



DE LA SALLE UNIVERSITY
TAÑADA-DIOKNO COLLEGE OF LAW
DLSU LAW CLINIC

Primer on R.A. No. 11648 (INCREASING THE AGE OF SEXUAL CONSENT)

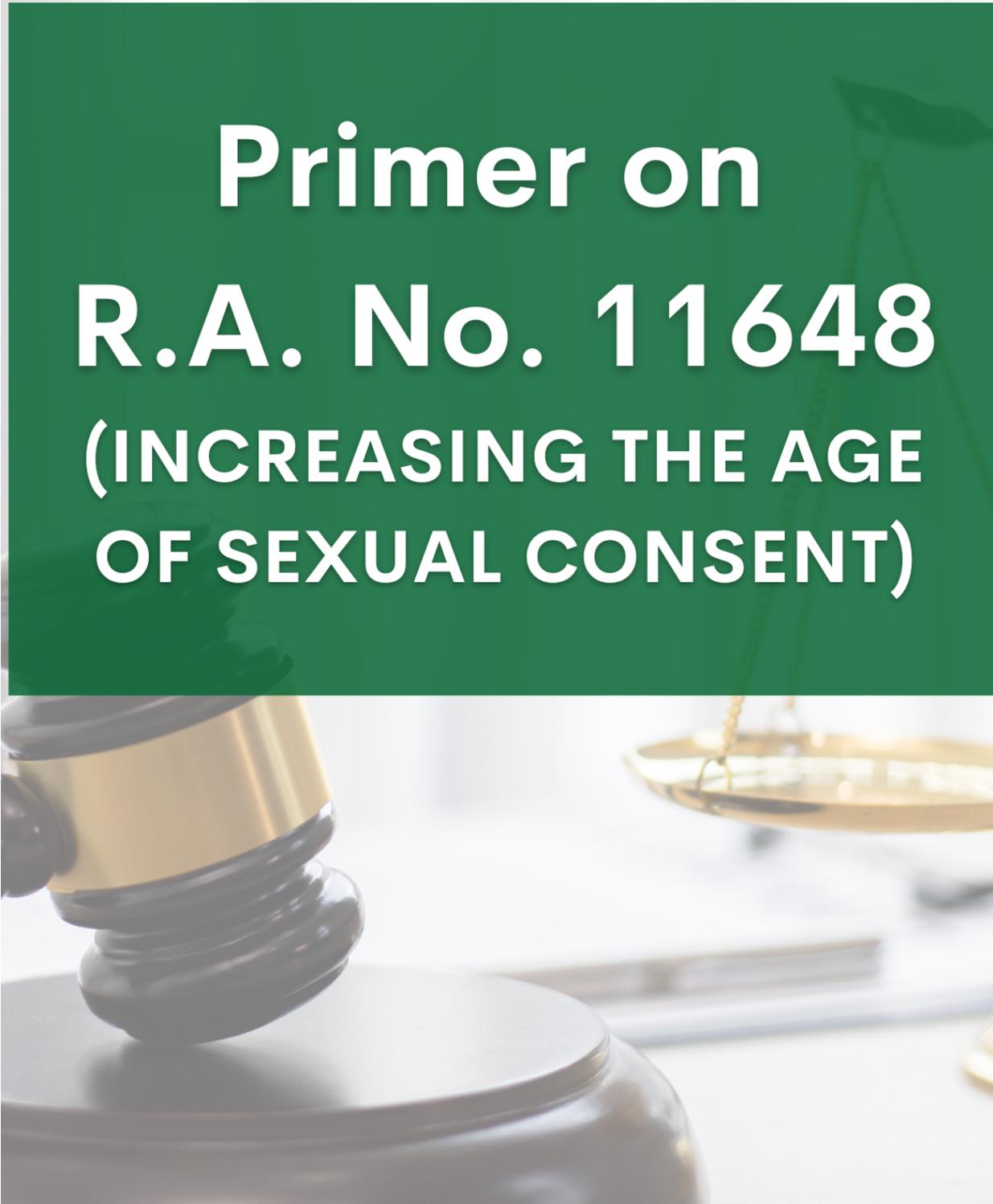


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INTRODUCTION

This Primer is a project of the DLSU Legal Clinic (DLC) as part of the Clinical Legal Education (CLEP) of the De La Salle University - Tañada-Diokno College of Law. This aims to provide all Filipinos with information regarding the rationale and impact of the amendments to existing laws brought about by Republic Act No. 11648 (AN ACT PROMOTING FOR STRONGER PROTECTION AGAINST RAPE AND SEXUAL EXPLOITATION AND ABUSE, INCREASING THE AGE OFR DETERMINING THE COMMISSION OF STATUTORY RAPE) and to help in achieving the ultimate aim of this law, that is to provide stronger protection against rape and sexual exploitation and abuse of children.

