

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

8 MAY 28 1970

SENATE

RECEIVED BY: 

S. No. 2346

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Introduced by Senator Manny Villar

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### EXPLANATORY NOTE

This bill seeks to strengthen and propagate foster care for abused, abandoned, neglected and other children with special needs so that they will be provided with alternative family care.

It cannot be denied that in our society, there are individuals and families in crisis situations. And while indeed parents are responsible for providing their children with the proper environment for them to grow up as upright individuals and responsible citizens, those placed in crisis situations could not and fail to fulfill this responsibility, thus giving rise to abandoned and neglected children. The situation is worse for abused who are physically and/or sexually abused. Only timely and proper social intervention can address the problem and here, foster caring is a strong alternative.

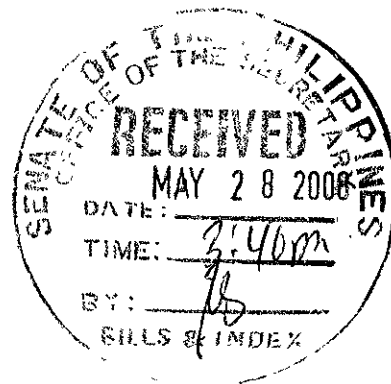
This bill then seeks to provide a comprehensive legal framework within which the welfare and interests of those needing foster care and those who can provide it can be harmonized. This is to give flesh to the Constitutional mandate for the State to provide social protection to children and youth.

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

  
MANNY VILLAR

SENATE

S.No. 2346



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Introduced by Senator Manny Villar

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**AN ACT TO STRENGTHEN AND PROPAGATE FOSTER CARE FOR ABUSED, ABANDONED, NEGLECTED AND OTHER CHILDREN WITH SPECIAL NEEDS, PROVIDING APPROPRIATIONS THEREFOR AND FOR OTHER PURPOSES**

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

SECTION 1. Title. —This Act shall be known as the "Foster Care Act of 2008".

SEC. 2. Declaration of Policy. -- Article XV of the Constitution 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, under socio-cultural difficulties and with special needs 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 to 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-caring or child-placing institution licensed and accredited by the Department of Social Welfare and Development (DSWP) to implement the foster care program.

- b) "Child" refers to a person below eighteen (18) years of age, or one who is over but is unable to fully take care of 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 developmental and/or physical disability.
- e) "Foster Care" refers to the provision of planned temporary substitute parental care to a child by a foster parent.
- f) "Foster Child" refers to a child placed under foster care.
- g) "Foster Family Care License" refers to the document issued by the DSWD, authorizing the foster parent to provide foster care.
- h) "Foster Parent" refers to a person duly licensed by the DSWD to provide foster care to a child.
- i) "Foster Placement Authority" refers to the document issued by the DSWD, authorizing the placement of a particular child with a foster parent.
- j) "Home Study Report" refers to a written report prepared by a social worker containing the necessary information on a prospective foster parent/ family member.
- k) "Matching" refers to the judicious pairing of a child with foster parents and family members based on the capacity and commitment of the foster parents to meet the individual needs of the child and the capacity of the child to benefit from the placement.
- l) "Parents" refers to the biological or adoptive parents or guardians.
- m) "Placement" refers to the physical transfer of the child to the foster parent.
- n) "Social Worker" refers to the registered and licensed social worker of the DSWD, Local Government Unit (LGU), or agency.

## ARTICLE II ELIGIBILITY

SEC. 4. *Who May Be Placed Under Foster Care.* A child may be placed under 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 special needs;
- d) Child whose parents are temporarily or permanently unable to provide him/her 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 socio-legal difficulties, such as, but not limited to, street child, child in armed conflict, one who is a victim of child labor or trafficking, and child whose family and/or himself/herself is affected by HIV/AIDS; 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 care.

SEC. 5. Who May Be a Foster Parent: — Any applicant who meets all the following qualifications may be a foster parent:

- a) Must be of legal age;
- b) Must have a genuine interest, capacity, and commitment in parenting 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;
- e) Must be physically and mentally capable and emotionally mature;
- f) Must have sufficient resources to provide for the family's needs; and
- g) 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/s. An alien possessing the above-stated qualifications and has resided in the Philippines for at least six (6) continuous months and will continue to stay in the country for the duration of the foster placement may qualify as a foster parent.

### ARTICLE III PROCEDURE

SEC. 6. Recruitment and Development of Foster Parent. Social workers shall reach out to communities to recruit and develop applicants for foster care.

SEC. 7. Issuance of License. — The DSWD shall issue a license to applicant foster parents after determining their motivation, capacities and

potentials for development on the basis of a home study report submitted by an agency or LOU concerned. The licensed is renewable unless earlier revoked by the DSWD.

