

SENATE  
S.B. No. 2012

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Introduced by Senator Loren Legarda

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### EXPLANATORY NOTE

Article XV, Section 3 (2) of the 1987 Constitution provides that it is the duty 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.

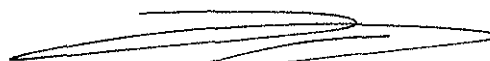
Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, mandates that the declaration of abandonment of children shall be secured by virtue of a judicial order. Unfortunately, the actively adversarial judicial process in a Family Court requiring the sending of summons and obtaining testimony of birth and prospective adoptive parents takes about three years. This long-drawn-out process poses a judicial obstacle hampering development of infants in a functional home environment.

Thus, this bill addresses the urgent need to provide a system that facilitates early placement of abandoned children for adoption. The salient features of this bill are as follows:

- (1) Transferring the resolution of declaration of abandonment cases to the Department of Social Welfare and Development (DSWD), changing the nature of this proceeding to a quasi-judicial one;
- (2) Mandating that the certification to be issued by DSWD declaring adoptee legally available for adoption as a prerequisite to all adoption proceedings, domestic and inter-country alike; and
- (3) Shortening the six (6) month period defined in the Child and Youth Welfare Code before the child may be considered abandoned to three (3) months.

This bill seeks to protect and assist abandoned children by expediting the process of declaring a child abandoned, thus, providing a more facilitative administrative proceeding that meets the child's best interests.

In view of the foregoing, passage of this bill is earnestly sought.



**LOREN LEGARDA**  
Senator

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Introduced by Senator Loren Legarda

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AN ACT REQUIRING CERTIFICATION OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT TO DECLARE A "CHILD LEGALLY AVAILABLE FOR ADOPTION" AS A PREREQUISITE FOR ADOPTION PROCEEDINGS, AMENDING FOR THIS PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 8552, ALSO KNOWN AS THE DOMESTIC ADOPTION LAW, REPUBLIC ACT NO. 8043, ALSO KNOWN AS THE INTER-COUNTRY ADOPTION ACT AND PRESIDENTIAL DECREE NO. 603, ALSO KNOWN AS THE CHILD AND YOUTH WELFARE CODE

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

**SECTION 1. Declaration of Policy.** - It is hereby declared the policy of the State that alternative protection and assistance shall be afforded to every child who is surrendered, abandoned or neglected. In this regard, the State shall extend such assistance in the most expeditious manner in the best interest of the child

**SECTION 2. Definition of Terms.** - As used in this Act, the following terms shall mean:

- (a) "Child" refers to a person below eighteen (18) years of age or over but is unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation or discrimination because of physical or mental disability or condition.
- (b) "Abandoned Child" refers to a child who has no proper parental care or guardianship, or whose parents have deserted him or her for a period of at least three continuous months.
- (c) "Neglected child" refers to a child whose basic needs have been deliberately unattended or inadequately attended. Neglect may occur in two ways:
  - (1) There is physical neglect when the child is malnourished, ill clad and without proper shelter. A child is unattended when left by

himself without provisions for his needs or without proper supervision; and

- (2) Emotional neglect exists when the child is maltreated, raped or seduced, exploited, overworked or made to work under conditions not conducive to good health; made to beg in the streets or public places, or in moral danger, exposed to gambling, prostitution and other vices.
- (d) "Voluntary committed child" refers to a child whose parent, guardian or any relative having custody over him knowingly and willfully relinquishes parental authority to the Department of Social Welfare and Development (DSWD).
- (e) "Child legally available for adoption" refers to a child in whose favor certification was issued by the DSWD that he is legally available for adoption after that the fact of abandonment or neglect has been proven through the submission of pertinent documents, or one who was voluntarily committed.
- (f) "Child caring agency" refers to a duly licensed and accredited agency by the DSWD that provides twenty-four (24) hour residential care services for abandoned, orphaned, neglected or voluntarily committed children.
- (g) "Child placing agency" refers to an institution licensed by the DSWD to assume the care, custody, protection and maintenance of children for purposes of adoption, guardianship or foster care.
- (h) "Petitioner" refers to any child caring agency or child placing agency or any other person who files a petition for certification to declare a surrendered, abandoned, or neglected child in his custody legally available for adoption.
- (i) "Secretary" refers to the Secretary of the DSWD or his duly authorized representative.