With the enactment of R.A. No. 11648, the age for sexual consent is now increased from under twelve (12) to under sixteen (16) years old. Increasing the age of sexual consent expanded the protection of children because sexual offenders can now be convicted when the victim is under sixteen (16) years old, even without proving the other elements of a crime. Before, this protection is only applicable when the victim is under twelve (12) years old making it difficult to prosecute sexual offenders that violated the rights of children of equally tender age at thirteen (13) to fifteen (15) years old. This is a step towards ending child rape and the fruit of numerous movements toward a safer country for every Filipino child. This Primer intends to elucidate the changes brought by the new law by providing a side-by-side comparison of the previous laws and their amendments through R.A. No. 11648.

COVERAGE OF R.A. NO. 11648

On March 04, 2022, R.A. No. 11648 was signed into law, the full text of which can be found in

<https://www.officialgazette.gov.ph/downloads/2022/03mar/20220304-RA-11648-RRD.pdf>

R.A. No. 11648 provides stronger protection against rape and sexual exploitation and abuse and increases the age for determining the commission of statutory rape. In effect, it amended the existing laws that governs the crimes of rape, qualified and simple seduction, child prostitution, child trafficking, obscene publications and indecent shows, and other acts of neglect, abuse, cruelty, or exploitation and other conditions prejudicial to the child's development.

Law	Short Title	Official Gazette Links	Date of Approval
Act No. 3815	The Revised Penal Code, as amended	https://www.officialgazette.gov.ph/1930/12/08/act-no-3815-s-1930/	08 December 1930
Republic Act No. 8353 (R.A. No. 8353)	The Anti-Rape Law of 1997, as amended	https://www.officialgazette.gov.ph/1997/09/30/republic-act-no-8353/	30 September 1997
Republic Act No. 7610 (R.A. No. 7610)	Special Protection of Children Against Abuse, Exploitation and Discrimination Act	https://www.officialgazette.gov.ph/1992/06/17/republic-act-no-7610/	17 June 1992

RATIONALE FOR INCREASING THE AGE OF SEXUAL CONSENT

Rape, including other forms of sexual abuse, should no longer be viewed as a crime against chastity, which focuses on the dishonor to the victim's father or family. Rape and sexual abuse is a strike against the person of the victim. It is a violation of one's autonomy, a "violation of free will, or the freely made choice to engage in sexual intimacy."¹

Part and parcel of a valid consent is the ability to have the intellectual resources and capacity to make a choice that reflects his or her judgments and values. For someone to give sexual consent, he or she must have reached a certain level of maturity.²

The United Nations Children's Fund (UNICEF) East Asia and Pacific Regional Office revealed in a 2015 report that the minimum age of twelve (12) set by the Philippines for sexual consent is the lowest among Association of Southeast Asian Nations (ASEAN) member states.³

A 2019 UNICEF policy brief on statutory rape in the Philippines explained that:

- By keeping the age of consent at twelve (12), the Philippines is neglecting its international obligations. The Philippines is a signatory to the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women, among others.
 - Committees of both Conventions have already recommended to the Philippine Government to increase the age of sexual consent from twelve (12) to sixteen (16) years old, noting that the low age of twelve (12) endangers children and makes them more vulnerable to sexual violence – including prostitution, trafficking, and online sexual exploitation and abuse.

¹ Separate Opinion of J. Leonen in *Bangayan v. People*, G.R. No. 235610, September 16, 2020.

² Separate Opinion of J. Leonen in *Bangayan v. People*, G.R. No. 235610, September 16, 2020.

³ UNICEF East Asia and Pacific Regional Office (EAPRO), *Legal Protection from Violence: Analysis of Domestic Laws Related to Violence against Children in ASEAN Member States* (2015).

- Data from the Department of Social Welfare and Development (DSWD) show that from 2015 to 2017, most of the victims of rape and child incest were between the ages of **fourteen (14) to below eighteen (18)**.
 - If this is the age range of the usual victims, **why is twelve (12) not within this range?** Clearly, there is a need to amend the law and widen the scope of protection it affords children, especially for ages where sexual abuse is more prevalent. Increasing the minimum age for sexual consent will provide greater protection for children against predators that seek to exploit their vulnerability.
- Aside from scientific proof and actual data available, increasing the age of statutory rape also widens the shield of the law in protecting children from suffering the horrendous and oftentimes long-lasting effects of sexual violence on children.
 - These effects include trauma, self-blame, depression, suicide, delinquency, risk-taking behavior, sexually transmitted infections, teenage pregnancy and sometimes, even death. According to the National Youth Commission, raising statutory rape coverage will not only help protect children, but also decrease the high incidence of teen pregnancy in the country.⁴

In *People v. Tulagan*,⁵ a case from 2019 decided prior to the enactment of R.A. No. 11648, the Supreme Court explained that:

- The opinion in *Malto v. People*,⁶ that a child is presumed by law to be incapable of giving rational consent, unduly extends the concept of statutory rape to those victims who are within the range of twelve (12) to seventeen (17) years old, and even those eighteen (18) years old and above under special circumstances, who are still considered as "children."

⁴ "Increasing the Age of Statutory Rape to Provide Stronger Protection for Children, A policy brief on statutory rape in the Philippines", UNICEF Philippines, Philippine Legislators' Committee on Population and Development Foundation, Inc. (2019).