SEC. 8. Matching. — matching shall be done by the agency/les or LOU concerned 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 said foster parent' 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 has been issued, except in emergency cases when the life of the child is in danger or at risk due to natural or manmade disasters. The DSWD shall issue the Foster Placement Authority within five (5) working days from submission of application thereof Otherwise, the application for a Foster Placement Authority shall be deemed approved after the lapse of said period without express or written denial thereof

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

During tile 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 ease of injury of death of a foster child or if he/she runs away or gets lost, such incident shall be reported immediately to the agency which, in turn, shall 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 of LOU.

#### 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 998", or Republic Act No. 8043, Otherwise known as the "Inter-Country Adoption Act of 1995", as the case may be;
- b) The foster child has not yet been matched for adoption;
- c) The trial custody, as required in adoption, may be waived by The DSWD: Provided, that a harmonious relationship exists between the child and his/her foster parents and family members; and
- d) For purposes of this Act, the procedure for adoption shall be governed by Republic Act No. 8552 or Republic Act No. 8043, as the case may be.

ARTICLE V  
ASSISTANCE TO FOSTER PARENTS

SEC. 13. Foster Child Subsidy. — A foster child shall be given a monthly subsidy b" the LGU with augmentation from the DSWD.

SEC. 14. Assistance and Incentives to Foster Parent — Foster parents shall be entitled to the following assistance and tax incentives:

(a) Support Care Services — The DSWD, the social service unit of the LGU or the agency 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.

(b) 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 personal exemption under the provision of Section 3 5(A) of the National Internal Revenue Code (NIRC) of W97.

(c) Additional Exemption for Dependents — For purposes of claiming the additional exemption of foster parent/s for each dependent not exceeding four, the definition of the term "dependent" under Section 35(8) 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.

*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 years to the exclusion of the parents and other foster parents of the child, if any. The DSWD shall issue a tax exemption certificate for this purpose.*

SEC. 15. Incentives to Agency — The agency shall be entitled to the following tax incentives:

(a) Exemption from Income Tax — The agency, which must be a DSWD accredited non-government organization (NGO), shall be exempt froth income tax on the income derived by it as such organization under the provision of Section 30 of the Tax Code, as implemented by Revenue Regulations (RR) No. 13-98.

(b) Qualification as a Donee Institution — The agency can also apply for qualification as a donee institution entitled to receive donations from donors.

SEC. 16. Incentives to Donor — The donor to an accredited NGO shall be entitled to the following:

(a) Full deductibility from the gross income of the donor of the amount donated subject to the conditions provided for under Section 34 (112c) of the Tax Code of 1997, otherwise, the donor shall only be entitled to a limited deduction in an amount in excess often percent (10%) in the case of an individual engaged in business or in the practice of a profession and five percent (5%) in the case of a corporation.

(b) Exemption from donor's tax subject to the provisions of Section 01 (A3) and (B2) of the Tax Code Provided, that not more than thirty percent (30%) of the amount of donations shall be used by such donee for administrative purposes

## ARTICLE VI PENALTIIES

SEC. 17. Penalties. — (a) Any person found to be committing any act of neglect, abuse, cruelty, exploitation or other similar acts prejudicial to the foster child's development shall be penalized in accordance with Republic Act No; 7610, as amended, 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 who violates any provision of this Act shall be penalized with imprisonment of not less than three months but not more than, three 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) Any agency which violates any provision of this Act and its implementing rules and regulations shall be penalized as follows:

(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 the revocation of its license to operate.

(d) If the offender is a public official, the court may impose the additional penalty of disqualification from office in addition to the penalties provided in the preceding paragraph.

## ARTICLE VII FINAL PROVISION

SEC. 18. 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 on 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 and other matters concerning foster care and the child's welfare; and

(d) Perform such other functions and duties as may be prescribed by the DSWD.

SEC. 19. Appropriations. The amount necessary to carry out the provision of this Act shall included in the General Appropriations Act of the year following its enactment into law and thereafter. An initial amount of Twenty Million Pesos (P20,000,000.00) shall be allocated for the first year of its operations. Such sum shall be in the allocation for the child-related programs of the DSWD.

SEC. 20. Implementing Rules and Regulations. — The DSWD as lead agency, the Department of the Interior and Local Government, the Department of Justice, the Department of Health, the Council for the Welfare of Children, and other concerned government agencies, in consultation with accredited child-caring institutions and organizations with foster care programs and both Houses of Congress, are, hereby mandated to draft the implementing rules and regulations to operationalize the provisions of this Act within three months from its effectivity.

SEC. 21. 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. 22. Separability (7ause. — If any provision of this Act is held invalid or unconstitutional, the other provisions not affected thereby shall remain valid and subsisting.

SEC. 23. Effectivity Clause. — This act shall take effect fifteen (15) days following its publication in two newspapers of general circulation or in the Official Gazette

Approved,