that the proposed Philippine Code of Crimes will be passed by 2015.[11]

While the legislative process for the replacement of the RPC is underway, it is concededly far from completion. Until such time that the proposed legislation on the Philippine Code of Crimes is finally approved and enacted into law, the RPC governs. In the meantime, Congress continues to pass statutes that affect the provisions of the RPC.

This Article discusses three of the more recent laws that have amended and introduced changes to the RPC: (1) Republic Act (R.A.) No. 10158, which decriminalized vagrancy as a felony under Article 202 of the RPC;[12] (2) R.A. No. 10591, which provides for a comprehensive law on firearms

5. Mark D. Merueñas, DOJ committee completes first phase of penal code revision, *available at* http://www.gmanetwork.com/news/story/283279/news/nation/doj-committee-completes-first-phase-of-penal-code-revision (last accessed Sep. 12, 2013).

6. *Id.*

7. *Id.*

8. *Id.*

9. Kathrina Alvarez, Repeal of 81 year-old Revised Penal Code sought, *available at* http://www.sunstar.com.ph/breaking-news/2013/08/13/repeal-81-year-old-revised-penal-code-sought-297576 (last accessed Sep. 12, 2013).

10. *Id.*

11. Patricia Denise Chiu, House to repeal 'outdated' Revised Penal Code, *available at* http://www.gmanetwork.com/news/story/321837/news/nation/house-to-repeal-outdated-revised-penal-code (last accessed Sep. 12, 2013).

12. An Act Decriminalizing Vagrancy, Amending for This Purpose Article 202 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, Republic Act No. 10158 (2012).

and ammunition;[13] and (3) R.A. No. 10592, which directly amended Articles 29, 94, 97, 98, and 99 of the RPC.[14]

II. REPUBLIC ACT NO. 10158: AN ACT DECRIMINALIZING VAGRANCY, AMENDING FOR THIS PURPOSE ARTICLE 202 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE RPC

R.A. No. 10158 amended Article 202[15] of the RPC by decriminalizing vagrancy as a felony.[16] The amendment dropped the definition of vagrants,

13. An Act Providing for a Comprehensive Law on Firearms and Ammunition and Providing Penalties for Violations Thereof [Comprehensive Firearms and Ammunition Regulation Act], Republic Act No. 10591 (2012).

14. An Act Amending Articles 29, 94, 97, 98, and 99 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, Republic Act No. 10592 (2012).

15. REVISED PENAL CODE, art. 202. This Article provides —

> Article 202. Vagrants and prostitutes; Penalty. — The following are vagrants:
>
> (1) Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;
>
> (2) Any person found loitering about public or semi-public buildings or places or trampling or wandering about the country or the streets without visible means of support;
>
> (3) Any idle or dissolute person who ledges in houses of ill fame; ruffians or pimps and those who habitually associate with prostitutes;
>
> (4) Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose; [and]
>
> (5) Prostitutes.
>
> For the purposes of this [A]rticle, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.
>
> Any person found guilty of any of the offenses covered by this Article shall be punished by *arresto menor* or a fine not exceeding [₱200.00], and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from [₱200.00] to [₱2,000.00], or both, in the discretion of the court.

Id.

16. R.A. No. 10158, § 1. This Section provides —

> Section 1. Article 202 of the [RPC] is hereby amended to read as follows:

but retained the definition of prostitutes and the penalty for engaging in prostitution.[17]

A. Legislative History of R.A. No. 10158

R.A. No. 10158, which is a consolidation of Senate Bill No. 2726[18] and House Bill No. 4936,[19] was finally passed by the Senate and the House of Representatives on 14 March 2011 and 30 January 2012, respectively.[20]

House Bill No. 4936 was co-authored by the Honorable Representatives Victorino Dennis M. Socrates, Linabelle Ruth R. Villarica, Marlyn L. Primicias-Agabas, and Angelo B. Palmones. It was approved by the House of Representatives on the third reading on 13 December 2011 without opposition, and was transmitted to the Senate on 15 December 2011.[21]

Senate Bill No. 2726 was submitted jointly by the Senate Committees on Justice and Human Rights and Constitutional Amendments, Revision of Codes and Laws,[22] after a thorough consideration of the following: Senate Bill No. 915,[23] introduced by the Honorable Senator Jinggoy P. Ejercito-

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> Article 202. *Prostitutes; Penalty.* — For the purposes of this Article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct are deemed to be prostitutes.
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> Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding [₱200.00], and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from [₱200.00] to [₱2,000.00], or both, in the discretion of the court.

Id.

17. *Id.*

18. An Act Decriminalizing Vagrancy Amending for This Purpose Article 202 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, S.B. No. 2726, 15th Cong., 1st Reg. Sess. (2011).

19. An Act Decriminalizing Vagrancy Amending for This Purpose Article 202 of Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, H.B. No. 4936, 15th Cong., 2d Reg. Sess. (2011).

20. R.A. No. 10158.

21. H.B. No. 4936.

22. Committees on Justice and Human Rights and Constitutional Amendments, Revision of Codes and Laws, S. Rep. No. 19, 15th Cong., 1st Reg. Sess. (2011).

23. An Act Decriminalizing Certain Acts of Vagrancy Amending for the Purpose Article 202 of Act No. 315, as Amended, Otherwise Known as the Revised Penal Code, S.B. No. 915, 15th Cong., 1st Reg. Sess. (2010).

Estrada, Senate Bill No. 1423[24] introduced by the Honorable Senator Loren B. Legarda, and Senate Bill No. 2367[25] introduced by the Honorable Senator Francis G. Escudero.

On 27 March 2012, His Excellency President Benigno S. Aquino III signed R.A. No. 10158 into law.[26]

B. Jurisprudence on Vagrancy

Act No. 519,[27] the first statute punishing vagrancy, "was modeled after American vagrancy statutes and passed by the Philippine Commission in 1902."[28] The Penal Code of Spain of 1870,[29] which was in force in this country up to 31 December 1931, had no provision on vagrancy.[30] While the law on vagrancy is historically an Anglo-American concept of crime prevention, the Philippine Legislature included it as a permanent feature of the RPC in Article 202.[31] Aside from the RPC, vagrancy has also been separately defined and distinctly punished under ordinances enacted by local government units (LGUs) pursuant to the provisions of the Local Government Code,[32] as well as in their respective charters.[33]

24. An Act Decriminalizing Certain Acts of Vagrancy Amending for This Purpose Article 202 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, S.B. No. 1423, 15th Cong., 1st Reg. Sess. (2010).

25. An Act Decriminalizing Vagrancy Amending for This Purpose Article 202 of Republic Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, S.B. No. 2367, 15th Cong., 1st Reg. Sess. (2010).

26. R.A. No. 10158.

27. An Act Defining Vagrancy and Providing for Punishment Therefor, Act No. 519 (1902).

28. People v. Siton, 600 SCRA 476, 486 (2009).

29. CÓDIGO PENAL [C.P.] (Spain).

30. *Siton*, 600 SCRA at 486.

31. *Id.*

32. *See, e.g.*, An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE OF 1991], Republic Act No. 7160, §§ 447 (a) (1) (v), 458 (a) (1) (v), & 468 (a) (1) (v) (1991).

33. *See, e.g.*, An Act Converting the Municipality of Guihulngan in the Province of Negros Oriental into a Component City to be Known as the City of Guihulngan [Charter of the City of Guihulngan], Republic Act No. 9409, § 11 (e) (1) (v) (2007); An Act Converting the Municipality of Bacoor in the Province of Cavite into a Component City to be Known as the City of Bacoor [Charter of the City of Bacoor], Republic Act No. 10160, § 11 (a) (1) (v) (2012); An Act Converting the Municipality of Imus in the Province of Cavite into a Component City to be Known as the City Of Imus [Charter of the City of Imus], Republic Act No. 10161, § 11 (a) (1) (v) (2012); An Act Converting

The earliest cases on vagrancy decided by the Court appear to be *United States v. Choa Chi Co*[34] and *United States v. Gandole*,[35] which were prosecutions based on vagrancy as defined and punished by Act No. 519.[36] In both cases, however, the Court acquitted the accused because the evidence was not sufficient to sustain a conviction.[37] When the evidence failed to show that the accused is without known trade or occupation, or that he is a person of depraved or dissolute habits, or that he frequents or lives in houses of prostitution, he cannot be convicted of vagrancy under the provisions of Act No. 519 nor be made to suffer the penalty imposed upon vagrants.[38]

The first substantive discussion on vagrancy appears in the 1912 case of *United States v. Molina*,[39] where the Court upheld the conviction of the

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the Municipality of Cabuyao in the Province of Laguna into a Component City to be Known as the City of Cabuyao [Charter of the City of Cabuyao], Republic Act No. 10163, § 11 (a) (1) (v) (2012); & An Act Converting the Municipality of Mabalacat in the Province of Pampanga into a Component City to be Known as Mabalacat City [Charter of Mabalacat City], Republic Act No. 10164, § 11 (a) (1) (v) (2012).

34. United States v. Choa Chi Co, 3 Phil. 678 (1904).

35. United States v. Gandole, 6 Phil. 253 (1906).

36. Act No. 519, § 1. This Section provides —

> Section 1. Every person having no apparent means of subsistence, who has the physical ability to work, and who neglects to apply himself or herself to some lawful calling; every person found loitering about saloons or dramshops or gambling houses, or tramping or straying through the country without visible means of support; every person known to be a pickpocket, thief, burglar, [or] ladron either by his own confession or by his having been convicted of either of said offenses, and having no visible or lawful means of support when found loitering about any gambling house, cockpit, or in any outlying barrio of a pueblo; every idle or dissolute person or associate of known thieves or ladrones who wanders about the country at unusual hours of the night; every idle person who lodges in any barn, shed, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or person entitled to the possession thereof; every lewd or dissolute person who lives in and about houses of ill fame; every common prostitute and common drunkard, is a vagrant, and upon conviction shall be punished by a fine of not exceeding [$100.00], or by imprisonment not exceeding [one] year and [one] day, or both, in the discretion of the court.

Id.

37. *Choa Chi Co*, 3 Phil. at 681 & *Gandole*, 6 Phil. at 253.

38. *Id.*

39. United States v. Molina, 23 Phil. 471 (1912).

accused for the crime of vagrancy, stating that the said offense "consists in general [worthlessness]; that is to say, in being idle, and, though able to work refusing to do so, and living without labor, *or on the charity of others.*"[40] In *United States v. Hart*,[41] the Court observed that the offense of vagrancy is "the Anglo-Saxon method of dealing with the habitually idle and harmful parasites society."[42] In acquitting the accused, the Court held that the absence of visible means of support or a lawful calling is necessary for a conviction under the pertinent provisions of Act No. 519.[43] In *People v. Mirabien*,[44] however, the Court clarified that the keeper of a house of prostitution may be punished under Act No. 519, and that "[w]ant of visible means of support is not made an ingredient of this part of the Vagrancy Law."[45]

In *United States v. Giner Cruz*[46] and *People v. Barabasa*,[47] the Supreme Court upheld the convictions of the accused under Section 822 of the Revised Ordinances of Manila, which ordinance included within its definition of vagrants, a person who "acts as pimp or procurer"[48] as well as those who "habitually and idly loiter about, or wander abroad, visiting or staying about hotels, cafés, drinking saloons, houses of ill repute, gambling houses, railroad depots, wharves, public waiting rooms[,] and parks."[49] The Court further clarified that under the ordinance, the lack of a visible means of support is not an essential element in those kinds of vagrancy and, therefore, there was no necessity of establishing it.[50]

The law on vagrancy has since been used by law enforcement officers to effect warrantless arrests upon persons suspected of committing other crimes for purposes of bringing them into police custody.[51] Far worse was the

40. *Id.* at 473 (citing Gavin v. The State, 96 Miss. 377, 498 (1909) (U.S.)) (emphasis supplied).

41. United States v. Hart, 26 Phil. 149 (1913).

42. *Id.* at 154.

43. *Id.*

44. People v. Mirabien, 50 Phil. 499 (1927).

45. *Id.* at 500.

46. United States v. Giner Cruz, 38 Phil. 677 (1918).

47. People v. Barabasa, 64 Phil. 399 (1937).

48. *Giner Cruz*, 38 Phil. at 678.

49. *Barabasa*, 64 Phil. at 401.

50. *Id.*

51. *See* Duque v. Vinarao, 63 SCRA 206 (1975); De la Plata v. Escarcha, 78 SCRA 208 (1977); People v. Pilones, 84 SCRA 167 (1978); Gamboa v. Cruz, 162 SCRA 642 (1988); People v. Carugal, 341 SCRA 319 (2000); & People v. Talavera, 416 SCRA 355 (2003).

situation in the case of *People v. Talavera*,[52] wherein the police arrested 30 individuals for vagrancy.[53] At the police station, the accused tried to extort money from each of the detainees, and even succeeded in raping one of them, in exchange for being released from police custody.[54]

The 2009 case of *People v. Siton*[55] is perhaps the most celebrated Philippine case involving vagrancy. There, the Municipal Trial Court denied the separate motions filed by the accused.[56] These motions sought to quash the Informations charging them with vagrancy under the second paragraph of Article 202 of the RPC based on unconstitutionality.[57] Aggrieved, the accused directly challenged the constitutionality of the anti-vagrancy law by filing a petition for *certiorari* with the Regional Trial Court.[58] They claimed "that the definition of the crime of vagrancy under Article 202 (2), apart from being vague, results as well in an arbitrary identification of violators, since the definition of the crime includes in its coverage persons who are otherwise performing ordinary peaceful acts."[59] They "likewise claimed that Article 202 (2) violated the equal protection clause under the Constitution because it discriminates against the poor and unemployed, thus permitting an arbitrary and unreasonable classification."[60] The Regional Trial Court declared Article 202 (2) of the RPC unconstitutional, citing *Papachristou v. City of Jacksonville*,[61] wherein a statute penalizing vagrancy was voided by the United States Supreme Court for being vague, both in the sense that it "fail[ed] to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute,"[62] and because it "encourage[d] arbitrary and erratic arrests and convictions."[63] The Regional Trial Court further declared that

> [t]he U.S. Supreme Court's justifications for striking down the Jacksonville Vagrancy Ordinance are equally applicable to paragraph 2 of Article 202 of the [RPC].

52. *Talavera*, 416 SCRA at 355.

53. *Id.* at 358.

54. *Id.* at 356–57.

55. *Siton*, 600 SCRA at 476.

56. *Id.* at 481.

57. *Id.* at 480.

58. *Id.* at 482.

59. *Id.*

60. *Id.*

61. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).

62. *Id.* at 162 (citing United States v. Harriss, 347 U.S. 612, 617 (1954)).

63. *Id.* (citing Thornhill v. Alabama, 310 U.S. 88 (1940) & Herndon v. Lowry, 301 U.S. 242 (1937)).

> Indeed, to authorize a police officer to arrest a person for being 'found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support' offers too wide a latitude for arbitrary determinations as to who should be arrested and who should not.
>
> Loitering about and wandering have become national pastimes particularly in these times of recession when there are many who are 'without visible means of support' not by reason of choice[,] but by force of circumstance as borne out by the high unemployment rate in the entire country.
>
> To authorize law enforcement authorities to arrest someone for nearly no other reason than the fact that he cannot find gainful employment would indeed be adding insult to injury.
>
> ...
>
> The application of the Anti-Vagrancy Law, crafted in the 1930s, to our situation at present runs afoul of the equal protection clause of the [C]onstitution as it offers no reasonable classification between those covered by the law and those who are not.
>
> Class legislation is such legislation which denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than is imposed upon another in like case offending.
>
> Applying this to the case at bar, since the definition of [v]agrancy under Article 202 of the [RPC] offers no guidelines or any other reasonable indicators to differentiate those who have no visible means of support by force of circumstance and those who choose to loiter about and bum around, who are the proper subjects of vagrancy legislation, it cannot pass a judicial scrutiny of its constitutionality.[64]

The State elevated the matter to the Supreme Court on petition for review.[65] The Court, speaking through the Honorable Justice Consuelo M. Ynares-Santiago, overturned the Regional Trial Court and upheld the constitutionality of Section 202 of the RPC, to wit —

> Since the [RPC] took effect in 1932, no challenge has ever been made upon the constitutionality of Article 202 except now. Instead, throughout the years, we have witnessed the streets and parks become dangerous and unsafe, a haven for beggars, harassing 'watch-your-car' boys, petty thieves and robbers, pickpockets, swindlers, gangs, prostitutes, and individuals performing acts that go beyond decency and morality, if not basic humanity. The streets and parks have become the training ground for petty offenders who graduate into hardened and battle-scarred criminals. Everyday, the news is rife with reports of innocent and hardworking people being robbed, swindled, harassed[,] or mauled — if not killed — by the scourge of the streets. Blue collar workers are robbed straight from

64. *Siton*, 600 SCRA at 483-84.

65. *Id.* at 484.

withdrawing hard-earned money from the ATMs (automated teller machines); students are held up for having to use and thus exhibit publicly their mobile phones; frail and helpless men are mauled by thrill-seeking gangs; innocent passers-by are stabbed to death by rowdy drunken men walking the streets; fair-looking or pretty women are stalked and harassed, if not abducted, raped[,] and then killed; robbers, thieves, pickpockets[,] and snatchers case streets and parks for possible victims; the old are swindled of their life savings by conniving street[-]smart bilkers and con artists on the prowl; beggars endlessly pester and panhandle pedestrians and commuters, posing a health threat and putting law-abiding drivers and citizens at risk of running them over. All these happen on the streets and in public places, day or night.

The streets must be protected. Our people should never dread having to ply them each day, or else we can never say that we have performed our task to our brothers and sisters. We must rid the streets of the scourge of humanity, and restore order, peace, civility, decency[,] and morality in them.

This is exactly why we have public order laws, to which Article 202 (2) belongs. These laws were crafted to maintain minimum standards of decency, morality[,] and civility in human society. These laws may be traced all the way back to ancient times, and today, they have also come to be associated with the struggle to improve the citizens' quality of life, which is guaranteed by our Constitution. Civilly, they are covered by the 'abuse of rights' doctrine embodied in the preliminary articles of the Civil Code concerning Human Relations, to the end, in part, that any person who [willfully] causes loss or injury to another in a manner that is contrary to morals, good customs[,] or public policy shall compensate the latter for the damage. This [P]rovision is, together with the succeeding articles on human relations, intended to embody certain basic principles 'that are to be observed for the rightful relationship between human beings and for the stability of the social order.'

...