⁵ G.R. No. 227363, March 12, 2019.

⁶ G.R. No. 164733, September 21, 2007.

- While *Malto v. People* is correct that consent is immaterial in cases where the offended party is below twelve (12) years of age, consent of the child is material and may even be a defense in criminal cases when the offended party is twelve (12) years old or below eighteen (18) years old, or above eighteen (18) years old under special circumstances.
 - Such consent may be implied from the failure to prove that the said victim engaged in sexual intercourse either "due to money, profit or any other consideration or due to the coercion or influence of any adult, syndicate or group."

In *Bangayan v. People*,⁷ a case from 2020 and likewise decided prior to the enactment of R.A. No. 11648, the Supreme Court held that:

- There is a need to distinguish the difference between a child under twelve (12) years of age and one who is between twelve (12) years old and below 18 years of age due to the incongruent mental capacities and emotional maturity of each age group.
- It is settled that a victim **under twelve (12) years old** does not and cannot have a will of her own on account of her tender years; thus, a child's consent is immaterial because of her presumed incapacity to discern good from evil. As such, regardless of the willingness of a victim **under twelve (12) years old** to engage in any sexual activity, the Revised Penal Code punishes statutory rape.
- The emotional maturity and predisposition of a juvenile, whose age is close to the threshold age of twelve (12), may significantly differ from a child aged between fifteen (15) to eighteen (18) years old who may be expected to be more mature and to act with consciousness of the consequences of sexual intercourse.

However, in Associate Justice Leonen's dissent⁸ in *Bangayan v. People*, he felt the need for a refined and clarified application of the law and explanation of what was said in passing in *People v. Tulagan*.

⁷ G.R. No. 235610, September 16, 2020.

⁸ Separate Opinion of J. Leonen in *Bangayan v. People*, G.R. No. 235610, September 16, 2020.

- As *People v. Tulagan* explained, consent is immaterial in sexual intercourse with children **under twelve (12) years of age**, because they are presumed to be incapable of giving consent.
 - The gap in the ages **between twelve (12) and eighteen (18) years old** was addressed by R.A. No. 7610, which provided criminal liability for acts of prostitution or other forms of sexual abuse done with a child **between twelve (12) and eighteen (18) years old**.
 - Nevertheless, R.A. 7610 takes into consideration that the age of sexual consent remains at twelve (12) years old. This is **"one of the lowest globally and the lowest in the Asia-Pacific Region. While the average age of consent is sixteen (16) years old."** This is despite the fact that under our laws, minors do not have the capacity to enter contracts or marriage.
 - Thus, in sexual intercourse with children **between twelve (12) and eighteen (18) years of age**, as *People v. Tulagan* concludes, Section 5(b) of Republic Act No. 7610 leaves room for a child to give consent. But this must be read with the policy espoused by the law, which states that **"the best interests of children shall be the paramount consideration."**
 - This obliges the courts to determine how consent to sexual conduct was given by the child, despite reaching an age where they could have reasonable "discernment."
 - **Factors such as age difference, the victim and perpetrators' relationship, and the child's psychological disposition must be considered by this Court, having in mind the child's best interest.**
- The age difference factor is an indicator of coercion and influence.

- A 14 year old can still be considered innocent of the ways of the world; the victim is no match against the accused rapist.⁹
- Minors could be easily intimidated and cowed into silence even by the mildest threat against their lives.¹⁰

There is thus an apparent need to increase the threshold age of a victim for purposes of criminal liability on the part of the accused for statutory rape. As Justice Leonen explains, several factors, such as the age of the child, his or her psychological state, intellectual capability, relationship with the accused, their age difference, and other signs of coercion or manipulation must be taken into account in order to protect the child.¹¹

With the advent of R.A. No. 11648, leading news providers in the country such as the Philippine Daily Inquirer and CNN Philippines have written the following (excerpts):

- “R.A. No. 116481, which amends the Anti-Rape Act of 1997, states that it will be considered statutory rape if an adult has sexual intercourse with a person under sixteen (16) years old.”

“It also said there is no criminal liability even if the person is under sixteen (16), as long as their partner is not more than three years older and the sexual act is consensual and non-abusive. The exception does not apply if the victim is under thirteen (13) years old.”

“Prior to the new law, the Philippines had the second lowest age for sexual consent worldwide, next to Nigeria's age of eleven (11), according to Child Rights Network.”

“The United Nations Children's Fund (UNICEF) celebrated the passage of the law that also equalized the protection for victims regardless of gender–

‘The passage of this legislation is an **essential step** towards **fulfilling children’s rights to protection from sexual violence**,

⁹ People v. Errojo, G.R. No. 102077, January 04, 1994.

¹⁰ People v. Clado, G.R. No. 135699-700, 139103, October 19, 2000.

