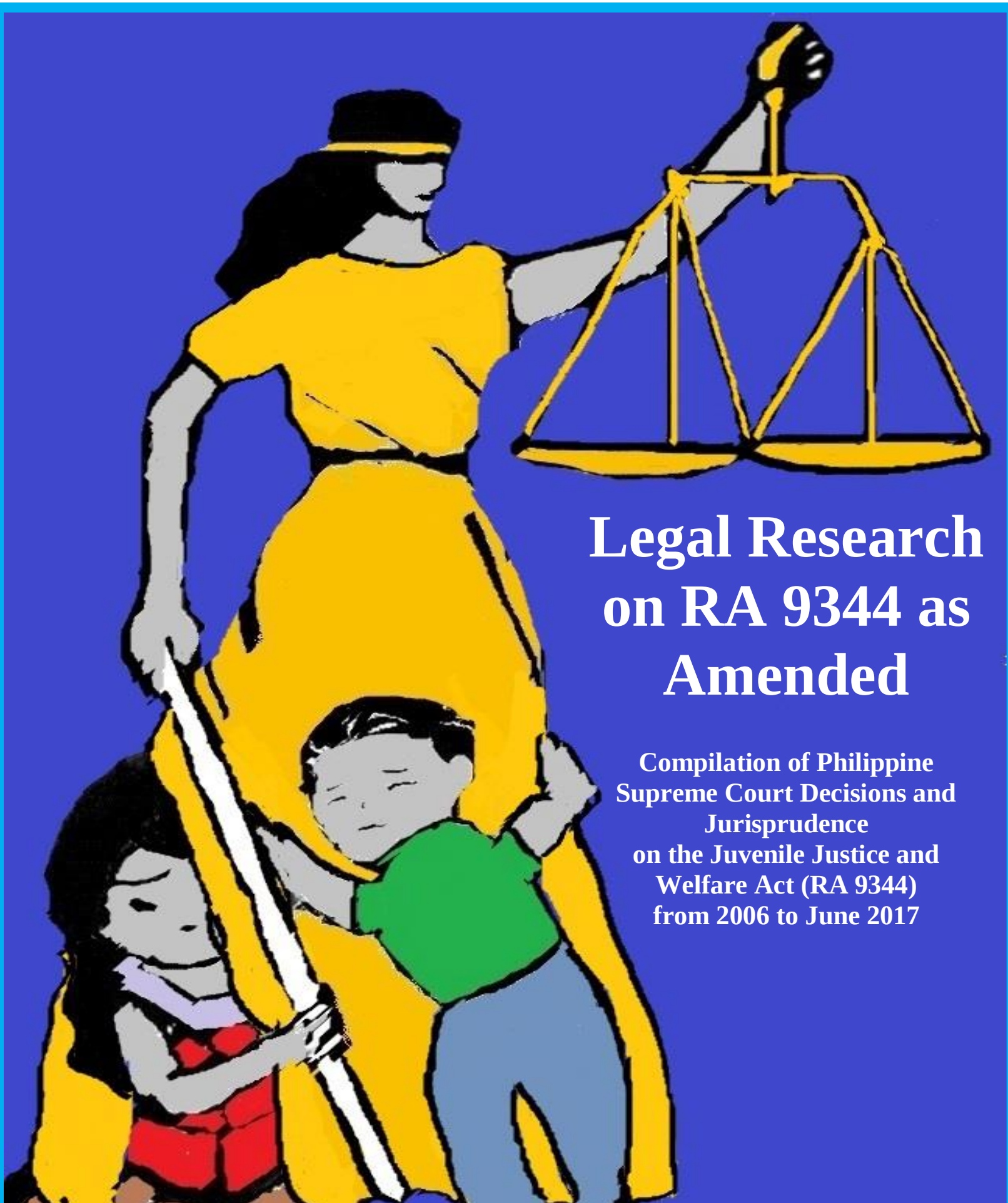
JUVENILE JUSTICE AND WELFARE COUNCIL



Legal Research on RA 9344 as Amended

Compilation of Philippine Supreme Court Decisions and Jurisprudence on the Juvenile Justice and Welfare Act (RA 9344) from 2006 to June 2017

Acknowledgment

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As we endeavor to regularly update this document we will also be grateful to all those who would want to contribute in enriching this document.

Thank you

JJWC

ACRONYMS

A.M.	Administrative Matter
BCPC	Barangay Council for the Protection of Children
BUCOR	Bureau of Corrections
CA	Court of Appeals
CAR	Children at risk
CICL	Children in conflict with the law
CWC	Council for the Welfare of Children
DSWD	Department of Social Welfare and Development
JJWC	Juvenile Justice and Welfare Council
LCPC	Local Council for the Protection of Children
LGU	Local government unit
LSWDO	Local Social Welfare and Development Office
NGO	Nongovernment organization
P.D.	Presidential Decree
R.A.	Republic Act
RPC	Revised Penal Code
RTC	Regional Trial Court
SC	Supreme Court

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I. Brief introduction/background of the study

A handy yet comprehensive reference for authoritative interpretation and enforcement of *Republic Act No. 9344*, as amended, its *Revised Implementing Rules and Regulations*, and relevant laws on CICL, this compilation of jurisprudence would serve as a ready and convenient tool for duty-bearers and advocates in their continuing pursuit to protect more Children in Conflict with the Law (CICL) and Children at Risk (CAR). From the enactment of *R.A. No. 9344* in 2006, the Supreme Court has decided a number of cases involving CICLs, clarifying certain grey areas in its provisions. The decisions of the Supreme Court are considered part of the law of the land, serving as authoritative reference when the provisions of the law are not clear or are ambiguous. A compendium and an analysis of these decisions is an important reference for duty-bearers and stakeholders in ensuring the effective and efficient implementation of the law.

II. Legal framework of R.A. No. 9344, as amended

The *Juvenile Justice and Welfare Act of 2006 (R.A. No. 9344)*, which took effect on May 20, 2006, has its foundation in the following legal documents, international instruments, and principles:

(a) The Constitutional obligation of the State to defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development.[1]

(b) As a State Party to the *United Nations Convention on the Rights of the Child*, the Philippines recognizes the right of every child alleged as, accused of, adjudged, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, taking into account the child's age and desirability of promoting his/her reintegration. Whenever appropriate and desirable, it shall adopt measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. It shall ensure that children are dealt with in a manner

[1] Section 3, Article XV, 1987 Constitution of the Philippines.

appropriate to their well-being by providing for, among others, a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care.[2]

(c) Although not legally binding, the Philippines has also adopted the following international instruments in the administration of juvenile justice and welfare: *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (*Beijing Rules*), *United Nations Guidelines for the Prevention of Juvenile Delinquency* (*Riyadh Guidelines*), and the *United Nations Rules for the Protection of Juveniles Deprived of Liberty*.[3]

(d) *R.A. No. 9344* "also drew its changes from the principle of restorative justice that it espouses; it considers the ages 9 to 15 years as formative years and gives minors of these ages a chance to right their wrong through diversion and intervention measures" ***(Republic of the Philippines v. Robert Sierra, G.R. No. 182941, July 3, 2009)***.

III. Intent and application of the law

In ***Joemar Ortega v. People of the Philippines (G.R. No. 151085, August 20, 2008)***, the Supreme Court expounded on the importance of legislative intent of a law in general, stating that:

> The intent of a statute is the law. If a statute is valid it is to have effect according to the purpose and intent of the lawmaker. The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to the intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act. Intent is the spirit which gives life to a legislative enactment. In construing statutes the proper course is to start out and follow the true intent of the legislature and to adopt

[2] Article 40, United Nations Convention on the Rights of the Child.
[3] Section 5, R.A. No. 9344, as amended.

> that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.[4]

In its decision in the following cases, the Supreme Court examined the intent of the *Juvenile Justice and Welfare Act* to provide services and programs geared towards the development of CICL and CAR, in addition to the factual findings of the lower court and/or other legal principles, in deciding several issues involving children who had been accused of committing a crime:

(a) *R.A. No. 9344* "establishes a comprehensive system to manage children in conflict with the law (CICL) and children at risk with child-appropriate procedures and comprehensive programs and services such as prevention, intervention, diversion, rehabilitation, re-integration and after-care programs geared towards their development. In order to ensure its implementation, the law, particularly Section 8 thereof, has created the Juvenile Justice and Welfare Council (JJWC) and vested it with certain duties and functions such as the formulation of policies and strategies to prevent juvenile delinquency and to enhance the administration of juvenile justice as well as the treatment and rehabilitation of the CICL" ***(Joemar Ortega v. People of the Philippines, G.R. No. 151085, August 20, 2008)***.

(b) The intent of *R.A. No. 9344* is "to promote and protect the rights of a child in conflict with the law or a child at risk by providing a system that would ensure that *children are dealt with in a manner appropriate to their well-being through a variety of disposition measures such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives to institutional care*" ***(Republic of the Philippines v. Robert Sierra, G.R. No. 182941, July 3, 2009)***.

(c) R.A. No. 9344 aims "to promote the welfare of minor offenders through programs and services, such as delinquency prevention, intervention, diversion, rehabilitation and re-

[4]Citing *Commissioner of Internal Revenue v. Philippine Airlines, Inc.*, G.R. No. 160528, October 9, 2006, 504 SCRA 91, 101-102, citing *Inding v. Sandiganbayan*, 434 SCRA 388 (2004), *National Tobacco Administration v. Commission on Audit*, 370 Phil. 793 (1999), and *Philippine National Bank v. Office of the President*, 322 Phil. 6, 14, (1996); *Ongsiako v. Gamboa*, 86 Phil. 50, 57 (1950); *Torres v. Limjap*, 56 Phil. 141, 145-146 (1931) citing SUTHERLAND, STATUTORY CONSTRUCTION, Vol. II, pp. 693-695).

integration, geared towards their development" ***(Salvador Atizado and Salvador Monreal v. People of the Philippines, G.R. No. 173822, October 13, 2010)***.

Wisdom and application of the law

(d) In ***Joemar Ortega v. People of the Philippines (G.R. No. 151085, August 20, 2008)***, the criminal cases for rape filed against the petitioner (accused) was dismissed as he was only 13 years old at the time of its commission. The Supreme Court declared that the victim, who was six years old at that time of rape, deserves the laws' greater protection. It clarified that the dismissal of the case "is inevitable because of the language of R.A. No. 9344, the wisdom of which is not subject to review by this Court. Any perception that the result reached herein appears unjust or unwise should be addressed to Congress. Indeed, the Court has no discretion to give statutes a meaning detached from the manifest intendment and language of the law. Our task is constitutionally confined only to applying the law and jurisprudence to the proven facts, and we have done so in this case".

In this particular case, the alleged perpetrator and victim were children at the time the crime was committed, and both are entitled to protection of the law. The Supreme Court stated that the victim in this case deserves the laws' greater protection, however, it is not a question of who is entitled to greater or more protection as both are entitled to such due to their minority. The nature or kind of protection afforded to child victims is different from that of CICLs as their needs and situation are different.

IV. Concerns on the effects of R.A. No. 9344

One of the strongest criticism against RA 9344 was the purported vulnerability of children to exploitation by organized syndicates in the proliferation of illegal activities. Since children below 15 years old cannot be held criminally liable, syndicates and adults look at this group of children as suitable instruments to carry out their illegal business. This makes children vulnerable to abuse and exploitation instead of giving them protection.

Some groups believe that RA 9433 would allow children to go scot-free from their wrongdoings. Local leaders on the other hand raised their concerns that the development of policies and guidelines on juvenile justice tend to be "national-centric" but are difficult to actually implement at the local level.

R.A. No. 10630 addresses these concerns and criticisms by amending certain provisions of *R.A. No. 9344*. RA 10630 imposes the maximum period prescribed by law for the crime committed on any person, who in the commission of a crime, makes use, takes advantage of, or profits from the use of children, including any person who abuses his/her authority over the child or who, with abuse of confidence, takes advantage of the vulnerabilities of the child and shall induce, threaten or instigate the commission of the crime.[5]

RA 10630 also allows the commitment of children below the age of criminal responsibility in residential facility if certain conditions are present. A child, even if exempt from criminal responsibility, is also required to undergo an intervention program in order to prevent re-offending.

To address the concerns of local leaders, representatives from the League of Provincial, municipal, city and barangay officials were allocated seat as Council Members in the JJWC in order to participate in the crafting of policies and guidelines.

These are but some of the significant amendments introduced by RA 10630 to RA 9344 to strengthen the implementation of the Law.

[5] Section 20-C, R.A. No. 9344, as amended.

V. Minimum age of criminal responsibility; 15 years of age or under exemption from criminal liability

R.A. No. 9344, as amended:

SEC. 6. *Minimum Age of Criminal Responsibility*.

A child **fifteen (15) years of age or under at the time of the commission of the offense** shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

x xx (emphasis supplied)

R.A. No. 9344, as amended:

SEC. 20. *Children Below the Age of Criminal Responsibility*.

If it has been determined that the child taken into custody is **fifteen (15) years old or below**, the authority which will have an initial contact with the child, in consultation with the local social welfare and development officer, has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative. The child shall be subjected to a community-based intervention program supervised by the local social welfare and development officer, unless the best interest of the child requires the referral of the child to a youth care facility or 'Bahay Pag-asa' managed by LGUs or licensed and/or accredited NGOs monitored by the DSWD.