Criminally, public order laws encompass a whole range of acts — from public indecencies and immoralities, to public nuisances, to disorderly conduct. The acts punished are made illegal by their offensiveness to society's basic sensibilities and their adverse effect on the quality of life of the people of society. For example, the issuance or making of a bouncing check is deemed a public nuisance, a crime against public order that must be abated. As a matter of public policy, the failure to turn over the proceeds of the sale of the goods covered by a trust receipt or to return said goods, if not sold, is a public nuisance to be abated by the imposition of penal sanctions. Thus, public nuisances must be abated because they have the effect of interfering with the comfortable enjoyment of life or property by members of a community.

Article 202 (2) does not violate the equal protection clause; neither does it discriminate against the poor and the unemployed. Offenders of public order laws are punished not for their status, as for being poor or

unemployed, but for conducting themselves under such circumstances as to endanger the public peace or cause alarm and apprehension in the community. Being poor or unemployed is not a license or a justification to act indecently or to engage in immoral conduct.

Vagrancy must not be so lightly treated as to be considered constitutionally offensive. It is a public order crime which punishes persons for conducting themselves, at a certain place and time which orderly society finds unusual, under such conditions that are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized[,] and ordered society, as would engender a justifiable concern for the safety and well-being of members of the community.

Instead of taking an active position declaring public order laws unconstitutional, the State should train its eye on their effective implementation, because it is in this area that the Court perceives difficulties. Red light districts abound, gangs work the streets in the wee hours of the morning, dangerous robbers and thieves ply their trade in the [train] stations, [and] drunken men terrorize law-abiding citizens late at night and urinate on otherwise decent corners of our streets. Rugby-sniffing individuals crowd our national parks and busy intersections. Prostitutes wait for customers by the roadside all around the metropolis, some even venture in bars and restaurants. Drug-crazed men loiter around dark avenues waiting to pounce on helpless citizens. Dangerous groups wander around, casing homes and establishments for their next hit. The streets must be made safe once more. Though a man's house is his castle, outside on the streets, the king is fair game.

The dangerous streets must surrender to orderly society.

Finally, we agree with the position of the State that first and foremost, Article 202 (2) should be presumed valid and constitutional. When confronted with a constitutional question, it is elementary that every court must approach it with grave care and considerable caution bearing in mind that every statute is presumed valid and every reasonable doubt should be resolved in favor of its constitutionality. The policy of our courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain, this presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied, crafted[,] and determined to be in accordance with the fundamental law before it was finally enacted.

It must not be forgotten that police power is an inherent attribute of sovereignty. It has been defined as the power vested by the Constitution in the [L]egislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same. The power is plenary and its scope is vast and pervasive, reaching and

> justifying measures for public health, public safety, public morals, and the general welfare. As an obvious police power measure, Article 202 (2) must therefore be viewed in a constitutional light.[66]

C. Current State of Laws Regarding Vagrancy

In a society that values individual freedom, use of the criminal law should be limited to situations in which injury is seriously threatened, and not simply "*to purify thoughts and perfect character.*"[67] Respect for individual liberties requires that the criminal law be exercised only in response to conduct, and not merely upon a person's status.[68] This is because ordinarily, the State cannot criminalize a person's status or state of being.[69] The issue of when a criminal statute proscribes status, as opposed to conduct can be very close.[70] Vagrancy laws have invariably been criticized for being crimes based on a person's status.[71]

While *Siton* cemented the constitutionality of vagrancy under Article 202 of the RPC, it likewise served as a signal for Congress to open its eyes

66. *Siton*, 600 SCRA at 493-98 (citing PHIL CONST. art. II, § 9). This Section provides —

> Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

PHIL. CONST. art. II, § 9. *See also* An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 21 (1950); Sea Commercial Company Inc. v. Court of Appeals, 319 SCRA 210, 222 (1999); Ruiz v. People, 475 SCRA 476, 489 (2005); Tiomico v. Court of Appeals, 304 SCRA 216, 223 (1999) (citing Lee v. Rodil, 175 SCRA 100, 110 (1989)); Villanueva v. Querubin, 48 SCRA 345, 350 (1972); Lacson v. Executive Secretary, 301 SCRA 298, 311 (1999); Macasiano v. National Housing Authority, 224 SCRA 236, 244-45 (1993) (citing Garcia v. Executive Secretary, 204 SCRA 516, 517 (1991)); & JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY 676-78 (2009).

67. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 93 (4th ed. 2006) (citing U.S. v. Hollingsworth, 27 F.3d 1196, 1203 (7th Cir. 1994) (U.S.)) (emphasis supplied).

68. DRESSLER, *supra* note 67, at 93 (citing HERBERT L. PACKER, THE LIMITS OF THE CRIMINAL SANCTION 74 (1968)).

69. JOHN M. SCHEB & JOHN M. SCHEB II, CRIMINAL LAW 95 (6th ed. 2012).

70. *Id.*

71. Romel Bagares, *The vagrancy law: Unconstitutional and often prone to abuse*, PHIL. STAR, Mar. 9, 2000, *available at* http://www.philstar.com/headlines/87005/vagrancy-law-unconstitutional-and-often-prone-abuse (last accessed Sep. 12, 2013).

and reconsider penalizing vagrancy as a crime in light of the realities facing the Philippines whose poverty level remains unchanged for the past six years.[72] It may very well be argued that people should not be prosecuted for lacking apparent means of subsistence, for failure to apply to some lawful calling, or for lacking any visible means of support,[73] because these are conditions which they have no capacity to alter or avoid,[74] in view of the Philippine poverty level. To do so would be tantamount to punishing persons for their status of being poor.[75] This observation is all the more highlighted considering that some of the physical conducts punished under Article 202 of the RPC, i.e., loitering, trampling, or wandering, would not be punishable when committed by persons who are above the poverty line.

One other thing which should rightfully be considered is the applicability of the following pronouncements in *Papachristou*, to wit —

> A presumption that people who might walk or loaf or loiter or stroll or frequent houses where liquor is sold, or who are supported by their wives[,] or who look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy standards [—] that crime is being nipped in the bud [—] is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the police. Of course, they are nets making easy the round[-]up of so-called undesirables. But the rule of law implies equality and justice in its application. Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together.[76]

With the amendments introduced by R.A. No. 10158, vagrancy has been decriminalized as a felony under Article 202 of the RPC.[77] Accordingly, all pending cases under said Article shall be dismissed upon the effectivity of R.A. No. 10158.[78] All persons serving sentence for violation of Article 202 of the RPC on vagrancy shall likewise be immediately released upon the effectivity of R.A. No. 10158, provided that they are not serving

72. National Statistical Coordination Board (NSCB), Poverty Statistics, Poverty incidence unchanged, as of first semester 2012, *available at* http://www.nscb.gov.ph/poverty/defaultnew.asp (last accessed Sep. 12, 2013).

73. REVISED PENAL CODE, art. 202.

74. SCHEB & SCHEB II, *supra* note 69, at 95 (citing Robinson v. California, 370 U.S. 660, 666-67 (1962)).

75. Bagares, *supra* note 71.

76. *Papachristou*, 405 U.S. at 171.

77. R.A. No. 10158, § 1.

78. *Id.* § 2.

sentence or detained for any other offense or felony.[79] R.A. No. 10158 also provides for a general repealing cause under which all laws, presidential decrees, executive orders, rules and regulations, and other issuances, or any part thereof, inconsistent therewith are repealed, modified, or amended accordingly.[80]

D. R.A. No. 10158 Does Not Provide for the Total Decriminalization of Vagrancy

While R.A. No. 10158 is clear with regard to the legislative intent to decriminalize vagrancy as a felony under Article 202 of the RPC, it does not affect vagrancy as an offense defined separately and distinctly by ordinances enacted by LGUs pursuant to the provisions of the Local Government Code.

For one thing, R.A. No. 10158 specifically amends only the provisions of Article 202 of the RPC.[81] The LGUs' authority to enact ordinances intended to prevent, suppress, and impose appropriate penalties for vagrancy are contained in certain sections of the Local Government Code,[82] as well as their respective charters.[83] For another, the Court itself recognized in *Giner Cruz* and *Barabasa* the validity of the LGUs' authority to enact ordinances which define and punish vagrancy as an offense separate and distinct from the felony defined in Article 202 of the RPC.[84]

If total decriminalization was indeed desired by the Legislature, the issue would lie in the method by which the Legislature sought to decriminalize vagrancy. Instead of simply providing that vagrancy is thereby decriminalized, the Legislature chose to simply re-enact another version of Article 202 of the RPC by dropping the enumerated definitions of what constituted vagrancy as a felony. Needless to state, such a method, dealing as it did specifically with the provisions of Article 202 of the RPC, miserably fails to decriminalize vagrancy *in toto*. The law against vagrancy continues as defined and penalized by ordinances enacted pursuant to other laws, such as the Local Government Code and the other LGU charters.

Considering that the policy adhered to by the courts is to presume that R.A. No. 10158 "has been carefully studied and determined to be in

79. *Id.* § 3.

80. *Id.* § 4.

81. *Id.* § 1.

82. LOCAL GOVERNMENT CODE, §§ 447 (a) (1) (v), 458 (a) (1) (v), & 468 (a) (1) (v).

83. *See, e.g.*, Charter of the City of Guihulngan, § 11 (e) (1) (v); Charter of the City of Bacoor, § 11 (a) (1) (v); Charter of the City of Imus, § 11 (a) (1) (v); Charter of the City of Cabuyao, § 11 (a) (1) (v); & Charter of Mabalacat City, § 11 (a) (1) (v).

84. *Giner Cruz*, 38 Phil. at 677-78 & *Barabasa*, 64 Phil. at 401-02.

accordance with the fundamental law before it was finally enacted"[85] by both Congress and the President, it would be more prudent to conclude that the State's intention was merely to partially decriminalize vagrancy only as a felony, and not to completely erase the same as a punishable act or offense in the Philippine statute books.

Notwithstanding the passage of R.A. No. 10158, the general delegation of authority under the Local Government Code and the different LGU charters authorizing LGUs to enact ordinances intended to prevent, suppress, and impose appropriate penalties for vagrancy still subsists. This must be so because, even after the Congress and the President had approved R.A. No. 10158, several LGU charters were still enacted — all with the express delegation of general authority to enact ordinances intended to prevent, suppress, and impose appropriate penalties for vagrancy.[86] This clearly indicates that the Legislature only intended to decriminalize vagrancy as a felony under Article 202 of the RPC, leaving it up to the LGUs to decide whether or not to define and penalize vagrancy as a punishable offense within their territory under ordinances issued pursuant to the provisions of the Local Government Code and their respective LGU charters.

III. REPUBLIC ACT NO. 10591: AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF

R.A. No. 10591 was issued pursuant to the declared policy of the State "to maintain peace and order and protect the people against violence."[87]

Also made as a matter of State policy is the express recognition of the "right of its qualified citizens to self-defense through, when it is the reasonable means to repel the unlawful aggression under the circumstances, the use of firearms."[88] The recognition of such a right as a matter of policy in the wordings expressed by the law, however, should not be absurdly construed to preclude or otherwise adversely affect the individual's general rights to defend one's self, his or her relatives, as well as strangers. Aside from being in accord with moral and natural law, these rights are independently defined as justifying circumstances under Article 11 of the RPC,[89] under

85. *Macasiano*, 224 SCRA at 245 (citing *Garcia*, 204 SCRA at 517).

86. *See, e.g.*, Charter of the City of Guihulngan, § 11 (e) (1) (v); Charter of the City of Bacoor, § 11 (a) (1) (v); Charter of the City of Imus, § 11 (a) (1) (v); Charter of the City of Cabuyao, § 11 (a) (1) (v); & Charter of Mabalacat City, § 11 (a) (1) (v).

87. Comprehensive Firearms and Ammunition Regulation Act, § 2.

88. *Id.*

89. REVISED PENAL CODE, art. 11, ¶¶ 1, 2, & 3.

which there is no criminal and no crime is committed,[90] because the person's act is considered not as a wrongful act or *actus reus* but as one that is both right and lawful.[91] The right expressly recognized by R.A. No. 10591 is tied primarily to that of self-defense, and not to the use of firearms.[92] R.A. No. 10591 did not elevate the bearing of firearms in the Philippines into a statutory right; it remains a privilege subject to regulation.

The holding in *Chavez v. Romulo*,[93] that the right to bear arms in the Philippines is a mere statutory privilege and not a constitutional right, still controls.[94] Even under the provisions of R.A. No. 10591, the "possession of firearms by citizens in the Philippines is the exception rather than the rule."[95] R.A. No. 10591 in fact seems to provide more stringent requirements and limitations for bearing firearms than its predecessor statutes.[96]

A. Legislative History of R.A. No. 10591

R.A. No. 10591, which is a consolidation of Senate Bill No. 3397[97] and House Bill No. 5484,[98] was finally passed by the Senate and the House of Representatives on 4 February 2013 and 5 February 2013, respectively.[99] It was signed into law by President Aquino on 29 May 2013.[100]

Firearms regulation in the Philippines can be traced as far back as 1907, with the enactment of Act No. 1780.[101] Act No. 1780 was later on repealed

90. REYES, BOOK ONE, *supra* note 3, at 155.

91. *Id.* at 154.

92. Comprehensive Firearms and Ammunition Regulation Act, § 2.

93. Chavez v. Romulo, 431 SCRA 534, 559 (2004).

94. Artillero v. Casimiro, 671 SCRA 357, 383 (2012) (citing *Chavez*, 431 SCRA at 559).

95. *Id.*

96. *See* An Act to Regulate the Importation, Acquisition, Possession, Use, and Transfer of Firearms, and to Prohibit the Possession of the Same Except in Compliance with the Provisions of this Act, Act No. 1780 (1907).

97. An Act Providing for a Comprehensive Law on Firearms and Ammunition and Providing Penalties for Violations Thereof, S.B. 3397, 15th Cong., 3d Reg. Sess. (2013).

98. An Act Providing for a Comprehensive Regulation of Firearms, Light Weapons, and Ammunition, Penalizing Violations Thereof and Repealing for the Purpose Presidential Decree Numbered Eighteen Hundred Sixty-Six, H.B. No. 5484, 15th Cong., 2d Reg. Sess. (2011).

99. Comprehensive Firearms and Ammunition Regulation Act.

100. *Id.*

101. *See* Act No. 1780.

by Act No. 2711.[102] Many laws related to the subject were later on enacted.[103]

The comprehensive firearms and explosives law in the Philippines, Presidential Decree (P.D.) No. 1866,[104] was promulgated in 1983 by then President Ferdinand E. Marcos in the exercise of his emergency legislative powers under martial law.[105] Its statutorily expressed purpose was to consolidate, integrate, update, revise, and codify the various laws on illegal possession of firearms, ammunition, and explosives.[106] In reality, however, P.D. No. 1866 was largely seen as a measure to strengthen martial law.[107] Aside from being criticized because it imposed onerous and anachronistic criminal penalties,[108] P.D. No. 1866 effectively stifled and discouraged

102. An Act Amending the Administrative Code [ADMINISTRATIVE CODE], Act No. 2711 (1917).

103. *See, e.g.*, An Act to Revise, Amend, and Codify the Internal Revenue Laws of the Philippines [NATIONAL INTERNAL REVENUE CODE], Commonwealth Act No. 466 (1939) & Orceo v. COMELEC, 616 SCRA 684, 700-02 (2010) (J. Brion, concurring opinion).

104. Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition, or Disposition, of Firearms, Ammunition, or Explosives, or Instruments Used in the Manufacture of Firearms, Ammunition, or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes, Presidential Decree No. 1866 (1983).

105. *Id.*

106. *Id.* whereas cl.

107. *See* Ronalyn V. Olea, Repressive decrees, issuances, legacies of Marcos dictatorship, remain in force, *available at* http://bulatlat.com/main/2011/09/21/repressive-decrees-issuances-legacies-of-marcos-dictatorship-remain-in-force/ (last accessed Sep. 12, 2013).

108. People v. Comadre, 431 SCRA 366, 379-80 (2004). The Case cited the sponsorship speeches of Representatives Roilo S. Golez and Senator Defensor-Santiago, to wit —

> Representative Roilo Golez, in his sponsorship speech, laid down two basic amendments under House Bill No. 8820, now [R.A. No.] 8294:
>
> (1) [R]eduction of penalties for simple illegal possession of firearms or explosives from the existing *reclusion perpetua* to *prision correccional* or *prision mayor*, depending upon the type of firearm possessed; [and]
>
> (2) [R]epeal of the incongruous provision imposing capital punishment for the offense of illegal possession of firearms and explosives in furtherance of or in pursuit of rebellion or insurrection.
>
> The same rationale was the moving force behind Senate Bill [No.] 1148 as articulated by then Senator Defensor-Santiago in her sponsorship speech [—]

private individuals from dealing in and possessing firearms and explosives through the imposition of strict regulatory requirements and harsh criminal penalties for violations.[109]

In 1997, R.A. No. 8294 amended P.D. No. 1866.[110] The amendatory law "was a reaction to the onerous and anachronistic penalties imposed under [P.D. No.] 1866[,] which [was in force] during the tumultuous years of the Marcos dictatorship."[111] It was enacted "not to decriminalize illegal possession of firearms and explosives, but to lower their penalties in order to rationalize them into more acceptable and realistic levels."[112]

R.A. No. 10591 represents the current gun control law in the Philippines. It was enacted in order to

> provide for a comprehensive law regulating the ownership, possession, carrying, manufacture, dealing in[,] and importation of firearms, ammunition, or parts thereof, in order to provide legal support to law

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> The issue of disproportion is conspicuous not only when we make a comparison with the other laws, but also when we make a comparison of the various offenses defined within the existing law itself. Under P.D. No. 1866, the offense of simple possession is punished with the same penalty as that imposed for much more serious offenses such as unlawful manufacture, sale, or disposition of firearms and ammunition.
>
> ...
>
> It was only during the years of martial law — 1972 and 1983 — that the penalty for illegal possession made a stratospheric leap. Under P.D. No. 9 promulgated in 1972 — the first year of martial law — the penalty suddenly became the mandatory penalty of death, if the unlicensed firearm was used in the commission of crimes. Subsequently, under P.D. No. 1866, promulgated in 1983 — during the last few years of martial law — the penalty was set at its present onerous level.
>
> The lesson of history is that a democratic, constitutional, and civilian government imposes a very low penalty for simple possession. It is only an undemocratic martial law regime — a law unto itself — which imposes an extremely harsh penalty for simple possession.

Id.

109. *See generally* P.D. No. 1866, §§ 1-7.

110. An Act Amending the Provisions of Presidential Decree No. 1866, as Amended, Entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition, or Disposition of Firearms, Ammunition, or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition, or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof, and for Relevant Purposes," Republic Act No. 8294 (1997).

