

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Sixteenth Congress
First Regular Session

3638
House Bill No. _____

Introduced by AKBAYAN Representatives
Ibarra "Barry" M. Gutierrez III and Walden F. Bello

EXPLANATORY NOTE

By virtue of Republic Act No. 8353, otherwise known as the *Rape Law of 1997*, the definition of the felony of rape in Act No. 3815 or the *Revised Penal Code of the Philippines* was amended, such amendment was incorporated in the *Revised Penal Code* as Article 266-A. It included the definition of statutory rape as that of having carnal knowledge of a woman who is under twelve (12) years of age.

The threshold age of twelve years old is one of the lowest minimum age for determining statutory rape across the globe. This means that, in the Philippines, the age of sexual consent also commences at twelve years old—the average developmental age of a child who is at the onset of puberty. Children at the age of puberty—pegged between the ages of ten to sixteen years—are just starting to develop various aspects of their self, and are considered to be physically, mentally and emotionally immature. While children mature and develop at different paces, a fifteen-year old child is just as susceptible to abuse, inducement and exploitation as a child who is eleven years old.

The *1987 Philippine Constitution*, in its Article XV (The Family), Section 3, paragraph 2, mandates the State to defend the right of children to assistance, including proper care and nutrition, and special attention from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development. Furthermore, the *United Nations' Convention of the Rights of the Child*, in its Article 34, provides that State Parties shall undertake to protect the child from all

forms of sexual exploitation and sexual abuse. The same Article mandates State Parties to take all appropriate national, bilateral and multilateral measures to prevent (a) the inducement or coercion of a child to engage in any unlawful sexual activity, (b) the exploitative use of children in prostitution or other unlawful sexual practices, and (c) the exploitative use of children in pornographic performances and materials.

The State under the doctrine of *parens patriae*, is mandated to take measures to ensure that sufficient protection is provided for children who might fall prey to sexual predators. This protection should extend to children below sixteen years of age who are still deemed vulnerable to abuse and exploitation. It is, therefore, imperative that the minimum age of sexual consent be modified not only to conform with the internationally acceptable level, but to protect the general welfare of Filipino children.

Pursuant to the obligation of the Philippines under the *Convention of the Rights of the Child*, this bill seeks to amend Article 266-A of the *Revised Penal Code* by raising the minimum age of consent in determining statutory rape to sixteen years old, as well as to rationalize the penalties stipulated in Article 266-B for child victims. Corollary to the proposed increase in the age of sexual consent to sixteen years old, defining simple seduction as a felony becomes unnecessary since girl children are protected by the amended definition of statutory rape. Whenever deceit is employed as a means to have carnal knowledge of the victim, recourse to a civil action is still possible. There is also a need to amend the definition of qualified seduction to reflect the threshold age of consent.

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


IBARRA "BARRY" M. GUTIERREZ III


WALDEN F. BELLO

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AN ACT

**AMENDING THE DEFINITION OF THE CRIME OF RAPE INVOLVING GIRL
CHILDREN AND RATIONALIZING THE PENALTIES THEREFOR,
AMENDING FOR THIS PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE
KNOWN AS THE "REVISED PENAL CODE," AND REPUBLIC ACT NO. 7610,
OTHERWISE KNOWN AS THE "SPECIAL PROTECTION OF CHILDREN
AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT"**

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

SECTION 1. *Short Title.*—This Act shall be known as "*An Act Raising the Age for Statutory Rape.*"

SECTION 2. Article 266-A of Act No. 3815, otherwise known as the *Revised Penal Code*, as amended, is hereby amended to read as follows:

"Article 266-A. Rape. When and How Committed.—Rape is committed—

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

- a. Through force, threat or intimidation;
- b. When the offended party is deprived of reason or is otherwise unconscious;
- c. By means of fraudulent machination or grave abuse of authority;
- d. When the offended party is under ~~twelve (12)~~sixteen (16) years of age or is demented, even though none of the circumstances mentioned above be present.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person."

