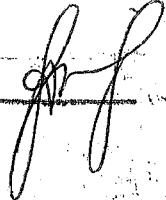


SENATE
OFFICE OF THE SECRETARY

THIRTEENTH CONGRESS OF THE)
Republic of the Philippines)
First Regular Session)

'04 JUN 30 P12:23

SENATE RECEIVED BY: 

S.B. No. **58**

Introduced by **SENATOR LUISA "LOI" P. EJERCITO ESTRADA**


EXPLANATORY NOTE

The nurture, care, support and development of the child is the utmost responsibility of the family. There are instances, however, in which the family cannot function as such, hence the need for alternative care. When problems of broken home, unwed motherhood, abandonment, illness or extreme poverty and the like seriously disrupt family relationships, substitute parental care becomes necessary.

Foster care is a planned substitute parental care for a child by a licensed foster parent when his biological parents cannot care for him. Children who are abandoned, neglected or with delayed development and poor health can be placed in foster homes. Instead of putting the child in an institution, foster homes can be the best substitute because of the social and emotional values they can offer to children who are in need of love, care and attention and can provide an atmosphere where a child can experience a healthy family life.

The passage of this bill on foster care is indeed significant in the light of the growing proportion of Filipino children urgently needing alternative family care.

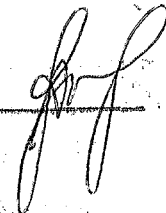
Hence, the immediate passage of this bill is earnestly sought.


LUISA "LOI" P. EJERCITO ESTRADA
Senator

SENATE
OFFICE OF THE SECRETARY

THIRTEENTH CONGRESS OF THE)
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AN ACT
TO STRENGTHEN AND PROPAGATE FOSTER CARE FOR ABANDONED AND
NEGLECTED CHILDREN AND OTHER CHILDREN WITH SPECIAL NEEDS,
PROVIDING APPROPRIATIONS THEREFOR AND FOR OTHER PURPOSES

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

Article I
GENERAL PROVISIONS

SECTION 1. **Title.** - This Act shall be known as the "Foster Care Act of 2004".

SEC. 2. **Declaration of Policy.** - The Constitution, Article 15 provides that the State shall 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.

It is hereby declared the policy of the State to provide every child who is abused, neglected, surrendered, dependent, abandoned and with developmental and physical disability with an alternative family that will provide love and care as well as opportunities for growth and development.

The State shall guarantee that all the rights of the child enumerated under Article 3 of Presidential Decree No. 603 otherwise known as "The Child and Youth Welfare Code", as amended, and the rights found under Article 20 of the United Nations Convention on the Rights of the Child, shall be observed.

Towards this end, the State shall systematize and enhance foster care program in the country. It shall ensure that the foster family shall provide a wholesome atmosphere for the foster child.

The State shall also protect the rights of the biological child of the foster family and ensure that in no case shall he/she be disadvantaged as a result of the placement of a foster child.

SEC. 3. **Definition of Terms.** - For purposes of this Act, the following terms are defined as:

- (a) "Agency" refers to any child care or child placement institution licensed and accredited by the DSWD to implement the foster care program;
- (b) "Child" refers to a person below eighteen (18) years of age, or those over but is unable to fully take care of himself/herself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;
- (c) "Child Case Study Report" refers to a written report prepared by a social worker containing all the necessary information on a child;
- (d) "Child With Special Needs" refers to a child with physical or mental disability or condition;
- (e) "Foster Care" refers to the provision of planned temporary substitute parental care to a child by a foster parent;
- (f) "Foster Family Care License" refers to the document issued by the DSWD authorizing the foster parent to provide foster care;
- (g) "Foster Parent" refers to a person, duly licensed by the Department of Social Welfare and Development (DSWD), to provide foster care to a child;
- (h) "Foster Placement Authority" refers to the document issued by the DSWD authorizing the placement of a particular child with the foster parent;
- (i) "Home Study Report" refers to a written report prepared by a social worker containing the necessary information on a prospective parent/family members;

- (j) "Matching" refers to the judicious pairing of a child with a foster parent and family members based on the capacity and commitment of the foster parents to meet the individual needs of a particular child and the capacity of the child to benefit from the placement;
- (k) "Parents" refers to the biological or adoptive parents or guardian;
- (l) "Placement" refers to the physical transfer of the child with the foster parent; and
- (m) "Social Worker" refers to the registered or licensed Social Worker of the DSWD, Local Government Unit (LGU) or Agency.