111. *Comadre*, 431 SCRA at 379.

112. *Id.*

> enforcement agencies in their campaign against crime, stop the proliferation of illegal firearms or weapons, and the illegal manufacture of firearms or weapons, ammunition[,] and parts thereof.[113]

R.A. No. 10591 dealt specifically with firearms and ammunitions.[114] As such, it eked the subject of firearms and ammunitions out of P.D. No. 1866, as amended by R.A. No. 8294, leaving untouched those provisions relating to explosives.[115]

B. Provisions of R.A. No. 10591 Relevant to the RPC

R.A. No. 10591 is a far cry from both P.D. No. 1866 and R.A. No. 8294 in depth, comprehensiveness, and detail. As opposed to P.D. No. 1866 and R.A. No. 8294 which only had five provisions relating to firearms,[116] R.A. No. 10591 is composed of 47 sections and six articles.[117] The Law was clearly meant as the all-encompassing law on gun control. Due to the sheer number and detail of its provisions, a thorough discussion of R.A. No. 10591 in its entirety would clearly require a separate treatise altogether.

This Article focuses only upon those matters in R.A. No. 10591 that more or less directly impact the RPC and the judicial doctrines pertinent thereto.

C. Adoption of the Range of Penalties in the RPC to Violations of R.A. No. 10591

One interesting observation is that the penal provisions of R.A. No. 10591 have adopted the nomenclature of penalties in the RPC.[118] This is quite relevant because it clearly indicates a legislative intent to have the provisions of the RPC suppletorily applicable to criminal violations of R.A. No. 10591.

In the seminal case of *People v. Simon*,[119] the Court declared the principle that the RPC suppletorily applies to special penal laws which have adopted penalties that are within the range of penalties of the said Code, to wit —

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113. Comprehensive Firearms and Ammunition Regulation Act, § 2.

114. *Id.*

115. *Id.* § 45. This Section states that "[R.A. No. 10591] repeals Sections 1, 2, 5[,] and 7 of [P.D. No.] 1866, as [A]mended, and Section 6 of [R.A. No.] 8294 and all other laws, executive orders, letters of instruction, issuances, circulars, administrative orders, [and] rules or regulations that are inconsistent herewith."

Id.

116. *See* P.D. No. 1866, §§ 1, 2, 5, & 7 & R.A. No. 8294, § 6.

117. *See* Comprehensive Firearms and Ammunition Regulation Act, §§ 1-47.

118. *Id.* §§ 28-41.

119. People v. Simon, 234 SCRA 555 (1994).

> We are not unaware of cases in the past wherein it was held that, in imposing the penalty for offenses under special laws, the rules on mitigating or aggravating circumstances under the [RPC] cannot and should not be applied. A review of such doctrines as applied in said cases, however, reveals that the reason therefor was because the special laws involved provided their own specific penalties for the offenses punished thereunder, and which penalties were not taken from or with reference to those in the [RPC]. Since the penalties then provided by the special laws concerned did not provide for the minimum, medium[,] or maximum periods, it would consequently be impossible to consider the aforestated modifying circumstances whose main function is to determine the period of the penalty in accordance with the rules in Article 64 of the Code.
>
> This is also the rationale for the holding in previous cases that the provisions of the Code on the graduation of penalties by degrees could not be given supplementary application to special laws, since the penalties in the latter were not components of or contemplated in the scale of penalties provided by Article 71 of the former. The suppletory effect of the [RPC] to special laws, as provided in Article 10 of the former, cannot be invoked where there is a legal or physical impossibility of, or a prohibition in the special law against, such supplementary application.
>
> The situation, however, is different where although the offense is defined in and ostensibly punished under a special law, the penalty therefor is actually taken from the [RPC] in its technical nomenclature and, necessarily, with its duration, correlation[,] and legal effects under the system of penalties native to said Code.[120]

The *Simon* ruling has been reiterated in several subsequent cases.[121]

With its adoption of penalties covered by the range of penalties in the RPC, R.A. No. 10591 opens its doors to the application of the entire gamut of jurisprudential principles and doctrines enunciated by the Supreme Court in deciding criminal cases involving felonies under the RPC. This means that, instead of starting from scratch, the different courts in the country that will initially try and decide cases for violation of R.A. No. 10591 can find guidance in the statutory provisions of the RPC and the precedents established by the wealth of jurisprudence on the subject.

Interestingly enough, R.A. No. 10591's adoption of the nomenclature of penalties under the RPC also indicates an implicit legislative intent to elevate the gravity of criminal violations of R.A. No. 10591 by treating them as being of the same nature as felonies, i.e., *mala in se*, particularly because it is

120. *Id.* at 573–74.

121. *See* Mendoza v. People, 659 SCRA 681, 690 (2011); People v. Elamparo, 329 SCRA 404, 416 (2000); People v. Valdez, 304 SCRA 140, 154 (1999); People v. Medina, 292 SCRA 436, 450–51 (1998); & People v. Doroja, 235 SCRA 238, 246 (1994).

only with crimes of this nature that modifying circumstances based on good faith as well as lack or diminution of criminal intent are applicable.[122]

D. Use of Loose Firearm in the Commission of a Crime

Like its predecessor statutes,[123] R.A. No. 10591 generally treats the possession of an unlicensed firearm as a separate offense.[124] The rules however differ particularly in cases where the unlicensed firearm was used in the commission of a crime.

Under Section 1 of P.D. No. 1866, when an unlicensed firearm was used in the commission of either homicide or murder, or when the use of the unlicensed firearm is in furtherance of, incident to, or in connection with the crimes of rebellion, insurrection, or subversion, the penalty was death.[125] The said Provision, however, did not clarify in what concept the use of unlicensed firearm should be applied when dealing with crimes other than rebellion, insurrection, or subversion, i.e., whether it should be dealt with as an offense separate and distinct from the crimes in connection with which it was used, or whether it was to be considered merely as an aggravating or qualifying circumstance of such crimes.

This statutory lacuna spawned a host of Supreme Court decisions. In *People v. Tac-an*,[126] the Supreme Court held that one who kills another with the use of an unlicensed firearm commits two separate offenses of (1) either homicide or murder under the RPC, and (2) aggravated illegal possession of firearm under Section 1 of P.D. No. 1866.[127] The use of the unlicensed firearm cannot serve to increase the penalty for homicide or murder; however, the killing of a person with the use of an unlicensed firearm, by express provision of P.D. No. 1866, shall increase the penalty for illegal possession of firearm.[128] This ruling was reiterated in *People v. Tiozon*,[129]

122. *See* Comprehensive Firearms and Ammunition Regulation Act, §§ 28–41.

123. *See* P.D. No. 1866, § 1 & R.A. No. 8294, § 1.

124. Comprehensive Firearms and Ammunition Regulation Act, §§ 28–29.

125. *See* P.D. No. 1866, § 1.

126. People v. Tac-an, 182 SCRA 601 (1990).

127. *Id.* at 615–17.

128. *Id.* at 617.

129. People v. Tiozon, 198 SCRA 368, 389 (1991).

People v. Caling,[130] *People v. Jumamoy*,[131] *People v. Deunida*,[132] *People v. Tiongco*,[133] *People v. Fernandez*,[134] and *People v. Somoc*.[135]

In the 1995 case of *People v. Barros*,[136] however, the Supreme Court Second Division, swayed by the separate opinion of Justice Florenz D. Regalado,[137] adopted a different view and decidedly chose between whether to convict the accused of murder or illegal possession of firearm in its aggravated form, but not both.[138]

The conflict between these jurisprudential pronouncements was discussed and resolved by the Supreme Court *en banc* in *People v. Quijada*,[139] which held that

> [t]he unequivocal intent of the second paragraph of Section 1 of P.D. No. 1866 is to respect and preserve homicide or murder as a distinct offense penalized under the [RPC] and to increase the penalty for illegal possession of firearm where such a firearm is used in killing a person. Its clear language yields no intention of the lawmaker to repeal or modify, *pro tanto*, Articles 248 and 249 of the [RPC], in such a way that if an unlicensed firearm is used in the commission of homicide or murder, either of these crimes, as the case may be, would only serve to aggravate the offense of illegal possession of firearm and would not anymore be separately punished. Indeed, the words of the subject provision are palpably clear to exclude any suggestion that either of the crimes of homicide and murder, as crimes *mala in se* under the [RPC], is obliterated as such and reduced as a mere aggravating circumstance in illegal possession of firearm whenever the unlicensed firearm is used in killing a person. The only purpose of the provision is to increase the penalty prescribed in the first paragraph of Section 1 — *reclusion temporal* in its maximum period to *reclusion perpetua* — to death, seemingly because of the accused's manifest arrogant defiance and contempt of the law in using an unlicensed weapon to kill another, but never, at the same time, to absolve the accused from any criminal liability for the death of the victim.
>
> Neither is the second paragraph of Section 1 meant to punish homicide or murder with death if either crime is committed with the use of an

130. People v. Caling, 208 SCRA 821, 828 (1992).

131. People v. Jumamoy, 221 SCRA 333, 347-48 (1993).

132. People v. Deunida, 231 SCRA 520, 530 (1994).

133. People v. Tiongco, 236 SCRA 458, 467-68 (1994).

134. People v. Fernandez, 239 SCRA 174, 187 (1994).

135. People v. Somoc, 244 SCRA 731, 742 (1995).

136. People v. Barros, 245 SCRA 312 (1995).

137. *Id.* at 323 (J. Regalado, separate opinion).

138. *Id.* at 332.

139. People v. Quijada, 259 SCRA 191 (1996).

> unlicensed firearm, i.e., to consider such use merely as a qualifying circumstance and not as an offense. That could not have been the intention of the lawmaker because the term 'penalty' in the subject provision is obviously meant to be the penalty for illegal possession of firearm and not the penalty for homicide or murder. We explicitly stated in *Tac-an* [that] '[t]here is no law which renders the use of an unlicensed firearm as an aggravating circumstance in homicide or murder. Under an information charging homicide or murder, the fact that the death weapon was an unlicensed firearm cannot be used to increase the penalty for the second offense of homicide or murder to death[.] The essential point is that the unlicensed character or condition of the instrument used in destroying human life or committing some other crime, is not included in the inventory of aggravating circumstances set out in Article 14 of the [RPC].'
>
> A law may, of course, be enacted making the use of an unlicensed firearm as a qualifying circumstance. This would not be without precedent. By analogy, we can cite Section 17 of B.P. Blg. 179, which amended the Dangerous Drugs Act of 1972 (R.A. No. 6425). The said [S]ection provides that when an offender commits a crime under a state of addiction, such a state shall be considered as a qualifying aggravating circumstance in the definition of the crime and the application of the penalty under the [RPC].
>
> In short, there is nothing in P.D. No. 1866 that manifests, even vaguely, a legislative intent to decriminalize homicide or murder if either crime is committed with the use of an unlicensed firearm, or to convert the offense of illegal possession of firearm as a qualifying circumstance if the firearm so illegally possessed is used in the commission of homicide or murder. To charge the lawmaker with that intent is to impute an absurdity that would defeat the clear intent to preserve the law on homicide and murder and impose a higher penalty for illegal possession of firearm if such firearm is used in the commission of homicide or murder.
>
> Evidently, the majority did not, as charged in the concurring and dissenting opinion, create two offenses by dividing a single offense into two. Neither did it resort to the 'unprecedented and invalid act of treating the original offense as a single integrated crime and then creating another offense by using a component crime which is also an element of the former.' The majority has always maintained that the killing of a person with the use of an illegally possessed firearm gives rise to two separate offenses of (a) homicide or murder under the [RPC], and (b) illegal possession of firearm in its aggravated form.[140]

Taking its cue from *Quijada*, Congress enacted R.A. No. 8294 which, aside from rationalizing the penalties in P.D. No. 1866 into more acceptable and realistic levels,[141] clarified how the use of an unlicensed firearm should be appreciated in cases where it was used in connection with another

140. *Quijada*, 259 SCRA at 232–34.

141. *Comadre*, 431 SCRA at 379.

crime.[142] Under R.A. No. 8294, simple illegal possession of firearms was to be treated as a separate offense, provided, that no other crime was committed.[143] If homicide or murder is committed with the use of unlicensed firearm, such use shall be considered as an aggravating circumstance, thereby precluding it from being tried as a separate offense.[144] Where the use of unlicensed firearm is in furtherance, incident to, or in connection with the crimes of rebellion or insurrection, sedition, or attempted coup d'etat, such use is absorbed as an element of the latter crimes.[145] In *People v. Molina*,[146] the Court expounded on these changes brought about by R.A. No. 8294, to wit —

> [R.A. No.] 8294 has now amended the said decree and considers the use of an unlicensed firearm simply as an aggravating circumstance in murder or homicide, and not as a separate offense. The intent of Congress to treat as a single offense the illegal possession of firearm and the commission of murder or homicide with the use of such unlicensed firearm is clear from the following deliberations of the Senate during the process of amending Senate Bill No. 1148 [—]
>
> 'Senator Drilon[:] On line 18, we propose to retain the original provision of law which says, 'If homicide or murder is committed with the use of the unlicensed firearm.' And in order that we can shorten the paragraph, we would suggest and move that the use of the unlicensed firearm be considered as an aggravating circumstance rather than imposing another period which may not be in consonance with the [RPC].
>
> So that if I may read the paragraph in order that it can be understood, may I propose an amendment to lines 18 to 22 to read as follows: 'If homicide or murder is committed with the use of the unlicensed firearm, [such use of an unlicensed firearm shall be considered as an aggravating circumstance].'
>
> ...
>
> Senator Santiago[:] Mr. President.
>
> The President[:] With the permission of the two gentlemen, Senator Santiago is recognized.
>
> Senator Santiago[:] Will the principal author allow me as co[-]author to take the [f]loor to explain, for the information of our colleagues, the stand taken by the Court on the question of whether aggravated illegal possession is a complex or a compound offense. May I have the [f]loor?

142. R.A. No. 8294, §§ 1–2.

143. *Id.* § 1.

144. *Id.* This would later on be known as the "Drilon Amendment." *See New firearms law also scraps rebellion link*, MANILA STAND. TODAY, June 14, 1997, at A3.

145. R.A. No. 8294, § 1.

146. People v. Molina, 292 SCRA 742 (1998).

> Senator Revilla[:] Yes, Mr. President.
>
> Senator Santiago[:] Thank you.
>
> ...
>
> In other words, in two successive years, the Supreme Court issued two different ways of treating the problem. The first is to treat it as one crime alone in the aggravated form, and the second is to treat it as two separate crimes.
>
> So at this point, the Senate has a choice on whether we shall follow the 1995 or the 1996 ruling. The proposal of the gentleman, as a proposed amendment, is to use the 1995 ruling and to consider the offense as only one offense but an aggravated form. That could be acceptable also to this co-author.
>
> The Presiding Officer [(Sen. Flavier):] So, do I take it that the amendment is accepted?
>
> Senator Revilla[:] Yes, it is accepted, Mr. President.
>
> The Presiding Officer[:] Thank you. Is there any objection to the amendment? [(Silence)] There being none, the amendment is approved.'
>
> Although the explanation of the legal implication of the Drilon amendment may not have been very precise, such modification, as approved and carried in the final version enacted as [R.A. No.] 8294, is unequivocal in language and meaning. The use of an unlicensed firearm in a killing is now merely an aggravating circumstance in the crime of murder or homicide. This is clear from the very wordings of the third paragraph of Section 1 of [R.A. No.] 8294, which reads [—]
>
> 'If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.'
>
> Furthermore, the preceding paragraphs, also in Section 1, state that the penalties for illegal possession of firearms shall be imposed 'provided that no other crime is committed.' In other words, where murder or homicide was committed, the separate penalty for illegal possession shall no longer be meted out since it becomes merely a special aggravating circumstance.[147]

With the enactment of R.A. No. 10591, Congress made further changes on how to appreciate the use of an unlicensed firearm in the commission of a crime, to wit —

> Section 29. Use of Loose Firearm in the Commission of a Crime. — The use of a loose firearm, when inherent in the commission of a crime punishable under the [RPC] or other special laws, shall be considered as an aggravating circumstance: [p]rovided, [t]hat if the crime committed with the use of a loose firearm is penalized by the law with a maximum penalty

147. *Molina*, 292 SCRA at 780–82 (emphasis omitted).

> which is lower than that prescribed in the preceding section for illegal possession of firearm, the penalty for illegal possession of firearm shall be imposed in lieu of the penalty for the crime charged: [p]rovided, further, [t]hat if the crime committed with the use of a loose firearm is penalized by the law with a maximum penalty which is equal to that imposed under the preceding section for illegal possession of firearms, the penalty of *prision mayor* in its minimum period shall be imposed in addition to the penalty for the crime punishable under the [RPC] or other special laws of which he/she is found guilty.
>
> If the violation of this Act is in furtherance of, or incident to, or in connection with the crime of rebellion of insurrection, or attempted [coup d'etat], such violation shall be absorbed as an element of the crime of rebellion or insurrection, or attempted [coup d'etat.]
>
> If the crime is committed by the person without using the loose firearm, the violation of this Act shall be considered as a distinct and separate offense.[148]

A cursory reading of the above Provision yields several notable observations.

First, there is that change in the terminology from "unlicensed"[149] to "loose"[150] in describing the firearm. Under Section 3 of Article I of R.A. No. 10591, a "[l]oose firearm refers to an unregistered firearm, an obliterated or altered firearm, firearm which has been lost or stolen, illegally manufactured firearms, registered firearms in the possession of an individual other than the licensee, and those with revoked licenses in accordance with the rules and regulations."[151] With this definition, the law has expanded the scope of circumstances under which a firearm may be considered as illegally possessed or used.

Second, the law uses the word "inherent,"[152] which at a glance would seem problematic. Inherent means that a thing is part of the very nature of another and therefore a permanent characteristic thereof, or necessarily involved in it, or an intrinsic or essential character of something.[153] The characterization of a circumstance as being inherent in a crime is equivalent to that of its being absorbed in that crime.[154] As traditionally used in teaching Criminal Law, the word "inherent" ordinarily refers to those circumstances

148. Comprehensive Firearms and Ammunition Regulation Act, § 29.

149. P.D. No. 1866, § 1.

150. Comprehensive Firearms and Ammunition Regulation Act, §§ 3 (v) & 29.

151. *Id.* § 3 (v).

152. *Id.* § 29.

153. Merriam-Webester Dictionary, Inherent, *available at* http://www.merriam-webster.com/dictionary/inherent (last accessed Sep. 12, 2013).