The local social welfare and development officer shall determine the appropriate programs for the child who has been released, in consultation with the child and the person having custody over the child. If the parents, guardians or nearest relatives cannot be located, or if they refuse to take custody, the child may be released to any of the following:

(a) A duly registered nongovernmental or religious organization;

(b) A barangay official or a member of the Barangay Council for the Protection of Children (BCPC);

(c) A local social welfare and development officer; or, when and where appropriate, the DSWD.

If the child has been found by the local social welfare and development officer to be dependent, abandoned, neglected or abused by his/her parents and the best interest of the child requires that he/she be placed in a youth care facility or 'Bahay Pag-asa', the child's parents or guardians shall execute a written authorization for the voluntary commitment of the child: *Provided*, That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the Local Social Welfare and Development Office (LSWDO) pursuant to Presidential Decree No. 603, as amended, otherwise known as 'The Child and Youth Welfare Code' and the Supreme Court rule on commitment of children: *Provided, further*, That the minimum age for children committed to a youth care facility or 'Bahay Pag-asa' shall be twelve (12) years old. (emphasis supplied)

Amendment of the Revised Penal Code

(a) Section 6 of *R.A. No. 9344* "modifies as well the minimum age limit of criminal responsibility for minor offenders; it changed what paragraphs 2 and 3 of Article 12 of the Revised Penal Code (*RPC*), as amended, previously provided *i.e.*, from under nine years of age and above nine years of age and under fifteen (who acted without discernment) to fifteen years old or under and above fifteen but below 18 (who acted without discernment) in determining

exemption from criminal liability"***(Republic of the Philippines v. Robert Sierra, G.R. No. 182941, July 3, 2009)***.

Nature and rationale of exemption from criminal liability

(b) In providing exemption, the new law as the old paragraphs 2 and 3, Article 12 of the Revised Penal Code did presume that the minor offenders completely lack the intelligence to distinguish right from wrong, so that their acts are deemed involuntary ones for which they cannot be held accountable. xxx An exempting circumstance, by its nature, admits that criminal and civil liabilities exist, but the accused is freed from criminal liability; in other words, the accused committed a crime, but he cannot be held criminally liable therefor because of an exemption granted by law ***(Republic of the Philippines v. Robert Sierra, G.R. No. 182941, July 3, 2009)***.

(c) For one who acts by virtue of any of the exempting circumstances, although he commits a crime, by the complete absence of any of the conditions which constitute free will or voluntariness of the act, no criminal liability arises. Therefore, while there is a crime committed, no criminal liability attaches **(*Joemar Ortega v. People of the Philippines, G.R. No. 151085, August 20, 2008)***.

(d) In ***Joemar Ortega v. People of the Philippines (G.R. No. 151085, August 20, 2008)***, the Supreme Court explained the rationale for exempting circumstances under Article 12 of the RPC for minors nine years and below, citing *Guevarra v. Almodovar* (G.R. No. 75256, January 26, 1989, 169 SCRA 476, 482) (decided prior to the effectivity of *R.A. No. 9344*):

> [I]t is worthy to note the basic reason behind the enactment of the exempting circumstances embodied in Article 12 of the RPC; **the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused.** In expounding on intelligence as the second element of *dolus*, Albert has stated:
>
> > "The second element of dolus is intelligence; without this power, necessary to determine the

> morality of human acts to distinguish a licit from an illicit act, no crime can exist, and because . . . the infant (has) no intelligence, the law exempts (him) from criminal liability."

(e) The Supreme Court recognized that "*R.A. No. 9344* also drew its changes from the principle of restorative justice that it espouses; it considers the ages 9 to 15 years as formative years and gives minors of these ages a chance to right their wrong through diversion and intervention measures" ***(Republic of the Philippines v. Robert Sierra, G.R. No. 182941, July 3, 2009)***.

The Supreme Court included the term 'diversion' for children ages 9 to 15 years old who committed a crime. It recognizes the need of these children to undergo the processes for accountability and rehabilitation despite exemption from criminal prosecution. Under RA 9344 as amended the term used by the law is intervention. Children below 15 years old are not qualified for diversion as it applies only to those who may be prosecuted under criminal law. A child who refuses to undergo diversion or fails the diversion program can be prosecuted as a consequence.

Definition of 15 years of age

R.A. No. 9344, as amended:

SEC. 6. *Minimum Age of Criminal Responsibility*.

x xx

A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthdate.

x xx (emphasis supplied)

According to *Senate Bill No. 3324* (amending *R.A. No. 9344*), it is mistakenly thought of that "15 years of age" refers to the whole year from the time of the 15th birthday until the day before

the 16th birthday.[6] To address the confusion as to age, *R.A. No. 10630* clarified that a child is deemed to be fifteen years of age on the day of the fifteenth anniversary of his birth date.

(f) In ***People of the Philippines v. Joery Deliola G.R. No. 200157, August 31, 2016*** the Supreme Court considered the accused-appellant at fifteen (15) years and two (2) months old being above the age of criminal responsibility. It held that, the law says that a minor is fifteen (15) years of age on the day of the fifteenth anniversary of his/her birth date. In A.M. No, 02-1-18-SC dated November 24, 2009, the Supreme Court likewise defined the age of criminal responsibility as the age when a child, fifteen (15) years and one (1) day old or above but below eighteen (18) years of age, commits an offense with discernment.

Exempted from criminal liability

(a) In ***Valcesar Estioca v. People of the Philippines (G.R. No. 173876, June 27, 2008)***, the Supreme Court affirmed the ruling of the Court of Appeals that one of the accused, who was barely 14 years of age at the time he committed the robbery, should be exempt from criminal liability and released to the custody of his parents or guardian pursuant to Sections 6 and 20 of *Republic Act No. 9344*. (*Note that Sections 6 and 20 has been amended by RA 10630)*

(b) In ***Joemar Ortega v. People of the Philippines (G.R. No. 151085, August 20, 2008)***, the Supreme Court, although convinced that the petitioner committed the crime, dismissed the criminal cases for rape filed against him as he was only 13 years old at the time of the commission of the alleged rape. Petitioner was referred to the local social welfare and development officer of the locality for the appropriate intervention program.

(c) In ***Republic of the Philippines v. Robert Sierra (G.R. No. 182941, July 3, 2009),*** the Supreme Court dismissed the criminal case for rape filed against the petitioner and he was referred to the appropriate local social welfare officer who was ordered to proceed in accordance with the provisions of *R.A. No. 9344*. According to the Supreme Court, petitioner's testimony

[6] Footnote no. 2, Senate Bill No. 3324.

that he was 15 years old when the crime took place should be read to mean that he was not more than 15 years old as this is the more favorable reading that *R.A. No. 9344* requires.

(d) In ***Raymund Madali and Rodel Madali v. People of the Philippines (G.R. No. 180380, August 4, 2009)***, the Supreme Court ruled that one of the accused was exempt from criminal liability as he was only 14 years of age at the time he committed the crime of homicide and he should be released to the custody of his parents or guardian pursuant to Sections 6 and 20 of *Republic Act No. 9344.*

(e) In ***People of the Philippines v. Henry Arpon (G.R. No. 183563, December 14, 2011)***, the Supreme Court, pursuant to the first paragraph of Section 6 of *R.A. No. 9344*, exempted the accused from criminal liability for the first count of rape allegedly committed in 1995 as he sufficiently established that he was only 13 years old at that time. The Supreme Court held that "[i]n view of the failure of the prosecution to prove the exact date and year of the first incident of rape, *i.e.*, whether the same occurred in 1995 or in 1998 as previously discussed, any doubt therein should be resolved in favor of the accused, it being more beneficial to the latter."

(f) In ***People of the Philippines v. Julieto Sanchez (G.R. No. 197815, February 8, 2012)***, the Supreme Court noted in its recitation of the facts of the case that the Regional Trial Court dismissed the charges against the co-accused (who was 14 years old at the time of the commission of the crime) pursuant to Section 64 of *R.A. No. 9344*.

Remember that 'rape' is included in the list of serious offenses which would warrant the commitment of a child below 15 but above 12 years old to Bahay Pag-asa for provision of intensive intervention program.

Processes for children below the MACR who commit crimes

The amendment in RA 10630 clarified the procedures for children below MACR who commit crimes. For children who committed serious crimes listed under the amendatory provision, the child shall be mandatorily placed in Bahay Pag-asa for at least one year and is required to

undergo an intensive intervention program. A child who has repeat offenses may also be committed to Bahay Pag-asa.

R.A. No. 9344, as amended by RA 10630:

SEC. 20-A. *Serious Crimes Committed by Children Who Are Exempt From Criminal Responsibility*. – A child who is above twelve (12) years of age up to fifteen (15) years of age and who commits parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is killed or raped or offenses under Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) punishable by more than twelve (12) years of imprisonment, shall be deemed a neglected child under Presidential Decree No. 603, as amended, and shall be mandatorily placed in a special facility within the youth care faculty or 'Bahay Pag-asa' called the Intensive Juvenile Intervention and Support Center (IJISC).

In accordance with existing laws, rules, procedures and guidelines, the proper petition for involuntary commitment and placement under the IJISC shall be filed by the local social welfare and development officer of the LGU where the offense was committed, or by the DSWD social worker in the local social welfare and development officer's absence, within twenty-four (24) hours from the time of the receipt of a report on the alleged commission of said child. The court, where the petition for involuntary commitment has been filed shall decide on the petition within seventy-two (72) hours from the time the said petition has been filed by the DSWD/LSWDO. The court will determine the initial period of placement of the child within the IJISC which shall not be less than one (1) year. The multi-disciplinary team of the IJISC will submit to the court a case study and progress report, to include a psychiatric evaluation report and recommend the reintegration of the child to his/her family or the extension of the placement under the IJISC. The multi-disciplinary team will also submit a report to the court on the services extended to the parents and family of the child and the compliance of the parents in the intervention program. The court will decide whether the child has successfully completed the center-based intervention program and is already prepared to be reintegrated with his/her family or if there is a need for the continuation of the center-based rehabilitation of the child. The court will determine the next period of assessment or hearing on the commitment of the child.

SEC. 20-B. *Repetition of Offenses.* – A child who is above twelve (12) years of age up to fifteen (15) years of age and who commits an offense for the second time or oftener: *Provided*, That the child was previously subjected to a community-based intervention program, shall be deemed a neglected child under Presidential Decree No. 603, as amended, and shall undergo an intensive intervention program supervised by the local social welfare and development officer: *Provided, further,* That, if the best interest of the child requires that he/she be placed in a youth care facility or 'Bahay Pag-asa', the child's parents or guardians shall execute a written authorization for the voluntary commitment of the child: *Provided, finally,* That if the child has no parents or guardians or if they refuse or fail to execute the written authorization for voluntary commitment, the proper petition for involuntary commitment shall be immediately filed by the DSWD or the LSWDO pursuant to Presidential Decree No. 603, as amended.

VI. Minimum Age of criminal responsibility; above 15 years but below 18 years of age with Discernment

R.A. No. 9344, as amended:

SEC. 6. *Minimum Age of Criminal Responsibility*.

x xx

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, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

x xx (emphasis supplied)

Revised Rules and Regulations Implementing R.A. No. 9344 (2014):

RULE 38. Discernment

Rule 38.a. Definition
Discernment is the capacity to understand the difference between right and wrong, and its consequences.

Rule 38.b. Initial Assessment of Discernment
The LSWDO, after the law enforcement officer refers the child who is above fifteen (15) 22 years but below eighteen (18) years of age, and the child's records, as provided in Rule 28 herein, shall prepare a report indicating an assessment on whether the child acted with discernment within seven (7) working days, for purposes of determining whether to proceed with the intervention under Section 20 of the Act (PART IX of these Rules) or with the diversion under Chapter 2 of the Act (PART X of these Rules).

Rule 38.c. Basis for Assessment of Discernment
In making an assessment of discernment, the LSWDO shall use the Discernment Assessment Tool developed by the DSWD. The DSWD shall issue the necessary guidelines and develop the standard tools to help the LSWDOs in the assessment of discernment. The DSWD shall regularly review and enhance the tool and its guidelines.

Rule 38.d. Report on the Assessment of Discernment
After making an assessment, the LSWDO shall prepare a report showing the basis for the assessment of whether the child acted with or without discernment. This report shall be submitted to the law enforcement officer handling the case of the child. After receipt of the report by the LSWDO, the law enforcement officer shall conclude the initial investigation, and refer the case of the child for intervention, diversion or preliminary investigation, whichever is appropriate under the obtaining circumstances of case.

Definition of discernment

(a) Discernment is that mental capacity of a minor to fully appreciate the consequences of his unlawful act. Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case **(*Raymund Madali and Rodel Madali v. People of the Philippines, G.R. No. 180380, August 4, 2009; People v. Jacinto, G.R. No. 182239, March 16, 2011; People of the Philippines v. Henry Arpon, G.R. No. 183563, December 14, 2011, People of the Philippines v. Joery Deliola G.R. No. 200157, August 31, 2016)***.

(b) The *Revised Rules and Regulations Implementing R.A. No. 9344* defines discernment as "the capacity of the child at the time of the commission of the offense to understand the differences between right and wrong and the consequences of the wrongful act".[7] The *Revised Rule on Juveniles in Conflict with the Law (Supreme Court Administrative Matter No. 02-1-1)* has a similar definition of discernment.