¹¹ Separate Opinion of J. Leonen in *Bangayan v. People*, G.R. No. 235610, September 16, 2020.

abuse and exploitation, regardless of their sex, orientation and gender identity and expression,’ it said in a statement. ‘Sexual violence results in severe physical, psychological and social harm for children.’”¹²

- GABRIELA stated that, “R.A. No. 11648 was a ‘hard-fought’ win for women and child rights activists who tirelessly worked for its passage. **The law will strengthen the fight against sexual violence and exploitation in the Philippines, especially against Filipino children.**”

While Salinlahi, a national alliance of child rights activists, stressed that, **“there’s still a long way to go to completely eliminate all kinds of sexual violence and exploitation,** the law will provide hope for victims of ‘obnoxious’ crimes.”¹³

R.A. No. 11648 gives life to certain dissents to cases that involve acquittals, or lesser penalties given to those convicted, such as that of Justice Leonen in *Bangayan*. The concern of having one of the lowest ages of sexual consent has been addressed. As the new law provides stronger protection against sexual violence and exploitation, future cases will have the new law as a basis to help ensure that future acts of violence against children are properly addressed.

¹² PH raises age of sexual consent from 12 to 16, CNN Philippines Staff, CNN Philippines, March 7, 2022, retrieved from: [PH raises age of sexual consent from 12 to 16 \(cnnphilippines.com\)](https://www.cnnphilippines.com/news/2022/03/07/age-of-sexual-consent-12-to-16/).

¹³ Age of sexual consent now 16: Why this ‘hard-fought’ win is crucial in PH, Kurt Dela Peña, Philippine Daily Inquirer, March 11, 2022, retrieved from: [Age of sexual consent now 16: Why this ‘hard-fought’ win is crucial in PH | Inquirer News](https://www.inquirer.net/ph/news/2022/03/11/age-of-sexual-consent-16-why-this-hard-fought-win-is-crucial-in-ph/).

AMENDMENTS TO THE REVISED PENAL CODE, AS AMENDED BY THE ANTI-RAPE LAW OF 1997 (R.A. No. 8353)

RAPE

1. *Q: How did R.A. No. 11648 amend the Revised Penal Code, as amended by the R.A. No. 8353 with regard to the crime of Rape?*

A: Under the Revised Penal Code, as amended by R.A. No. 8353,¹⁴ statutory rape is committed when a person has carnal knowledge with another person who is **under twelve (12) years old** or is demented. Under R.A. No. 11648,¹⁵ the crime is now considered statutory rape when a person has carnal knowledge with another person on or after 22 March 2022, who is **under sixteen (16) years old** or is demented, subject to the exceptions explained hereinafter.

2. *Q: What would be the effect if the offended party's age is exactly sixteen (16) years old?*

A: Under R.A. No. 11648¹⁶, the offense shall now be punishable as qualified seduction. Under the amended law, the elements of qualified seduction are the following:

- The offended party is a minor;
- The offended party is sixteen (16) years old and over but less than eighteen (18) years old;
- The offender has sexual intercourse with the victim; and
- Such offense was committed in abuse of authority, confidence or relationship.

¹⁴ REV. PEN. CODE, Art. 266-A(1)(d), as amended by Rep. Act. No. 8353 (1997).

¹⁵ Sec. 1, Rep. Act. No. 11648 (2022). An Act Promoting for Stronger Protection Against Rape and Sexual Exploitation and Abuse, Increasing the Age for Determining the Commission of Statutory Rape, Amending for the Purpose Act No. 3815, as Amended, Otherwise Known as "The Revised Penal Code," Republic Act No. 8353, Also Known as "The Anti-Rape Law of 1997," and Republic Act No. 7610, as Amended, Otherwise Known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act".

¹⁶ Rep. Act. No. 11648, Sec. 2 (2022).

However, if the offense was not committed in abuse of authority, confidence or relationship, the offense committed shall be considered rape under the following circumstances¹⁷:

- Through force, threat or intimidation;
- When the offended party is deprived of reason or unconscious; or
- Through fraudulent machination or grave abuse of authority.

3. *Q: What is the exception to the increased age for determining the commission of statutory rape?*

A: Under R.A. No. 11648¹⁸, there will be no criminal liability when the age difference between the parties is **not more than three (3) years**, and the sexual act is proven to be consensual, non-abusive, and non-exploitative, even if the offended party is **under sixteen (16) years of age**.

The exception to the exception to this rule is that even if the carnal knowledge was consensual, non-abusive, and non-exploitative, rape is still committed if the offended party is **under thirteen (13) years old**.

However, the offender may still be exempted from criminal liability if he/she is **fifteen (15) years old or below**. Section 6 of R.A. No. 9344 (Juvenile Justice and Welfare Act of 2006) provides that a child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability but shall be subjected to an intervention program. Likewise, a “child **above fifteen (15) years but below eighteen (18) years** of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment.”¹⁹

4. *Q: What does the law mean when it says that “the sexual act must be non-abusive and non-exploitative”?*

A: Non-abusive means the absence of undue influence, intimidation, fraudulent schemes, coercion, threat, physical, sexual, psychological, or

¹⁷ Rep. Act. No. 11648, Sec. 1 (2022).

¹⁸ Rep. Act. No. 11648, Sec. 1 (2022).