154. R.A. No. 8294, § 1.

or characteristics which, if present, are considered as necessarily and intrinsically involved in the commission of the crime so much so that they are covered or subsumed by the statutory definition of the offense. Being absorbed into, and forming part and parcel of the resulting crime, circumstances which are inherent to the crime committed should not legally be considered any further as a basis for modifying or aggravating the offender's criminal liability for the crime committed.[155] That is the lesson in *People v. Prieto*,[156] wherein the Court ratiocinated that murder or physical injuries charged as overt acts of treason cannot be charged as crimes separate from treason, in the same way that a person cannot be punished for possessing opium in a prosecution for smoking the same identical drug, and a robber cannot be punished for coercion and trespass separately from that of the robbery.[157]

The ruling in *Prieto* became the underlying doctrinal basis and rationale for the Supreme Court's rulings in *People v. Hernandez, et al.*[158] and *People v. Geronimo, et al.*,[159] from which the Legislature conceptualized the fourth paragraph of Section 1 of R.A. No. 8294[160] and the second paragraph of Section 29 of R.A. No. 10591.[161]

The idea of a circumstance as being both inherent as well as aggravating is not only incongruous; it is patently anathema. Take for example the crime

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155. *See, e.g.*, People v. Caliso, 58 Phil. 283, 295 (1933).

156. People v. Prieto, 80 Phil. 138 (1948).

157. *Id.* at 143. The Court took exception to the lower court's judgment holding the accused guilty of the crime of treason complexed by murder and physical injuries. In holding that the crime committed was treason, the Court held that

> [j]ust as one [cannot] be punished for possessing opium in a prosecution for smoking the identical drug, and a robber cannot be held guilty of coercion or trespass to a dwelling in a prosecution for robbery, because possession of opium and force and trespass are inherent in smoking and in robbery respectively, so may not a defendant be made liable for murder as a separate crime or in conjunction with another offense where, as in this case, it is averred as a constitutive ingredient of treason. This rule would not, of course, preclude the punishment of murder or physical injuries as such if the government should elect to prosecute the culprit specifically for those crimes instead of relying on them as an element of treason. It is where murder or physical injuries are charged as overt acts of treason that they can not be regarded separately under their general denomination.

Id.

158. *See* People v. Hernandez, et al., 99 Phil. 515 (1956).

159. *See* People v. Geronimo, et al., 100 Phil. 90 (1956).

160. R.A. No. 8294, § 1.

161. Comprehensive Firearms and Ammunition Regulation Act, § 29.

of robbery wherein the accused uses a loose firearm as a means of violence or intimidation upon his victim.[162] The use of force, violence, or intimidation is inherent in robbery.[163] Being inherent, it is part and parcel of robbery and, after being appreciated as an element of robbery, it cannot again be utilized for purposes aggravating criminal liability for the same crime.[164] With R.A. No. 10591, will there now be a change in this jurisprudential paradigm? It would therefore be of particular interest for the legal community to see how the courts will deal with this dilemma through the creative exercise of legal hermeneutics. What is clear, however, is the legislative intent to have the use of a loose firearm considered as an aggravating circumstance in the commission of the crime.[165] It would thus only be the Legislature's inapt use of the word "inherent"[166] which could very well be subjected to sage judicial interpretation.

Third, R.A. No. 10591 clarifies that the use of loose firearms is an aggravating circumstance in the commission of all crimes in general, inclusive of felonies under the RPC as well as offenses under special laws.[167] This is quite problematic considering that unlike the RPC and a handful of special penal laws which expressly or implicitly allows the suppletory application of the RPC's system of penalties, many special penal laws have no specific set of rules on how to appreciate aggravating circumstances for purposes of modifying criminal liability. R.A. No. 10591 ingeniously addresses this matter by investing the use of loose firearms as an aggravating circumstance with peculiar and special effects depending upon whether the penalty provided for by law in relation to the crime committed with the use of loose firearms is greater or less than, or equal to, the penalty prescribed in Section 28 of the law for illegal possession of firearms, to wit:

(1) If the maximum penalty prescribed by law for the crime committed is lower than that prescribed for illegal possession of firearm by Section 28 of R.A. No. 10591, the offender shall suffer the penalty for illegal possession of firearm in lieu of the penalty for the crime charged.[168]

(2) If the maximum penalty prescribed by law for the crime committed is equal to that prescribed for illegal possession of

162. REVISED PENAL CODE, art. 294.

163. *Id.*

164. LUIS B. REYES, THE REVISED PENAL CODE: CRIMINAL LAW BOOK TWO 656 & 293 (18th ed. 2012) [hereinafter REYES, BOOK TWO].

165. Comprehensive Firearms and Ammunition Regulation Act, § 29.

166. *Id.*

167. *Id.*

168. *Id.*

firearm by Section 28 of R.A. No. 10591, the offender shall suffer the penalty for the crime charged plus the additional penalty of *prision mayor* in its minimum period.[169]

(3) Section 29 of R.A. No. 10591 does not specifically provide for the rule in case the maximum penalty prescribed by law for the crime committed is greater than that prescribed for illegal possession of firearms by Section 28 of R.A. No. 10591. It is, however, readily deducible that the penalty to be imposed in such cases corresponds to that of the crime committed, and the use of loose firearm will merely serve to have the penalty imposed in its maximum. This is implicit from the law's characterization of the use of loose firearms as a special aggravating circumstance.[170]

Fourth, unlike the fourth paragraph of Section 1 of R.A. No. 8294 under which the offense absorbed by crime of rebellion or insurrection, sedition, or attempted coup d'état is limited to that particular section on unlawful manufacture, sale, acquisition, disposition, or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition,[171] the second paragraph of Section 29 of R.A. No. 10591 refers to the absorption of all the violations of the entire law itself for as long as such violations are "in furtherance of, or incident to, or in connection with"[172] the absorbing crime.[173] Parenthetically, the crime of sedition has been expressly omitted from the list of crimes that have been statutorily given the ability to absorb violations of R.A. No. 10591.[174] There is however a bit of an oddity in the law's sweeping recognition of the ability of the crimes of rebellion or insurrection, and attempted coup d'état to absorb all violations of R.A. No. 10591, particularly with reference to Section 38 thereof which penalizes the planting of evidence.[175]

Fifth, the last paragraph of Section 29 of R.A. No. 10591 implicitly emphasizes the distinction between mere possession as opposed to use of a loose firearm.[176] It contemplates a situation wherein a person commits a crime while illegally possessing a loose firearm, but he or she does not use

169. *Id.*

170. *Id.*

171. R.A. No. 8294, § 1.

172. Comprehensive Firearms and Ammunition Regulation Act, § 29.

173. *Id.*

174. *Id.*

175. *Id.* § 38.

176. *Id.* § 29.

the said firearm in the commission of that crime.[177] Without the use of the loose firearm as a nexus between the mere possession thereof and the commission of another crime, it is clear that the criminal liability for illegal possession of firearms shall be considered as an offense separate and distinct from that other crime that the offender has committed.

E. Legal Definition of a Firearm

The linchpin which connects a particular case to the foregoing discussions on the relevant impact of R.A. No. 10591 to the RPC is of course the current statutory definition of what constitutes a firearm.[178] Determining whether a particular weapon is a firearm is of such great importance because an instrument that is not a firearm as defined by R.A. No. 10591 is not covered by the said law. Simply stated, instruments which do not clearly and squarely fall within R.A. No. 10591's statutory definition of a firearm are not firearms in legal contemplation and are therefore not subject to the regulatory and penal provisions of the law, irrespective of how benign or dangerous the use of such instruments may be.[179]

In *Orceo v. COMELEC*,[180] the Court, citing Act No. 1780, defined a firearm as

> any rifle, musket, carbine, shotgun, revolver, pistol[,] or air rifle, except air rifles of small caliber and limited range used as toys, or any other deadly weapon from which a bullet, ball, shot, shell[,] or other missile or missiles may be discharged by means of gunpowder or other explosive; the barrel of any of the same shall [also] be considered [as] a firearm.[181]

Thereafter, Act No. 2711 repealed Act No. 1780 and modified the definition to "include rifles, muskets, carbines, shotguns, revolvers, pistols[,] and all other deadly weapons from which a bullet, ball, shot, shell[,] or other missile may be discharged by means of gunpowder or other explosives."[182] The law expressly included air rifles except those that are of small caliber and limited range used as toys; the barrel of any firearm shall also be considered as a complete firearm for all the purposes provided by law.[183]

177. *Id.*

178. Comprehensive Firearms and Ammunition Regulation Act, § 3 (l).

179. *See* Peaceful Responsible Owners of Guns (PROGUNS), Airguns and Airsoft guns now excluded from definition of "Firearms" Under New Law RA 10591, *available at* http://progun.ph/content/airguns-and-airsoft-guns-now-excluded-definition-firearms-under-new-law-ra-10591 (last accessed Sep. 12, 2013).

180. *Orceo*, 616 SCRA at 684.

181. *Id.* at 700 (J. Brion, concurring opinion).

182. *Id.*

183. *Id.*

Commonwealth Act No. 466, as amended,[184] followed the definition under Act No. 2711, "with the modification that the term firearms include air rifles coming under regulations of the Provost Marshal General."[185]

Despite being statutorily expressed as a comprehensive firearms law, P.D. No. 1866 took a different path from its predecessors and did not provide for a statutory definition of a firearm.[186] The reason for this can be discovered in part by looking at the historical backdrop under which the said law was issued. It was issued by then President Marcos during the tumultuous years of his dictatorship, and it was of course to the government's interest to ensure that firearms did not proliferate.[187] The lack of an express legal definition precluded the citizenry from knowing the exact metes and bounds of what could be considered as firearms. This also afforded the military, the law enforcement personnel, and other government agents such wide latitude in determining the law's coverage. It also provided for harsh penalties that were later on described as onerous, disproportionate, anachronistic, unrealistic, and unacceptable.[188] The scenario under P.D. No. 1866 was clearly calculated to discourage people not only from having firearms, but also from having any other instruments or items that the military and law enforcement can describe as a firearm, regardless of how close or remote the similarity was to a true firearm.

With the enactment of R.A. No. 8294, Congress provided for two classifications of firearms: low-powered and high-powered.[189] It also expanded the concept of unlicensed firearms to include firearms with expired licenses, as well as the unauthorized use of licensed firearm in the commission of the crime.[190] This expanded concept was explained by the Court in *Molina*, to wit —

> Moreover, unlicensed firearm no longer simply means a firearm without a license duly issued by lawful authority. The scope of the term has been expanded in Section 5 of [R.A. No. 8294 —]
>
> Section 5. Coverage of the Term Unlicensed Firearm. — The term unlicensed firearm shall include:
>
> (1) [F]irearms with expired license[;] or

184. NATIONAL INTERNAL REVENUE CODE, § 290.

185. *Orceo*, 616 SCRA at 700-01 (J. Brion, concurring opinion).

186. Renato Bautista, Jr., Law on Firearms in the Philippines, *available at* http://aboutphilippines.ph/filer/Law-on-Firearms-in-the-Philippines.pdf (last accessed Sep. 12, 2013).

187. *Comadre*, 431 SCRA at 379.

188. *Id.* at 379.

189. R.A. No. 8294, § 1.

190. *Id.* at § 5.

(2) [U]nauthorized use of licensed firearm in the commission of the crime.

Thus, the unauthorized use of a weapon which has been duly licensed in the name of its owner/possessor may still aggravate the resultant crime. In the case at bar, although appellants may have been issued their respective licenses to possess firearms, their carrying of such weapons outside their residences and their unauthorized use thereof in the killing of Bonifacio Uy may be appreciated as an aggravating circumstance in imposing the proper penalty for murder.[191]

A critical observation of R.A. No. 8294 yields that, although it classified firearms into low-powered and high-powered, it still did not provide a clear legal definition of what constituted a firearm.[192] Neither did it specify in detail the standards and criteria for classifying firearms.[193] In lieu thereof, the law sought to provide a somewhat manageable yardstick by specifying examples of the caliber or diameter of the projectile, as well as the type of ammunition, used by the firearm.[194] Thus, low powered firearms included "rimfire handgun, .380 or .32 and other firearm of similar firepower,"[195] and firearms classified as high powered included those that have bores that are "bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45, and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three."[196] Despite such a yardstick, the absence of a specific legal definition of a firearm in R.A. No. 8294 preserved the wide discretion enjoyed by the military and law enforcers in determining whether a specific instrument falls within the coverage of the firearms law.

R.A. No. 8294 proved to be quite problematic due to the methods that it statutorily employed in determining whether an instrument was a firearm or not, i.e., the bore size, the caliber or diameter of the projectile used, and the type of ammunition.[197] The law left out a critical piece of information — the means by which a firearm fires, expels, launches, or discharges its projectiles or ammunitions. While the specific examples enumerated in R.A. No. 8294[198] all used the burning of gunpowder as a common means for discharging and expelling the projectile, the main take away made by law enforcement agencies was that an instrument with a bore and an ability to

191. *Molina*, 292 SCRA at 783.

192. Bautista, Jr., *supra* note 186.

193. *Id.*

194. R.A. No. 8294, § 1.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

expel a projectile can be statutorily considered as a firearm within the purview of the law, with the size or diameter of the bore and projectile, as well as the instrument's firing capability, being determinative only of its classification as either a low-powered or high-powered firearm.[199]

As it was in P.D. No. 1866, law enforcers under the regime of R.A. No. 8294 still exercised quite a large degree of discretion in determining what a firearm was, to the point that they considered as fair game any instrument capable of propelling projectiles through a bore.[200] The flaw in that administrative interpretation of R.A. No. 8294 is readily discernible in that it was so broad and general that it allowed quite a stretch which, if taken to absurd levels, can include not just airguns,[201] but also spud or potato guns,[202] Nerf guns,[203] water guns,[204] airsoft guns,[205] and pop guns.[206]

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199. *Id.*

200. *See* Commission on Elections, Rules and Regulations on the: (1) Bearing, Carrying, or Transporting of Firearms or Other Deadly Weapons; and (2) Employment, Availment, or Engagement of the Services of Security Personnel or Bodyguards, During the Election Period for the May 10, 2010 National and Local Elections, COMELEC Resolution No. 8714 (Dec. 16, 2009) & *Orceo*, 616 SCRA at 689-92.

201. An airgun is defined as "a gun that propels a projectile by compressed air[.]" Definition of air gun, *available at* http://dictionary.reference.com/browse/airgun (last accessed Sep. 12, 2013).

202. A spud gun is defined as "a toy gun that fires a plug of potato by compressing the air in the barrel, forcing the potato 'bullet' out at speed." Definition of spud gun, *available at* http://www.definitions.net/definition/spud%20gun (last accessed Sep. 12, 2013).

203. A Nerf gun is defined as

> a type of toy, created for safe indoor play, that either shoots or is made of foam-like material. Most of the toys are a variety of foam-based weaponry, but there [are] also several different types of Nerf toys, such as balls for sports like football, basketball, and others. The most famous of the toys are the 'dart guns' (also known as blasters) that shoot projectiles made from Nerf foam. Since many such items were released throughout the 1980s, they often featured bright neon colors and soft textures similar to the flagship Nerf ball.

Academic Dictionaries and Encyclopedias, Nerf, *available at* http://en.academic.ru/dic.nsf/enwiki/419942 (last accessed Sep. 12, 2013).

204. A water gun is "a toy pistol designed to squirt a jet of liquid[.]" Merriam-Webster Dictionary, Water Pistol, *available at* http://www.merriam-webster.com/dictionary/water+pistol (last accessed Sep. 12, 2013).

205. An airsoft gun is "[a replica firearm] used in airsoft that fire[s] plastic pellets by way of compressed gas or electric and/or spring-driven pistons. [This gun is] designed to be non-lethal." Elite Sports, Airsoft, *available at* http://www.elitesportsinc.us/airsoft/ (last accessed Sep. 12, 2013).

Absurd as it may seem, law enforcement and other government agencies exercised their discretion quite liberally in favor of the State, and churned out rules that regulated a wide array of instruments that fell within their own conceptualized view of what legally constituted a firearm,[207] to the point that even toys and replicas[208] were subjected to stringent firearm regulations.[209]

The foregoing administrative concept of a firearm was tangentially affirmed by the Court in *Orceo*, which involved the validity of Section 2 (b) of COMELEC Resolution No. 8714.[210] The Section defined the term "firearm"[211] to include "airgun, airsoft guns, and their replica/imitation in whatever form that can cause an ordinary person to believe that they are real[,]"[212] for purposes of the gun ban during the election period from 10 January 2010 to 9 June 2010.[213] In *Orceo*, the Court held that

> [c]ontrary to [the] petitioner's allegation, there is a regulation that governs the possession and carriage of airsoft rifles/pistols, namely, Philippine National Police (PNP) Circular No. 11 dated [4 December] 2007, entitled Revised Rules and Regulations Governing the Manufacture, Importation, Exportation, Sale, Possession, Carrying of Airsoft Rifles/Pistols[,] and Operation of Airsoft Game Sites and Airsoft Teams. The Circular defines an airsoft gun as follows [—]
>
> Airsoft Rifle/Pistol ... includes 'battery operated, spring[,] and gas type powered rifles/pistols which discharge plastic or rubber pellets only as bullets or ammunition. This differs from [a] replica as the latter does not fire plastic or rubber pellet[s].'

206. A pop gun is defined as "a toy gun that fires small objects, such as corks, with a loud noise[.]" Longman Dictionary of Contemporary English, Pop-gun, *available at* http://www.ldoceonline.com/dictionary/pop-gun (last accessed Sep. 12, 2013).

207. *See, e.g.*, Office of the President, Revising Executive Order No. 58, S. 1987, by Rationalizing the Fees and Charges on Firearms, Ammunition, Spare Parts, Accessories, Components, Explosives, Explosive Ingredients, Pyrotechnics, and Firecrackers, Executive Order No. 256 [E.O. No. 256] (Dec. 21, 1995) & Philippine National Police, Revised Rules and Regulations Governing the Manufacture, Importation, Exportation, Sale, Possession, Carrying of Airsoft Rifles/Pistols, and Operation of Airsoft Game Sites and Airsoft Teams, PNP Circular No. 11 (Dec. 4, 2007).

208. *See* Office of the President, Ban on the Importation, Manufacture, Distribution, Sale and Distribution, Sale and Display of Certain Types of Toy Firearms and Explosives, Letter of Instruction No. 1264 (July 31, 1982).

209. *See Orceo*, 616 SCRA at 684.

210. *Id.* at 689-90.

211. COMELEC Resolution No. 8714, § 2 (b).

212. *Id.*

213. *Id.* at § 2 (a).

