

SENATE

'18 AUG 28 A11 :48

S. No. 1949

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Introduced by **SENATOR LEILA M. DE LIMA**

AN ACT
INCREASING THE AGE OF CONSENT TO PROVIDE A
STRONGER PROTECTION TO CHILDREN, AND AMENDING
FOR THIS PURPOSE ARTICLE 266-A (1) (d) OF ACT NO. 3815, AS
AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE

EXPLANATORY NOTE

“Age of Consent” is a topic often brushed aside by Filipinos; it remains to be a taboo topic in social gatherings. Our country remains to be silent and unperturbed by the necessity to shed light into it, to bring changes that would give paramount importance to providing more protection to the youth.

When we speak of the age of consent, a travel back in time would be necessary. In 700 B.C., the ancient Greek poet Hesiod in “Work and Days”¹ recommended that a woman should be five (5) years post puberty before a man could take her home as wife. In 1275, the first age-related sex law on record was enacted in England which made punishable by two (2) years imprisonment and a fine “*at the king’s pleasure*” to “*ravish*” a “*maiden within age*”, regardless of her consent (Westminster 1 Statute).²

The average age of consent in the world is pegged between sixteen (16) years old and eighteen (18) years old;³ placing the Philippines second in the list of countries with the lowest age of consent in the entire world – surpassed only by Nigeria whose age of consent was, in 2015, set at eleven (11) years old.⁴

The general historic trend among western countries in recent history is to continually raise the age of consent while eliminating ambiguities associated with

¹ Hesiod, “*Erga kai Hemérai*.” (700 B.C.)

² Robertson, Stephen, “*Age of Consent Laws*” *Children and Youth in History*. (Sydney, Australia: University of Sydney.) Available at: <http://chnm.gmu.edu/cyh/case-studies/230> <last visited on 16 August 2018>

³ “*Highest and Lowest Ages of Consent*.” Available at: <https://www.ageofconsent.net/highest-and-lowest>. <last visited on 16 August 2018>

⁴ Varghese, Johnlee, “*Nigerian Senate Lowers Age of Consent for Sex from 18 to 11; Faces Backlash*.” International Business Times online. Available at: <https://www.ibtimes.co.in/nigerian-senate-lowers-age-consent-sex-18-11-faces-backlash-635241>. <last visited on 16 August 2018>

gender and sexual act.⁵ Here in the Philippines, we deal with the situation quite differently.⁶

Twenty three years ago, the UNICEF found the age of consent in the Philippines so alarming that it persuaded the Philippines to enact a law that would clearly establish the age of consent in the country – a law that would give a vital intensification in then existing protections to the youth whom we fondly call “*pag-asang bayan*”. However, more than two decades since, and the age of consent in the Philippines remains to be at twelve (12) years old – an age still very much unenriched by experience, yet to develop physical, psychological and emotional maturity and stability.⁷

It is imperative that we look into the realities that surround the Filipino youth.⁸ At twelve (12) years old, he/she is a 6th grader who has barely gone through puberty. A child whose knowledge about sexual intercourse is still very scant,⁹ owing to the fact that there is no proper sex education provided in schools.¹⁰ In health centers where photographs of private parts and illustrations of childbearing stages are posted, he/she would be prohibited from freely and independently availing condoms and other forms of contraception¹¹ until he/she reaches the age of majority, or unless she has already conceived or suffered a miscarriage.¹² Filipino children under eighteen (18) years old are barred from getting tested for HIV without parental guidance and consent.¹³ This twelve year old child has no proper understanding of sexual consent yet, discussions

⁵ Stephen Robertson, "Age of Consent Laws," in *Children and Youth in History*, Item #230, Available at: <http://chnm.gmu.edu/cyh/items/show/230> <last visited on 19 August 2018>

⁶ Guno, Niña, "Daphne Oseña-Paez slams 12 years old as age of sexual consent in PH." 29 July 2018. Entertainment, Inquirer.net. Available at: <http://entertainment.inquirer.net/285914/p2fb-daphne-osen-paez-slams-12-year-old-age-sexual-consent-ph> <last visited on 16 August 2018>