Article II
ELIGIBILITY

SEC. 4. Who May Be Placed on Foster Care. - A child may be placed on foster care if he/she is in need of special protection, as assessed by a Social Worker, due, but not limited, to any of the following circumstances:

- (a) Child who is abandoned, surrendered, neglected, dependent or orphaned;
- (b) Child who is a victim of sexual, physical, or any other form of abuse or exploitation;
- (c) Child with developmental and/or physical disability;
- (d) Child whose parents or guardians are temporarily or permanently unable to provide the child with adequate care;
- (e) Child awaiting adoptive placement and would have to be prepared for family life;
- (f) Child who needs long-term care and close family ties but who cannot be placed for adoption;
- (g) Child whose adoption has been disrupted;

- (h) Child under social difficulties such as, but not limited to, street child, child in armed conflict and those who are victims of child labor or trafficking; and
- (i) Child who has committed a minor offense but has been released on recognizance or on custody supervision or his/her case dismissed but whose family or relatives are not capable of providing him/her with care;

SEC. 5. **Who May Be A Foster Parent.** - Any applicant must meet all the following qualifications:

- (a) Must be of legal age;
- (b) Must have a genuine interest, capacity and commitment in parenting and be able to provide a family atmosphere for the child;
- (c) Must have a healthy and harmonious relationship with each family member;
- (d) Must have good moral character, emotional maturity, be physically and mentally capable and whose resources are able to provide for the family's needs; and
- (e) Must be willing to be trained to further hone his/her knowledge, attitudes and skills in caring for a child.

The relatives of the child shall be given priority to be the foster parent.

An alien possessing the above qualifications and has resided in the Philippines for at least six (6) months may qualify as a foster parent.

Article III PROCEDURE

SEC. 6. **Recruitment and Development of Foster Parents.** – Social Workers shall reach out to communities to recruit applicants for foster care.

SEC. 7. **Issuance of License.** - The DSWD shall issue a license based on the home study report submitted by the Agency to determine the motivations, capacities and potentials for development of applicants. The license is renewable every three (3) years unless earlier revoked by the DSWD.

SEC. 8. **Matching.** - Matching shall be done by the Agency only after the child case study and the home study have been conducted. The child case study report shall establish the needs of the child for consideration in the selection of the foster parent. Likewise, the home study report shall establish the foster parent's capacity and resources to provide a safe, secure and loving home to the child.

SEC. 9. **Placement.** - The physical transfer of the child to the foster parent shall be allowed only after the Foster Placement Authority (FPA) has been issued.

SEC. 10. **Supervision of Foster Placement.** - Supervised foster placement begins as soon as the foster parent receives the child into his/her care.

During the foster placement, the Social Worker shall conduct regular home visits to monitor the child's adjustment in the foster home and shall submit progress reports to the DSWD.

In case of incident, injury or death of a foster child, or if he/she runs away or gets lost, such case shall be reported immediately to the Agency, which, in turn, shall immediately report the same to the DSWD.

SEC. 11. **Termination of Placement.** - Termination of placement shall be done by the DSWD upon the recommendation of the Agency.

Article IV

ADOPTION OF A FOSTER CHILD

SEC. 12. **Conditions.** - A foster parent may adopt his/her foster child through the following conditions:

- (a) The foster parent must have all the qualifications as provided for by Republic Act No. 8552, otherwise known as the "Domestic Adoption Act of 1998", or Republic Act No. 8043, otherwise known as "Inter-Country Adoption Act of 1995", as the case may be;

- (b) The trial custody, as required in adoption, may be waived; Provided, That a harmonious relationship exists between the child and his/her foster parents and family members; and
- (c) The procedures for adoption, for purposes of this Act, shall be governed by Republic Act No. 8552 or Republic Act No. 8043, as the case may be.

Article V

ASSISTANCE AND INCENTIVES

Sec. 13. Assistance To A Foster Child. -

- (a) *Foster Child Subsidy.* - A foster child, through the Agency, shall be entitled to a monthly subsidy from the DSWD, subject to existing government auditing rules and regulations. The subsidy is primarily aimed to support the expenses of the child to lessen the financial burden of the foster parent.
- (b) *Health Insurance* — A foster child shall be entitled to health insurance benefits subject to the guidelines to be used by the DSWD and PHILHEALTH.

SEC. 14. Assistance and Incentives To A Foster Parent. -

- (a) *Special Discounts* - To the extent possible, the government may grant special discounts to a foster parent on the purchase of basic commodities for the exclusive use of a foster child subject to the guidelines to be issued for the purpose by the Department of Trade and Industry (DTI).
- (b) *Support Care Services.* - The DSWD, the social service units of local governments and Agencies shall provide support care services to include, but not limited to, counseling, visits, training on child care and development, respite care, skills training and livelihood assistance.
- (c) *Personal Exemption.* - For purposes of determining the taxable income of a foster parent who is either unmarried, widow/widower or legally separated, a foster child shall be treated as a dependent by the said foster

parent, that would qualify him/her as "head of the family" entitled to the P25,000.00 personal exemption under the provisions of Section 35(A) of the National Internal Revenue Code of 1997.