¹⁹ Rep. Act. No. 9344, Sec. 6 (2006).

mental injury or maltreatment, either with intention or through neglect, during the conduct of sexual activities with the child victim.

On the other hand, non-exploitative means there is no actual or attempted act or acts of unfairly taking advantage of the child’s position of vulnerability, differential power, or trust during the conduct of sexual activities.²⁰

Revised Penal Code (Act 3815), as amended by the Anti-Rape Law of 1997 (R.A. No. 8353)	R.A. No. 11648 Amendments to Act No. 3185, R.A. No. 3854, and R.A. No. 7610
<p>“Article 266-A. Rape: When And How Committed. – Rape is committed:”</p> <p>1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: xxxx</p> <p>d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.</p>	<p>“Article 266-A. Rape: When And How Committed. – Rape is committed:”</p> <p>1.) By a person who shall have carnal knowledge of another person under any of the following circumstances: xxxx</p> <p>(d) When the offended party is under sixteen (16) years of age or is demented, even though none of the circumstances mentioned above be present. Provided, That there shall be no criminal liability on the part of a person having carnal knowledge of another person under sixteen (16) years of age when the age difference between the parties is not more than three (3) years, and the sexual act in question is proven to be consensual, non-abusive, and non-exploitative. Provided, further, That if the victim is under thirteen (13) years of age, this exception shall not apply.</p> <p>“As used in this Act, non-abusive shall mean the absence of undue influence, intimidation, fraudulent machinations, coercion, threat, physical, sexual, psychological, or mental injury or maltreatment, either with intention or</p>

²⁰ Separate Opinion of J. Leonen in *Bangayan v. People*, G.R. No. 235610, September 16, 2020.

	through neglect, during the conduct of sexual activities with the child victim. On the other hand, non-exploitative shall mean there is no actual or attempted act or acts of unfairly taking advantage of the child's position of vulnerability, differential power, or trust during the conduct of sexual activities.
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QUALIFIED SEDUCTION

5. Q: *How did R.A. No. 11648 amend the Revised Penal Code, as amended by the R.A. No. 8353 with regard to Qualified Seduction?*

A: Initially, the elements of **Qualified Seduction** under the Revised Penal Code²¹, as amended, were as follows:

- a. The offended party is a **virgin**;
- b. The offended party is **over twelve (12) years old but less than eighteen (18) years old**;
- c. The offender has sexual intercourse with her; and
- d. Such offense was committed in abuse of authority, confidence or relationship.

Under R.A. No. 11648, the parameters of such elements have been changed. Now, the elements of the crime of Qualified Seduction consist of²²:

- a. The offended party is a **minor**;
- b. The offended party is **sixteen (16) years old and over but less than eighteen (18) years old**;
- c. The offender has sexual intercourse with the victim; and
- d. Such offense was committed in abuse of authority, confidence or relationship.

²¹ REV. PEN. CODE, Art. 337, as amended by Rep. Act. No. 8353 (1997).

²² Rep. Act. No. 11648, Sec. 2 (2022).

Revised Penal Code (Act 3815), as amended by the Anti-Rape Law of 1997 (R.A. No. 8353)	R.A. No. 11648 Amendments to Act No. 3185, R.A. No. 3854, and R.A. No. 7610
<p>Article 337. Qualified Seduction. - The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by prison correccional in its minimum and medium periods.</p> <p>The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.</p> <p>Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.</p>	<p>Article 337. Qualified Seduction.- The seduction of a minor, sixteen and over but under eighteen years of age, committed by any person in public authority, priest, home-servant, domestic guardian, teacher or any person who, in any capacity, shall be entrusted with the education or custody of the minor seduced, shall be punished by prison correccional in its minimum and medium periods.</p> <p>The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.</p> <p>Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.</p>

6. Q: Why did R.A. No. 11648 change the range of age of the offended party in a crime of Qualified Seduction?

A: The original provision in the Revised Penal Code provides an age range of over twelve (12) years old to less than eighteen (18) for Qualified Seduction, compared to R.A. No. 11648 which contemplates an age range of above sixteen (16) but less than eighteen (18). Although initially seemingly narrowed for purposes of the offense, the legislative intent of R.A. No. 11648 is to strengthen the protection of those who fall under the 4-year period

between 12-16 years of age under the coverage of rape instead of qualified seduction. Keep in mind that the crime of rape is punishable by reclusion perpetua, while Qualified Seduction is just punished by prision correccional in its minimum and medium periods. Hence Qualified Seduction as a crime is narrowed in order to broaden the coverage of rape as a crime, increasing the punishment as a deterrent.

7. Q: Why did R.A. No. 11648 change the element that the offended party must be a virgin and now only requires that the offended party is a minor?

A: The original statute on qualified seduction contemplated virginity as an essential element of the crime, notably that virginity is presumed if the girl is **over 12 years of age but under 18 years of age**, unmarried and of good reputation.²³ Under R.A. No. 11648, this distinction between virgins and non-virgins is removed, making it easier to prosecute qualified seduction without having to prove virginity (whether physical, or by reputation). This may also be in view of more progressive directions in the legislature, which would explain why a woman no longer has to prove her virtue in order to accuse a person of qualified seduction.

