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SENATE

S.B. NO. 1658

RECEIVED BY:

Introduced by Senator Ramon Bong Revilla, Jr.

**AN ACT
CREATING THE OFFICE OF TANODBATA AND PROVIDING FUNDS THEREFOR**

EXPLANATORY NOTE

The State is duty bound as "*parens patriae*" or as the "father of our country" to protect the children who populate the country which it governs. The term "children" refers to those below eighteen (18) years old or older but are incapable of taking care of themselves or protect themselves from abuse, neglect, or cruelty, exploitation or discrimination because of a physical or mental disability or condition. It is therefore, the fundamental policy of the State to promote and protect their welfare.

In line with this mandate, the Congress has passed numerous laws to shield children from the oppressions which this world presents. The Judiciary, on the other hand, adheres to the principle of giving the highest priority to the best interest of children when it comes to litigation which affects them. Hence, children's testimonies are given high regard. Thus, the Supreme Court in *People v. Tamayo*¹, affirmed the decision of the Court of Appeals convicting Tamayo guilty of raping an 18-year old, as it gave more weight to the victim's statement. It reasoned that since the State, as *parens patriae*, is under the obligation to minimize the risk of harm to those who, because of their minority, are not yet able to fully protect themselves, it should lend credence to the testimony of the victim of tender years. Also, children below the age of criminality are presumed to have acted without discernment and this incapable of contributory negligence or are exempt from criminal liability. Judge Sangco in his book, *Philippine Law on Torts and Damages*, enlightens us on the matter:

In our jurisdiction, a person under nine years of age is conclusively presumed to have acted without discernment, and is, on that account, exempt from criminal liability. The same presumption and a like exemption from criminal liability obtains in a case of a person over nine and under fifteen years of age, unless it is shown that he has acted with discernment. Since negligence may be a felony and a quasi-delict and required discernment as a condition of liability, either criminal or civil, a

¹ *People v. Tamayo*, GR 86162, Sept 17, 1993

child under nine years of age is, by analogy, conclusively presumed to be incapable of negligence; and that the presumption of lack of discernment or incapacity for negligence in the case of a child over nine but under fifteen years of age is a rebuttable one, under our law. The rule, therefore, is that a child under nine years of age must be conclusively presumed incapable of contributory negligence as a matter of law²."

However, in spite of the presence of various legislation and jurisprudence, the children of our country remain victims of despotism and exploitation. It is for this reason that the establishment of the Office of the Tanodbata is sought.

This bill was first filed by Senator Juan Flavio Velasco in 2004. He envisioned it to be an independent body, which exclusively pursued and ensured the successful prosecution of perpetrators. The bill mentions the situation where the accused goes "scot-free" because the complainant is forced to abandon the case due to financial restraints. Albeit not an independent office, the Tanodbata is imbued with powers to effectively prosecute and even defend a child involved in a case. It is created under the wing of the Department of Social Welfare and Development (DSWD) to aid its operation.

In consideration of the foregoing, the immediate passage of this measure is sought.


RAMON BONG REVILLA, JR. 

² Philippine Law on Torts and Damages by Judge Sangco, pp. 70-71 (1993).

NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



Senate
Office of the Secretary

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Introduced by SENATOR RAMON BONG REVILLA, JR.

**AN ACT
CREATING THE OFFICE OF TANODBATA AND PROVIDING FUNDS THEREFOR**

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

1 Section 1. *Short Title.* This Act shall be known as the "Tanodbata Act."

2 Sec. 2. *Declaration of Policy.* It is hereby declared the policy of the State as
3 'Parens Patriae' of the Filipino people, particularly of the Filipino children, to provide
4 not only special protection to children from all forms of abuse, neglect, cruelty,
5 exploitation and discrimination, and other conditions prejudicial to their development
6 but also to ensure the prosecution and conviction of perpetrators of child abuse,
7 exploitation and discrimination. The State shall intervene and initiate criminal
8 complaints on behalf of the child when the parent, guardian, teacher or person having
9 care or custody of the child fails or is unable to initiate and/or pursue the prosecution
10 for child abuse and exploitation.