- (d) *Additional Exemption for Dependents.* - For purposes of claiming the P8,000.00 additional exemption of foster parent/s for each dependent not exceeding four (4), the definition of the term "dependent" under Section 35(B) of the NIRC of 1997 shall be amended to include "foster child," Provided, however, that all the other conditions provided for under the aforesaid section of the Tax Code are complied with. Provided, further, that this additional exemption shall be allowed only if the period of foster care is at least a continuous period of one (1) taxable year.

The foregoing provisions to the contrary notwithstanding, for purposes of this section, only one foster parent can treat the foster child as dependent for a particular taxable year to the exclusion of the parents and other foster parents of the child, if any.

SEC. 15. Incentives To Agencies and Donors. -

- (a) *Agencies.* - Agencies and donations to agencies shall be entitled to the following tax incentives:
- (1) Exemption from Income Tax - An Agency, which must be an accredited Non-Governmental Organization (NGO), shall be exempt from income tax on the income derived by it under the provision of Sec. 30 of the Tax Code, as implemented by Revenue Regulations (RR) No. 13-98; and
 - (2) It can also apply for qualification as a qualified-donee institution entitled to receive donations from donors who shall be exempt from Donor's Tax.
- (b) *Donors.* - Donations to an accredited NGO shall be entitled to the following :
- (1) Full deductibility from the gross income of the donor of the amount donated subject to the conditions provided for under Sec. 34 (H) of the Tax Code of 1997;and

- (2) Exemption from donor's tax under Sec. 101 of the Tax Code provided that not more than 30% of the amount of donations shall be spent for administrative expenses.

Article V
PENALTIES

SEC. 16. **Penalties.** –

- (a) Any foster parent, found to be committing any act of neglect, abuse, cruelty or exploitation and other similar acts prejudicial to the child's development, shall be penalized in accordance with Republic Act No. 7610, otherwise known as "An Act Providing For Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing For Its Violation, And For Other Purposes", and other applicable laws.
- (b) Any person, natural or juridical, who violates any provision of this Act shall be penalized with imprisonment of not less than three (3) months but not more than three (3) years, or a fine of not less than Ten Thousand Pesos (P10,000.00) but not more than One Hundred Thousand Pesos (P100,000.00), or both at the discretion of the court.
- (c) An Agency which violates any provision of this Act and its implementing rules and regulations shall suffer the following penalties:
 - (1) For the first violation, a fine of not less than Five Thousand Pesos (P5,000.00) but not exceeding Twenty Thousand Pesos (P20,000.00); and
 - (2) For any subsequent violation, a fine of not less than Twenty Thousand Pesos (P20,000.00) but not exceeding One Hundred Thousand Pesos (P100,000.00) and revocation of its license to operate.

Article VII
FINAL PROVISIONS

SEC. 17. **Foster Care Committee.** - The Regional Child Welfare Specialist Group of the DSWD shall serve as the Foster Care Committee, which shall have the following functions:

- (a) Review and deliberate issues affecting the placement of a particular child;
- (b) Make recommendations to resolve any dispute between and among the agency, the parents, foster parents and the child;
- (c) Monitor the implementation, review and recommend changes in policies concerning foster care and other matters related to the child's welfare;
- (d) Submit to the President of the Philippines and to Congress an annual report of the policies, programs and activities relative to the implementation of this Act; and
- (e) Perform such other functions and duties as may be prescribed by the DSWD.

SEC. 18. **Appropriation.** - The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter. An initial amount of Twenty Five Million Pesos (P25,000,000.00) shall be allocated for the first year of its operations. Such sum shall be in the allocation for child-related programs of the DSWD.

SEC. 19. **Implementing Rules and Regulations.** - The DSWD, as lead agency, Department of Justice (DOJ), Department of Health (DOH), Bureau of Internal Revenue (BIR), Council for the Welfare of Children (CWC), and other concerned government agencies, in consultation with accredited child-caring institutions and organizations with foster care programs, are hereby mandated to prepare and draft the implementing rules and regulations to operationalize the provisions of this Act within three (3) months from its effectivity.

SEC. 20. **Repealing Clause.** - Any law, presidential decree, issuance, executive order, letter of instruction, administrative order, rule and regulation contrary to or

inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly.

SEC. 21. **Separability Clause.** - If any provision of this Act is held invalid or unconstitutional, the other provisions not affected hereby shall remain valid and subsisting.

SEC. 22. **Effectivity Clause.** - This Act shall take effect fifteen (15) days following its complete publication in two (2) newspapers of general circulation or in the Official Gazette.

Approved,