Virginity as an element of the crime would, in common understanding, contemplate physical virginity as it refers to the intact state of the hymen. However, the law takes a different view. Even before the amendments to qualified and simple seduction were enacted by subsequent legislation, The Supreme Court had ruled that the physical virginity of the offended party is not essential for cases of seduction. What was considered necessary is that “the complainant be an unmarried woman, with a chaste life and good reputation”.²⁴ In the case of *People vs. Iman*,²⁵ the Supreme Court explained further in that the statute making seduction a crime, what is punished is the destruction of the chastity of the victim- chastity here referring to the state of refraining from all extramarital intercourse. In sum, the distinction between physical and reputational virginity is that physical virginity in the eyes of the law is not as conclusive on the crime of seduction in comparison to the

²³ Babanto vs. Zosa, G.R. No. L-32895, February 28, 1983; People vs. Lee, G.R. No. 139070, May 29, 2002.

²⁴ People vs. Yap, Jr., G.R. No. L-25176, February 27, 1968.

²⁵ People vs. Iman, G.R. No. 42660, September 12, 1935.

reputational damage to the chastity of the victim in light of being deceived into intercourse by the accused.

SIMPLE SEDUCTION

8. *Q: How did R.A. No. 11648 amend the Revised Penal Code, as amended by the R.A. No. 8353 with regard to Simple Seduction?*

A: Under the Revised Penal Code, the offended party in a Simple Seduction, are as follows²⁶:

- a. The offended party is a **woman who is single or a widow of good reputation;**
- b. The offended party is **over twelve (12) years old but less than eighteen (18) years old;**

Under R.A. No. 11648, the offended party is now described as follows²⁷:

- a. The offended party is a **minor;**
- b. The offended party is **sixteen (16) years old and over but less than eighteen (18) years old;**

9. *Q: Why did R.A. No. 11648 change the range of the age of the offended party in a crime of Simple Seduction, as well as the element of single, or widow of good virtue?*

A: The amendment via R.A. No. 11648 dispenses with the requirement of proof of virtue of the victim or their being single, which appears to be a more progressive stance that is independent of marriage status and takes into consideration the variety of the kind of life that modern women now live. What is important for purposes of criminal liability is the emphasis on the element of age which is exhaustively discussed in Item 6, and that of deceit.

²⁶ REV. PEN. CODE, Art. 337, as amended by Rep. Act. No. 8353 (1997).

²⁷ Rep. Act. No. 11648, Sec. 2 (2022).

Revised Penal Code (Act 3815), as amended by the Anti-Rape Law of 1997 (R.A. No. 8353)	R.A. No. 11648 Amendments to Act No. 3185, R.A. No. 3854, and R.A. No. 7610
<p>Article 338. Simple seduction. - The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by arresto mayor.</p>	<p>Article 338. Simple seduction. - The seduction of a minor, sixteen and over but under eighteen years of age, committed by means of deceit, shall be punished by arresto mayor.</p>

10. Q: *What are the differences between simple seduction and qualified seduction?*

A: Based on the current amendments to Act No. 3185, R.A. No. 3854, and R.A. No. 7610, the differences are as follows:

- For the crime of **simple seduction**, what distinguishes it from qualified seduction is the element of deceit: specifically, that the accused attains his goal of sexual intercourse with the victim through false pretenses or lies, be it a promise of marriage or other fraudulent representation;
- For **qualified seduction**, the critical element that distinguishes it from simple seduction is that there was an abuse of authority. This means that the accused is in a position of authority, confidence, relationship, or ascendancy compared to the victim. Some examples would be a priest and a member of his congregation, a CEO and an intern, and a policeman, and his escort. What is important here is that such a relationship is abused and utilized by the accused to commit the seduction.

A more detailed breakdown of the elements and penalty differences between the two crimes can be found below.

Difference	Simple Seduction	Qualified Seduction
Elements	<ol style="list-style-type: none"> 1. That the offended party is a minor; 2. The offended party is sixteen (16) years old and over but less than eighteen (18) years old; 3. The offender has sexual intercourse with the victim; and 4. That such was committed by means of deceit. 	<ol style="list-style-type: none"> 1. That the offended party is a minor; 2. The offended party is sixteen (16) years old and over but less than eighteen (18) years old; 3. The offender has sexual intercourse with the victim; and 4. Such offense was committed in abuse of authority, confidence or relationship.
Penalty	Arresto Mayor, equivalent to one month and one day up to six months.	<p>Prision Correccional in its minimum and medium periods.</p> <p>Minimum period for Prision Correccional: six months and one day to two years and four months;</p> <p>Maximum period for Prision Correccional: One year, one month and eleven days to one year, eight months and twenty days.</p> <p>The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.</p>

AMENDMENTS TO THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. No. 7610)

CHILD PROSTITUTION AND OTHER SEXUAL ABUSE

11. *Q: Who are children deemed exploited in prostitution and other sexual abuse?*

