

SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

SENATE
S. No. _____

Introduced by Senator Miriam Defensor Santiago

AN ACT
AMENDING REPUBLIC ACT NO. 8504, OTHERWISE KNOWN AS THE
“PHILIPPINE AIDS PREVENTION AND CONTROL ACT OF 1998” BY
ALLOWING MINORS AGED 15 TO 17 YEARS OLD TO GIVE CONSENT TO HIV
TESTING UNDER EXCEPTIONAL CIRCUMSTANCES

EXPLANATORY NOTE

The Constitution, Article 13, Section 11 provides:

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, disabled, elderly, women and **children**. The State shall endeavor to provide free medical care to paupers (Emphasis Supplied).

Based on the Department of Health’s latest HIV/AIDS and Art Registry of the Philippines, 560 new HIV cases were reported in April 2015, which is 42 percent higher than the same period in 2014. The Department of Health reportedly expects the number of monthly HIV cases to increase by 10 to 20 percent after the government held the National HIV Testing Week last May.

According to the DOH, 30 percent of these new cases were youth aged 15 to 24 years old. Most of the new cases (96%) were male. Ninety-nine percent were reportedly infected through sexual contact, and 1% through needle sharing.

Republic Act No. 8504 or the Philippine AIDS Prevention and Control Act requires minors to first obtain written parental consent before they can be tested for HIV. This limits the access of minors to potentially life-saving treatment and care, especially

since many adolescents and young people lack the finances to pay for health care. In the 5th AIDS Medium-Term Plan by the Philippine National AIDS Council, it was reported that such age restrictions resulted in less than one percent of males under 18 who are at risk of contracting HIV to ever have an HIV test.

R.A. No. 8504 fails to consider that many minors already engage in sex and other risky behaviors that make them prone to HIV. According to the 2013 Young Adult Fertility and Sexuality Study of the University of the Philippines Population Institute (UPPI), one in three Filipino youth aged 15 to 24 had engaged in premarital sex.

The study also showed that premarital sex among the youth rose to 32 percent from 18 percent in 1994. In 2013 alone, around 6.2 million Filipino youth had premarital sex, and more than half of this number – 4.8 million – engaged in unprotected sex. Of this 6.2 million, 7.3 percent engaged in casual sex, and 5.3 percent of males had sex with other males. However, only 40 percent of these youth aged 15 to 24 were aware of sexually transmitted diseases, while 80 percent were aware of HIV and AIDS, and only 17 percent have comprehensive knowledge of HIV.

Several countries have recognized the “mature minor principle,” which considers the evolving capacities of a child to make decisions independently. This concept recognizes that some minors are mature enough to consent independently to medical procedures, if assessed by a health professional to be sufficiently mature to understand the meaning and consequences of the medical procedure. The “mature minor principle” is also known as the “Gillick principle” or “Gillick competence,” which was decided in a 1986 case by the English House of Lords. The case established that under English law “the parental right to determine whether or not their minor child below the age of 16 will have medical treatment terminates if and when the child achieves sufficient understanding and intelligence to understand fully what is proposed.”¹

¹ UNESCO. *Young People and the Law in Asia and the Pacific*. 2013.

Aside from the United Kingdom, the United States, Canada, Australia, New Zealand, and Africa also apply the “mature minor principle.” In Asia and the Pacific, the age of minority is normally pegged at 17 years and below. However, the laws of Asian countries vary with regard to HIV testing. For example, in Lao PDR, a person 14 years and above can consent to HIV testing without the need of parental consent. Similarly, in Pohnpei State (Federated States of Micronesia), minors above 14 may consent for themselves if in the opinion of the testing clinicians, they have been at risk of HIV acquisition and they are able to understand the nature and implications of the test. Perhaps, the most progressive, in terms of allowing access to HIV testing and treatment, is Papua New Guinea which allows a person 13 years old and above to request for HIV testing and treatment without the need of parental consent.²

The World Health Organization has enumerated some circumstances when a minor can freely give his or her consent to HIV testing without securing parental consent:

1. If the minor is living independently;
2. If the minor is pregnant;
3. If the minor has no contact with parents or guardians;
4. If the minor has a clinical condition that suggests infection with HIV; or
5. If the knowledge of their HIV status is in the best interest of the minor.³

This bill therefore seeks to amend R.A. No. 8504 in order to allow minors aged 15 to 17 years old to give their consent to HIV testing under exceptional circumstances.