(c) RA 10630 added that "the social worker shall conduct an initial assessment to determine the appropriate interventions and whether the child acted with discernment, using the discernment assessment tools developed by the DSWD. The initial assessment shall be without prejudice to the preparation of a more comprehensive case study report.[8]

(d) According to the Supreme Court, the surrounding circumstances must demonstrate that the minor knew what he was doing and that it was wrong. Such circumstance includes the gruesome nature of the crime and the minor's cunning and shrewdness **(*Remiendo vs. People of the Philippines, G.R. No. 184874, October 9, 2009; People v. Jacinto, G.R. No. 182239, March 16, 2011)***. Under the *Revised Rule on Children in Conflict with the Law (2009)*, "[t]he determination of discernment shall take into account the ability of a child to understand the moral and psychological components of criminal responsibility and the consequences of the wrongful act; and whether a child can be held responsible for essentially antisocial behaviour".[9]

Circumstances showing discernment

In the following cases, there was finding that the CICL acted with discernment, with the Supreme Court relying on the findings of the trial court and/or the Court of Appeals:

(e) The Supreme Court agreed with the Court of Appeals when it opined that one of the accused (who was 16 years old at the time of the commission of the crime) acted with discernment. He, together with his cohorts, warned the alleged lone eyewitness not to reveal their hideous act to anyone; otherwise, they would kill him. He knew, therefore, that killing AAA was

[7] Section 7, RA 10630
[8] Section 4(j), A.M. No. 02-1-18-SC (November 24, 2009).
[9] *Id.*, Section 10.

a condemnable act and should be kept in secrecy. He fully appreciated the consequences of his unlawful act ***(Raymund Madali and Rodel Madali v. People of the Philippines, G.R. No. 180380, August 4, 2009)***.

(f) Culled from the records of the case, the Supreme Court considered it manifest that petitioner (being above 15 and under 18 years of age at the time of the rape) acted with discernment, being able to distinguish between right and wrong and knowing fully well the consequences of his acts against AAA. During the rape that occurred in March 1997, petitioner waited for AAA to be left alone at her house before he came, and, while doing his criminal act, threatened to kick her should she shout for help. In May 1997, petitioner again raped AAA in the room of his house when the latter passed by and, thereafter, threatened to kill her if she told anybody about what had just happened. Per his own testimony, he knew that committing rape was wrong because he claimed to have been enraged when he was asked by AAA's playmates if he indeed raped AAA, to the point of slapping her and revving up the engine of a jitney and directing the smoke from the exhaust pipe towards her ***(Remiendo vs. People of the Philippines, G.R. No. 184874, October 9, 2009)***.

(g) The Supreme Court agreed with the Court of Appeals that: (1) choosing an isolated and dark place to perpetrate the crime, to prevent detection [;] and (2) boxing the victim xxx, to weaken her defense are indicative of then 17 year-old appellant's mental capacity to fully understand the consequences of his unlawful action ***(People v. Jacinto, G.R. No. 182239, March 16, 2011)***.

(h) In this case, the fact that the accused-appellant (who was 17 years old at the time the second and third counts of rape were committed) acted with discernment was satisfactorily established by the testimony of AAA (victim), which we had already found to be credible. AAA testified that she at first did not tell anybody about the sexual assault she suffered at the hands of the accused-appellant because the latter told her that he would kill her mother if she did so. That the accused-appellant had to threaten AAA in an effort to conceal his dastardly acts only proved that he knew full well that what he did was wrong and that he was aware of the consequences thereof ***(People of the Philippines v. Henry Arpon, G.R. No. 183563, December 14, 2011)***.

(i) The Supreme Court referred to the observation of the trial court that PPP gave inconsistent answers and lied several times under oath during the trial. PPP lied about substantial details such as her real name, age, address and the fact that she saw Chan (victim) at the Elizabeth Resort. When asked why she lied several times, PPP claimed she was scared to be included or identified with the other accused-appellants. According to the Supreme Court, the lying and the fear of being identified with people whom she knew had done wrong are indicative of discernment. She knew, therefore, that there was an ongoing crime being committed at the resort while she was there. It is apparent that she was fully aware of the consequences of the unlawful act. However, as the prosecution was not able to proffer sufficient evidence to hold her responsible as a principal, the Supreme Court is of the opinion that PPP should not be held liable as a co-principal, but rather only as an accomplice to the crime of Kidnapping for Ransom ***(People of the Philippines v. Halil Gambao, et al., G.R. No. 172707, October 01, 2013)***.

(j) That the accused-appellant acted with discernment when he raped the victim is demonstrated by the following surrounding circumstances: (1) the victim was a helpless minor; (2) accused-appellants secured the consummation of the offense with a weapon; (3) he satisfied his lust by penetrating the victim from behind; and (4) he threatened the victim not to report what happened. Taking all these facts into consideration, accused-appellant clearly knew that what he did was wrong. ***(People of the Philippines v. Joery Deliola G.R. No. 200157, August 31, 2016)***

Burden of proving discernment

(k) The prosecution has the burden to prove that the accused acted with discernment by evidence of physical appearance, attitude or deportment not only before and during the commission of the act, but also after and during the trial **(*Remiendo vs. People of the Philippines, G.R. No. 184874, October 9, 2009)***.

(l) After a judicious study of the records, the Court finds that the prosecution did not make an effort to prove that DDD, then a sixteen (16)-year old minor, acted with discernment at the time of the commission of the crime. The RTC decision simply stated that a privileged mitigating

circumstance of minority in favor of DDD must be appreciated as it was proven that he was a minor at the time of the incident. Glaringly, there was no discussion at all on whether DDD acted with discernment when he committed the crime imputed against him.

xxx

Considering that there was no determination of discernment by the trial court, the Court cannot rule with certainty that DDD was criminally responsible. As earlier stated, there can be no presumption of discernment on the part of the CICL. In the absence of such determination, it should be presumed that the CICL acted without discernment. This is in accordance with Section 3 of R.A. No. 9344 xxx. ***(Dorado vs. People of the Philippines, G.R. No. 216671, October 03, 2016)***

Discernment is different from intent

Dorado vs. People of the Philippines, G.R. No. 216671, October 03, 2016 *further stated:* Discernment is different from intent. The distinction was elaborated in *Guevarra v. Almodovar [251 Phil. 427, 431, 433 (1989)]*

xxx

> ‘The word "intent" has been defined as:
>
> "(a) design; a determination to do a certain things; an aim the purpose of the mind, including such knowledge as is essential to such intent; . . .; the design resolve, or determination with which a person acts." (46 CJS Intent, p. 1103.)
>
> It is this intent which comprises the third element of dolo as a means of committing a felony, freedom and intelligence being the other two. On the other hand, We have defined the term "discernment," as used in Article 12(3) of the RPC, in the old case of *People vs. Doquena*, 68 Phil. 580(1939), in this wise:
>
> "The discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen years of age but over nine, who commits an act prohibited by

law, is his mental capacity to understand the difference between right and wrong ..." (italics Ours)

From the foregoing, it is clear that the terms "intent" and "discernment" convey two distinct thoughts. While both are products of the mental processes within a person, the former refers to the desire of one's act while the latter relate to the moral significance that person ascribes to the said act. Hence, a person may not intend to shoot another but may be aware of the consequences of his negligent act which may cause injury to the same person in negligently handling an air rifle. It is not correct, therefore, to argue, as petitioner does, that since a minor above nine years of age but below fifteen acted with discernment, then he intended such act to be done. He may negligently shoot his friend, thus, did not intend to shoot him, and at the same time recognize the undesirable result of his negligence.

In further outlining the distinction between the words "intent" and "discernment," it is worthy to note the basic reason behind the enactment of the exempting circumstances embodied in Article 12 of the RPC; the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused. In expounding on intelligence as the second element of dolus, Albert has stated:

"The second element of *dolus* is intelligence; without this power, necessary to determine the morality of human acts to distinguish a licit from an illicit act, no crime can exist, and because . . . the infant (has) no intelligence, the law exempts (him) from criminal liability. *Guevarra v. Almodovar [251 Phil. 427, 1989]* " (Emphasis Ours)'

VII. Exemption from criminal liability: non-exemption from civil liability

R.A. No. 9344, as amended:

SEC. 6. *Minimum Age of Criminal Responsibility*.

xxx

The exemption from criminal liability herein established **does not include exemption from civil liability**, which shall be enforced in accordance with existing laws.

(emphasis supplied)

(a) In ***Valcesar Estioca v. People of the Philippines (G.R. No. 173876, June 27, 2008)***, the Supreme Court ruled that the exemption of one of the accused from criminal liability (as he was 14 years of age at the time he committed the robbery) does not extinguish his civil liability pursuant to the last paragraph of Section 6, R.A. No. 9344, as amended. He was held jointly liable with the other co-accused for the payment of civil liability in the amount of PHP15, 000.00 representing the stolen items.

(b) In ***Joemar Ortega v. People of the Philippines (G.R. No. 151085, August 20, 2008)***, although the Supreme Court dismissed the criminal cases filed against the petitioner as he was only 13 years old at the time of the commission of the alleged rape, it sustained the ruling of the RTC, duly affirmed by the CA, that petitioner and/or his parents are liable to pay AAA (victim) PHP100, 000.00 as civil indemnity. According to the Supreme Court, this award is in the nature of actual or compensatory damages, and is mandatory upon a conviction for rape.

(c) In ***Republic of the Philippines v. Robert Sierra (G.R. No. 182941, July 3, 2009)***, the Supreme Court dismissed the criminal case for rape filed against the petitioner on the ground that he was not more than 15 years old when the crime took place. Based on the last paragraph of Section 6 of *R.A. No. 9344*, petitioner was adjudged to be civilly liable to AAA (victim) despite his exemption from criminal liability. According to the Supreme Court, "[t]he extent of his civil liability depends on the crime he would have been liable for had he not been found to be exempt from criminal liability." The Supreme Court modified the awarded civil indemnity

of PHP75,000.00 to PHP50,000.00, the latter being the civil indemnity appropriate for simple rape on the finding that rape had been committed.

(d) In ***Raymund Madali and Rodel Madali v. People of the Philippines (G.R. No. 180380, August 4, 2009)***, the Supreme Court ruled that one of the accused was exempt from criminal liability as he was only 14 years of age at the time he committed the crime. He, together with his co-accused, were held to be solidarily liable to pay the heirs of the victim the amount of PHP50,000.00 as civil indemnity, PHP50,000.00 as moral damages, and PHP25,000.00 as temperate damages.

(e) In ***People of the Philippines v. Henry Arpon (G.R. No. 183563, December 14, 2011)***, the Supreme Court exempted the accused from criminal liability for the first count of rape as he sufficiently established that he was only 13 years old at that time. However, as civil liability, accused was ordered to pay AAA (victim) for each of the three counts of rape PHP75,000.00 as civil indemnity, PHP75,000.00 as moral damages and PHP30,000.00 as exemplary damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of the Supreme Court's decision.

VIII. Determination of age

R.A. No. 9344, as amended:

SEC. 7. *Determination of Age.*

The child in conflict with the law shall enjoy the **presumption of minority**. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. **In case of doubt as to the age of the child, it shall be resolved in his/her favor**.

xxx (emphasis supplied)

Revised Rules and Regulations Implementing R.A. No. 9344 as amended:

RULE 35. Age of the Child

Rule 35.a. When a Child is Deemed to be Fifteen (15) Years of Age
A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of the child's date of birth.

Rule 35.b. Determination of the Age of the Child
Consistent with Section 7 of the Act, the following measures may be used to ascertain the age of the child:
(1) Obtain documents that show proof of the child's age, such as:
a. Child's birth certificate;
b. Child's baptismal certificate; or
c. Any other pertinent documents, such as but not limited to, the child's school records, dental records, travel papers, etc.
(2) The law enforcement officer may obtain the above documents from any of the following:
a. Parents, guardian or relatives of the child (for copies of any of the above documents);
b. Local Civil Registrar or the National Statistics Office (for a copy of the birth certificate);
c. School where the child attends (for school records, dental records, birth certificate or baptismal certificate, when required by the school);
d. Local Health Officer (for medical records); and
e. Church (for baptismal records).
If the above documents cannot be obtained or pending receipt of such documents, the law enforcement officer shall exhaust other measures to determine the age of the child by:
(1) Interviewing the child and obtaining information that indicate age (e.g., date of birth, grade level in school);
(2) Interviewing persons who may have knowledge of the age of the child (e.g., relatives, neighbors, teachers, classmates);
(3) Evaluating the physical appearance (e.g., height, built) of the child; and
(4) Obtaining other relevant evidence of age.

Rule 35.c. Presumption of Age of Minority in Case of Doubt
In case of doubt as to the age of the child, after all the measures are exhausted to determine it, the doubt shall be resolved in favor of the child's minority.