⁷ Arias, Jacqueline, "The PH Age of Consent is 12 Years Old and You Should be Alarmed." Preen, Inquirer.net. Available at: <http://preen.inquirer.net/79776/ph-age-consent-12-years-old-alarmed>. <last visited on 16 August 2018>

⁸ Pasion, Patty, "PH Among the Worst Places for Children to Grow Up – Report." Rappler online. Available at: <https://www.rappler.com/nation/171641-philippines-worst-place-children-growing-up> <last visited on 20 August 2018>

⁹ Geronimo, Jee, "Sex Education in PH Schools Still Lacking – UNFPA." 09 July 2016. Rappler Online. Available at: <https://www.rappler.com/nation/139118-sex-education-philippines-unfpa> <last visited on 20 August 2018>

¹⁰ Crisostomo, Shiela, "Teachers Not Comfortable Tackling Sex Education – DepEd." 21 October 2017. Philstar Global online. Available at: <https://www.philstar.com/headlines/2017/10/21/1751201/teachers-not-comfortable-tackling-sex-education-deped> <last visited on 20 August 2018>

¹¹ Geronimo, Yee, "Briones: Condoms Won't Be Given Out like Leaflets in Schools." 15 December 2016. Rappler online. Available at: <https://www.rappler.com/nation/155607-briones-condoms-distribution-schools-deped-doh> <last visited on 20 August 2018>

¹² Republic Act No. 10354.

Section 7. Access to Family Planning.

“xxx

No person shall be denied information and access to family planning services, whether natural or artificial: Provided, That minors will not be allowed access to modern methods of family planning without written consent from their parents or guardian/s except when the minor is already a parent or has had a miscarriage.”

¹³ Mendoza, Diana, "Treat Minors Seeking HIV Testing as Medical Emergencies – experts." 04 August 2017. Rappler Online. Available at: <https://www.rappler.com/nation/177654-treat-minors-seeking-hiv-tests-medical-emergencies> <last visited on 20 August 2018>

of such nature being frowned upon in a very conservative country. Having been born in a society where majority of rape victims are aged 13 to 15 years old,¹⁴ she is defenseless. In 2017, a woman who sought to avenge her virtue and dignity after having been raped was thwarted in her efforts, when the Supreme Court questioned her failure to exhibit unequivocal acts of resistance and reluctance; we have Justice Bersamin saying: “*what she did not do was eloquent proof of her consent.*”¹⁵

To paint the picture more clearly, imagine a little girl aged approximately twelve years old – maybe even younger. Let us call her Rosario Baluyot. It is 1986, she is young and naïve; she sold herself for around 200 to 300 pesos to a foreigner named Dr. Heinrich Ritter. Brought to a hotel room, she was asked – no, paid – to spread her legs wide and open. Over seven months later in May 1987, she died from a severe infection in her cervix – parts of an electronic vibrator were stuck inside her vagina.¹⁶ In 1991, the Supreme Court of the Philippines having been unsatisfied by testimonies and baptismal records that state Rosario was under twelve years old when she was raped, found that when she sold herself for a few hundred bucks to Ritter, she was in effect consenting to the sexual acts that thereafter transpired. The Supreme Court speaking through Justice Gutierrez declared: “*Rosario Baluyot, a poor street child, was a prostitute in spite of her tender age. Circumstances in life may have forced her to submit to sex at such a young age but the circumstances do not come under the purview of force or intimidation needed to convict for rape*”, acquitted Ritter, deported him, and ordered him to pay 30, 000 pesos. Rosario’s dignity, life and future reduced to petty cash.¹⁷

With the aforementioned truths, it is vital to delineate childhood from adulthood, and to take a second look at the choices we allow our children, despite the scarcity of their experience and wisdom, to independently take.