> PNP Circular No. 11 classifies the airsoft rifle/pistol as a special type of air gun, which is restricted in its use only to sporting activities, such as war game simulation. Any person who desires to possess an airsoft rifle/pistol needs a license from the PNP, and he shall file his application in accordance with PNP Standard Operating Procedure No. 13, which prescribes the procedure to be followed in the licensing of firearms. The minimum age limit of the applicant is 18 years old. The Circular also requires a Permit to Transport an airsoft rifle/pistol from the place of residence to any game or exhibition site.
>
> A license to possess an airsoft gun, just like ordinary licenses in other regulated fields, does not confer an absolute right, but only a personal privilege to be exercised under existing restrictions, and such as may thereafter be reasonably imposed.
>
> The inclusion of airsoft guns and airguns in the term 'firearm' in Resolution No. 8714 for purposes of the gun ban during the election period is a reasonable restriction, the objective of which is to ensure the holding of free, orderly, honest, peaceful[,] and credible elections.
>
> However, the Court excludes the replicas and imitations of airsoft guns and airguns from the term 'firearm' under Resolution No. 8714, because they are not subject to any regulation, unlike airsoft guns.[214]

The Separate Opinion issued by Justice Arturo D. Brion in *Orceo*[215] further elucidated the matter, to wit —

> I concur with the majority's decision and add the following discussions in its support.
>
> *The Law on Firearms*
>
> The definition of 'firearm' has evolved through various statutes and issuances.
>
> Under Act No. 1780, a firearm was defined as any rifle, musket, carbine, shotgun, revolver, pistol[,] or air rifle, except air rifles of small caliber and limited range used as toys, or any other deadly weapon from which a bullet, ball, shot, shell[,] or other missile or missiles may be discharged by means of gunpowder or other explosive; the barrel of any of the same shall be considered a firearm.
>
> Under Act No. 2711 (which repealed Act No. 1780), firearms include rifles, muskets, carbines, shotguns, revolvers, pistols[,] and all other deadly weapons from which a bullet, ball, shot, shell[,] or other missile may be discharged by means of gunpowder or other explosives; the term also includes air rifles except such as being a small caliber and limited range used

214. *Orceo*, 616 SCRA at 696-97 (citing PNP Circular No. 11 & *Chavez*, 431 SCRA at 562).

215. *Orceo*, 616 SCRA at 700 (J. Brion, concurring opinion).

as toys; the barrel of any firearm shall be considered a complete firearm for all the purposes hereof.

Commonwealth Act No. 466, as amended, follows the definition under Act No. 2711, with the modification that the term firearms include air rifles coming under regulations of the Provost Marshal General.

[P.D.] No. 1866 codifies the laws on illegal/unlawful possession, manufacture, dealing in, acquisition[,] or disposition of firearms, ammunition or explosives[,] or instruments used in the manufacture of firearms, ammunition or explosives, and imposed stiffer penalties for its violation. It does not, however, define the term firearm. The definition is provided in the Implementing Rules and Regulations of [P.D. No.] 1866 as follows [—]

Firearm — as herein used, includes rifles, muskets, carbines, shotguns, revolvers, pistols and all other deadly weapons from which a bullet, ball, shot, shell[,] or other missile may be discharged by means of gunpowder or other explosives. *The term also includes air rifles and air pistols not classified as toys under the provisions of Executive Order (E.O.) No. 712 dated 28 July 1981.* The barrel of any firearm shall be considered a complete firearm.

E.O. No. 712, to which the Implementing Rules and Regulations of [P.D. No.] 1866 refers, regulates the manufacture, sale[,] and possession of air rifles/pistols which are considered as firearms. Under [S]ection 1, the Chief of the Philippine Constabulary is given the authority to prescribe the criteria in determining whether an air rifle/pistol is to be considered a firearm or a toy within the contemplation of Sec. 877 of the Revised Administrative Code. Under Section 3, the Chief of the Philippine Constabulary is also delegated the authority to act dispositively on all applications to manufacture, sell[,] or possess and/or otherwise deal in air rifles/pistols whether considered as firearms or toys under the criteria to be prescribed pursuant to Section 1. The Chief of the Philippine Constabulary shall also prescribe, under Section 4, the rules and regulations to implement [E.O. No.] 712.

[R.A.] No. 8294, which amended [P.D. No.] 1866, also does not define the term firearm but categorizes it into two: (1) low powered firearm such as rimfire handgun, .380 or .32 and other firearm of similar firepower; and (2) high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter, such as caliber .40, .41, .44, .45[,] and also lesser calibered firearms[,] but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three.

The Election Firearms Ban [U]nder [R.A. No.] 7166

When a statute defines the particular words and phrases it uses, the legislative definition controls the meaning of the statutory word, irrespective of any other meaning the word or phrase may have in its ordinary or usual sense; otherwise put, where a statute defines a word or

phrase employed therein, the word or phrase should not, by construction, be given a different meaning; the [L]egislature, in adopting a specific definition, is deemed to have restricted the meaning of the word within the terms of the definition.

Significantly, [R.A. No.] 7166 did not provide a statutory definition of the term 'firearms.' The absence of this statutory definition leads to the question of what the term 'firearms' under [R.A. No.] 7166 exactly contemplates[.] Various rules of statutory construction may be used to consider this query.

First, the general rule in construing words and phrases used in a statute is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary[,] and common usage meaning; the words should be read and considered in their natural, ordinary, commonly accepted usage, and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation.

Second, a word of general significance in a statute is to be taken in its ordinary and comprehensive sense, unless it is shown that the word is intended to be given a different or restricted meaning; what is generally spoken shall be generally understood and general words shall be understood in a general sense.

Third, a word of general signification employed in a statute should be construed, in the absence of legislative intent to the contrary, to comprehend not only peculiar conditions obtaining at the time of its enactment but those that may normally arise after its approval as well. This rule of construction, known as progressive interpretation, extends by construction the application of a statute to all subjects or conditions within its general purpose or scope that come into existence subsequent to its passage, and thus keeps legislation from becoming ephemeral and transitory.

Fourth, as a general rule, words that have or have been used in a technical sense or those that have been judicially construed to have a certain meaning, should be interpreted according to the sense in which they have been previously used, although the sense may vary from the strict or literal meaning of the words; the presumption is that the language used in a statute, which has a technical or well-known legal meaning, is used in that sense by the [L]egislature.

We cannot apply the first cited rule, under which a firearm could mean a weapon from which a shot is discharged by gunpowder — this is the common usage or acceptation of the term. Specifically, we cannot apply the rule as there previously existed a more comprehensive definition of the term under our legal tradition, i.e., the definition originally provided under Act [No.] 1780 which Act [No.] 2711 substantially adopted. Under this cited statutory definition, the term 'firearms' may include any other weapon from which a bullet, ball or shot, shell[,] or other missile may be discharged by means of gunpowder or other explosive. Thus, a weapon not using the medium of gunpowder may also be considered a firearm.

Under the fourth rule above, the term 'firearms' appears to have acquired a technical or well-known legal meaning. The statutory definition (under Act [No.] 2711) included air rifles, except those with small caliber and limited range and used as toys, and that the barrel of any firearm shall be considered a complete firearm for purposes of the law regulating the manufacture, use, possession[,] and transport of firearms.

As our legal history or tradition on firearms shows, this old definition has not changed. Thus, we can reasonably assume, in the absence of proof to the contrary, that when the [L]egislature conceived of the election firearms ban, its understanding of the term 'firearm' was in accordance with the definition provided under the then existing laws.

However, this old definition should not bar an understanding of 'firearm' suggested by the third rule above — that [R.A. No.] 7166, as an act of Congress, is not intended to be short-lived or transitory; it applies not only to existing conditions, but also to future situations within its reasonable coverage. Thus, the election firearms ban ([R.A. No.] 7166) applies as well to technological advances and developments in modern weaponry.

It is under this context that we can examine whether an airsoft gun can be considered a firearm.

As defined, [a]irsoft guns are firearm replicas, often highly detailed, manufactured for recreational purposes. Airsoft guns propel plastic 6mm and 8mm pellets at muzzle velocities ranging from 30 meters per second (m/s) to 180 m/s (100 feet per second [(ft/s)] to [637 ft/s]) by way of compressed gas or a spring-driven piston. Depending on the mechanism driving the pellet, an airsoft gun can be operated manually or cycled by either compressed gas such as Green Gas (propane), or CO2, a spring, or an electric motor. All pellets are ultimately fired from a piston compressing a pocket of air from behind the pellets.

Other than firearms discharged with the use of gunpowder, the law on firearms includes air rifles but subject to appropriate regulations that the proper authority may promulgate as regards their categorization, whether it is used as a toy. An air gun (e.g., air rifle or air pistol) is a rifle, pistol, or shotgun which fires projectiles by means of compressed air or other gas, in contrast to a firearm which burns a propellant. Most air guns use metallic projectiles as ammunition. Air guns that only use plastic projectiles are classified as airsoft guns.

An airsoft gun appears to operate on the same principle as air rifles — i.e., it uses compressed air — and could properly be considered to be within the coverage of an administrative determination of whether it could be considered a toy or a firearm. From this perspective, airsoft guns can be considered a firearm subject to regulation by the proper authorities.

The Authority to Categorize Air Rifles and Airsoft Guns

Pursuant to the cited [E.O. No.] 712, the President, then exercising legislative powers and authority, delegated to the Chief of the Constabulary [now the Chief of the PNP], the authority to determine whether certain air

> rifles/guns can be treated as toys or firearms. Under this same authority, then PNP Chief Avelino [I.] Razon issued PNP Circular No. 11 on 4 December 2007.
>
> PNP Circular No. 11 requires that airsoft guns and rifles be given the same treatment as firearms and air rifles with respect to licensing, manufacture, possession[,] and transport limitations. In effect, this is the PNP Chief's determination, by regulation, that airsoft guns and rifles are not simply considered toys beyond administrative regulation but, on the contrary, are considered as weapons subject to regulation. Based on this Circular, they are included under the term 'firearms' within the contemplation of [R.A. No.] 7166, and are therefore appropriate subjects of COMELEC Resolution No. 8714 issued pursuant to this law.[216]

With the enactment of R.A. No. 10591, Congress again transformed the legal definition of what constitutes a firearm under Philippine law.[217] The foregoing observations and jurisprudential pronouncements are therefore to be considered in light of the changes that Congress has made through the enactment of R.A. No. 10591, and are to be considered modified to the extent of the new statutory changes.

Under Section 3 of Article 1 of R.A. No. 10591, a firearm is defined as

> any handheld or portable weapon, whether a small arm or light weapon, that expels or is designed to expel a bullet, shot, slug, missile[,] or any projectile, which is discharged by means of expansive force of gases from burning gunpowder or other form of combustion or any similar instrument or implement. For purposes of this Act, the barrel, frame[,] or receiver is considered a firearm.[218]

As defined, the following statutory elements are established by R.A. No. 10591 for an instrument to be considered as a firearm:

(1) It must be a weapon;[219]

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216. *Id.* at 700-06 (J. Brion, concurring opinion) (citing An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes, Republic Act No. 7166 (1991); RUBEN E. AGPALO, STATUTORY CONSTRUCTION 163 & 181 (2009 ed.); Airsoft, *supra* note 205; Office of the President, Directing the Immediate Review of Existing Orders, Rules, and Regulations Issued by Local Government Units Concerning Public Transportation, Including the Grant of Franchises to Tricycles, Establishment and Operation of Transport Terminals, Authority to Issue Traffic Citation Tickets, and Unilateral Rerouting Schemes of Public Utility Vehicles, and for Other Purposes, Executive Order No. 712 [E.O. No. 712] (Mar. 11, 2008); & Definition of airgun, *supra* note 201).

217. Comprehensive Firearms and Ammunition Regulation Act, § 3 (l).

218. *Id.*

219. *Id.*

(2) It must be handheld or portable, whether a small arm or light;[220]

(3) It expels or is designed to expel a bullet, shot, slug, missile, or any projectile;[221] and

(4) It discharges the bullet, shot, slug, missile, or projectile by means of expansive force of gases from any of the following sources: burning gunpowder, other form of combustion, or any similar instrument or implement.[222]

For purposes of R.A. No. 10591, the barrel, frame, or receiver of an instrument which fulfils the foregoing elemental requirements of a firearm, is likewise considered as a firearm.[223]

With this definition, R.A. No. 10591 has effectively discarded the flawed notion under R.A. No. 8294 that an instrument's having a bore and an ability to expel a projectile was enough for it to be statutorily considered as a firearm.[224] Likewise discarded is the wide latitude of discretion previously enjoyed by law enforcers in determining whether a particular instrument is a firearm or not. The foregoing elements expressly provided for in the law serves to limit both the law enforcer's administrative discretion and R.A. No. 10591's coverage as a penal and regulatory statute.

The impact of R.A. No. 10591's express definition of what constitutes a firearm sent waves across the citizenry, prompting at least one organization, Peaceful Responsible Owners of Guns (PROGUNS), to release the following public statement —

> The definition of '[f]irearm' under the new law[,] [R.A. No.] 10591[,] is expressly defined in Art[icle] 3 [(l)][,] which states [that a] '[f]irearm refers to any handheld or portable weapon, whether a small arm or light weapon, that expels or is designed to expel a bullet, shot, slug, missile[,] or any projectile, which is discharged by means of expansive force of gases from burning gunpowder or other form of combustion or any similar instrument or implement. For purposes of this Act, the barrel, frame[,] or receiver is considered a firearm.' Clearly, airguns and airsoft guns which are powered by spring air are no longer included in the definition of 'firearm' under the law.
>
> This has far reaching legal effects.
>
> The first legal effect is that the PNP no longer possesses any power or jurisdiction to regulate or register any airgun or airsoft gun. The power of

220. *Id.*

221. *Id.*

222. *Id.*

223. Comprehensive Firearms and Ammunition Regulation Act, § 3 (l).

224. R.A. No. 8294, § 1.

> the PNP to regulate and register airguns and airsoft guns emanated from the [P.D. No.] 1866[,] as amended, which has now been repealed by Sec[tion] 45 of [R.A. No.] 10591 which states [—] 'Section 45. Repealing Clause. — This Act repeals Sections 1, 2, 5[,] and 7 of [P.D.] No. 1866, as amended, and Section 6 of [R.A.] No. 8294 and all other laws, executive orders, letters of instruction, issuances, circulars, administrative orders, [and] rules or regulations that are inconsistent herewith.'
>
> Thus[,] this new [R.A. No.] 10591 effectively repeals by implication [E.O.] No. 712 on regulation of airguns and the PNP [R]ules dated January 1992 on registration of airguns, as well as PNP Order No. 12 series 2008 on airsoft guns.
>
> The second legal implication of the exclusion of airsoft and airguns from the definition of 'firearm' under [R.A. No.] 10591, is that these guns are no longer entitled to be included in the [COMELEC] gun ban. Under the Omnibus [E]lection Code, [COMELEC] can only include in its gun ban 'firearms and deadly weapons.' Now since airguns and airsoft guns are not 'firearms' as defined by law, and certainly they are not ['deadly weapons,'] then airsoft guns and airguns are now excluded from the [COMELEC] gun ban.[225]

The relative merits of the foregoing public announcement will of course have to pass judicial scrutiny in an appropriate case. Pending judicial imprimatur, however, the limiting effect of the express definition of a firearm under R.A. No. 10591 remains as the popular view among gun enthusiasts.

From a legal and academic standpoint, such a view seems to be supported by legislative history.

In Act No. 1780, a firearm was expressly defined along the lines of its ordinary and usual sense, i.e., as any rifle, musket, carbine, shotgun, revolver, pistol, or any other deadly weapon from which a bullet, ball, shot, shell, or other missile or missiles may be discharged by means of gunpowder or other explosive.[226] Oddly however, Act No. 1780 statutorily included air rifles together with its enumeration of true firearms despite the fact that air rifles are not discharged by means of gunpowder or other explosives.[227] To compound the matter, the law provided for a further exception relating to air rifles of small caliber and limited range used as toys.[228] Act No. 2711 repealed Act No. 1780, and sought to clarify the definition of firearms to "include rifles, muskets, carbines, shotguns, revolvers, pistols[,] and all other deadly weapons from which a bullet, ball, shot, shell[,] or other missile may

225. PROGUNS, *supra* note 179.

226. *Orceo*, 616 SCRA at 700 (J. Brion, concurring opinion).

227. *Id.*

228. *Id.*

be discharged by means of gunpowder or other explosives."[229] In a somewhat strained effort to clarify the confusion wrought by Act No. 1780, Act No. 2711 devoted a proviso that was meant to specifically and expressly include, by legislative fiat, air rifles within the term "firearm" despite the clear difference between true firearms and airguns in terms of the means of propulsion.[230] The need for the Legislature to expressly include airguns was both necessary and proper because airguns are not firearms in the technical sense.[231] Airguns merely utilize the escape of air pressure, and do not involve the use of any form combustion due to the ignition of gunpowder or other fuel sources.[232]

P.D. No. 1866 did away with expressly defining a firearm as a legal term, presumably to fulfil its purpose as an effective martial law measure.[233] With this, P.D. No. 1866 abrogated whatever limitations and inclusions were established in the legal definitions and enumerations provided by both Act Nos. 1780 and 2711, and left the task of redefining firearms to the PNP as the implementing administrative agency.[234] The PNP fulfilled this task through its Implementing Rules and Regulations of P.D. No. 1866 which largely adopted the criteria under Act Nos. 1780 and 2711, which require combustion or a discharge by means of gunpowder or other explosives.[235] To fill the lacuna regarding airguns, the PNP harked back to an old martial law issuance, E.O. No. 712 dated 28 July 1981, under which certain types of airguns were legislatively considered as firearms.[236] R.A. No. 8294 virtually adopted the same avenue as P.D. No. 1866, but indirectly changed the criteria for determining whether an instrument is a firearm by merely looking at the existence of a bore and the ability to expel a projectile.[237] As worded, R.A. No. 8294 gave law enforcers almost unlimited discretion to consider as firearms, all types of instruments that have a bore and the ability to expel a projectile, regardless of the means of propulsion.[238]

Against such a historical backdrop, the legislative intent to limit the coverage of R.A. No. 10591, both as a penal and regulatory measure, to true

229. *Id.*

230. The law retained the further exception regarding airguns of small caliber and limited range used as toys. Act No. 2711, § 877.

231. *Orceo*, 616 SCRA at 705 (J. Brion, concurring opinion).

232. *Id.*

233. *See* Bautista, Jr., *supra* note 186.