Burden of defense to prove child was 15 years old or less

(a) In ***Republic of the Philippines v. Robert Sierra (G.R. No. 182941, July 3, 2009)***, the Supreme Court explained that "[b]urden of proof, under Section 1, Rule 131 of the Rules on

Evidence, refers to the duty of a party to present evidence on the facts in issue in order to establish his or her claim or defense. In a criminal case, the burden of proof to establish the *guilt of the accused* falls upon the prosecution which has the duty to prove all the essential ingredients of the crime. The prosecution completes its case as soon as it has presented the evidence it believes is sufficient to prove the required elements. At this point, the burden of evidence shifts to the defense to disprove what the prosecution has shown by evidence, or to prove by evidence the circumstances showing that the accused did not commit the crime charged or cannot otherwise be held liable therefor". In this case, the Supreme Court held that the prosecution completed its evidence and had done everything that the law requires it to do, and the burden of evidence has now shifted to the defense. The defense is claiming, by an affirmative defense, that the accused, even if guilty, should be exempt from criminal liability because of his age when he committed the crime. The defense, therefore, not the prosecution, has the burden of showing by evidence that the petitioner was 15 years old or less when he committed the rape charged (*citing People v. Concepcion*, G.R. No. 136844, August 1, 2002, 386 SCRA 74, 78; *See: People v. Austria*, G.R. Nos. 111517-19, July 31, 1996, 260 SCRA 106, 117; *Ty v. People*, G.R. No. 149275, September 27, 2004, 439 SCRA 220, 231; *People v. Castillo*, G.R No. 172695, June 29, 2007, 526 SCRA 215, 227; *Ortega v. People*, G.R. No. 151085, August 20, 2008). According to the Supreme Court, this conclusion can also be reached by considering that minority and age are not elements of the crime of rape; the prosecution therefore has no duty to prove these circumstances. To impose the burden of proof on the prosecution would make minority and age integral elements of the crime when clearly they are not. If the prosecution has a burden related to age, this burden relates to proof of the age of the victim as a circumstance that qualifies the crime of rape ***(Republic of the Philippines v. Robert Sierra, G.R. No. 182941, July 3, 2009)***.

Testimonial evidence as to the child's age: requirements

(b) According to the Supreme Court, Section 7 of *R.A. No. 9344* does not depart from the jurisprudence (before it took effect) on the evidence that may be admitted as satisfactory proof of the accused's minority and age, citing the following cases in ***Republic of the Philippines v. Robert Sierra (G.R. No. 182941, July 3, 2009)***:

> In the 1903 case of *U.S. v. Bergantino (3 Phil 59, 61 [1903])*, we accepted testimonial evidence to prove the minority and age of the accused in the absence of any document or other satisfactory evidence showing the date of birth. This was followed by *U.S. v. Roxas (5 Phil 186, 187 [1905])* where the defendants statement about his age was considered sufficient, even without corroborative evidence, to establish that he was a minor of 16 years at the time he committed the offense charged. Subsequently, in *People v. Tismo (G.R. No. 44773, December 4, 1991)*, the Court appreciated the minority and age of the accused on the basis of his claim that he was 17 years old at the time of the commission of the offense in the absence of any contradictory evidence or objection on the part of the prosecution. Then, in *People v. Villagracia (G.R. No. 94471, September 14, 1993)*, we found the testimony of the accused that he was less than 15 years old sufficient to establish his minority. We reiterated these dicta in the cases of *People v. Morial (G.R. No. 129295, August 15, 2001)* and *David v. Court of Appeals (G.R. Nos. 11168-69, June 17, 1998)*, and ruled that the allegations of minority and age by the accused will be accepted as facts upon the prosecutions failure to disprove the claim by contrary evidence.

(c) The Supreme Court listed the following conditions present in cases where it gave evidentiary weight to testimonial evidence on the accused's minority and age: (1) the absence of any other satisfactory evidence such as the birth certificate, baptismal certificate, or similar documents that would prove the date of birth of the accused; (2) the presence of testimony from accused and/or a relative on the age and minority of the accused at the time of the complained incident without any objection on the part of the prosecution; and (3) lack of any contrary evidence showing that the accused's and/or his relatives' testimonies are untrue.

Testimonial evidence as to the child's age

(d) In ***Republic of the Philippines v. Robert Sierra (G.R. No. 182941, July 3, 2009)***, the Supreme Court held that the Court of Appeals seriously erred when it rejected testimonial evidence showing that the petitioner was only 15 years old at the time he committed the crime due to the following reasons: First, the petitioner and CCC (mother of both victim and petitioner) both testified regarding his minority and age when the rape was committed. Second, the records before us show that these pieces of testimonial evidence were never objected to by the

prosecution. And lastly, the prosecution did not present any contrary evidence to prove that the petitioner was above 15 years old when the crime was committed.

(e) In ***Salvador Atizado and Salvador Monreal v. People of the Philippines (G.R. No. 173822, October 13, 2010)***, the RTC and the CA did not appreciate MMM minority at the time of the commission of the murder probably because his birth certificate was not presented at the trial. According to the Supreme Court, it cannot be doubted that MMM was a minor below 18 years of age when the crime was committed on April 18, 1994. Firstly, his counter-affidavit executed on June 30, 1994 stated that he was 17 years of age. Secondly, the police blotter recording his arrest mentioned that he was 17 years old at the time of his arrest on May 18, 1994. Thirdly, Villafe's (witness for the defense) affidavit dated June 29, 1994 averred that MMM was a minor on the date of the incident. Fourthly, as RTC's minutes of hearing dated March 9, 1999 showed, MMM was 22 years old when he testified on direct examination on March 9, 1999, which meant that he was not over 18 years of age when he committed the crime. And, fifthly, Mirandilla (one of the witnesses for the State) described MMM as a teenager and young looking at the time of the incident.

(f) In ***People of the Philippines v. Henry Arpon (G.R. No. 183563, December 14, 2011)***, the accused-appellant, HHH, was charged of one (1) count of statutory rape and 7 counts of rape for having carnal knowledge of AAA on different occasions. He alleged that the statutory rape happened when he was only thirteen years old. Although no evidence was presented by HHH to prove his date of birth, the Court gave credence to his testimony. The Court acquitted him of statutory rape since the prosecution neither objected nor presented evidence to disprove the allegation of minority of HHH. He was, however, convicted of seven (7) counts of rape since these acts were committed when he is no longer a minor.

Observation as to physical appearance to estimate age

(g) III claimed he was born on August 5, 1987; MMM stated his birth date as July 6, 1987; SSS said he was born on January 10, 1985; and JJJ claimed he was born on July 13, 1981. According to the Supreme Court, if JJJ's birth date was indeed July 13, 1981, then he was over

18 years of age when the crime was committed in June of 2001 and, thus, he cannot claim minority. It should be noted that the defense absolutely failed to present any document showing accused-appellants' date of birth, neither did they present testimonies of other persons such as parents or teachers to corroborate their claim of minority. x xx The trial court, in the absence of any document stating the age of the aforementioned four accused-appellants, or any corroborating testimony, had to rely on its own observation of the physical appearance of accused-appellants to estimate said accused-appellants' age. A reading of the afore-quoted Section 7 of *R.A. No. 9344* shows that this manner of determining accused-appellants' age is also sanctioned by the law. The accused-appellants appeared to the trial court as no younger than twenty-four years of age, or in their mid-twenties, meaning they could not have been under eighteen (18) years old when the crime was committed. As discussed above, such factual finding of the trial court on the age of the four accused-appellants, affirmed by the CA, must be accorded great respect, even finality by the Supreme Court. ***(People v. Abdurahman, G.R. No. 186523, June 22, 2011)***

Doubt as to age

(h) In ***Republic of the Philippines v. Robert Sierra (G.R. No. 182941, July 3, 2009),*** the Supreme Court stressed that the last paragraph of Section 7 of R.A. No. 9344 provides that any doubt on the age of the child must be resolved in his favor. Hence, any doubt in this case regarding the petitioners age at the time he committed the rape should be resolved in his favor. In other words, the testimony that the petitioner as 15 years old when the crime took place should be read to mean that he was not more than 15 years old as this is the more favorable reading that R.A. No. 9344 directs.

Analysis

The Supreme Court has been quite liberal in interpreting and appreciating the provisions of RA 9344 with respect to evidence required for the determination of age of the CICL. However, current jurisprudential ruling vests the burden of proof to prove minority on the CICL as part of his/her defense. The prosecution has no duty to prove that the respondent (alleged CICL) is

already 18 years old and above. The defense' allegation of minority must be supported by sufficient evidence. It is only after all measures to determine age are exhausted that the presumption of minority would be resolved in favor of the CICL.

IX. Biological age versus mental age

Accused-appellant RRR claims that since he has a mental age of nine years old, he should be "exempt from criminal liability although his chronological age at the time of the commission of the crime was already eighteen years old". The Regional Trial Court had previously found the testimonies of the defense as "flimsy". It did not exempt the accused-appellant from criminal responsibility and it did not consider the accused as a minor or an imbecile or insane person since the doctor psychiatrist merely testified that he was an eighteen year old with a mental development comparable to that of children between nine to ten years old.

The Supreme Court did not accept accused-appellant's argument on his mental age and ruled that in determining age for purposes of exemption from criminal liability, Section 6 clearly refers to the age as determined by the anniversary of one's birth date, and not the mental age as argued by accused-appellant RRR. When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. (***People of the Philippines v. Milan Roxas, GR No. 200793, June 4, 2014***).

X. Suspension of sentence

R.A. No. 9344, as amended:

SEC. 38. *Automatic Suspension of Sentence.*

Once the child who is **under eighteen (18) years of age at the time of the commission of the offense** is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, **the court shall place the child in conflict with the law under suspended sentence, without need of application**: *Provided, however*, that suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law. (*Emphasis supplied*)

R.A. No. 9344, as amended:

SEC. 40. *Return of the Child in Conflict with the Law to Court.*

If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to **extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years**. (*Emphasis supplied*)

Revised Rule on Children in Conflict with the Law (A.M. No. 02-1-18-SC, November 24, 2009)

Section 48. *Automatic Suspension of Sentence and Disposition Orders.*

If the child is found guilty of the offense charged, the court, instead of executing the judgments of conviction, shall place the child in conflict with the law under suspended sentence, without need of application. Suspension of sentence can be availed of even if the child is already eighteen years (18) of age or more but not above twenty-one (21) years old, at the time of the pronouncement of guilt, without prejudice to the child's availing of other benefits such as probation, if qualified, or adjustment of penalty, in interest of justice.

The benefits of the suspended sentence shall not apply to a child in conflict with the law who has once enjoyed suspension of sentence, **but shall nonetheless apply to one who is convicted of an offense punishable by *reclusion perpetua* or life imprisonment pursuant to the provisions of Rep. Act No. 9346 prohibiting the imposition of the death penalty and in lieu thereof, reclusion perpetua**, and after application of the privileged mitigating circumstance of minority.

If the child in conflict with the law reaches eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with the provisions of Republic Act 9344, or to extend the suspended sentence for a maximum period of up to the time the child reaches twenty-one (21) years of age, or to order service of sentence.

(emphasis supplied)

People v. Sarcia (2009): Suspension of sentence for children convicted of an offense punishable by death, reclusion perpetua or life imprisonment

(a) Sec. 38 of *R.A. No. 9344* provides for the automatic suspension of sentence of a child in conflict with the law, even if he/she is already 18 years of age or more at the time he/she is found guilty of the offense charged. The above-quoted provision makes no distinction as to the nature of the offense committed by the child in conflict with the law, unlike *P.D. No. 603* and *A.M. No. 02-1-18-SC* (*2002 Rule on Juveniles in Conflict with the Law*)which provides that the benefit of suspended sentence would not apply to a child in conflict with the law if, among others, he/she has been convicted of an offense punishable by death, *reclusion perpetua* or life imprisonment.. In construing Sec. 38 of Supreme Court relied on the basic principle of statutory construction that when the law does not distinguish, we should not distinguish. According to the Supreme Court, since *R.A. No. 9344* does not distinguish between a minor who has been convicted of a capital offense and another who has been convicted of a lesser offense, it should also not

distinguish and should apply the automatic suspension of sentence to a child in conflict with the law who has been found guilty of a heinous crime ***(People of the Philippines v. Richard O. Sarcia, G.R. No. 169641, September 10, 2009)***.

(b) In ***People v. Jacinto (G.R. No. 182239, March 16, 2011)***, the Supreme Court reiterated its ruling in *People v. Sarcia* ***(G.R. No. 169641, September 10, 2009)*** and its *2009 Revised Rule on Children in Conflict with the Law* (which reflected the same position), to support its finding that automatic suspension of sentence applies to children found guilty of a heinous crime.

Rationale for the ruling in People v. Sarcia (*G.R. No. 169641, September 10, 2009*):

(c) According to the Supreme Court, the legislative intent to apply to heinous crimes the automatic suspension of sentence of a child in conflict with the law can be gleaned from the Senate deliberations on *Senate Bill No. 1402*, the pertinent portion of which is quoted below:

> If a mature minor, maybe 16 years old to below 18 years old is charged, accused with, or may have committed a serious offense, and may have acted with discernment, then the child could be recommended by the Department of Social Welfare and Development (DSWD), by the Local Council for the Protection of Children (LCPC), or by my proposed Office of Juvenile Welfare and Restoration to go through a judicial proceeding; but *the welfare, best interests, and restoration of the child should still be a primordial or primary consideration.* ***Even in heinous crimes, the intention should still be the child's restoration, rehabilitation and reintegration.*** xxx (Italics supplied)

Note that People v. Sarcia (2009) ***OVERTURNED*** *the case of Declarador v. Hon. Gubaton (GR No. 159208 of August 18, 2006) which disqualified accused of availing suspension of sentence for the commission of the crime of murder which is punishable by reclusion perpetua to death.*

Application of suspension of sentence

(d) In ***Raymund Madali and Rodel Madali v. People of the Philippines (G.R. No. 180380, August 4, 2009)***, the Supreme Court held that since one of the co-accused (who was 16 years

old at the time of the commission of the crime) committed homicide with discernment, the sentence to be imposed against him should be suspended pursuant to Section 38 of *Republic Act No. 9344*. The Supreme Court ordered the suspension of his sentence and remanded the case to the court *a quo* for further proceedings in accordance with said Section 38.