SECTION 3. Article 266-B of Act No. 3815, otherwise known as the *Revised Penal Code*, as amended, is hereby amended to read as follows:

"Article 266-B. Penalties.—Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

1
2 The death penalty shall also be imposed if the crime of rape is
3 committed with any of the following aggravating/qualifying
4 circumstances:

5
6 1. When the victim is under eighteen (18) years of age and
7 the offender is a parent, ascendant, stepparent, guardian, relative
8 by consanguinity or affinity within the third civil degree, or the
9 common law spouse of the parent of the victim.

10
11 2. When the victim is under the custody of the police or
12 military authorities or any law enforcement or penal institution.

13
14 3. When the rape is committed in full view of the spouse,
15 parent, any of the children or other relatives within the third civil
16 degree of consanguinity.

17
18 4. When the victim is a religious engaged in legitimate
19 religious vocation or calling and is personally known to be such
20 by the offender before or at the time of the commission of the
21 crime.

22
23 5. When the victim is a child below ~~seven (7)~~ twelve (12)
24 years old.

25
26 6. When the offender knows that he is afflicted with Human
27 Immuno-Deficiency Virus (HIV)/ Acquired Immune Deficiency
28 Syndrome (AIDS) or any other sexually transmissible disease and
29 the virus or disease is transmitted to the victim.

30
31 7. When committed by any member of the Armed Forces of
32 the Philippines or para-military units thereof or the Philippine
33 National police or any law enforcement agency or penal

1 institution, when the offender took advantage of his position to
2 facilitate the commission of the crime.

3
4 8. When by reason or on the occasion of the rape, the
5 victim has suffered permanent physical mutilation or disability.

6
7 9. When the offender knew of the pregnancy of the
8 offended party at the time of the commission of the crime.

9
10 10. When the offender knew of the mental disability,
11 emotional disorder and/or physical handicap of the offended
12 party at the time of the commission of the crime.

13
14 Rape under paragraph 2 of the next preceding article shall be
15 punished by *prision mayor*.

16
17 Whenever the rape is committed with the use of a deadly weapon
18 or by two or more persons, the penalty shall be *prision mayor* to
19 *reclusion temporal*.

20
21 When the rape is attempted and a homicide is committed by
22 reason or on the occasion thereof, the penalty shall be *reclusion*
23 *temporal* to *reclusion perpetua*.

24
25 When by reason or on the occasion of the rape, homicide is
26 committed, the penalty shall be *reclusion perpetua*.

27
28 *Reclusion temporal* shall also be imposed if the rape is committed by
29 any of the ten aggravating/qualifying circumstances mentioned in
30 this article.”

31
32 **SECTION 4.** Pursuant to Sections 2 and 3 of this Act, Section 5(b) of Republic Act No. 7610,
33 otherwise known as the *Special Protection of Children Against Abuse, Exploitation and Discrimination*
34 *Act* is hereby amended to read as follows:

1
2 “Section 5. Child prostitution and other sexual abuse.—

3
4 (b) Those who commit the act of sexual intercourse or lascivious
5 conduct with a child exploited in prostitution or subject to other
6 sexual abuse; *Provided*, That when the victim is under ~~twelve~~
7 ~~(12)~~sixteen (16) years of age, the perpetrators shall be prosecuted
8 under ~~Article 355, paragraph 3, Article 266-A(1)(d), for rape and~~
9 ~~Article 336~~Article 266-B of Act No. 3815, as amended, otherwise
10 known as the *Revised Penal Code*, for rape or lascivious conduct, as
11 the case may be: *Provided*, That the penalty for lascivious conduct
12 when the victim is under ~~twelve (12)~~sixteen (16) years of age shall
13 be reclusion temporal in its medium period; and”
14

15 **SECTION 5.** Pursuant to Sections 2 and 3 of this Act, the second to the last paragraph of
16 Section 10 of Republic Act No. 7610, otherwise known as the *Special Protection of Children Against*
17 *Abuse, Exploitation and Discrimination Act*” is hereby amended to read as follows:
18