234. P.D. No. 1866, § 8.

235. *Orceo*, 616 SCRA at 701 (J. Brion, concurring opinion).

236. *Id.*

237. R.A. No. 8294, § 1.

238. *Id.*

firearms in the ordinary sense of the term, is clear and categorical. This much can be gleaned from the statutory requirements: that the instrument must be a weapon; that it must be handheld or portable; that it expels or is designed to expel a bullet, shot, slug, missile, or any projectile; and that its discharge of the bullet, shot, slug, missile, or projectile should be by means of expansive force of gases from burning gunpowder or other form of combustion or any similar instrument or implement, in order to be considered as a firearm.[239]

The popular view above is likewise supported by contemporary canons of statutory construction.

The first rule applicable would be that of *casus omissus pro habendus est*, wherein "a person, object[,] or thing omitted from an enumeration in a statute must be held to have been intentionally omitted."[240] Unlike Act Nos. 1780 and 2711, which expressly included airguns within the enumerated items to be considered as firearms, R.A. No. 10591 dropped the said item in its own statutory definition of the same term.[241] Unlike P.D. No 1866 and R.A. No. 8294, which did not provide for any definition of a firearm, leaving almost full discretion to the administrative agency in that regard, R.A. No. 10591 provided for an express and concededly restrictive statutory definition of that term leaving little room, if any, for unbridled executive discretion.[242] Had the Legislature intended to include and characterize as firearms those other items that were previously subjected by the PNP to regulation under the regimes of P.D. No. 1866 and R.A. No. 8294, it could have explicitly provided for the same limitless administrative discretion under the said laws, or it could have otherwise expressly covered them as statutorily enumerated inclusions in the same way that Act Nos. 1780 and 2711 did. The Legislature, however, did not do either of these in enacting R.A. No. 10591. Worth noting in this regard is that "if cases should arise for which Congress has made no provision, the courts cannot supply the omission."[243] It is also settled that "[a] *casus omissus* does not justify judicial legislation, most particularly in respect of statutes defining and punishing criminal offenses."[244]

The foregoing scenario also brings to fore the application of the statutory construction rule that "[t]he express mention of one person, thing, or consequence implies the exclusion of all others," as expressed in the familiar

239. Comprehensive Firearms and Ammunition Regulation Act, § 3 (l).

240. AGPALO, *supra* note 216, at 731.

241. Comprehensive Firearms and Ammunition Regulation Act, § 3 (l).

242. *Id.*

243. Republic v. Cojuangco, Jr., 674 SCRA 492, 512 (2012) (citing Del Monte Mining Co. v. Last Chance Mining Co., 171 U.S. 55, 66 (1898)).

244. *Id.*

maxim, *expressio unius est exclusio alterius*,[245] as well as one other variation of the said rule — the principle that "[w]hat is expressed puts an end to that which is implied."[246] *Expressium facit cessare tacitum*.[247] This means that "where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters."[248] Both principles are canons of restrictive interpretation, "based on the rules of logic and the natural workings of the human mind."[249] They come "from the premise that the [L]egislature would not have made specified enumeration in a statute had the intention been not to restrict its meaning and confine its terms to those expressly mentioned."[250]

One other matter worth noting is that R.A. No. 10591 clearly and categorically requires that, in order to be legally considered as a firearm within the law's contemplation, the discharge must be "by means of expansive force of gases"[251] and that such force must be "from burning gunpowder or other form of combustion or any similar instrument or implement."[252] Following the rule on *ejusdem generis*,[253] the instrument or implement generally referred to in the last portion of the definition is clearly limited to those which utilize technology that is similar to the burning of gunpowder or other form of combustion,[254] such as igniting explosives, alcohol, gasoline, or combustible fuel, the common denominator of all of which is the process of burning.[255] The legislative intent to make the presence of combustion an indispensable element of what constitutes a firearm is evident not only from the very definition of a firearm under Section 3 (l) of R.A. No. 10591, but also from its other provisions describing

245. AGPALO, *supra* note 216, at 731.

246. *Id.* at 732.

247. *Id.*

248. Lung Center of the Philippines v. Quezon City, 433 SCRA 119, 135 (2004) (citing Malinias v. Commission on Elections, 390 SCRA 480, 491-92 (2002)).

249. *Lung Center*, 433 SCRA at 135.

250. Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. (IDEALS, Inc.) v. Power Sector Assets and Liabilities Management Corporation (PSALM), 682 SCRA 602, 650 (2012).

251. Comprehensive Firearms and Ammunition Regulation Act, § 3 (l).

252. *Id.*

253. *See* Parayno v. Jovellanos, 495 SCRA 85, 92 (2006).

254. Combustion is defined as "an act or instance of burning; a usually rapid chemical process (as oxidation) that produces heat and usually light." Merriam-Webster Dictionary, Combustion, *available at* http://www.merriam-webster.com/dictionary/combustion (last accessed Sep. 12, 2013).

255. *Id.*

the parts of a firearm.[256] Section 3 (x) of the law even provides that "minor parts of a firearm refers to the parts of the firearm other than the major parts which are *necessary to effect and complete the action of expelling a projectile by way of combustion*[.]"[257] It is thus undoubtedly evident from the provisions of the law itself that Congress intended to expressly exclude from its statutory definition of a firearm all other instruments that discharge projectiles by means other than the expansive force of gases, or even though using expansive force of gases, derive those gases from sources other than burning gunpowder, other forms of combustion, and the like.

The foregoing observations, coupled with the age old rules that penal laws are to be construed strictly against the State and liberally in favor of the accused,[258] and the applicability of the *pro reo* doctrine,[259] all clearly serve to foreclose the possibility that the implementing agency would stretch the law's import beyond its allowable limits, to the point of absurdity.

From all the foregoing, it could be deduced that Congress really intended R.A. No. 10591 to be an instrument of concrete change meant to overhaul and undertake changes in the Philippine laws on gun control. The historical perspective of prior gun control legislation demonstrates how Philippine gun control laws have evolved from being clear in scope and definition at the onset, to being somewhat vague, with the two laws immediately preceding R.A. No. 10591 largely leaving the matter of what constitutes a firearm to the PNP's discretion as the implementing agency.[260] The unwritten yet obvious aim of P.D. No. 1866 was of course to suppress and discourage people from owning and possessing firearms during martial law. The law's silence supported that aim. While R.A. No. 8294 rationalized the imposable penalties for gun control violations to more realistic levels, it failed to address the need to provide the public with a clear, direct, and concise definition of what is a firearm within the purview of penal violation as well as gun control regulation.

In this regard, R.A. No. 10591 is significant not only because of its role as an instrument for the government to further rationalize gun control in the country but also because of its equally important role of addressing the need to make the gun control law less discretionary on the part of law enforcers, and make it clearer and less confusing to the public, particularly those people who wish to pursue a legitimate and lawful interest in firearms as a valid means of recreation and defense.

256. *See* Comprehensive Firearms and Ammunition Regulation Act, § 3 (w) & (x).

257. *Id.* § 3 (x) (emphasis supplied).

258. *See* People v. Subido, 66 SCRA 545, 551 (1975) & David v. People, 659 SCRA 150, 169-70 (2011).

259. *Comadre*, 431 SCRA at 384.

260. *See* P.D. No. 1866, §§ 1 & 8 & R.A. No. 8294, § 1.

To achieve this, R.A. No. 10591 restrictively limits its coverage to all firearms under a direct legal definition which accurately corresponds to that term as it is understood in the ordinary and usual sense by all people in general, and expressly omits from its legal definition any vestige of judicially acceptable vagueness afforded by the administrative agency's fluid and conceptual notion of what should be considered as firearms.[261]

IV. REPUBLIC ACT NO. 10592: AN ACT AMENDING ARTICLES 29, 94, 97, 98, AND 99 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE RPC

R.A. No. 10592 introduced changes to the following provisions of the RPC: (1) Article 29 regarding periods of preventive imprisonment deducted from term of imprisonment;[262] (2) Article 94 on partial extinction of criminal liability;[263] (3) Article 97 on allowance for good conduct;[264] (4) Article 98 on special time allowance for loyalty;[265] and (5) Article 99 on who grants time allowances.[266]

A. Legislative History of R.A. No. 10592

R.A. No. 10592, which is a consolidation of House Bill No. 417 and Senate Bill No. 3064, was finally passed by the Senate and the House of Representatives on 5 November 2012 and 28 January 2013, respectively.[267]

House Bill No. 417 was introduced in the House of Representatives by then Congressman (now Senator) Juan Edgardo "Sonny" M. Angara for purposes of further refining Article 29 of the RPC to give offenders the fullest benefit of preventive imprisonment.[268] Congressman Angara explains the need to remedy the procedural inequities in Article 29 of the RPC, to wit —

> Our present penal law provides that in instances where a person is convicted of a non-bailable offense or he is convicted of a bailable offense but cannot afford bail, he shall undergo preventive imprisonment. Once

261. *See* Comprehensive Firearms and Ammunition Regulation Act, § 3 (l).

262. REVISED PENAL CODE, art. 29.

263. *Id.* art. 94.

264. *Id.* art. 97.

265. *Id.* art. 98.

266. *Id.* art. 99.

267. R.A. No. 10592.

268. An Act Giving Offenders the Fullest Benefit of Preventive Imprisonment, Amending for the Purpose Article 29 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, H.B. No. 417, 15th Cong., 1st Reg. Sess. (2010).

> entitled to preventive imprisonment he must voluntarily agree in writing that he will abide by the same disciplinary rules imposed upon convicted prisoners. Otherwise, if no such written agreement is made, he will only be entitled to four-fifths of the period of detention.
>
> A review of many cases of prisoners show that this written agreement is often not completed for many reasons, either: [(a)] the apprehending officers do not know this provision of law or have no forms; [(b)] the prisoner himself is not aware of the requirement; or [(c)] neglect on the part of the prison officials as when the written agreement is lost or misplaced.
>
> No less than the Board of Pardons and Parole who review the cases of prisoners is of the view that the legal requirement should be reversed. The prisoner should be entitled to credit in full for preventive imprisonment, except in cases specifically provided by law, without any written agreement. This measure seeks to correct this iniquitous procedure and thus gives the offender full credit for his preventive imprisonment as the general rule without any written agreement. If and when he does not agree to abide with the said rules, he should be required to do so in writing and be entitled only to four-fifths of the period of detention.
>
> Another instance of inequity is when a prisoner has undergone preventive imprisonment for the possible maximum imprisonment of the offense charged and he is not released. A paragraph under Article 29 by virtue of [B.P.] Blg. 85 corrects this injustice. This amendment, however, needs further refinement. The offender under detention should not undergo detention more than the maximum, instead it should be equal to the possible maximum imprisonment. Moreover, since the prisoner, if he were to be convicted, would enjoy good conduct time allowance for actual period of detention, then the computation, for purposes of immediate release, should be the actual period of detention plus good conduct time allowance as the maximum possible imprisonment.
>
> It is unjust to unduly delay the proceedings of a person already under detention. He should be given every possible opportunity to enjoy the benefits of the law. If good conduct time allowance is granted to convicted prisoners, this benefit should also be extended to the detention prisoner under Article 29, as amended by [B.P.] Blg. 85.[269]

On the other hand, Senate Bill No. 3064 was prepared jointly by the Senate Committees on Justice and Human Rights and Constitutional Amendments, Revision of Codes and Laws,[270] after a thorough consideration of House Bill No. 417 and the following legislative proposals:

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269. *Id.*

270. An Act Amending Articles 29, 94, 97, 98, and 99 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, S.B. No. 3064, 15th Cong., 2d Reg. Sess. (2011).

(1) Senate Bill No. 116 in which the Honorable Senator Gregorio B. Honasan II proposed amendments to Article 99 RPC;[271]

(2) Senate Bill Nos. 1151[272] and 1295[273] in which the Honorable Senator Manny B. Villar, Jr. proposed measures to ensure the fair and equal treatment of prisoners and to give offenders the fullest benefit of preventive imprisonment;[274]

(3) Senate Bill Nos. 2115,[275] 2363,[276] and 2374[277] in which the Honorable Senator Escudero sought to provide good conduct time allowances to detention prisoners and to give offenders the fullest benefit of preventive imprisonment; and[278]

(4) Senate Bill Nos. 2423[279] and 2462[280] in which the Honorable Senator Miriam Defensor-Santiago proposed the grant of mandatory good conduct allowance to prisoners who participate

271. An Act Amending Article Ninety-Nine of Act Numbered Thirty-Eight Hundred Fifteen, as Amended, Otherwise Known as the Revised Penal Code, S.B. No. 116, 15th Cong., 1st Reg. Sess. (2010).

272. An Act to Ensure the Fair and Equal Treatment of Prisoners, Amending for That Purpose Articles 39, 94, 97, and 99 of Act No. 3815, as Amended, the Revised Penal Code, and for Other Purposes, S.B. No. 1151, 15th Cong., 1st Reg. Sess. (2010).

273. An Act Amending Article 29 of Act No. 3815, as Amended, the Revised Penal Code, in Order to Give Offenders the Fullest Benefit of Preventive Imprisonment and for Other Purposes, S.B. No. 1295, 15th Cong., 1st Reg. Sess. (2010).

274. S.B. No. 3064.

275. An Act Amending Article 98 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, S.B. No. 2115, 15th Cong., 1st Reg. Sess. (2010).

276. An Act Providing for Good Conduct Time Allowances (GCTA) to Detention Prisoners and Those Serving Sentence by Virtue of Final Judgment, Appropriating Funds Therefor and for Other Purposes, S.B. No. 2363, 15th Cong., 1st Reg. Sess. (2010).

277. An Act Giving Offenders the Fullest Benefit of Preventive Imprisonment, Amending for the Purpose Article 29 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, S.B. No. 2374, 15th Cong., 1st Reg. Sess. (2010).

278. S.B. No. 3064.

279. An Act Granting Mandatory Good Conduct Allowance to Prisoners Who Participate in Literacy, Skills, and Values Development Programs in Penal Institutions, S.B. No. 2423, 15th Cong., 1st Reg. Sess. (2010).

280. An Act Amending Article 97 of Act No. 3815, Otherwise Known as the Revised Penal Code, S.B. No. 2462, 15th Cong., 1st Reg. Sess. (2010).

> in literacy, skills, and values development programs in penal institutions.[281]

On 29 May 2013, President Aquino signed R.A. No. 10592 into law.[282]

B. Credits for Preventive Imprisonment

R.A. No. 10592 retains the distinction between detention prisoners who agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners and those who do not.[283] Thus, detention prisoners who agree shall be credited in the service of their sentence consisting of deprivation of liberty with the full time during which they have undergone preventive imprisonment,[284] while those who do not shall be

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281. S.B. No. 3064.

282. R.A. No. 10592.

283. *Id.* § 1.

284. *Id.* Section 1 provides —

> SECTION 1. Article 29 of Act No. 3815, as amended, otherwise known as the [RPC], is hereby further amended to read as follows [—]
>
> '[Article 29.] Period of preventive imprisonment deducted from term of imprisonment. — Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing after being informed of the effects thereof and with the assistance of counsel to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:
>
> (1) When they are recidivists, or have been convicted previously twice or more times of any crime; and
>
> (2) When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.'
>
> 'If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall do so in writing with the assistance of a counsel and shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.'
>
> 'Credit for preventive imprisonment for the penalty of *reclusion perpetua* shall be deducted from [30] years.'
>
> 'Whenever an accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. Computation of preventive imprisonment for

credited in the service of their sentence with only four-fifths of the time during which they have undergone preventive imprisonment.[285]

The disqualifications under the first item clearly arise from the detention prisoner's past misconduct.[286] On the other hand, the disqualification under the second item can arise only upon the detainee's conviction and sentencing for the crime charged for which he or she was preventively imprisoned.[287] Those detention prisoners who are not otherwise disqualified under the first item, are, in case of conviction, required to surrender voluntarily upon being summoned for the execution of their sentence under pain of losing the benefit of the credits which have already accrued during the period of their preventive imprisonment.[288] In such cases, the accused's failure to surrender voluntarily for the execution of his or her sentence is akin to a resolutory condition,[289] which would prevent the right to have his or her preventive imprisonment credited from arising. Thus, while the credits may have already accrued during the accused's preventive imprisonment, his or her subsequent failure to surrender voluntarily upon being summoned for the execution of sentence would operate to disqualify him or her from having the accrued credits for preventive imprisonment deducted from the service of his or her sentence.[290]

If the offender is qualified to earn credits for preventive imprisonment, the credit begins from the very moment he or she is placed under preventive imprisonment, and accrues for as long as he or she remains preventively imprisoned.[291] Note, however, that the provision requires the existence of a sentence to which the accrued credits will be applied, which necessarily

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> purposes of immediate release under this paragraph shall be the actual period of detention with good conduct time allowance: Provided, however, [t]hat if the accused is absent without justifiable cause at any stage of the trial, the court may *motu proprio* order the rearrest of the accused: Provided, finally, [t]hat recidivists, habitual delinquents, escapees[,] and persons charged with heinous crimes are excluded from the coverage of this Act. In case the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after [30] days of preventive imprisonment.'

Id.

285. *Id.*

286. REYES, BOOK TWO, *supra* note 164, at 634.

287. *Id.* at 635.

288. *Id.*

289. *See* Multinational Village Homeowners Association, Inc. v. Ara Security & Surveillance Agency, Inc., 441 SCRA 126, 133 (2004).

290. R.A. No. 10592, § 1 & REYES, BOOK TWO, *supra* note 164, at 635.

291. REYES, BOOK TWO, *supra* note 164, at 631.

presupposes the detention prisoner's conviction by final judgment for the crime charged and the imposition upon him or her of a sentence consisting of deprivation of liberty.[292] If the detention prisoner is later on acquitted or the case against him or her is dismissed with prejudice, either after trial or on appeal, he or she would forthwith be released and there would be no occasion to utilize the accrued credits for preventive imprisonment. There would be no sentence to serve, and no service of sentence to which the accrued credits can be applied.