(e) In ***People of the Philippines v. Jerwin Quintal, et al. (G.R. No. 184170, February 2, 2011)***, the Supreme Court noted that the three accused (one 15-year old and another 16-year old) were found guilty beyond reasonable doubt of the crime of rape by the RTC in 2006. Pursuant to R.A. No. 9344, the judgment of conviction against the two minor accused was suspended. The parents or guardians; the Social Worker of the RTC; the Municipal Social Welfare Officer of Virac, Catanduanes, the Provincial Social Welfare Officer of Catanduanes, the Director of Region V of the Department of Social Welfare and Development (DSWD); and the Head of the Social Services and Counseling Division of DSWD were enjoined to attend the disposition conference on November 28, 2006. Both minors were confined at the Home for Boys in Naga City for rehabilitation pursuant to the ruling of the RTC and on 27 November 2009, the RTC ordered the dismissal of the cases against the two accused upon the recommendation of the DSWD.

Application of suspension of sentence: age limit

(f) The Supreme Court held that while Sec. 38 of *R.A. No. 9344* provides that suspension of sentence can still be applied even if the child in conflict with the law is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt, Sec. 40 of the same law limits the said suspension of sentence until the said child reaches the maximum age of 21 ***(People of the Philippines v. Richard O. Sarcia, (G.R. No. 169641, September 10, 2009)***.

(g) In ***Michael Padua v. People of the Philippines (G.R. No. 168546, July 23, 2008)***, the Supreme Court held that suspension of sentence under Section 38 of *Rep. Act No. 9344* could no longer be retroactively applied for petitioner's benefit. Section 40 of *Rep. Act No. 9344*, however, provides that once the child reaches 18 years of age, the court shall determine whether to discharge the child, order execution of sentence, or extend the suspended sentence for a certain

specified period **or until the child reaches the maximum age of 21 years**. Petitioner has already reached 21 years of age or over and thus, could no longer be considered a child for purposes of applying Rep. Act 9344. Thus, the application of Sections 38 and 40 appears moot and academic as far as his case is concerned.

(h) In ***People of the Philippines v. Richard O. Sarcia (G.R. No. 169641, September 10, 2009)***, the Supreme Court held that at the time it reviewed the case, accused-appellant was about 31 years of age, and the judgment of the RTC had been promulgated, even before the effectivity of *R.A. No. 9344*. Thus, the application of Sections 38 and 40 to the suspension of sentence has become moot and academic. However, the Supreme Court held that the accused-appellant is entitled to appropriate disposition under Sec. 51 of *R.A. No. 9344*.

(i) In ***Remiendo v. People of the Philippines (G.R. No. 184874, 9 October 2009)***, the accused was born on January 21, 1982 and the Joint Judgment was promulgated on October 27, 2004. At the time of the imposition of his sentence, he was already 22 years old and could no longer be considered a child for the purposes of the application of *R.A. No. 9344*. Being above 15 and under 18 years of age at the time of the rape, and having acted with discernment, but having already reached 21 years of age at the time of the imposition of his sentence by the trial court, the Supreme Court held that his claim for the benefits of *R.A. No. 9344* is rendered moot and academic in view of Section 40.

(j) In ***People v. Jacinto (G.R. No. 182239, March 16, 2011)***, the Supreme Court ruled that the benefits of a suspended sentence can no longer apply to the appellant as the suspension of sentence lasts only until the child in conflict with the law reaches the maximum age of twenty-one (21) years. This is based on Section 40 of *R.A. No. 9344*and Section 48of the *Revised Rule on Children in Conflict with the Law (2009)* which are clear on the matter. The appellant was twenty-five (25) years old at the time the Supreme Court reviewed the case.

(k) In ***People v. Abdurahman (G.R. No. 186523, June 22, 2011)***, the Supreme Court accorded respect to the factual finding of the trial court that the accused-appellants appeared to the trial court as no younger than twenty-four years of age, or in their mid-twenties, meaning

they could not have been under eighteen (18) years old when the crime was committed. Even assuming *arguendo* that the four accused-appellants were indeed less than eighteen years old at the time the crime was committed, at this point in time, the applicability of *R.A. No. 9344* is seriously in doubt. The Supreme Court held that if accused-appellants' claim are true, that they were born in 1985 and 1987, then they have already reached 21 years of age, or over by the time the Supreme Court reviewed the case and thus, the application of Sections 38 and 40 of *R.A. No. 9344* has become moot and academic.

(l) In ***People of the Philippines v. Allen Udtojan Mantalaba (G.R. No. 186227, July 20, 2011)***, the appellant was seventeen (17) years old when the buy-bust operation took place or when the said offense was committed, but was no longer a minor at the time of the promulgation of the RTC's Decision. The Supreme Court noted that *R.A. No. 9344* took effect on May 20, 2006, while the RTC promulgated its decision on this case on September 14, 2005, when said appellant was no longer a minor. The RTC did not suspend the sentence in accordance with Article 192 of *P.D. No. 603 (The Child and Youth Welfare Code)* and Section 32 of A.M. No. 02-1-18-SC *(2002Rule on Juveniles in Conflict with the Law),* the laws that were applicable at the time of the promulgation of judgment, because the imposable penalty for violation of Section 5 of R.A. No. 9165 is life imprisonment to death. According to the Supreme Court, the appellant (who was beyond the age of twenty-one years at the time the case was reviewed by the Supreme Court) can no longer avail of the provisions of Sections 38 and 40 of *R.A. No. 9344* as to his suspension of sentence because such is already moot and academic.

The Supreme Court noted that this would not have happened if the Court of Appeals, when this case was under its jurisdiction, suspended the sentence of the appellant. The records show that the appellant filed his notice of appeal at the age of 19 (2005), hence, when *R.A. 9344* became effective in 2006, appellant was 20 years old, and the case having been elevated to the Court of Appeals, the latter should have suspended the sentence of the appellant because he was already entitled to the provisions of Section 38 of the same law, which now allows the suspension of sentence of minors regardless of the penalty imposed as opposed to the provisions of Article 192 of *P.D. No. 603.*

(m) In ***People of the Philippines v. Henry Arpon (G.R. No. 183563, December 14, 2011)***, the Supreme Court held that the suspension of sentence may no longer be applied given that the accused-appellant is now about 29 years of age and Section 40 of *Republic Act No. 9344* puts a limit to the application of a suspended sentence, namely, when the child reaches a maximum age of 21. The Supreme Court noted that had the trial court correctly appreciated in favor of the accused-appellant the circumstance of his minority, the latter would have been entitled to a suspension of sentence for the second and third counts of rape under Section 38 of *Republic Act No. 9344*.

(n) In ***People of the Philippines v. Halil Gambao, et al. (G.R. No. 172707, October 1, 2013)***, the Supreme Court held that although the suspension of sentence of a child in conflict with the law shall still be applied even if he/she is already eighteen (18) years of age or more at the time of the pronouncement of his/her guilt (in accordance with Section 38 of *R.A. No. 9344*), at the present age of 31, PPP can no longer benefit from the aforesaid provision, because under Article 40, the suspension of sentence can be availed of only until the child in conflict with the law reaches the maximum age of twenty-one (21) years.

(o) In ***People of the Philippines v. John Wile et al. (G.R. No. 208066, April 12, 2016),*** the Supreme Court held that the three accused may no longer have their sentences suspended under Section 40 of the Republic Act No, 9344. Although suspension of sentence still applies even when the child in conflict with the law is already eighteen (18) years of age or more at the time the judgment of conviction was rendered, suspension is only until the minor reaches the maximum age of twenty-one (21). By now the accused-appellants JJJ and MMM are twenty-seven (27), while the accused-appellant PPP is twenty six (26) years old.

Analysis:

The Supreme Court overturned and abandoned its earlier pronouncement in ***Rennie Declarador v. Hon. Gubaton and Bansales (G.R. No. 159208, August 18, 2006)*** that Section 38 of RA 9344 merely amended Article 192 of P.D. No. 603, as amended by A.M. No. 02-1-18-SC, and thus

CICL who has been convicted of a crime with imposable penalty of *reclusion perpetua*, life imprisonment, or *reclusion perpetua* to death, or death, are disqualified from having their sentences suspended.

Succeeding case laws followed the ruling laid in **People v Sarcia** (2009) which enunciated that automatic suspension of sentence applies even if the CICL was adjudged guilty of a heinous crime. The Supreme Court explained that RA 9344 made no distinction on the nature of the offense committed, we should not also distinguish between a CICL who has been convicted of capital offense and a CICL who has been convicted of a lesser offense.

Jurisprudence is also clear that automatic suspension of sentence will not benefit a CICL who is already over 21 years of age at the time of conviction. The benefit of 'automatic suspension of sentence' operates from the time the CICL was adjudged guilty by the lower court. It is not necessary that the judgment has become final and executory. In *People v Henry Arpon (2011)*, the Supreme Court noted that had the trial court correctly appreciated in favour of the accused the circumstance of minority, the latter would have been entitled to a suspension of sentence under Section 38 of RA 9344. In *People v Allen Udjutan Mantalaba (2009)*, the Supreme Court also expressed that since the accused (CICLs) was only 20 years old when the case was appealed in 2006 (after RA 9344 became effective in May 20, 2006), the CA should have suspended the sentence of the appellants.

XI. Probation

Application of Probation

In ***Rosal Hubilla v. People of the Philippines, G.R. No. 176102, November 26, 2014,*** **RRR** insists that the maximum of his indeterminate sentence of eight years and one day of *prision mayor* should be reduced only to six years of *prision correccional* to enable him to apply for probation under Presidential Decree No. 968.

In ruling that the accused is not qualified for probation the Supreme Court stated the following, A.M. No. 02-1-18-SC[10] (Rule on Juveniles in Conflict with the Law) provides certain guiding principles in the trial and judging in cases involving a child in conflict with the law. One of them is that found in Section 46 (2), in conjunction with Section 5 (k), whereby the restrictions on the personal liberty of the child shall be limited to the minimum.[11]Consistent with this principle, the amended decision of the CA imposed the ultimate minimums of the indeterminate penalty for homicide under the Indeterminate Sentence Law. On its part, Republic Act No. 9344 nowhere allows the trial and appellate courts the discretion to reduce or lower the penalty further, even for the sake of enabling the child in conflict with the law to qualify for probation.

Conformably with Section 9(a) of Presidential Decree 968,[12] which disqualifies from probation an offender sentenced to serve a maximum term of imprisonment of more than six years, the petitioner could not qualify for probation. For this reason, we annul the directive of the CA to remand the case to the trial court to determine if he was qualified for probation.

XII. Credit in service of sentence

R.A. No. 9344, as amended:

SEC. 41. *Credit in Service of Sentence.*

The child in conflict with the law shall be credited in the services of his/her sentence with the **full time spent in actual commitment and detention under this Act.**

Note that "**actual commitment and detention**" includes those period spent by the CICL in rehabilitation center or youth detention sentence while under preventive suspension and suspended sentence.

(a) In ***Salvador Atizado and Salvador Monreal v. People of the Philippines (G.R. No. 173822, October 13, 2010)***, the Supreme Court held that it cannot be doubted that MMM was a minor below 18 years of age when the crime was committed on April 18, 1994. The penalty imposed on him by the Supreme Court is six years and one day of *prision mayor,* as the minimum period, to 14 years, eight months, and one day of *reclusion temporal*, as the maximum period. Given that the entire period of MMM's detention should be credited in the service of his sentence pursuant to Section 41 of *Republic Act No. 9344*, the Supreme Court held that the revision of the penalty imposed on him warrants his immediate release from the penitentiary. As MMM has been detained for over 16 years (from the time of his arrest on May 18, 1994 until the time the Supreme Court reviewed the case), the Bureau of Corrections in Muntinlupa City was ordered to immediately release MMM (unless he is being held for other lawful causes) due to his having fully served the penalty imposed on him.

XIII. Confinement in agricultural camps and other training facilities

R.A. No. 9344, as amended:

SEC. 51. *Confinement of Convicted Children in Agricultural Camps and other Training Facilities.*

A child in conflict with the law may, after conviction and upon order of the court, be made to serve his/her sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities that may be established, maintained, supervised and controlled by the BUCOR (Bureau of Corrections), in coordination with the DSWD (Department of Social Welfare and Development).

Note that the agricultural camp mandated by the law to be established for rehabilitation of children in conflict under Section 51 has yet to be implemented by the Government. What exists now are BuCor facilities that are regular penal institutions with agricultural lands/programs.

Application of and rationale

(a) For the guidance of the bench and bar, it should be borne in mind that if indeed, an accused was under eighteen (18) years of age at the time of the commission of the crime, then as held in *People v. Sarcia (G.R. No. 169641, September 10, 2009),* such offenders, even if already over twenty-one (21) years old at the time of conviction, may still avail of the benefits accorded by Section 51 of *R.A. No. 9344* ***(People v. Abdurahman, G.R. No. 186523, June 22, 2011)***.