19 “For purposes of this Act, the penalty for the commission of acts
20 punishable under Articles 248, 249, 262, paragraph 2, and 263,
21 paragraph 1 of Act No. 3815, as amended, the *Revised Penal Code*,
22 for the crimes of murder, homicide, other intentional mutilation,
23 and serious physical injuries, respectively, shall be *reclusion perpetua*
24 when the victim is under twelve (12) years of age. The penalty for
25 the commission of act punishable under Articles 337, 339, 340
26 and 341 of Act No. 3815, as amended, the *Revised Penal Code*, for
27 the crimes of qualified seduction, acts of lasciviousness with the
28 consent of the offended party, corruption of minors, and white
29 slave trade, respectively, shall be one (1) degree higher than that
30 imposed by law when the victim is under ~~twelve (12)~~sixteen (16)
31 years of age.”
32

33 **SECTION 6.** Article 338 of Act No. 3815, otherwise known as the *Revised Penal Code*, as
34 amended, which defines simple seduction and which reads:

1
2 “Article 338. *Simple seduction.*—The seduction of a woman who is
3 single or a widow of good reputation, over twelve but under
4 eighteen years of age, committed by means of deceit, shall be
5 punished by *arresto mayor*.”
6

7 is hereby repealed.
8

9 **SECTION 7.** Article 337 of Act No. 3815, otherwise known as the *Revised Penal Code*, as
10 amended, is hereby amended to read as follows:
11

12 “Article 337. *Qualified seduction.*—The seduction of a virgin over
13 ~~twelve~~sixteen (16) years and under eighteen years of age,
14 committed by any person in public authority, priest, home-
15 servant, domestic, guardian, teacher, or any person who, in any
16 capacity, shall be entrusted with the education or custody of the
17 woman seduced, shall be punished by ~~prison~~ *correctional* ~~prison~~
18 *mayor* in its minimum and medium periods.
19

20 The penalty next higher in degree shall be imposed upon any
21 person who shall seduce his sister or descendant, whether or not
22 she be a virgin or over eighteen years of age.
23

24 Under the provisions of this Chapter, seduction is committed
25 when the offender has carnal knowledge of any of the persons
26 and under the circumstances described herein.”
27

28 **SECTION 8. *Retroactive effect.***—All pending criminal cases, and accompanying civil cases, if
29 any, for a violation of Article 338 of the *Revised Penal Code* shall be dismissed upon the effectivity
30 of this Act.
31

32 Pursuant to Section 22 of the 1987 *Philippine Constitution* prohibiting the enactment of *ex-post facto*
33 laws or bills of attainder and to Article 22 of the *Revised Penal Code*, the provisions of this Act
34 shall have retroactive effect insofar as they are favorable to the person charged or convicted

1 under Articles 266-A, 266-B, 337 and 338 of the *Revised Penal Code*, who is not a habitual criminal,
2 as defined in Rule 5 of Article 62 of the said *Code*, even if at the time of the publication of this
3 Act a final sentence has been pronounced and the convict is serving the same. Therefore, all
4 persons serving sentence for a violation of Article 337 of the *Revised Penal Code* shall be
5 immediately released upon the effectivity of this Act: *Provided*, That they are not serving sentence
6 or detained for any other offense or felony.

7
8 **SECTION 9. *Separability clause*.**—If any part, section or provision of this Act is held invalid
9 or unconstitutional, other provisions not affected thereby shall remain in full force and effect.

10
11 **SECTION 10. *Repealing clause*.**—All laws, decrees, orders, rules and regulations or other
12 issuances, particularly that of the *Revised Penal Code*, which are inconsistent with the provisions of
13 this Act, are hereby repealed, amended, or modified accordingly. Articles 266-A, 266-B and 337
14 of Act No. 3815 (*Revised Penal Code*, as amended), and Section 5(b) and the second to the last
15 paragraph of Section 10 of Republic Act No. 7610 (*Special Protection of Children Against Child Abuse,*
16 *Exploitation, Discrimination Act*), are hereby amended. Article 338 of Act No. 3815 (*Revised Penal*
17 *Code*, as amended) is hereby repealed.

18
19 **SECTION 11. *Effectivity*.**—This Act shall take effect fifteen (15) days after the completion of
20 its publication in the *Official Gazette* or in two (2) newspapers of general circulation.

Approved,