R.A. No. 10592 likewise retains the distinction between detention prisoners who agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners and those who do not.[293]

Detention prisoners who are not otherwise disqualified are entitled to credits for preventive imprisonment, the extent of which depends upon whether or not they agree to abide by the same disciplinary rules imposed upon convicted prisoners.[294] Those who agree shall be credited in the service of their sentence consisting of deprivation of liberty with the full time during which they have undergone preventive imprisonment,[295] while those who do not shall be credited in the service of their sentence with only four-fifths of the time during which they have undergone preventive imprisonment.[296]

Prior to executing such a written document, it is now required that the detention prisoner should be informed of the effects of his or her choice, with the assistance of counsel.[297] Whether or not the detention prisoner agrees or disagrees to abide by the same disciplinary rules imposed upon convicted prisoners, it is required that he or she should, with the assistance of counsel, execute the same voluntarily and in writing.[298] Moreover, the detention prisoner's choice of whether or not to agree does not affect his or her entitlement to the credit for preventive imprisonment, provided that he or she is qualified to earn such credits.[299] The distinction between detention prisoners who agree to abide by the same disciplinary rules imposed upon convicted prisoners and those who do not, relate only to the rate of the credit, and not the entitlement to the credit itself.[300]

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292. R.A. No. 10592, § 1.

293. *Id.*

294. REYES, BOOK TWO, *supra* note 164, at 631.

295. R.A. No. 10592, § 1

296. *Id.*

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

R.A. No. 10592 also attempts to address part of the quandary on how to credit preventive imprisonment in cases of perpetual punishment. In *U.S. v. Ortencio*,[301] the Court held that the credit for preventive imprisonment is applicable even in the case of perpetual punishment, i.e., life imprisonment,[302] without however stating the period from which the credits for preventive imprisonment are to be deducted. In providing that "credit for preventive imprisonment for the penalty of *reclusion perpetua* shall be deducted from 30 years,"[303] R.A. No. 10592 at least provides for a concrete formula on how a person convicted of a crime punishable by *reclusion perpetua* and who has undergone preventive imprisonment during the pendency of the case, is to be credited in the service of his sentence for the time he was preventively imprisoned.[304]

C. Time Allowance for Good Conduct

1. Inequity in the Grant of Time Allowances for Good Conduct prior to R.A. No. 10592

Prior to R.A. No. 10592, the general rule was that only convicted prisoners were entitled to good conduct time allowances because such allowances clearly refer to deductions from the period of the prisoner's "sentence."[305] Moreover, only the Director of Prisons was authorized to grant time allowances for good conduct.[306]

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301. United States v. Ortencio, 38 Phil 341 (1918).

302. *Id.* at 345.

303. R.A. No. 10592, § 1.

304. Supreme Court, Correct Application of the Penalty of Reclusion Perpetua, Administrative Circular No. 6-92 [SC Admin. Circ. 6-92] (Oct. 8, 1992). The Circular provides that

> [i]n *People* [*v.*] *Baguio*[,] the Court emphasized that *reclusion perpetua* is not the same as life imprisonment, as the [RPC] does not prescribe the penalty of life imprisonment for any of the felonies therein defined, the penalty being invariably imposed for serious offenses penalized not by the [RPC,] but by special laws. *Reclusion perpetua* entails imprisonment for at least [30] years after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as 'life imprisonment' which, for one thing, does not carry with it any accessory penalty, and for another, does not appear to have any definite extent or duration.

Id.

305. *See* REVISED PENAL CODE, art. 97.

306. *Id.* art. 99.

The Director of Prisons heads the Bureau of Corrections,[307] which is under the DOJ.[308] Under the law, the principal task of the Bureau of Corrections is the rehabilitation of prisoners.[309] It carries out its functions through its divisions and its seven penal institutions, namely: the New Bilibid Prisons; Correctional Institution for Women; Iwahig, Davao, San Ramon, and Sablayan Prisons and Penal Farms; and the Leyte Regional Prisons.[310]

The Director of Prisons may grant good conduct time allowance to an inmate who displays good behavior and who has no record of breach of discipline or violation of prison rules and regulations.[311] An "inmate" is defined in the Bureau of Corrections Operation Manual as

> a national prisoner or one sentenced by a court to serve a maximum term of imprisonment of more than three years or to a fine of more than [₱1,000.00]; or regardless of the length of the sentence imposed by the court, to one sentenced for violation of the customs law or other laws within the jurisdiction of the Bureau of Customs or enforceable by it, or for violation of immigration and elections laws; or to one sentenced to serve two or more prison sentences in the aggregate exceeding the period of three years, whether or not he has appealed. It shall also include a person committed to the Bureau by a court or competent authority for safekeeping or similar purpose. Unless otherwise indicated, 'inmate' shall also refer to a 'detainee.'[312]

The manual likewise defines a "detainee" as "a person who is confined in prison pending preliminary investigation, trial[,] or appeal; or upon legal process issued by competent authority."[313]

Despite the clear reference made by Article 97 of the RPC to the existence of a prison "sentence" in deducting good conduct time allowances, the Bureau of Corrections provided in its Operating Manual a Provision which allows the Director of Prisons to grant good conduct time allowances to a detainee "if he voluntarily offers in writing to perform such labor as may be assigned to him."[314] The grant of time allowances to such a detainee,

307. Office of the President, Instituting The "Administrative Code of 1987," Executive Order No. 292 [ADMINISTRATIVE CODE OF 1987], Book IV, Title III, § 27 (July 25, 1987).

308. *Id.* § 3.

309. *Id.* § 26.

310. *Id.* § 27.

311. Bureau of Corrections, Bureau of Corrections Operating Manual 16 (Mar. 30, 2000).

312. *Id.* at 3.

313. *Id.*

314. *Id.* at 17.

however, becomes material and useful only if the detainee is ultimately convicted.[315] It seems therefore that, in an effort to put the Director of Prison's authority to grant of good conduct time allowances to detainees under Bureau of Corrections Operating Manual within the purview of Article 97 of the RPC, the said allowances though granted during the period of preventive imprisonment become effective and usable only when the detainee is convicted.[316] In this case, the time allowance previously earned shall factor in the "sentence" of the erstwhile detainee turned convicted prisoner.[317] Good conduct time allowances to detention prisoners were immaterial in cases of acquittal, presumably because there is no "sentence" as required by Article 97 of the RPC. It likewise serves virtually no purpose during the pendency of the criminal case against them because it was not considered in computing the period of preventive imprisonment for purposes of release *pendente lite* under Article 29 of the RPC.

Although the Bureau of Corrections Operating Manual was legally questionable insofar as the grant of good conduct time allowances to detainees is concerned, there was no court action assailing it. It thus continued to enjoy the constitutional presumption of validity accorded to rules and regulations issued by administrative agencies.[318]

On the other hand, detention prisoners or persons detained and awaiting investigation or trial and/or transfer to the national penitentiary are generally under the custody and safekeeping of jails established in every province, district, city, and municipality in the country.[319] By way of exception, convicted prisoners who are not otherwise covered by the Bureau of Correction's definition of an "inmate,"[320] such as local prisoners or those sentenced to serve a maximum term of at most three years or to a fine of less than ₱1,000.00, are likewise confined in the local jails.[321]

City, district, and municipal jails are under the supervision and control of the Bureau of Jail Management and Penology, also known as the Jail Bureau,[322] which is under the Department of Interior and Local

315. *Id.* The credit that the detainee "may receive shall be deducted from sentence as may be imposed upon him if he is convicted." *Id.*

316. Bureau of Corrections, *supra* note 311, at 17.

317. *Id.*

318. *See* Abakada Guro Party List v. Purisima, 562 SCRA 251, 272 (2008).

319. *See* An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government and for Other Purposes [Department of the Interior and Local Government Act of 1990], Republic Act No. 6975, § 63 (1990).

320. Bureau of Corrections, *supra* note 311, at 3.

321. *Id.*

322. Department of the Interior and Local Government Act of 1990, § 60.

Government (DILG).[323] Provincial jails are under the supervision and control of their respective provinces[324] which, in turn, are under the supervisory authority of the President of the Republic of the Philippines,[325] assisted by the DILG.[326] Each city and municipal jail is headed by a city or municipal jail warden,[327] and each provincial jail is headed by a provincial jail warden.[328] In the case of large cities and municipalities, the law authorizes the establishment of a district jail with subordinate jails headed by a district jail warden.[329] Unlike the Director of Prisons, the Chief of the Bureau of Jail Management and Penology as well as the different wardens of the provincial, district, city, and municipal jails did not have the authority to grant good conduct time allowance under the RPC.[330]

As it then stood, the benefit of time allowances for good conduct can only be granted by the Director of Prisons[331] generally to convicted prisoners, and exceptionally to detainees, in the penal establishments under the Bureau of Corrections.[332] In the case of the detainees, any allowance for good conduct granted during the period of his preventive imprisonment will be taken into consideration only when he is convicted,[333] concededly because Article 97 of the RPC required the existence of a "sentence."[334] The legality of such practice, however, remained quite doubtful considering that the law at that time did not recognize the good conduct time allowances earned during preventive imprisonment as a cause for partial extinction of criminal liability. Article 94 of the RPC only recognized the good conduct time allowances earned by the culprit while serving sentence as one of the causes for partial extinction of criminal liability.[335]

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323. *Id.* § 6.

324. *Id.* § 61.

325. LOCAL GOVERNMENT CODE OF 1991, § 25.

326. ADMINISTRATIVE CODE OF 1987, Book IV, Title III, §§ 2 & 3.

327. Department of the Interior and Local Government Act of 1990, § 62.

328. *See, e.g.*, An Act Creating the Province of Dinagat Islands, Republic Act No. 9355, § 44 (2006); An Act Creating the Province of Quezon Del Sur, Republic Act No. 9495, § 46 (2007); & An Act Creating the Province of Zamboanga Sibugay from the Province of Zamboanga Del Sur and for Other Purposes, Republic Act No. 8973, § 9 (2000).

329. Department of the Interior and Local Government Act of 1990, § 62.

330. REVISED PENAL CODE, art. 99.

331. *Id.*

332. Bureau of Corrections, *supra* note 311, at 17.

333. *Id.*

334. *See* REVISED PENAL CODE, art. 97.

335. *Id.* art. 94.

What stands out is that the benefits of good conduct time allowance could not be granted by the Director of Prisons to convicted prisoners and detainees confined in provincial, district, city, and municipal jails simply because they are under the custody and safekeeping of separate and distinct government agencies — either the provinces or the Bureau of Jail Management and Penology, the heads of which were not given express legal authority to grant allowances for good conduct.

Preventive imprisonment involves restriction of personal liberties.[336] In this regard, it is concededly similar to the service of sentence by a convicted prisoner. It was thus quite arguable that both convicted and detention prisoners are practically in the same boat in terms of equally suffering the same deprivation of liberty, notwithstanding the difference in the object or purpose of their respective confinement.

Recognizing the gross inequity and the equal protection implications presented by the foregoing situation, Congress deemed it wise to address the situation by enacting R.A. No. 10592.

2. Equalizing the Grant of Time Allowances

R.A. No. 10592 extends the applicability of good conduct time allowances not only to convicted prisoners but also to detention prisoners, regardless of the jail or penal establishment in which they are confined.[337] To achieve this, the law amended Article 29[338] and Article 97[339] of the RPC by providing for applicable deductions in the form of time allowances for good conduct in favor of convicted prisoners and detention prisoners in any penal institution, rehabilitation, or detention center or any other local jail.[340] To drive home this point, it further provides that an appeal by the accused shall not deprive him of entitlement to the above allowances for good conduct.[341]

R.A. No. 10592 also expanded the number of public officials vested with the power to grant allowances for good conduct, namely: (1) the Director of the Bureau of Corrections; (2) the Chief of the Bureau of Jail Management and Penology; and/or (3) the Warden of a provincial, district, municipal, or city jail,[342] thereby eliminating the administrative and

336. Quimbo v. Gervacio, 466 SCRA 277, 284 (2005).

337. R.A. No. 10592, § 3.

338. *Id.* § 1.

339. *Id.* § 3.

340. *Id.*

341. *Id.*

342. *Id.* § 5. This Section provides —

> Section. 5. Article 99 of the same Act is hereby further amended to read as follows [—]

jurisdictional complications brought about by the current set-up wherein jails, detention centers, and penal institutions separately fall under the jurisdiction of different government agencies, bureaus, and departments.

Thus, for purposes of entitlement to good conduct time allowances, the amendments introduced by R.A. No. 10592 eliminated the distinction in the treatment of convicted and detention prisoners confined in the penal institutions under the Bureau of Corrections of the DOJ *vis-à-vis* those confined in the different provincial, district, and municipal jails under the supervision and control of either the provinces or the Bureau of Jail Management and Penology under the DILG.[343]

To be entitled to time allowances for good conduct, the common requirement for convicted and detention prisoners alike is, of course, good conduct,[344] which under current rules is the display of good behavior and having no record of breach of discipline or violation of prison rules and regulations.[345] R.A. No. 10592 includes the pursuit of studies and the rendition of teaching and mentoring services as a means for both convicted and detention prisoners to earn additional time allowances for good behavior.[346] Aside from these, both convicted and detention prisoners are now entitled to the grant of special time allowances for loyalty.[347]

For detention prisoners, the law now mandates that they should be qualified to avail of credits for preventive imprisonment under Article 29 of the RPC in order to likewise avail of time allowances for good conduct under Article 97 of the same Code.[348] Detention prisoners who are disqualified from availing of credits for preventive imprisonment because: (1) they are recidivists, or have been convicted previously twice or more times of any crime; or (2) when upon being summoned for the execution of their sentence, they have failed to surrender voluntarily,[349] are likewise ineligible for the grant of time allowances for good conduct under Article 97 of the

> 'Article 99. Who grants time allowances. — Whenever lawfully justified, the Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology[,] and/or the Warden of a provincial, district, municipal[,] or city jail shall grant allowances for good conduct. Such allowances once granted shall not be revoked.'
>
> R.A. No. 10592, § 5.

343. *Id.*

344. *See* REVISED PENAL CODE, art. 97 & R.A. No. 10592, § 3.

345. Bureau of Corrections, *supra* note 311, at 16.

346. *See* REVISED PENAL CODE, art. 97 & R.A. No. 10592, § 3.

347. *See* REVISED PENAL CODE, art. 98 & R.A. No. 10592, § 4.

348. *See* REVISED PENAL CODE, art. 97 & R.A. No. 10592, § 3.

349. *See* R.A. No. 10592, § 1.

same Code.[350] Detention prisoners who do not fall under these two enumerated disqualifications are entitled not only to credits for preventive imprisonment, but also to the grant of good conduct time allowances, regardless of whether they agreed to abide by the same disciplinary rules imposed upon convicted prisoners.[351] This is so because their choice of whether or not to abide by these disciplinary rules merely affects their rate of credit, i.e., either full or four-fifths, and not their entitlement to have their credit for preventive imprisonment applied to the service of their sentence should they be eventually convicted by final judgment.[352]

As it now stands, convicted prisoners and detention prisoners who are qualified to avail of credits for preventive imprisonment, currently have equal entitlement to the grant of time allowances for good conduct, regardless of the jail or penal institution in which they are confined in.[353] Moreover, the grant of good conduct time allowance has been administratively simplified by allocating to the different heads of their places of confinement the authority to grant the same.[354] The law now also expressly recognizes as an additional cause for the partial extinction of criminal liability the good conduct time allowances which the culprit may earn even during his or her preventive imprisonment.[355]

D. A System of Incentives for Detention Prisoners to Observe and Exemplify Good Conduct

R.A. No. 10592 provides a system of incentives for qualified detention prisoners by retaining the traditional incentive for them to abide by the same disciplinary rules imposed upon convicted prisoners,[356] and by also providing for further incentives in the form of time allowances that encourage them to observe good conduct,[357] to study, teach, and mentor,[358] and to show loyalty,[359] during the period of their preventive imprisonment.

1. First Incentive: Credits for Preventive Imprisonment

350. *See* REVISED PENAL CODE, art. 97 & R.A. No. 10592, § 3.

351. R.A. No. 10592, § 3.

352. *Id.*

353. *Id.*

354. *Id.*

355. *See* REVISED PENAL CODE, art. 94 & R.A. No. 10592, § 2.

356. R.A. No. 10592, § 1.

357. *Id.* § 3.

358. *Id.*

359. *Id.* § 4.

The first incentive is the credit for preventive imprisonment, the rules for which have been largely retained in Article 29 of the RPC by the first and second paragraphs of Section 1 of R.A. No. 10592.

The first paragraph of Article 29 of the RPC sets forth the general rule that offenders or accused "who have undergone preventive imprisonment shall be credited in the service of their sentence"[360] and, by way of exception, disqualifies detention prisoners from availing of such credit: "(1) [w]hen they are recidivists, or have been convicted previously twice or more times of any crime; [or] (2) [w]hen upon being summoned for the execution of their sentence they have failed to surrender voluntarily."[361]

The detention prisoner who is qualified under Article 29 of the RPC shall have the duration of his preventive imprisonment credited in the service of his or her sentence consisting of deprivation of liberty, at the rate applicable in view of his or her agreement or refusal to abide by the same disciplinary rules imposed upon convicted prisoners.[362] Under the law, a detention prisoner who agrees in writing to abide by the same disciplinary rules imposed upon convicted prisoners is given the full credit of the time he or she has undergone preventive imprisonment.[363] If the detention prisoner does not so agree, he or she still gets the incentive, albeit at the lesser rate of four-fifths of the time he or she has undergone preventive imprisonment.[364]

Credits for preventive imprisonment under the first to third paragraphs of Article 29 of the RPC are computed by multiplying the applicable rate with the detention prisoner's actual period of preventive imprisonment.[365] This is the formula for arriving at the period of the preventive imprisonment that shall be credited in the service of the sentence imposed upon final conviction.[366] Accordingly, the credit is applied only when the detainee is convicted and a sentence consisting of deprivation of liberty has been imposed by final judgment.[367] If the computation of the credits for preventive imprisonment yields a period or duration that is at the very least equal to that of the sentence imposed upon the convict by final judgment, the erstwhile detainee-turned-convicted prisoner shall be entitled to

360. *Id.* § 1.

361. *Id.*

362. R.A. No. 10592, § 1.

363. *Id.*

364. *Id.*

365. Prison Watch, What Does Good Conduct Time Allowance Mean, *available at* http://philippineprisons.com/2013/07/page/2/ (last accessed Sep. 12, 2013).

366. R.A. No. 10592, § 1.

367. *Id.*

release.[368] This is because the application of his or her credits in the service of the sentence would have the effect of full service of sentence.[369]

Note, however, that the foregoing rules and requirements, as well as the formula, for determining the convicted prisoner's credits for preventive imprisonment under the first to third paragraphs of Article 29 of the RPC are entirely separate and distinct from those provided in the fourth paragraph, Article 29 of the same Code which relate to the detention prisoner's immediate release during the pendency of the criminal case against him.