11 Sec. 3. *Definition of Terms.* As used in this Act, the following terms shall mean:

12 (a) "Children" refers to those below eighteen (18) years of age or older but are
13 incapable of taking care of themselves or protect themselves from abuse, neglect,
14 cruelty, exploitation or discrimination because of a physical or mental disability or
15 condition;

16 (b) "Child in Conflict with the Law (CICL)" refers to a child who is alleged as,
17 accused of, or adjudged as, having committed an offense under Philippine laws;

18 (c) "Office" means the Office of the Tanodbata;

1 (d) "Child Abuse" refers to any act or omission as defined and penalized by
2 Republic Act No. 7610, otherwise known as the "Special Protection of Children Against
3 Child Abuse, Exploitation and Discrimination Act," and/or crimes against children,
4 including the conceived but unborn child as provided for by the Revised Penal Code
5 and other pertinent laws.

6 Sec. 4. *The Office of the Tanodbata.* The independent office of the Tanodbata
7 is hereby created, composed of the Chief Tanodbata and four (4) Tanodbata Deputies
8 who shall be appointed by the President. The Office shall be under the Department of
9 Social Welfare and Development (DSWD).

10 The Chief Tanodbata shall have the rank and receive the salary of an associate
11 justice of the Court of Appeals (CA) while, the deputies shall have the rank and receive
12 the salary of a judge of the Regional Trial Court (RTC).

13 Sec. 5. *Qualifications.* The Chief Tanodbata and his deputies shall be natural-
14 born citizens of the Philippines, and at the same time of their appointment, at least
15 thirty-five (35) years old, of recognized probity and independence, members of the
16 Philippine Bar and have proven expertise and experience in youth-related cases. One
17 Tanodbata Deputy must come from Luzon, one from Visayas, one from Mindanao and
18 one at large. They must have been engaged in the practice of law in the Philippines
19 for at least five (5) years and shall not have been actively involved in partisan politics.

20 Sec. 6. *Disqualification.* The Chief Tanodbata and his Deputies shall not, during
21 their tenure in office, engage in the practice of any profession or in the management
22 of any business, or be financially interested directly or indirectly in any contract with
23 or in any franchise or privilege granted by the Government or any subdivision, agency,
24 or instrumentality thereof including government-owned and/or controlled
25 corporations.

26 Sec. 7. *Powers, Duties and Functions of the Chief Tanodbata and Deputies.*

27 (a) The Chief Tanodbata and his Deputies shall have the power to intervene in
28 any case or file a petition as third-party complainant in any civil case
29 involving children with the sole purpose of ensuring their well-being. This
30 includes cases to protect the conceived and the unborn.

31 (b) The Office shall have the power to look into confidential records of a child
32 concerned in any civil or criminal case.

1 (c) The Office shall have the power to investigate and procure evidence to use
2 in any civil or criminal case it has pursued. It shall also be empowered to
3 issue subpoena to compel any person to appear, give sworn
4 statement/testimony, or produce documentary or other evidence which the
5 Office deems relevant to a matter under his inquiry.

6 (d) The Chief Tanodbata and his Deputies shall have *locus standi* to file a
7 petition before the Supreme Court of the Philippines in cases involving the
8 constitutionality of any legislation that involves children.

9 (e) The Chief Tanodbata and his Deputies shall have the power to receive a
10 CICL released on recognizance.

11 (f) The Office shall prepare and present to the President and Congress an
12 annual report on its accomplishments, disposition of cases, other relevant
13 funds, problems and obstacles encountered, financial and other
14 administrative information as well as its insights and recommendations,
15 when clearly in the public interest, subject to law and regulations relating
16 to protection of witness, the rights of the victim, the collateral rights of the
17 accused and his/her defense, sound prosecution practice and proper
18 administration of justice.

19 (g) The Office shall propose measures which can strengthen children's safety
20 under the law.

21 (h) The Office shall conduct research and gather information for statistics
22 regarding children which shall be published yearly.