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(b) "To give meaning to the legislative intent of the (Juvenile Justice and Welfare) Act, the promotion of the welfare of a child in conflict with the law should extend even to one who has exceeded the age limit of twenty-one (21) years, so long as he/she committed the crime when he/she was still a child. The offender shall be entitled to the right to restoration, rehabilitation and reintegration in accordance with the (Juvenile Justice and Welfare) Act in order that he/she is given the chance to live a normal life and become a productive member of the community. The age of the child in conflict with the law at the time of the promulgation of the judgment of

conviction is not material. What matters is that the offender committed the offense when he/she was still of tender age" ***(People v. Jacinto, G.R. No. 182239, March 16, 2011)***.

(c) In the proper execution of judgment by the lower court, the Section 51 of *R.A. No. 9344* should be taken into consideration by the judge in order to accord children in conflict with the law, who have already gone beyond twenty-one (21) years of age, the proper treatment envisioned by law ***(People of the Philippines and AAA v. Court of Appeals, 21st Division, et al., G.R. No. 183652, February 25, 2015)***.

Disposition in accordance with Section 51

(d) In ***People of the Philippines v. Richard O. Sarcia, (G.R. No. 169641, September 10, 2009)***, as the accused-appellant is about 31 years of age (at the time the Supreme Court reviewed the case), and the judgment of the RTC had been promulgated (before the effectivity of *R.A. No. 9344*), the Supreme Court held that the application of Sections 38 and 40 of *R.A. No. 9344*to the suspension of sentence is now moot and academic. However, accused-appellant is entitled to appropriate disposition under Section 51 of R.A. No. 9344, which provides for the confinement of convicted children. The Supreme Court imposed the penalty of *reclusion perpetua* on the accused-appellant and ordered the case remanded to the court of origin for appropriate disposition in accordance with Section 51.

(e) In ***People v. Jacinto (G.R. No. 182239, March 16, 2011),*** the Supreme Court held that the benefits of a suspended sentence can no longer apply to appellant as the suspension of sentence lasts only until the child in conflict with the law reaches the maximum age of twenty-one (21) years. Appellant, who was twenty-five (25) years old at the time the Supreme Court reviewed the case, may be confined in an agricultural camp or any other training facility in accordance with Section 51 of *Republic Act No. 9344*. The case was remanded by the Supreme Court to the court of origin for its appropriate action in accordance with Section 51.

(f) In ***People v. Mantalaba (G.R. No. 186227, July 20, 2011)***, the Supreme Court held that the appellant, who is now beyond the age of twenty-one (21) years can no longer avail of the

provisions of Sections 38 and 40 of *R.A. No. 9344* as to his suspension of sentence, because such is already moot and academic. The Supreme Court noted that this would not have happened if the Court of Appeals, when this case was under its jurisdiction, suspended the sentence of the appellant as records show that the appellant filed his notice of appeal at the age of 19 (2005). When *R.A. No. 9344* became effective in 2006, appellant was 20 years old, and the case having been elevated to the CA, the latter should have suspended the sentence of the appellant because he was already entitled to the provisions of Section 38 of the same law, which now allows the suspension of sentence of minors regardless of the penalty imposed as opposed to the provisions of Article 192 of *P.D. No. 603*.Nevertheless, the Supreme Court held that the appellant is entitled to appropriate disposition under Section 51 of *R.A. No. 9344*.

(g) In ***People of the Philippines v. Henry Arpon (G.R. No. 183563, December 14, 2011)***, the Supreme Court held that the suspension of sentence may no longer be applied given that the accused-appellant is now about 29 years of age and Section 40 of *Republic Act No. 9344* puts a limit to the application of a suspended sentence, namely, when the child reaches a maximum age of 21. After sentencing the accused-appellant to suffer Reclusion Perpetua for each count of rape, the Supreme Court remanded the case to the court of origin for its appropriate action in accordance with Section 51 of *R.A. No. 9344*.

(h) In ***People of the Philippines v. Halil Gambao, et al. (G.R. No. 172707, October 01, 2013)***, the Supreme Court held that at the present age of 31, PPP can no longer benefit from Section 38 because under Article 40 of *R.A. No. 9344*, the suspension of sentence can be availed of only until the child in conflict with the law reaches the maximum age of twenty-one (21) years. As regards PPP's possible confinement in an agricultural camp or other training facility in accordance with Section 51 of R.A. 9344, the Supreme Court cited its ruling in *People v. Jacinto (G.R. No. 182239, March 16, 2011)* that the age of the child in conflict with the law at the time of the promulgation of the judgment is not material, what matters is that the offender committed the offense when he/she was still of tender age. However, the Supreme Court finds such arrangement no longer necessary in view of the fact that PPP's actual served term has already exceeded the imposable penalty for her offense. For such reason, the Supreme Court ordered the Correctional Institute for Women to immediately release PPP due to her having fully

served the penalty imposed on her, unless her further detention is warranted for any other lawful causes.

(i) In ***People of the Philippines and AAA v. Court of Appeals, 21st Division, et al., (G.R. No. 183652, February 25, 2015)***, the Supreme Court imposed the indeterminate penalty of imprisonment from six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum, for each count of rape committed. However, the Supreme Court held that the accused-respondent is entitled to appropriate disposition under Section 51, *R.A. No. 9344*, which extends even to one who has exceeded the age limit of twenty-one (21) years, so long as he committed the crime when he was still a child. The case was remanded to the court of origin for its appropriate action in accordance with Section 51.

(j) In ***People of the Philippines v. John Wile et al. (G.R. No. 208066, April 12, 2016)*** accused-appellants are still entitled to the benefit of Section 51 of Republic Act No. 9344 even when they are already beyond twenty-one (21) years of age. Upon order of the court, accused-appellants may serve their sentences at an agricultural camp or any other training facility, controlled by the Bureau of Correction, in coordination with the Department of Social Welfare and Development, in lieu of regular penal institution.

XIV. Determination of penalty

Revised Penal Code, as amended:

Chapter Three
CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY
Art. 13. Mitigating circumstances.
The following are mitigating circumstances
x xx
2. That the offender is under eighteen year of age ...
x xx

Revised Penal Code, as amended:

Art. 68. Penalty to be imposed upon a person under eighteen years of age.

When the offender is a minor under eighteen years ..., the following rules shall be observed:

1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but **always lower by two degrees** at least than that prescribed by law for the crime which he committed.

2. Upon a person over fifteen and under eighteen years of age the penalty **next lower than that prescribed by law shall be imposed**, but always in the proper period.

Paragraph 1, Section 68 of the Revised Penal Code is no longer be applicable since RA 9344 as amended has repealed the same. Children below 15 years old are exempt from criminal liability.

However paragraph 2, remains applicable as illustrated in the case of ***People vs Jacinto (645 SCRA 590, March 16, 2011)*.** The Supreme Court ruled that a minor who raped a five (5) - year old child should have meted out the penalty of death based on the Revised Penal Code. Since Republic Act No. 9346 prohibits the imposition of death penalty the offender's sentence was thus lowered by one degree from death to Reclusion Perpetua. Note, that the application of mitigating circumstance of minority under Paragraph 2 of Article 68, which prescribes the imposition of the next lower penalty, was still reckoned from death penalty. The Supreme Court imposed the penalty of Reclusion Perpetua to the child in conflict with the law.[10]

[10] Based on discussion of Judge Artemio Tuquero, Revised Penal Code Annotated. Quezon City: Central Books, 2015., page 276

Indeterminate Sentence Law (Act 4103 as amended):

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

x xx

Indeterminate Sentence Law

(a) In ***Raymund Madali and Rodel Madali v. People of the Philippines (G.R. No. 180380, August 4, 2009)***, the Supreme Court ruled that the penalty for homicide under Article 249 of the *Revised Penal Code* is *reclusion temporal* and pursuant to Article 68 of the same law, the maximum penalty should be within *prision mayor*, which is a degree lower than *reclusion temporal*. Absent any aggravating or mitigating circumstance, the maximum penalty should be in the medium period of *prision mayor* or 8 years and 1 day to 10 years. Applying the *Indeterminate Sentence Law*, the minimum should be anywhere within the penalty next lower in degree, that is, *prision correccional*. According to the Supreme Court, the penalty imposed by the Court of Appeals, which is 6 months and one day of *prision correccional* to 8 years and one day of *prision mayor*, is in order.

Raymund Madali and Rodel Madali v. People of the Philippines (G.R. No. 180380; August 4, 2009):

Reclusion temporal: Penalty for homicide (Article 249 of the *Revised Penal Code*)

Prision mayor: Applying Article 68 of the *Revised Penal Code* (accused was 16 years old at the time of commission of crime)

Duration of *prision mayor*: 6 years and one day to 12 years
Duration of *prision correctional*: 6 months and one day to 6 years

Penalty imposed by the Supreme Court (applying the Indeterminate Sentence Law) on one of the accused (affirming the ruling of the Court of Appeals):
Six months and one day of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum

Revised Penal Code, as amended:

Art. 61. Rules for graduating penalties.
For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:
xx x
2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be impose to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.
x xx

Revised Penal Code, as amended:

Art. 64. Rules for the application of penalties which contain three periods.

In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.
2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.
3. When an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.
4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.
5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.
6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.
7. Within the limits of each period, the court shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater and lesser extent of the evil produced by the crime.

(b) As reiterated in ***People of the Philippines v. John Wile et al. (G.R. No. 208066, April 12, 2016)***, the Supreme Court held that pursuant to Art 68 (2) of the Revised Penal Code, as amended, the penalty to be imposed upon a person under eighteen (18) but above fifteen (15) years of age for a crime shall be the penalty next lower than that prescribed by law.

As previously determined in this case, the imposable penalty for rape committed by two or more persons, without any mitigating or aggravating circumstance, is reclusion perpetua. Therefore the imposable penalty on the three accused, who were either seventeen (17) or sixteen (16) years old at the time of the rapes, is reduced by one degree from *reclusion perpetua*, which is *reclusion temporal*, for every count. Being a divisible penalty, the Indeterminate Sentence Law is applicable. There being no modifying circumstance attendant to each crime, the maximum of the indeterminate penalty is imposed in its medium period, which ranges from 14 years, 8 months and one day to 17 years, 4 months. To set the minimum of the indeterminate penalty reclusion temporal is reduced by one degree to prision mayor, which ranges from 6 years and one day to 12 years. The minimum of the indeterminate penalty is taken from the full range of prision mayor. In the present case, the penalty imposed by the Court of Appeals on accused-appellants, John, Mark and Jaypee for each count of rape is imprisonment of 6 years and 1 day of reclusion temporal, as maximum. Being within the proper range of indeterminate sentence as provided by law, we have no reason to disturb the same. *(See also **Ryan Mascardo v. People of the Philippines, G.R. No. 218657, September 9, 2015**)*

(c) In ***Salvador Atizado and Salvador Monreal v. People of the Philippines (G.R. No. 173822, October 13, 2010)***, the Supreme Court held that pursuant to Article 68.2 of the *Revised Penal Code, as amended*, when the offender is over 15 and under 18 years of age, the penalty next lower than that prescribed by law is imposed. Based on Article 61.2 of the Revised Penal Code, as amended, *reclusion temporal* is the penalty next lower than *reclusion perpetua* to death. Applying the *Indeterminate Sentence Law* and Article 64 of the *Revised Penal Code, as amended*, therefore, the range of the penalty of imprisonment imposable on MMM was *prision mayor* in any of its periods, as the minimum period, to *reclusion temporal* in its medium period, as the maximum period. Accordingly, his proper indeterminate penalty is from six years and one

day of *prision mayor*, as the minimum period, to 14 years, eight months, and one day of *reclusion temporal*, as the maximum period.

Salvador Atizado and Salvador Monreal v. People of the Philippines (G.R. No. 173822, October 13, 2010):

Reclusion perpetua to death: Penalty for murder with treachery (Article 248 of the *Revised Penal Code*, as amended by Republic Act No. 7659

Reclusion temporal: Penalty next lower (Article 61.2 of the *Revised Penal Code*)

Duration of *reclusion temporal*: 12 years and one day to 20 years
Duration of *prision mayor*: 6 years and one day to 12 years

Penalty imposed on MMM by the Supreme Court (applying the *Indeterminate Sentence Law* and Article 61.2 of the *Revised Penal Code*):

6 years and one day of *prision mayor* as minimum period to 14 years, eight months and one day of *reclusion temporal* as maximum period

(d) In ***People of the Philippines and AAA v. Court of Appeals, 21st Division, et al. (G.R. No. 183652, February 25, 2015)***, the Supreme Court ruled that in view of the presence of the mitigating circumstance of voluntary surrender and the absence of an aggravating circumstance to offset the same, the lighter penalty of *reclusion perpetua* shall be imposed upon the accused, for each count of rape (instead of *reclusion perpetua* to death under Article 266-B of the *Revised Penal Code*, when rape is committed by two or more persons) . With regard to OOO, appreciating in his favor the privileged mitigating circumstance of minority, the proper imposable penalty upon him is *reclusion temporal*, being the penalty next lower to *reclusion perpetua* to death. Being a divisible penalty, the *Indeterminate Sentence Law* is applicable. Applying the *Indeterminate Sentence Law*, OOO can be sentenced to an indeterminate penalty the minimum of which shall be within the range of *prision mayor* (the penalty next lower in degree to *reclusion temporal*) and the maximum of which shall be within the range of *reclusion temporal* in its minimum period, there being the ordinary mitigating circumstance of voluntary surrender, and there being no aggravating circumstance.