2. Second Incentive: Time Allowances for Good Conduct

As a further incentive, R.A. No. 10592 provides detention prisoners the opportunity to earn time allowances for exhibiting good conduct during their period of preventive imprisonment,[370] at the following rates:

(1) During the first two years of imprisonment, he shall be allowed a deduction of [20] days for each month of good behavior during detention;

(2) During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a reduction of [23] days for each month of good behavior during detention;

(3) During the following years until the [10th] year, inclusive, of his imprisonment, he shall be allowed a deduction of [25] days for each month of good behavior during detention; [and]

(4) During the [11th] and successive years of his imprisonment, he shall be allowed a deduction of [30] days for each month of good behavior during detention[.][371]

3. Third Incentive: Additional Time Allowances for Studying, Teaching, or Mentoring

Aside from providing for time allowances for the display of good behavior, R.A. No. 10592 provides a further opportunity for qualified detention prisoners to earn additional time allowances at the rate of 15 days for each month of study, teaching, or mentoring service time that they rendered.[372] The inclusion of studying, teaching, or mentoring as bases for additional time allowances is logical because the said activities are indicative of good

368. *Id.*

369. *Id.*

370. *See* REVISED PENAL CODE, art. 97 & R.A. No. 10592, § 3.

371. R.A. No. 10592, § 3.

372. *Id.*

conduct that goes well beyond the mere display of good behavior, discipline, and proper compliance with prison rules and regulations.[373]

The use of the disjunctive "or"[374] in item five of Article 97 of the RPC, as amended by Section 3 of R.A. No. 10592, indicates that "study, teaching[,] and mentoring"[375] are services that are mutually exclusive alternatives[376] that a detention prisoner may avail of in order to earn additional time allowances. It is thus quite possible for a detention prisoner who studied as well as rendered teaching services for one and the same month, to separately earn 15 days of time allowance for studying and another 15 days for teaching.

With this, R.A. No. 10592 encourages detention prisoners not only to be on good behavior but also to further improve and develop their education and skills, as well as that of their fellow inmates, through the pursuit of their studies or the rendition of teaching and mentoring services during the period of their preventive confinement.

4. Fourth Incentive: Special Time Allowances for Loyalty

Prior to R.A. 10592, the grant of special time allowances for loyalty under Article 98 in relation to Article 158 of the RPC was available only to convicted prisoners[377] at a rate of one-fifth of his or her original sentence.[378] The law required that the prisoner must have evaded the service of his or her sentence, by leaving the penal institution "on the occasion of disorder resulting from a conflagration, earthquake, explosion, or other similar catastrophe, or during a mutiny in which he or she has not participated[;]"[379] and that he or she should "give himself [or herself] up to the authorities within [48] hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity."[380] Accordingly, it did not apply to detention prisoners because as to them, there was as yet no

373. Bureau of Corrections, *supra* note 311, at 16.

374. R.A. No. 10592, § 3.

375. *Id.*

376. Disjunctive is defined as "expressing an alternative or opposition between the meanings of the words connected[.]" Merriam-Webster Dictionary, Disjunctive, *available at* http://www.merriam-webster.com/dictionary/disjunctive (last accessed Sep. 12, 2013).

377. REVISED PENAL CODE, art. 98.

378. REYES, BOOK ONE *supra* note 3, at 896.

379. REVISED PENAL CODE, art. 158.

380. *Id.*

service of sentence to evade.[381] Neither did it apply to prisoners who did not escape.[382]

R.A. No. 10592 amended Article 98 of the RPC by extending the benefit of special time allowances for loyalty to detention prisoners.[383] Article 98 of the RPC now applies to any prisoner whether undergoing preventive imprisonment or serving sentence.[384]

The deduction of one-fifth now also applies to detention prisoners who, having evaded his or her preventive imprisonment by leaving the penal institution on the occasion of disorder resulting from a conflagration, earthquake, explosion, or other similar catastrophe, or during a mutiny in which he or she has not participated, gives himself or herself up to the authorities within 48 hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity.[385] In cases where the prisoner chose to stay in the place of his confinement, R.A. No. 10592 significantly provides for a higher deduction at the rate of two-fifths of the period of original sentence.[386]

R.A. No. 10592, however, retained the use of the phrase "*the period of his sentence*"[387] as the base from which the applicable rate deduction is applied.[388] Due to this, significant issues may arise as to when the special time allowance for loyalty would be effective. Is it in the nature of an inchoate incentive that is effective only in case the detention prisoner is ultimately convicted and sentenced? Or can it be utilized at once as part and parcel of the "good conduct time allowance" which, together with the actual period of detention, is taken into consideration for purposes of immediate release *pendente lite*?

The notion that the benefits attached to the time allowance earned by the detention prisoner for loyalty are merely inchoate or subject to his or her ultimate conviction, militates heavily against the legislative intent behind the passage of R.A. No. 10592 which is to address the inequity behind unduly delaying the proceedings of a person already under detention, and to afford that person every possible opportunity to enjoy the benefits of the law.[389]

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381. Baking v. Director of Prisons, 28 SCRA 850, 858-59 (1969).

382. Artigas Losada v. Acenas, 78 Phil 226, 229 (1947).

383. R.A. No. 10592, § 4.

384. *Id.*

385. R.A. No. 10592, § 4 & REVISED PENAL CODE, art. 158.

386. R.A. No. 10592, § 4.

387. *Id.* (emphasis supplied).

388. *Id.*

389. H.B. No. 417, explanatory note. Senator Angara states —

Testament to this, R.A. No. 10592 effectively overhauled the Bureau of Corrections Operating Manual insofar as it subjected the benefits of good conduct time allowances to the suspensive condition that the detention prisoner be ultimately convicted.[390] Under R.A. No. 10592, the good conduct time allowances earned by the detention prisoner becomes material even prior to conviction, particularly for purposes of computing the possibility of his or her immediate release during the pendency of the criminal case.[391] Insofar as this is concerned, the benefit of good conduct time allowance undoubtedly exists even during the pendency of the criminal case either on trial or on appeal, and is wholly independent of the detention prisoner's subsequent conviction or acquittal.

It is more in accordance with the legislative intent pervading R.A. No. 10592 to consider the special time allowance for loyalty under Article 98 of the RPC as one of the sources for the good conduct time allowances generally referred to in Article 29 of the RPC.[392] Bear in mind that, for purposes of determining the detention prisoner's eligibility for immediate release *pendente lite*, Article 29 of the RPC refers generally to "good conduct time allowance" without specifying any provision of law in order to limit where such time allowances can be sourced.[393] Thus, when Article 29 of the RPC refers to "good conduct time allowance" for purposes of release *pendente lite*, it should be construed as referring to time allowances for good conduct in general. In that regard, the detention prisoner's loyalty under the circumstances referred to in Articles 98 and 158 of the RPC can properly be considered as part of his or her good conduct in general.

Much like the pursuit of studies and the rendition of teaching or mentoring services, the prisoner's loyalty concretely displays his or her good conduct that is well above and beyond mere good behavior, discipline, and

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> Moreover, since the prisoner, if he were to be convicted, would enjoy good conduct time allowance for actual period of detention, then the computation, for purposes of immediate release[,] should be the actual period of detention plus good conduct time allowance as the maximum possible imprisonment.
>
> It is unjust to unduly delay the proceedings of a person already under detention. He should be given every possible opportunity to enjoy the benefits of the law. If good conduct time allowance is granted to convicted prisoners, this benefit should also be extended to the detention prisoner under Article 29, as amended by [B.P.] Blg. 85.

Id.

390. Bureau of Corrections, *supra* note 311, at 17.

391. R.A. 10592, § 1.

392. *Id.*

393. REVISED PENAL CODE, art. 29.

proper compliance with prison rules and regulations.[394] All these, taken together with the rule on liberal construction in favor of the accused,[395] make for a compelling argument that the provision for special time allowances for loyalty is but another source from which the detention prisoner can earn additional time allowances for good conduct under Article 29 of the RPC. Viewed in this light, it is quite apparent that the special time allowance for loyalty under Article 98 of the RPC is but one of the many sources from which prisoners can earn additional time allowances for good conduct. This interpretation makes the benefits of the special time allowance for loyalty effective at once in favor of the detention prisoner notwithstanding continuation of the criminal case and without being subject to the requirement of conviction.

With the concept of loyalty being part and parcel of good conduct, the time allowances earned under Article 98 of the Code should clearly be utilized in computing the duration of preventive imprisonment for purposes of determining the possibility of the detention prisoner's immediate release during the pendency of the criminal case.[396]

When Article 29 of the RPC refers to "good conduct time allowance" for purposes of release *pendente lite*, it refers to time allowances for good conduct in general. Accordingly, the phrase aptly refers to the sum total of the time allowances granted to the detention prisoner by virtue of the latter's general good conduct, the component parts of which are his or her (a) good behavior and compliance with prison rules and regulations, (b) pursuit of study, or rendition of teaching or mentoring service, and (c) loyalty, all during the period of preventive imprisonment.[397] The detention prisoner can thus earn time allowances for good conduct not just by passively complying with the basic requirements of good behavior, but also by actively performing those laudable activities that are legally recognized as additional sources for earning time allowances for good conduct.

When the detention prisoner earns enough good conduct time allowances from all these sources, he or she can then realize the benefits thereof at once because these allowances, taken into consideration together with the actual period of preventive imprisonment, can give rise to the possibility of provisional liberty or immediate release even during the pendency of the criminal proceedings against him on her, either on trial or on appeal, properly termed as "release *pendente lite*."

5. Fifth Incentive: Release *Pendente Lite*

394. Bureau of Corrections, *supra* note 311, at 16.

395. *See Subido*, 66 SCRA at 551 & *David*, 659 SCRA at 169-70.

396. R.A. No. 10592, § 1.

397. *Id.* §§ 1-4.

Prior to the amendments introduced by R.A. No. 10592, Article 29 of the RPC requires that the accused must have undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he or she may be sentenced, before he or she becomes entitled to release during the pendency of the criminal case.[398]

Section 1 of R.A. No. 10592 introduced the following significant changes to Article 29 of the RPC: (1) the immediate release of the detention prisoner during the pendency of the criminal case is now mandatory whenever the accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced;[399] and (2) for purposes of determining whether the accused is entitled to immediate release *pendente lite* under Article 29 of the RPC, good conduct time allowances are now to be considered together with the actual period of preventive imprisonment.[400] Parenthetically, the good conduct allowances earned by the culprit while he or she is undergoing preventive imprisonment are now recognized as causes for partial extinction of criminal liability, even during the pendency of the criminal case.[401]

In view of the amendments introduced by R.A. No. 10592 to Article 29 of the RPC, the beneficial effect of earning time allowances for good conduct has been transformed from one that is merely inchoate,[402] to one

398. *See* An Act Amending Article Twenty-Nine of the Revised Penal Code to Give Full Time Credit Under Certain Conditions to Offenders Who Have Undergone Preventive Imprisonment (Detention Prisoners) in the Service of Their Sentences, Republic Act No. 6127, § 1 (1970) & Office of the President, Further Amending Article 29 of the Revised Penal Code, as Amended, Executive Order No. 214 [E.O. No. 214], § 1 (July 10, 1987).

399. R.A. No. 10592, § 1.

400. *Id.*

401. *Id.* § 2. This Section provides —

> Section 2. Article 94 of the same Act is hereby further amended to read as follows [—]
>
> 'A[rticle] 94. Partial extinction of criminal liability. — Criminal liability is extinguished partially:
>
> (1) By conditional pardon;
>
> (2) By commutation of the sentence; and
>
> (3) For good conduct allowances which the culprit may earn while he is undergoing preventive imprisonment or serving his sentence.'

Id.

402. Wherein the grant of time allowances to such a detainee becomes material and useful only if the detainee is ultimately convicted. *See* Bureau of Corrections, *supra* note 311, at 17.

that is both concrete and at once utilizable in favor of the detention prisoner even during the pendency of the criminal case, and without the need for conviction. The law accomplishes this by including the time allowances earned for good conduct together with the actual period of detention in computing the detention prisoner's preventive imprisonment for purposes of his or her immediate release.[403]

The fourth paragraph of Article 29 of the RPC provides for a separate and distinct computation of preventive imprisonment for purposes of immediate release of the detention prisoner during the pendency of the criminal case.[404] Whenever the detention prisoner has undergone preventive imprisonment for a period equal to the possible maximum of the offense charged to which he or she may be sentenced and his or her case is not yet terminated, he or she shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review.[405] For purposes of determining whether or not a detention prisoner is entitled to immediate release *pendente lite*, the computation should be the actual period of detention with good conduct time allowances.[406] In other words, the sum total of the credits for preventive imprisonment and the time allowances earned for good conduct should be equal to the maximum imprisonment of the offense charged to which he or she may be sentenced, in order for the detention prisoner to be entitled to immediate release despite the pendency of the criminal case, either on trial or on appeal.[407]

The formula is simple — it is the actual period of detention with good conduct time allowances.[408] It is the sum total of the detention prisoner's actual period of detention together with the time allowances that he or she earned for good conduct during that period.[409] If that sum total becomes equal to the possible maximum imprisonment of the offense charged to which the detention prisoner may be sentenced and the case is not yet terminated, he or she shall be entitled to immediate release *pendente lite*.[410] This formula, however, applies only for the specific purpose of determining whether or not the detention prisoner should be immediately released *pendente lite* — it is different, separate, and distinct from the formula in the

403. R.A. No. 10592, § 1.

404. *Id.*

405. *Id.*

406. *Id.*

407. *Id.*

408. *Id.*

409. R.A. No. 10592, § 1.

410. *Id.*

first to third paragraphs of Article 29 of the RPC which deals with credits for preventive imprisonment.

Unlike the first to third paragraphs, which apply different rates of credit for preventive imprisonment depending on whether the detention prisoner agrees to abide by the same disciplinary rules imposed upon convicted prisoners, wherein full credit is given to the detention prisoner in case he or she agrees, while only four-fifths credit is granted to said prisoner, if he or she does not agree to abide by said rules, the fourth paragraph simply provides that it is the actual period of detention with good conduct time allowances,[411] which should be computed in determining release *pendente lite*. The detention prisoner's choice of whether or not to abide by the same disciplinary rules imposed upon convicted prisoners is immaterial for purposes of determining whether he or she should be released *pendente lite*.[412]

E. The Ideal Scenario for Detention Prisoners to Fully Attain the Benefits of the Incentives Under R.A. No. 10592

Prior to R.A. No. 10592, the only measure for determining the propriety of the detention prisoner's release *pendente lite* was his or her actual period of preventive imprisonment.[413] The only option for detention prisoners was to passively let their credits and time allowances accumulate through the mere passage of time in good behavior during their preventive imprisonment, all in the hope that, should they later on be convicted, these credits and the time allowances would be utilized to reduce the length of time needed to fully serve their sentence consisting of deprivation of liberty.

Under R.A. No. 10592, good conduct time allowances earned by the detention prisoner are now utilized in computing whether or not they will be entitled to release *pendente lite* under Article 29 of the RPC.[414] This provides detention prisoners with a mechanism by which they can actively aspire to further shorten the duration of their preventive confinement and attain provisional liberty during the pendency of the criminal case against them. Release *pendente lite* effectively encourages detention prisoners to exhibit not only the passive requirement of good behavior but also to pursue their studies, to render teaching or mentoring services, and to observe loyalty, all of which are active manifestations of good conduct that go well beyond mere good behavior and passive compliance with disciplinary rules and regulations.

411. *Id.*

412. *See* REVISED PENAL CODE, art. 29.

413. *Id.*

414. R.A. No. 10592, § 1.

R.A. No. 10592 delineates the system of incentives available to detention prisoners in the form of credits for preventive imprisonment, time allowances for good conduct, and the possibility of release *pendente lite*. In order to fully avail of all these incentives, the detention prisoner should:

(1) Be qualified to avail of credits for preventive imprisonment, meaning: (a) he or she is not a recidivist; (b) he or she has not been convicted previously twice or more times of any crime; and (c) he or she should surrender voluntarily upon being summoned for the execution of his or her sentence.[415]

(2) The detention prisoner's qualification to avail of credits for preventive imprisonment likewise qualifies him or her to avail of time allowances for good conduct.[416]

(3) With the assistance of counsel, agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, so as to be entitled to the full credit of his preventive imprisonment.[417]

(4) Exhibit good conduct,[418] i.e., display good behavior and have no record of breach of discipline or violation of prison rules and regulations,[419] during the entire period of his preventive imprisonment.

(5) Pursue studies, or render teaching or mentoring services during the entire period of his or her preventive imprisonment.[420] If the detention prisoner pursues studies and at the same time renders teaching or mentoring services, he or she would be entitled to additional good conduct time allowances for the study separate from that granted for the teaching or mentoring service.[421]

(6) Observe loyalty by choosing to stay in the place of confinement notwithstanding the existence of the calamity or catastrophe enumerated under Article 158 of the RPC.[422] A higher deduction rate of two-fifths of the period of original sentence is

415. *Id.*

416. *Id.* § 3.

417. *Id.* § 1.

418. *Id.* § 3.

419. Bureau of Corrections, *supra* note 311, at 16.

420. R.A. No. 10592, § 3.

421. *Id.*

422. *Id.* § 4.

> given in cases where the prisoner chooses to stay in the place of his confinement.[423]

F. Penal Provisions

The legislative intent behind R.A. No. 10592, which is to benefit prisoners, is made all the more evident by Section 6 thereof which provides for a penal clause addressed not to the prisoners but to the public officers or employees who are tasked with the faithful compliance with the provisions of the law, to wit —

> Section 6. Penal Clause. — Faithful compliance with the provisions of this Act is hereby mandated. As such, the penalty of one year imprisonment, a fine of ₱100,000.00[,] and perpetual disqualification to hold office shall be imposed against any public officer or employee who violates the provisions of this Act.[424]

G. Transitory Provisions

The final proviso in the fourth paragraph of Article 29 of the RPC, as amended by Section 1 of R.A. No. 10592, expressly excludes recidivists, habitual delinquents, and escapees.[425] Persons charged with heinous crimes are also excluded from the coverage of the said Act.[426] Release *pendente lite* can therefore be availed of only by detention prisoners who are not recidivists, habitual delinquents, or escapees, provided they are not being charged with heinous crimes.[427] It may further be observed that erstwhile detention prisoners who have already been convicted of heinous crimes by the trial court prior to the effectivity of R.A. No. 10592 are likewise covered by the provisions on release *pendente lite*, notwithstanding the pendency of any appeal or automatic appellate review. This is so considering that they have already passed the point of being charged; they have already been convicted, even though such convictions have yet to become final and executory in view of the pending appeal or automatic review.

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423. *Id.*

424. *Id.* § 6.

425. *Id.* § 1.

426. R.A. No. 10592, § 1

427. *Id.*