

SENATE

S. No. 622

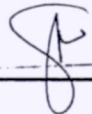


Senate

Office of the Secretary

'19 JUL 18 P3:40

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

RECEIVED BY: 

**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 defined as the age at which a person is deemed legally competent to consent to sexual activity. It is a topic often brushed aside by Filipinos and remains a taboo topic in social gatherings. Our country has one of the lowest age of consent at 12 years old. This is contrary to the international standard set forth in the United Nations Convention on the Rights of the Child, to which the Philippine government is a signatory. The Convention defines a child as every human being below the age of 18 years. Republic Act No. 7610, or the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act,” likewise defines a child as 18 years below.

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

³ “Highest and Lowest Ages of Consent.” Available at: <https://www.ageofconsent.net/highest-and-lowest>. <last visited on 15 May 2019>

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 15 May 2019>

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

Twenty four 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 vital intensification in the then existing protection mechanism for the youth whom we fondly call “*pag-asa ng bayan*”. However, more than two decades hence, the age of consent in the Philippines remains to be at twelve (12) years old – an age still very much unenriched by experience and physically, psychologically and emotional underdeveloped.⁷

It is therefore imperative that we reevaluate 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 of 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 Prior to the passage of

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 15 May 2019>

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 15 May 2019>

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 15 May 2019>

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 15 May 2019>

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 15 May 2019>

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 15 May 2019>

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 15 May 2019>

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

Republic Act No. 11166, otherwise known as the “HIV and AIDS Policy Act”, all Filipino minors were barred from getting tested for HIV and AIDS without parental guidance and consent.¹³ When President Duterte signed it into law in the first month of 2019, minors aged 15-17 are now allowed to get tested without consent. The age bracket sends out a message that a twelve-year-old minor is still too young to get tested – let alone engage in sexual intercourse, whether consented or otherwise. This twelve-year-old child has no proper understanding of sexual consent as discussions of such nature are frowned upon in familial conversations. In a society where majority of rape victims are aged 13 to 15 years old,¹⁴ a girl child 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. In that decision, the ponente opined that: “*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. Her name is 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. In May 1987, or 7 months later, 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, not satisfied with testimonies and baptismal records showing that 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*

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 15 May 2019>

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 15 May 2019>

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 15 May 2019>

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 reassess the choices we allow our children, with their lack of 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 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 is the age of consent fixed at twelve (12) years old, when at that age, sexual act is damaging in so many ways and on so many levels? Can a child at this age give his/her consent with full knowledge of its consequences? With the age of consent at 12 years old, are we faithfully complying with our obligations to the youth as mandated in the Constitution and the international treaties that we signed and ratified?

This bill, if enacted into law, is a positive measure to comply with Article II, Section 13 of the Constitution which states that: “The State recognizes the vital role of

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 15 May 2019>

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 15 May 2019>


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 15 May 2019>

the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being” and our international obligations.

In amending the age of consent to be on the same level as that of the age of majority, the State would safeguard the innocence of the youth, prevent sexual predators from violating them, and further ensure that their best interests are protected and promoted. This Act is likewise consistent with the provisions of the Convention on the Rights of the Child on the State 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 an unequivocal message that 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

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
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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 known
2 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 woman
6 under any of the following circumstances:

7 xxx xxx xxx

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

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

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

1 Sec. 4. *Effectivity.* - This Act shall take effect fifteen (15) days after its
2 publication in the Official Gazette or in at least two (2) newspapers of general
3 circulation.

Approved,