23 Sec. 8. *Term of Office.* The Chief Tanodbata shall have a term of six (6) years.
24 The Tanodbata Deputies shall each have a term of three (3) years. In no case shall
25 the Chief Tanodbata or his Deputies be allowed to serve more than 2 consecutive
26 terms.

27 Sec. 9. *Organization of Office.* The Office shall have one (1) Executive Director
28 and an Administrative Officer, a Finance, Management and Planning Office, a Legal
29 Office and an Investigation and Prosecution Office.

30 The Executive Director shall have the rank of a judge of the Metropolitan Trial
31 Court and shall receive the same salary. Each of the aforesaid offices shall be headed

1 by a Director which shall have the rank and receive the salary of a Clerk of Court of
2 the Regional Trial Courts.

3 The Investigation and Prosecution Office shall, aside from the Director, have
4 three (3) special prosecutors and three (3) investigators; or one (1) special prosecutor
5 and one (1) investigator for Luzon, Visayas and Mindanao. The Special Prosecutors
6 shall have the rank and receive compensation equivalent to that of an Assistant City
7 prosecutor (Assistant Fiscal); while the investigators shall have the rank and receive
8 the salary of a Regional Trial Court Assistant Sheriff.

9 The Legal Office shall, aside from the Director, have three (3) Legal Officers or
10 one (1) each for Luzon, Visayas and Mindanao. They shall also have the rank and
11 receive salary equivalent to an Assistant City Prosecutor.

12 The Administrative Office shall consist of the General Services Division and
13 Personnel Division.

14 The Finance, Management and Planning Office shall consist of the Budget
15 Division, Accounting Division and Management Planning Division.

16 All these officials shall be appointed by the President upon recommendation of
17 the Chief Tanodbata. The Chief Tanodbata may also select, appoint, and compensate
18 in accordance with law and within the amount available by appropriation, such other
19 assistants and employees as may be necessary to discharge the responsibilities of the
20 Office under this law.

21 When the Chief Tanodbata is physically-challenged or absent and so notifies
22 the office, the Senior Deputy Tanodbata shall have the authority to act on the former's
23 stead.

24 The Chief Tanodbata may delegate to other members of his staff any of his
25 authority or duties under this law, except his power of decision in all cases and duty
26 of formally making recommendations to administrative agencies or reports to the
27 President or to Congress.

28 Sec. 11. *Duty to Render Assistance to the Office of the Tanodbata.* Any public
29 official or employee, when called upon or required by the Office, is duty bound to
30 render assistance to the Office, otherwise said public official or employee shall be
31 subject to administrative disciplinary action.

1 Sec. 12. *Obstruction.* Any person who shall willfully obstruct or hinder the
2 proper exercise of the office's functions or who shall, after due hearing, be punished
3 with a fine not exceeding FIFTEEN THOUSAND PESOS (P15,000) without prejudice to
4 any criminal or other administrative liability.

5 Sec. 13. *Implementing Rules and Regulations (IRR).* The Department of Social
6 Welfare and Development (DSWD) shall formulate the rules and regulations within
7 ninety (90) days upon the approval of this Act.

8 Sec. 14. *Appropriations.* The amount of FIFTEEN MILLION PESOS
9 (P15,000,000) is hereby authorized to be appropriated equally from the savings of the
10 Department of Justice (DOJ), Department of Social Welfare and Development (DSWD)
11 and from the Office of the President as the initial amount to implement the provisions
12 of tis Act.

13 Thereafter a regular appropriation shall be included in the annual General
14 Appropriations Act for the support and maintenance of the Office.

15 Sec. 15. *Separability Clause.* – If any provision or part hereof is held invalid or
16 unconstitutional, the remainder of the law or the provision or part not otherwise
17 affected thereby shall remain in full force and effect.

18 Sec. 16. *Repealing Clause.* – Any law, presidential decree or issuance, executive
19 order, letter of instruction, administrative order, rule, or regulation contrary to, or
20 inconsistent with, the provisions of this Act are hereby repealed, modified, or amended
21 accordingly.

22 Sec. 17. *Effectivity.* – This Act shall take effect fifteen (15) days after its
23 publication either in the *Official Gazette* or in a newspaper of general circulation.

Approved,