A: Those children (male or female) who indulge in sexual intercourse or lascivious conduct for money, profit, or any other consideration, or when coerced or influenced by any adult, syndicate, or group.²⁸

12. *Q: How did R.A. No. 11648 amend R.A. No. 7610 with regard to the crime of Child Prostitution?*

A: Prior to the amendment, R.A. No. 7610 meted out the general penalty of reclusion temporal in its medium period to reclusion perpetua. However, when the victim is **under twelve (12) years of age**, the law prosecuted perpetrators for Rape under Article 335 paragraph 3 of the Revised Penal Code and Acts of Lasciviousness under Article 336. For lascivious conducts, the penalty for perpetrators when the victim is **under twelve (12) years of age** is reclusion temporal in its medium period.²⁹

R.A. No. 11648³⁰ amended the law by meting out the same penalties, but changing the age of the victim from **under twelve (12) years of age** to **under sixteen (16) years age**.

²⁸ Rep. Act. No. 11648, Sec. 3 (2022).

²⁹ Rep. Act. No. 7610, Sec. 5 (1992).

³⁰ Rep. Act. No. 11648, Sec. 3 (2022).

<p style="text-align: center;">R.A. No. 7610 Special Protection of Children Against Abuse, Exploitation and Discrimination Act</p>	<p style="text-align: center;">R.A. No. 11648 Amendments to Act No. 3185, R.A. No. 3854, and R.A. No. 7610</p>
<p>Section 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.</p> <p>The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:</p> <p>xxx</p> <p>(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period;</p>	<p>Section 5. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.</p> <p>The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:</p> <p>xxx</p> <p>(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victims is under sixteen (16) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, otherwise known as “The Revised Penal Code”, for rape, or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under sixteen (16) years of age shall be reclusion temporal in its medium period;</p>

CHILD TRAFFICKING

13. Q: *What is child trafficking?*

A: Child trafficking is the act of engaging in trading and dealing with

children, such as buying and selling a child for money or for any other consideration, or bartering.³¹

14. Q: How did R.A. No. 11648 amend R.A. No. 7610 with regard to child trafficking?

A: Under R.A. No. 7610³², before the amendment, any person who shall engage in child trafficking shall suffer penalty of reclusion temporal to reclusion perpetua, where the maximum period is imposed when the victim is **under twelve (12) years of age**.

With the amendment by R.A. No. 11648³³, the maximum penalty is now imposed when the victim is **under sixteen (16) years of age**.

<p style="text-align: center;">R.A. No. 7610 Special Protection of Children Against Abuse, Exploitation and Discrimination Act</p>	<p style="text-align: center;">R.A. No. 11648 Amendments to Act No. 3185, R.A. No. 3854, and R.A. No. 7610</p>
<p>Section 7. Child Trafficking. – Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of reclusion temporal to reclusion perpetua. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age.</p>	<p>Section 7. Child Trafficking. – Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of reclusion temporal to reclusion perpetua. The penalty shall be imposed in its maximum period when the victim is under sixteen (16) years of age.</p>

OBSCENE PUBLICATIONS AND INDECENT SHOWS

15. Q: What are obscene publications and indecent shows?

A: These pertain to obscene exhibitions and indecent shows, whether live or in video, as well as obscene publications or pornographic materials that

³¹ Rep. Act. No. 11648, Sec. 3 (2022).

³² Rep. Act. No. 7610, Sec. 7 (1992).

³³ Rep. Act. No. 11648, Sec. 3 (2022).

feature a child as a performer or model, or as a seller or distributor of such materials.³⁴

16. Q: How did R.A. No. 11648 amend R.A. No. 7610 with regard to the crime of obscene publications and indecent shows?

A: Under R.A. 7610, the penalty shall be imposed in its maximum period to any person who will hire, employ, use, persuade, induce or coerce a child below the age of **twelve (12) years old** to act as a performer, subject or seller/distributor of obscene exhibitions, indecent shows, obscene publications or pornographic materials. The amendment under R.A. 11648 increased the child’s age requirement to **below eighteen (18) years old**.

The penalty of prision mayor in its medium period will be imposed on persons found guilty of hiring, employing, using, persuading, inducing, or coercing a child to perform in, obscene exhibitions and indecent shows, whether live or in video, or to model in obscene publications or pornographic materials, or to sell or distribute the said materials.³⁵ The penalty for these acts remains the same in the amended law.

In addition, the amended law still continues to penalize any ascendant, guardian, or person entrusted in any capacity with the care of a child who causes and/or allows such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other obscene publications and indecent shows. The penalty of prision mayor in its medium period will be imposed on such persons.