Studies show that brain maturity extends well beyond teen years; in fact “emerging science about brain development suggests that most people don’t reach full maturity until the age of 25.”¹⁸ Critical thinking abilities, which are essential abilities for healthy sexuality, almost quadruple from age 12 to age 16.¹⁹ According to experts, although sexual urges are normally felt by children even prior to entering the age of maturity, this is only because the development of the sexual portions of the human

¹⁴ Philippine Commission on Women; “*Policy Brief No. 1. Strengthening the Provisions of R.A. 8353: Amending the Anti-Rape Law.*” Available at: <http://www.pcw.gov.ph/wpla/amending-anti-rape-law> <last visited on 20 August 2018>

¹⁵ *People v. Claro*; G.R. No. 199894. (April 5, 2017)

¹⁶ Rodriguez, Fritzie; “*Remembering the Rape of Rosario Baluyot.*” 14 June 2014. Rappler online. Available at: <https://www.rappler.com/move-ph/ispeak/60590-rosario-baluyot-philippines-rape> <last visited on 20 August 2018>

¹⁷ *People v. Ritter*; G.R. No. 88582. (March 5, 1991)

¹⁸ National Public Radio, Inc., “*Brain Maturity Extends well beyond Teen Years.*” 10 October 2011. Available at <https://www.npr.org/templates/story/story.php?storyId=141164708> <last visited on 20 August 2018>

¹⁹ Saletan, William, “*Rethinking the Age of Sexual Consent.*” 27 September 2007. Available at: http://www.slate.com/articles/health_and_science/human_nature/2007/09/the_mindbooty_problem.html <last visited on 20 August 2018>

brain precedes the other parts thereof – including that part responsible for cognitive competence.²⁰

Hence, allowing our children at the tender age of twelve (12) years old badly feeling the need to scratch worldly itches, to decide on their own whether the time is proper to engage in sexual intercourse – would be like abandoning them blindfold in a tunnel of mazes.

Why then should we allow the age of consent to be fixed at twelve (12) years old, when at that age, sexual act is damaging in so many ways and on so many levels? Why not question whether the ability to give consent, at the age of twelve (12) years old, is of a kind that is both healthy and knowledgeable? Why not step up now, as we should have decades ago, and finally faithfully comply with our obligations to the youth as mandated by no less than the Constitution?

For, to enact this law would mean compliance with Article II, Section 13 of the Constitution which states: “The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being.”

In putting the age of consent on the same level as that of the age of majority, the State would safeguard the innocence of the youth, prevent sexual predators from deflowering our children, and finally put premium on the virtue of the hope of this nation. This Act is consistent with provisions of The Convention on the Rights of the Child with regard to the obligation to provide protection to children from all forms of sexual exploitation and abuse.²¹ In increasing the age of consent to eighteen (18) years old, the State is sending a message – loud and clear – the youth will be protected by all means and at all costs.

In view of the foregoing, approval of this measure is earnestly sought.


LEILA M. DE LIMA

²⁰ Saletan, William, “*Rethinking the Age of Sexual Consent.*” 27 September 2007. Available at: http://www.slate.com/articles/health_and_science/human_nature/2007/09/the_mindbooty_problem.html <last visited on 20 August 2018>

²¹ Article 34. “State parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.”

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FOR THIS PURPOSE ARTICLE 266-A (1) (d) OF ACT NO. 3815, AS
AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE

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

1 **SECTION 1.** Article 266-A (1) (d) of Act No. 3815, as amended, otherwise
2 known as the Revised Penal Code, shall be amended as follows:

3 “Article 266-A. Rape, When and How Committed. – Rape is
4 committed –

5 1. By a man who shall have carnal knowledge of a
6 woman under any of the following circumstances:

7 xxx xxx xxx

8 (d) When the offended party is under [~~twelve—(12)~~]
9 **EIGHTEEN (18)** years of age or is demented, even though
10 none of the circumstances mentioned above be present.”

11 **Sec. 2. Separability Clause.** – If, for any reason, any section or provision of
12 this Act is declared unconstitutional or invalid, the other sections or provisions which
13 are not affected shall continue to be in full force and effect.

14 **Sec. 3. Repealing Clause.** – All laws, decrees, executive orders,
15 proclamations, rules and regulations or parts thereof inconsistent herewith are
16 repealed, amended, or modified accordingly.

1 **Sec. 4. Effectivity.** – This Act shall take effect fifteen (15) days after its
2 publication in the Official Gazette or in a newspaper of general circulation.

Approved,