The Supreme Court imposed the indeterminate penalty of imprisonment from six (6) years and one (1) day of *prision mayor* as minimum to twelve (12) years and one (1) day of *reclusion temporal* as maximum, for each count of rape committed. (However, OOO was ruled to be entitled to appropriate disposition under Section 51, *R.A. No. 9344*, which extends even to one who has exceeded the age limit of twenty-one years, so long as he committed the crime when he was still a child.)

People of the Philippines and AAA v. Court of Appeals, 21st Division, et al. (G.R. No. 183652, February 25, 2015):

Reclusion perpetua to death:	Penalty imposed when rape is committed by three or more persons (Article 266-B of the Revised Penal Code)
Reclusion perpetua:	Lighter penalty as there is mitigating circumstance of voluntary surrender (and no aggravating circumstance to offset it
Reclusion temporal:	Privileged mitigating circumstance of minority (Article 68.2 of the Revised Penal Code)

Duration of *reclusion temporal*: 12 years and one day to 20 years
Duration of *prision mayor*: 6 years and one day to 12 years

Penalty imposed on OOO by the Supreme Court applying the Indeterminate Sentence Law:

6 years and one day of *prision mayor* as minimum to 12 years and one day of *reclusion temporal* as maximum

(e) Applying the Indeterminate Sentence Law or ISLAW, Minor DJ was sentence by the Court of Appeals to suffer an indeterminate penalty ranging from twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum in each of the three counts of rape. The case was appealed by one of the accused to the Supreme Court but minor did not appeal his case.

Nevertheless the Supreme Court ruled that while not an appellant before the Court, it finds the need to correct the penalty imposed, thus, applying ISLAW, the penalty to be imposed on DJ

will be within the range of the range of *prision mayor*from six (6) years and one (1) day to twelve (12) years, as minimum penalty, to 14 years, eight (8) months and 1 day to 17 years and four (4) months of *prision temporal* in its medium period, as maximum penalty in each of the three counts of rape.

Graduation of penalties: Death penalty

Revised Penal Code, as amended:

Art. 71. Graduated scales.
In the case in which the law prescribed a penalty lower or higher by one or more degrees than another given penalty, the rules prescribed in Article 61 shall be observed in graduating such penalty.
The lower or higher penalty shall be taken from the graduated scale in which is comprised the given penalty.
The courts, in applying such lower or higher penalty, shall observe the following graduated scales:
SCALE NO. 1

1. Death
2. Reclusion perpetua
3. Reclusion temporal
4. Prision mayor
5. Prisioncorreccional
6. Arresto mayor

x xx

(a) In ***People of the Philippines v. Richard O. Sarcia (G.R. No. 169641, September 10, 2009)***, Article 335 of the *Revised Penal Code*, as amended by *Republic Act No. 7659 (Death*

Penalty Law), was the governing law at the time the accused-appellant committed the rape in question. Under the said law, the penalty of death shall be imposed when the victim of rape is a child below seven years of age, hence, the death penalty is applicable in this case. However, as the Supreme Court deemed the accused to be a minor at the time of the commission of the offense, he is entitled to the privileged mitigating circumstance of minority. The Supreme Court (*en banc*) held that: "[u]nder Article 68 of the Revised Penal Code, when the offender is a minor under 18 years, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. However, for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is still the penalty to be reckoned with." Thus, the proper imposable penalty for the accused-appellant is *reclusion perpetua. (See also* ***People v. Vergel Ancajas et.al, G.R. 199270, October 21, 2015*** *reiterating the principle in* ***People v. Sarcia***)

(b) In ***People v. Jacinto (G.R. No. 182239, March 16, 2011)***, since the victim was five years old at the time of rape, the law prescribing the death penalty applies. However, the Supreme Court (First Division) ruled that the following circumstances call for the reduction of the penalty: (1) the prohibition against the imposition of the penalty of death in accordance *with Republic Act No. 9346*; and (2) the privileged mitigating circumstance of minority of the appellant, which has the effect of reducing the penalty one degree lower than that prescribed by law, pursuant to Article 68 of the *Revised Penal Code*.

Relying on *People v. Bon (G.R. No. 166401, October 30, 2006)*, the Court of Appeals, in this case, **excluded** death from the graduation of penalties provided in Article 71 of the *Revised Penal Code*. Consequently, in its appreciation of the privileged mitigating circumstance of minority of appellant, the Court of Appeals lowered the penalty one degree from *reclusion perpetua* and sentenced appellant to suffer the indeterminate penalty of six (6) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, in its medium period, as maximum. Please note that in *People v. Bon (2006)*, the Supreme Court held that:

> As to sentences not yet handed down, or affirmed with finality, the application is immediate. **Henceforth, "death," as utilized in Article 71 of the Revised Penal Code, shall no longer form part of the equation in the graduation of penalties**. For example, in the case of appellant, the determination of his penalty for attempted rape shall be reckoned not from two degrees lower than death, but two degrees lower than reclusion perpetua. Hence, the maximum term of his penalty shall no longer be *reclusion temporal*, as ruled by the Court of Appeals, but instead *prision mayor*. (*Emphasis supplied*)

The Supreme Court disagreed with the Court of Appeals, citing it earlier in *People vs. Sarcia (G.R. No. 169641, September 10, 2009)*:

> Under Article 68 of the Revised Penal Code, when the offender is a minor under 18 years, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. **However, for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is still the penalty to be reckoned with.** Thus, the proper imposable penalty for the accused-appellant is *reclusion perpetua. (Emphasis supplied.)*

The Supreme Court imposed the penalty of *reclusion perpetua* on the appellant and remanded the case to the court of origin for its appropriate action in accordance with Section 51 of *Republic Act No. 9344*.

People v. Jacinto (G.R. No. 182239, March 16, 2011):

Court of Appeals:

Death: Excluded from the graduation of penalties

Reclusion perpetua: Starting point of the Court of Appeals in determining the proper penalty because of the privileged mitigating circumstance of minority

Reclusion temporal: One degree lower from *reclusion perpetua*

Duration of *reclusion temporal*: 12 years and one day to 20 years

Duration of *prision mayor*: 6 years and one day to 12 years

Penalty imposed by the Court of Appeals:

Six (6) years and one (1) day to twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, in its medium period, as maximum

Supreme Court:

Death: Starting point of the Supreme Court in determining the proper penalty because of the privileged mitigating circumstance of minority

Reclusion perpetua: Penalty imposed by the Supreme Court; one degree lower from death

(c) In ***People of the Philippines v. Halil Gambao, et al. (G.R. No. 172707, October 01, 2013)***, the Supreme Court (*en banc*) found PPP guilty beyond reasonable doubt as an accomplice in the crime of kidnapping for ransom. **Since the Supreme Court has ruled that death as utilized in Article 71 of the *Revised Penal Code* shall no longer form part of the equation in the graduation of penalties pursuant to R.A. No. 9346 (*An Act Prohibiting the Imposition of Death Penalty in the Philippines*)**[11], the penalty imposed by law on accomplices in the commission of consummated kidnapping for ransom is *reclusion temporal*, the penalty one degree lower than what the principals would bear (*reclusion perpetua*). Applying Article 68 of the *Revised Penal Code*, the imposable penalty should then be adjusted to the penalty next lower than that prescribed by law for accomplices. The Supreme Court, therefore, holds that as to PPP, the penalty of *prision mayo*r, the penalty lower than that prescribed by law (*reclusion temporal*), should be imposed. Applying the *Indeterminate Sentence Law*, the minimum penalty, which is one degree lower than the maximum imposable penalty, shall be within the range of *prision*

[11] *Citing* People v. Bon, 536 Phil. 897, 940 (2006) (*en banc*).

correccional; and the maximum penalty shall be within the minimum period of *prision mayor*, absent any aggravating circumstance and there being one mitigating circumstance. The Supreme Court imposes the indeterminate sentence of six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum.

People of the Philippines v. Halil Gambao, et al. (G.R. No. 172707, October 01, 2013):

Death	No longer forms part of the equation in the graduation of penalties pursuant to R.A. No. 9346 (*An Act Prohibiting the Imposition of Death Penalty in the Philippines*); *People v. Bon* (G.R. No. 166401, October 30, 2006)
Reclusion perpetua:	Penalty imposed on principals for consummated kidnapping for ransom
Reclusion temporal:	Penalty imposed on accomplices for consummated kidnapping for ransom (one degree lower than that imposed on principals)
Prision mayor:	Applying Article 68 of the Revised Penal Code (accused was 17 years old at the time of commission of crime

Duration of *prision mayor*: 6 years and one day to 12 years
Duration of *prision correctional*: 6 months and one day to 6 years

Penalty imposed on PPP by the Supreme Court (applying the *Indeterminate Sentence Law*):

Six months and one day of *prision correccional*, as minimum, to six years and one day of *prision mayor*, as maximum

This case, decided by the Supreme Court *en banc*, reaffirmed its ruling in *People v. Bon (G.R. No. 166401, October 30, 2006)* and the overturned pronouncement of the First Division in the case of *People v. Jacinto (2011)* and *People v. Sarcia (2009)* that for purposes of determining the proper penalty because of the privileged mitigating circumstance of minority, the penalty of death is till the penalty to be reckoned with. This ruling in *Gambao (2013)* is more favourable to the accused and as stated in *Bon (2006)* by the Supreme Court *en banc*:

> "[I]t is also a well-known rule of legal hermeneutics that penal or criminal laws are strictly construed against the state and **liberally in favor of the accused**. If the language of the law were

> ambiguous, the court will lean more strongly in favor of the defendant than it would if the statute were remedial, as a means of effecting substantial justice. The law is tender in favor of the rights of an individual. It is this philosophy of caution before the State may deprive a person of life or liberty that animates one of the most fundamental principles in our Bill of Rights, that every person is presumed innocent until proven guilty." (emphasis supplied)

Both *Bon (2006)* and *Gambao (2013)*, were decided by the Supreme Court en banc and as provided by the 1987 Constitution: "no doctrine or principle of law laid down by the court in a decision rendered *en ban* or in division may be modified or reversed except by the court sitting *en banc*".[12] Although *People v. Sarcia (2009)* was also decided *en banc*, the principle of law enunciated in this case is considered to have been reversed given the ruling in *Gambao (2013)* which was also decided by the Supreme Court *en banc*.

Comprehensive Dangerous Drugs Act of 2002

Comprehensive Dangerous Drugs Act of 2002: Section 98. *Limited Applicability of the Revised Penal Code*. x xx Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be *reclusion perpetua* to death. x xx

(a) In ***People of the Philippines v. Allen Udtojan Mantalaba (G.R. No. 186227, July 20, 2011)***, the Regional Trial Court the imposed the penalty of *reclusion perpetua* in Section 98 of *R.A. No. 9165 (Comprehensive Dangerous Act of 2002)*, finding the guilt beyond reasonable doubt of the appellant for violation of Section 5. A violation of Section 5 of *R.A. No. 9165* merits the penalty of life imprisonment to death; however, in Section 98, it is provided that, where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided in the same law shall be *reclusion perpetua* to death. According to the Supreme Court, this means that

[12] Article VIII, Section 4.

the penalty can now be graduated as it has adopted the technical nomenclature of penalties provided for in the *Revised Penal Code*. The said principle was enunciated by the Supreme Court in *People v. Simon (*G.R. No. 93028, July 29, 1994, 234 SCRA 555):

> We are not unaware of cases in the past wherein it was held that, in imposing the penalty for offenses under special laws, the rules on mitigating or aggravating circumstances under the Revised Penal Code cannot and should not be applied. A review of such doctrines as applied in said cases, however, reveals that the reason therefor was because the special laws involved provided their own specific penalties for the offenses punished thereunder, and which penalties were not taken from or with reference to those in the Revised Penal Code. Since the penalties then provided by the special laws concerned did not provide for the minimum, medium or maximum periods, it would consequently be impossible to consider the aforestated modifying circumstances whose main function is to determine the period of the penalty in accordance with the rules in Article 64 of the Code.
>
> This is also the rationale for the holding in previous cases that the provisions of the Code on the graduation of penalties by degrees could not be given supplementary application to special laws, since the penalties in the latter were not components of or contemplated in the scale of penalties provided by Article 71 of the former. The suppletory effect of the Revised Penal Code to special laws, as provided in Article 10 of the former, cannot be invoked where there is a legal or physical impossibility of, or a prohibition in the special law against, such supplementary application.
>
> The situation, however, is different where although the offense is defined in and ostensibly punished under a special law, the penalty therefor is actually taken from the Revised Penal Code in its technical nomenclature and, necessarily, with its duration, correlation and legal effects under the system of penalties native to said Code. When, as in this case, the law involved speaks of *prision correccional*, in its technical sense under the Code, it would consequently be both illogical and absurd to posit otherwise.
>
> x xxx
>
> Prefatorily, what ordinarily are involved in the graduation and consequently determine the degree of the penalty, in accordance with the rules in Article 61 of the Code as applied to the scale of penalties in Article 71, are the stage of execution of the crime and the nature of the participation of the accused. However, under

paragraph 5 of Article 64, when there are two or more ordinary mitigating circumstances and no aggravating circumstance, the penalty shall be reduced by one degree. Also, **the presence of privileged mitigating circumstances, as provided in Articles 67 and 68, can reduce the penalty by one or two degrees, or even more.** These provisions of Articles 64(5), 67 and 68 should not apply *in toto* in the determination of the proper penalty under the aforestated second paragraph of section 20 of Republic Act No. 6425, to avoid anomalous results which could not have been contemplated by the legislature.