<p style="text-align: center;">R.A. No. 7610 Special Protection of Children Against Abuse, Exploitation and Discrimination Act</p>	<p style="text-align: center;">R.A. No. 11648 Amendments to Act No. 3185, R.A. No. 3854, and R.A. No. 7610</p>
<p>Section 9. Obscene Publications and Indecent Shows. – Any person who shall hire, employ, use, persuade, induce or</p>	<p>Section 9. Obscene Publications and Indecent Shows. – Any person who shall hire, employ, use, persuade, induce or</p>

³⁴ Rep. Act. No. 11648, Sec. 3 (2022)

³⁵ Rep. Act. No. 7610, Sec. 9 (1992)

<p>coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of prision mayor in its medium period.</p> <p>If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.</p> <p>Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of prision mayor in its medium period.</p>	<p>coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of prision mayor in its medium period.</p> <p>If the child used as a performer, subject or seller/distributor is below eighteen (18) years of age, the penalty shall be imposed in its maximum period.</p> <p>Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of prision mayor in its medium period.</p>
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OTHER ACTS OF NEGLIGENCE, ABUSE, CRUELTY OR EXPLOITATION AND OTHER CONDITIONS PREJUDICIAL TO THE CHILD'S DEVELOPMENT

17. *Q: Who does the law penalize?*

A: R.A. No. 7610, before the amendment, penalizes any person who is with a **minor, twelve (12) years old and below**, or who is with a child ten (10) years or more his junior, in any public or private place, such as hotel, motel, beer joint, disco, cabaret, pension house, sauna or massage parlor, or beach and/or other tourist or similar places with prision mayor in its maximum period and a fine of not less than P50,000. The amendment under R.A. No. 11648 increased the child's age requirement to **below sixteen (16) years old**.

The law exempts a person who is related to a minor or a child within the fourth degree of consanguinity (blood relationship) or affinity (two people are related by affinity if they are married to each other) – these include parents,

grandparents, great-grandparents, great- great-grandparents, spouse, children, siblings, grandchildren, great-grandchildren, great-great-grandchildren, nieces or nephews, grand-nieces or grand-nephews, aunts or uncles, great-aunts or great-uncles, and first cousins, and in-laws of all those stated – who has a bond with a minor or a child recognized by law, local custom, and tradition; or who acts out of a social, moral, or legal duty.³⁶

<p style="text-align: center;">R.A. No. 7610 Special Protection of Children Against Abuse, Exploitation and Discrimination Act</p>	<p style="text-align: center;">R.A. No. 11648 Amendments to Act No. 3185, R.A. No. 3854, and R.A. No. 7610</p>
<p>Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. –</p> <p>xxx</p> <p>(b) Any person who shall keep or have in his company a minor, twelve (12) years or under or who in ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places shall suffer the penalty of prision mayor in its maximum period and a fine of not less than Fifty thousand pesos (P50,000): Provided, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition or acts in the performance of a social, moral or legal duty.</p> <p>xxx</p>	<p>Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. –</p> <p>xxx</p> <p>(b) Any person who shall keep or have in his company a minor, sixteen (16) years or under or who in ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places shall suffer the penalty of prision mayor in its maximum period and a fine of not less than Fifty thousand pesos (P50,000): Provided, That this provision shall not apply to any person who is related within the fourth degree of consanguinity or affinity or any bond recognized by law, local custom and tradition or acts in the performance of a social, moral or legal duty.</p> <p>xxx</p>

³⁶ Rep. Act. No. 11648, Sec. 3 (2022)

OTHER PERTINENT PROVISIONS UNDER R.A. 11648

18. Q: *What must the curriculum for staff development of private and public institutions include?*

A: Under R.A. No. 11648,³⁷ private and public institutions should incorporate plans and learning sessions on their responsibilities in identifying, responding, and reporting rape and other sexual offenses as well as the scope of their duties.

19. Q: *What is the role of the DepEd in teaching the rights and protection of children?*

A: R.A. No. 11648³⁸ provides that DepEd shall include in its basic education curriculum and teach age-appropriate subjects concerning the matters related to the rights and protection of children. They shall design a lesson plan that would teach sex education to prevent the spread of rape.

20. Q: *What happens to the other laws, orders, decrees, rules and regulations, or other parts that are inconsistent with the law?*

A: R.A. No. 11648³⁹ repeals any inconsistencies between the previous provisions under the Anti-Rape Act of 1997, as amended, other laws, decrees, orders, rules and regulations or parts thereof.

21. Q: *When did RA 11648 take effect?*

A: R.A. No. 11648⁴⁰ took effect on 22 March 2022 or fifteen (15) days after the publication in the Official Gazette or in a newspaper of general circulation in the Philippines. The law was first published in the Official Gazette on 07 March 2022.

Under Article 4 of the Civil Code of the Philippines, laws shall be prospectively applied unless the contrary is provided. Moreover, under

³⁷ Rep. Act. No. 11648, Sec. 4 (2022).

³⁸ Rep. Act. No. 11648, Sec. 4 (2022).

³⁹ Rep. Act. No. 11648, Sec. 6 (2022).

⁴⁰ Rep. Act. No. 11648, Sec. 7 (2022).

Article 22 of the Revised Penal Code,⁴¹ criminal laws shall only be retrospectively applied if the same shall be favorable to the accused. Hence, the Anti-Rape Act of 1997 will govern on offenses committed prior to 22 March 2022 while R.A. No. 11648 shall govern offenses committed on 22 March 2022 and onwards.

⁴¹ REV. PEN. CODE, Art. 22.