MIRIAM DEFENSOR SANTIAGO

² *Id.*

³ http://apps.who.int/adolescent/hiv-testing-treatment/page/Informed_consent_and_HIV_testing.

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

1 SECTION 1. Republic Act No. 8504, otherwise known as the “Philippine AIDS
2 Prevention and Control Act of 1998,” Section 4 is hereby amended to read as follows:

3 SEC. 4. HIV/AIDS Education in Schools – The Department of
4 Education, Culture and Sports (DECS), the Commission on Higher
5 Education (CHED), and the Technical Education and Skills Development
6 Authority (TESDA), utilizing official information provided by the
7 Department of Health, shall integrate instruction on the causes, modes of
8 transmission and ways of preventing HIV/AIDS and other sexually
9 transmitted diseases in subjects taught in public and private schools at
10 intermediate grades, secondary and tertiary levels, including non-formal
11 and indigenous learning systems: Provided, That if the integration of HIV/
12 AIDS education is not appropriate or feasible, the DECS and the TESDA
13 shall design special modules on HIV/AIDS prevention and control:
14 Provided, further, That it shall not be used as an excuse to propagate birth
15 control or the sale or distribution of birth control devices: Provided, finally,
16 That it does not utilize sexually explicit materials.

17 Flexibility in the formulation and adoption of appropriate course
18 content, scope, and methodology in each teaching level or group shall be
19 allowed after consultations with Parent-Teachers-Community Associations,
20 Private School Associations, school officials, and other interest groups. As
21 such, no instruction shall be offered to minors without the adequate prior
22 consultation with parents who must agree to the thrust and content of the
23 instruction materials, **EXCEPT UNDER ANY OF THE**
24 **CIRCUMSTANCES ENUMERATED IN SECTION 15 WITH**
25 **REGARD TO MINORS AGED 15 TO 17.**

1 All teachers and instructors of HIV/AIDS courses shall be required
2 to undergo a seminar or training on HIV/AIDS prevention and control to be
3 supervised by DECS, CHED and TESDA, in coordination with the
4 Department of Health (DOH) before they are allowed to teach on the
5 subject.

6 SECTION 2. R.A. No. 8504, Section 15 is hereby amended to read as follows:

7 SEC. 15. *Consent as a Requisite for HIV Testing.* – No compulsory
8 HIV testing shall be allowed. However, the State shall encourage voluntary
9 testing for individuals with a high risk for contracting HIV; Provided, That
10 written informed consent must first be obtained. Such consent shall be
11 obtained from the person concerned if he/she is of legal age or from the
12 parents or legal guardian in the case of a minor or a mentally incapacitated
13 individual.

14 **THE CONSENT SHALL BE OBTAINED FROM THE MINOR**
15 **CONCERNED AGED 15 TO 17 YEARS OLD UNDER ANY OF THE**
16 **FOLLOWING CIRCUMSTANCES:**