**SECTION 3. *Petition.*** - For abandoned and neglected children, petitioner shall file a petition with the DSWD for certification that a child in his custody is legally available. The petition shall be in the form of a duly notarized affidavit. It shall contain facts necessary to establish the merits of the petition and shall state the circumstance surrounding the abandonment and neglect of the child. The petition shall be supported by the following documents:

- (a) Case study made by a licensed social worker of the local government unit or the DSWD or licensed and accredited child caring agencies or child placing agency charged with the custody of the child;
- (b) Proof that efforts were made to locate the parents or any known relatives of the child. The following shall be considered sufficient proof:
  - (1) Written certification from a radio or television station that the case was aired on three different radio stations;
  - (2) Publication in two newspaper of general circulations;
  - (3) Returned registered mail to the last known address of the parents or known relatives if applicable;
  - (4) Police or barangay report;
  - (5) Birth certificate or foundling certificate; and
  - (6) Recent photograph of the child.

The petition shall be filed in the Regional Office of the DSWD where the child was found or abandoned.

The Regional Director shall act on the same and shall render to recommendation not later than five (5) working days from receipt thereof. He shall transmit a copy of his recommendation and records to the Office of the Secretary of the DSWD within five (5) working days from the date of the recommendation.

The Secretary shall review the petition and the supporting documents. Upon finding the merit in the petition, he shall issue a certification declaring the child legally available for adoption with ten (10) working days from the receipt of the recommendation.

The decision of the Secretary shall be appealable to the regular courts: Provided, that the child has not been placed for adoption.

**SECTION 4. *Voluntary Commitment.*** - In case of voluntary commitment, the certification declaring the child legally free for adoption shall be issued by the Secretary within ten (10) days from the receipt of the Deed of Voluntary Commitment (DVC) and other supporting documents. The DVC shall be submitted to the office of the Secretary only after the completion of the three (3) months prescriptive period following its signing by the parent, guardian or any relative having custody of the child.

Any petition for restoration of parental authority may be filed by the parent, guardian or any relative with the DSWD or child caring or child placing agency having custody of the child within three months after the signing of the DVC.

**SECTION 5. *Certification.*** - The certification that a child is legally available for adoption issued by the DSWD shall be considered a prerequisite in all adoption proceedings. For all intents and purposes, it shall be the primary evidence that the child is legally available in a domestic adoption proceeding, as provided in Republic Act No. 8552 and in an inter-country adoption proceeding, as provided in Republic Act No. 8043.

**SECTION 6. *Implementing Rules and Regulations.*** - The DSWD, together with the Council for the Welfare of Children, the National Statistics Office and two private individuals representing child placing and child caring agencies, is hereby tasked to draft the implementing rules and regulations of this Act within sixty (60) days following its effectivity.

**SECTION 7. *Penalty.*** - The penalty of Fifty Thousand Pesos (P 50,000.00) but not more than Two Hundred Thousand Pesos (P 200,000.00) shall be imposed on any person who shall place out a child for adoption or any form of alternative home placement without a DSWD certification that the child is legally available for adoption.

Any agency found violating any provision of this Act shall cause the revocation of its license to operate without prejudice to the criminal prosecution of its officers and employees.

**SECTION 8. *Repealing Clause.*** - Section 2(c)(iii), 3(e), (h) and 8 (a) of Republic Act 8552, Section 3(f) of Republic Act No. 8043, Title VIII, Chapter 1 of Presidential Decree No. 603 and any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with the provisions of this Act are hereby repealed, modified or amended accordingly.

**SECTION 9. *Separability Clause.*** - If any provision or part hereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

**SECTION 10. *Effectivity Clause.*** - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,