Thus, paragraph 5 of Article 61 provides that when the law prescribes a penalty in some manner not specially provided for in the four preceding paragraphs thereof, the courts shall proceed by analogy therewith. Hence, when the penalty prescribed for the crime consists of one or two penalties to be imposed in their full extent, the penalty next lower in degree shall likewise consist of as many penalties which follow the former in the scale in Article 71. If this rule were to be applied, and since the complex penalty in this case consists of three discrete penalties in their full extent, that is, *prision correccional*, *prision mayor* and *reclusion temporal*, then one degree lower would be *arresto menor*, *destierro* and *arresto mayor*. There could, however, be no further reduction by still one or two degrees, which must each likewise consist of three penalties, since only the penalties of fine and public censure remain in the scale.

The Court rules, therefore, that while modifying circumstances may be appreciated to determine the periods of the corresponding penalties, or even reduce the penalty by degrees, in no case should such graduation of penalties reduce the imposable penalty beyond or lower than *prision correccional*. It is for this reason that the three component penalties in the second paragraph of Section 20 shall each be considered as an independent principal penalty, and that the lowest penalty should in any event be *prision correccional* in order not to depreciate the seriousness of drug offenses. *Interpretatio fiendaestut res magisvaleat quam pereat*. Such interpretation is to be adopted so that the law may continue to have efficacy rather than fail. A perfect judicial solution cannot be forged from an imperfect law, which impasse should now be the concern of and is accordingly addressed to Congress.

(emphasis supplied)

According to the Supreme Court, the privileged mitigating circumstance of minority can now be appreciated in fixing the penalty that should be imposed. The RTC, as affirmed by the CA,

imposed the penalty of *reclusion perpetua* without considering the minority of the appellant. Thus, applying the rules stated above, the proper penalty should be one degree lower than *reclusion perpetua*, which is *reclusion temporal*, the privileged mitigating circumstance of minority having been appreciated. Necessarily, also applying the *Indeterminate Sentence Law (ISLAW)*, the minimum penalty should be taken from the penalty next lower in degree which is *prision mayor* and the maximum penalty shall be taken from the medium period of *reclusion temporal*, there being no other mitigating circumstance nor aggravating circumstance. The *ISLAW* is applicable in the present case because the penalty which has been originally an indivisible penalty (*reclusion perpetua* to death), where *ISLAW* is inapplicable, became a divisible penalty (*reclusion temporal*) by virtue of the presence of the privileged mitigating circumstance of minority. The Supreme Court imposed a penalty of six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

People of the Philippines v. Allen Udtojan Mantalaba (G.R. No. 186227, July 20, 2011):

Life imprisonment to death:	Penalty for Section 5, *R.A. No. 9165*
Reclusion perpetua to death:	In case offender is a minor (in case *Section 98, R.A. No. 9165*), instead of life imprisonment to death
Reclusion temporal:	Appreciating the privileged mitigating circumstance of minority; as there is no other mitigating or aggravating circumstance, the maximum penalty is to be taken from its medium period
Prision mayor:	Minimum penalty

Duration of *reclusion temporal*: 12 years and one day to 20 years
Duration of *prision mayor*: 6 years and one day to 12 years

Penalty imposed by the Supreme Court (applying the *Indeterminate Sentence Law*):
Six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum

(b) In ***People of the Philippines v. Aisa Musa, et al. (G.R. No. 199735, October 24, 2012)***, the Regional Trial Court found one of the accused to be a minor or 17 years old at the time of the commission of the offense. It imposed the indeterminate penalty of imprisonment of fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as minimum, to sixteen (16) years of reclusion temporal, as maximum. On appeal, the Court of Appeals increased this penalty to life imprisonment. The Supreme Court held that these impositions are contrary to prevailing jurisprudence, referring to *People v. Mantalaba* (G.R. No. 186227, July 20, 2011, 654 SCRA 188), where the accused was also 17 years old at the time of the commission of the offense.

In *People v. Mantalaba (2011)*, the Supreme Court held that: (a) pursuant to Sec. 98 of *R.A. No. 9165 (Comprehensive Dangerous Act of 2002)*, the penalty for acts punishable by life imprisonment to death provided in the same law shall be *reclusion perpetua* to death when the offender is a minor; and (b) that the penalty should be graduated since the said provision adopted the technical nomenclature of penalties provided for in the *Revised Penal Code*, and established the rules as follows:

> Consequently, the privileged mitigating circumstance of minority can now be appreciated in fixing the penalty that should be imposed. The RTC, as affirmed by the CA, imposed the penalty of *reclusion perpetua* without considering the minority of the appellant. Thus, applying the rules stated above, the **proper penalty should be one degree lower than *reclusion perpetua*, which is *reclusion temporal***, the privileged mitigating circumstance of minority having been appreciated. Necessarily, also applying the Indeterminate Sentence Law (ISLAW), **the minimum penalty should be taken from the penalty next lower in degree which is *prision mayor* and the maximum penalty shall be taken from the medium period of *reclusion temporal*, there being no other mitigating circumstance nor aggravating circumstance**. The ISLAW is applicable in the present case *because the penalty which has been originally an indivisible penalty (reclusion perpetua to death), where ISLAW is inapplicable, became a divisible penalty (reclusion temporal) by virtue of the presence of the privileged mitigating circumstance of minority*. Therefore, **a penalty of six (6) years and one (1) day of prision mayor, as minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum, would be the proper imposable penalty**. (Emphasis supplied.)

The Supreme Court held that the penalty of imprisonment imposed against the accused should mirror *Mantalaba* (2011) in the absence of any mitigating circumstance or aggravating circumstance other than the minority of the accused. The penalty of imprisonment imposed on the accused for violating Section 5, Article II or R.A. No. 9165 was six (6) years and one (1) day of *prision mayor*, as minimum, and fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

XV. Transitory provisions

Children fifteen years old and below

R.A. No. 9344, as amended:

Section 64. *Children in Conflict with the Law Fifteen (15) Years Old and Below.*

Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs, as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

(a) In ***People of the Philippines v. Julieto Sanchez (G.R. No. 197815, February 8, 2012)***, the Supreme Court noted that the Regional Trial Court dismissed the charges against the co-accused (who was 14 years old at the time of the commission of the crime) pursuant to Section 64 of R.A. No. 9344.

Children who have been convicted and are serving sentences

R.A. No. 9344, as amended:

Section 68. *Children Who Have Been Convicted and are Serving Sentences*.

Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time of the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. **They shall be immediately released if they are so qualified under this Act or other applicable laws.**

(emphasis supplied)

(b) In ***People of the Philippines v. Richard O. Sarcia, (G.R. No. 169641, September 10, 2009)***, the Supreme Court stated that Section 68 "allows the retroactive application of the (*Juvenile Justice and Welfare) Act* to those who have been convicted and are serving sentence at the time of the effectivity of this said Act, and who were below the age of 18 years at the time of the commission of the offense. With more reason, the Act should apply to this case wherein the conviction by the lower court is still under review. Hence, it is necessary to examine which provisions of R.A. No. 9344 shall apply to accused-appellant, who was below 18 years old at the time of the commission of the offense". As the accused-appellant is about 31 years of age (at the time the Supreme Court reviewed the case), and the judgment of the RTC had been promulgated (before the effectivity of *R.A. No. 9344*), the Supreme Court held that the application of Sections 38 and 40 of *R.A. No. 9344* to the suspension of sentence is now moot and academic, however, accused-appellant is entitled to appropriate disposition under Section 51 of *R.A. No. 9344*, which provides for the confinement of convicted children.

(c) According to the Supreme Court, it cannot be doubted that MMM was a minor below 18 years of age when the crime was committed on April 18, 1994. MMM has been detained for over 16 years, that is, from the time of his arrest on May 18, 1994 until the time the Supreme Court reviewed the case. Pursuant to Section 41 of *R.A. No. 9344*, the entire period of MMM's

detention should be credited in the service of his sentence. The benefits in favor of children in conflict with the law as granted under *Republic Act No. 9344*, which aims to promote the welfare of minor offenders through programs and services, such as delinquency prevention, intervention, diversion, rehabilitation and re-integration, geared towards their development, are retroactively applied to MMM as a convict serving his sentence in accordance with Section 68 of said law. The Supreme Court ordered the Bureau of Corrections to immediately release MMM due to his having fully served the penalty imposed on him, unless he is being held for other lawful causes ***(Salvador Atizado and Salvador Monreal v. People of the Philippines, G.R. No. 173822, October 13, 2010)***.

(d) In ***People v. Jacinto (G.R. No. 182239, March 16, 2011)***, the Supreme Court noted that in the determination of the imposable penalty, the Court of Appeals correctly considered *Republic Act No. 9344 (Juvenile Justice and Welfare Act of 2006)* despite the commission of the crime three (3) years before it was enacted on April 28, 2006. The Supreme Court cited the rationale elucidated in *People v. Sarcia* (G.R. No. 169641, September 10, 2009):"[Sec. 68 of Republic Act No. 9344] allows the retroactive application of the Act to those who have been convicted and are serving sentence at the time of the effectivity of this said Act, and who were **below the age of 18 years at the time of the commission of the offense. With more reason, the Act should apply to this case wherein the conviction by the lower court is still under review** (emphasis supplied)**".**

(e) Although the acts of rape in this case were committed before *Republic Act No. 9344* took effect on May 20, 2006, the said law is still applicable in accordance with Section 68. This provision allows the retroactive application of the *Juvenile and Justice Welfare Act* to those who have been convicted and are serving sentence at the time of its effectivity (on May 20, 2006), and who were below the age of 18 years at the time of the commission of the offense. With more reason, according to the Supreme Court, *R.A. No. 9344* should apply to this case wherein the conviction by the lower court is still under review. Hence, it is necessary to examine which provisions of *R.A. No. 9344* shall apply to accused-appellant, who was below 18 years old at the time of the commission of the offense ***(People of the Philippines v. Henry Arpon (G.R. No. 183563, December 14, 2011)***.

Retroactive effect of R.A. No. 9344: Revised Penal Code

> Revised Penal Code, as amended:
>
> Article 22. *Retroactive effect of penal laws*
>
> Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

(f) Although the crime was committed on July 28, 2001 and *Republic Act No. 9344* took effect only on May 20, 2006, the said law should be given retroactive effect in favor of BBB (who was 14 years old at the time he committed the robbery) who was not shown to be a habitual criminal, based on Article 22 of the *Revised Penal Code* (***Valcesar Estioca v. People of the Philippines, G.R. No.173876, June 27, 2008).***

(g) One of the issues in ***Joemar Ortega v. People of the Philippines (G.R. No. 151085, August 20, 2008)*** is whether the pertinent provisions of *R.A. No. 9344* apply to petitioner's case, considering that at the time he committed the alleged rape, he was merely 13 years old.

The position of the Office of the Solicitor General is that petitioner is no longer covered by the provisions of Section 64 of *R.A. No. 9344* since as early as 1999, petitioner was convicted by the RTC and the conviction was affirmed by the Court of Appeals in 2001. *R.A. No. 9344* was passed into law in 2006, and with the petitioner now approximately 25 years old (at the time his case reached the Supreme Court), he no longer qualifies as a child as defined by *R.A. No. 9344.* According to the Supreme Court, Section 64 of the law categorically provides that cases of children 15 years old and below, at the time of the commission of the crime, shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. It ruled that: "[w]hat is controlling, therefore, with respect to the exemption from criminal liability of the CICL, is not the CICL's age at the time of the promulgation of judgment but the CICL's age at the time of the commission of the offense. In

short, by virtue of R.A. No. 9344, the age of criminal irresponsibility has been raised from 9 to 15 years old. x xx Given this precise statutory declaration, it is imperative that this Court accord retroactive application to the aforequoted provisions of R.A. No. 9344 pursuant to the well-entrenched principle in criminal law – *favorabilia suntamplianda adios arestrigenda*. Penal laws which are favorable to the accused are given retroactive effect. This principle is embodied in Article 22 of the Revised Penal Code..."

(h) In ***Republic of the Philippines v. Robert Sierra (G.R. No. 182941, July 3, 2009),*** the Supreme Court held that the fact that the petitioner committed the rape before *R.A. No. 9344* took effect and that he is no longer a minor (he was already 20 years old when he took the stand) will not bar him from enjoying the benefit of total exemption that Section 6 of *R.A. No. 9344* grants, citing its ruling in *Ortega v. People (G.R. No. 151085, August 20, 2008)*. Furthermore, the Supreme Court explained that the retroactive application of *R.A. No. 9344* is also justified under Article 22 of the *Revised Penal Code*, as amended, which provides that penal laws are to be given retroactive effect insofar as they favor the accused who is not found to be a habitual criminal. Nothing in the records of this case indicates that the petitioner is a habitual criminal.

(i) In ***Raymund Madali and Rodel Madali v. People of the Philippines (G.R. No. 180380, August 4, 2009)***, the Supreme Court held that although the crime was committed on April 13, 1999 and *Republic Act No. 9344* took effect only on May 20, 2006, the said law should be given retroactive effect in favor of one of the accused who was not shown to be a habitual criminal based on Article 22 of the *Revised Penal Code*.

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