- 17 **1. THE MINOR IS LIVING INDEPENDENTLY;**
- 18 **2. THE MINOR IS PREGNANT;**
- 19 **3. THE MINOR IS ALREADY A PARENT OR HAS**
20 **SUFFERED A MISCARRIAGE;**
- 21 **4. THE MINOR HAS NO CONTACT WITH PARENTS OR**
22 **GUARDIANS;**
- 23 **5. THE MINOR HAS CLINICAL CONDITION THAT**
24 **SUGGESTS INFECTION WITH HIV;**
- 25 **6. THE KNOWLEDGE OF HIV STATUS IS IN THE BEST**
26 **INTEREST OF THE MINOR; OR**
- 27 **7. THE MINOR IS PART OF THE KEY POPULATIONS AS**
28 **DETERMINED BY THE PHILIPPINE NATIONAL AIDS**
29 **COUNCIL (PNAC).**

30 **KEY POPULATIONS OR THE KEY AFFECTED**
31 **POPULATIONS AT HIGHER RISK OF HIV EXPOSURE REFER**
32 **TO THOSE PERSONS WHOSE BEHAVIOR MAKE THEM MORE**
33 **LIKELY TO BE EXPOSED TO HIV OR TO TRANSMIT THE**
34 **VIRUS, AS DETERMINED BY THE PNAC. THE TERM INCLUDES**
35 **MINORS, YOUTH AND ADULTS LIVING WITH HIV; MEN WHO**
36 **HAVE SEX WITH MEN; TRANSGENDER PERSONS; PEOPLE**
37 **WHO INJECT DRUGS; AND PEOPLE WHO SELL SEX.**

38 **A PROPER AND CONFIDENTIAL COUNSELLING BY A**
39 **SOCIAL WORKER, HEALTH CARE PROVIDER OR OTHER**

1 **HEALTH CARE PROFESSIONAL, ACCREDITED BY THE**
2 **DEPARTMENT OF HEALTH (DOH) OR THE DEPARTMENT OF**
3 **SOCIAL WELFARE AND DEVELOPMENT (DSWD) SHOULD BE**
4 **DONE BEFORE AND AFTER THE HIV TESTING OF THE**
5 **MINOR.**

6 Lawful consent to HIV testing of a donated human body, organ,
7 tissue, or blood shall be considered having been given when:

8 (a) a person volunteers or freely agrees to donate his/her blood,
9 organ, tissue for transfusion, transplantation or research;

10 (b) a person has executed a legacy in accordance with Section 3 of
11 Republic Act No. 7170, also known as “Organ Donation Act of 1991”;

12 (c) a donation is executed in accordance with Section 4 of Republic
13 Act No. 7170.
14

15 SECTION 3. R.A. No. 8504, Section 32 is hereby amended to read as follows:

16 *SEC. 32. Release of HIV/AIDS Test Results.* – All results of
17 HIV/AIDS testing shall be confidential and shall be released only to the
18 following persons:

19 (a) the person who submitted himself/herself to such a test;

20 (b) either parent of a minor child who has been tested **OR THE**
21 **MINOR WHO SUBMITTED HIMSELF/HERSELF TO SUCH TEST**
22 **IF THE TESTING WAS MADE UNDER ANY OF THE**
23 **CIRCUMSTANCES ENUMERATED IN SECTION 15;**

24 (c) a legal guardian in the case of insane persons or orphans;

25 (d) a person authorized to receive such results in conjunction with
26 the AIDSWATCH program as provided in Section 27 of this Act;

27 (e) a justice of the Court of Appeals or the Supreme Court, as
28 provided under subsection (c) of this Act and in accordance with the
29 provision of Section 16 hereof.

30 SECTION 4. The minor by himself/herself may file an administrative case arising
31 from any violation of this Act and Republic Act No. 8504.

32 SECTION 5. *Separability Clause.* – If any provision of this Act shall be declared
33 unconstitutional, any other provision not affected thereby shall remain in full force and
34 effect.

1 SECTION 6. *Repealing Clause.* – All laws, decrees, orders, rules and regulations,
2 or parts thereof inconsistent with this Act are hereby repealed or amended accordingly.

3 SECTION 7. *Effectivity.* – This Act shall take effect fifteen (15) days after its
4 publication in at least two (2) newspapers of general circulation.

Approved,