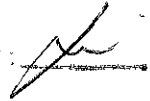


SENATE

S.B. No. **2486**

(In substitution of Senate Bill Nos. 680 and 1080)

RECEIVED BY: 

Prepared jointly by the Committees on Youth, Women and Family Relations, Social Justice, Welfare and Rural Development, Ways and Means and Finance with Senators Ejercito-Estrada, Villar, Cayetano (P.), Pangilinan, Recto, and Drilon as authors

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 House of Representatives of the Philippines in Congress assembled:

ARTICLE 1

GENERAL PROVISIONS

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4 SECTION 1. *Title.* – This Act shall be known as the “*Foster Care Act*
5 *of 2010*”.

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7 SECTION 2. *Declaration of Policy.* – Article XV of the Constitution
8 provides that the State shall defend the right of children to assistance,
9 including proper care and nutrition, and special protection from all forms of
10 neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their
11 development. It is hereby declared the policy of the State to provide every

1 Child who is abused, neglected, surrendered, dependent, abandoned or with
2 *developmental or physical disability with an alternative family that will provide*
3 *love and care as well as opportunities for growth and development.*

4
5 The State shall guarantee that all the rights of the Child enumerated
6 under Article 3 of Presidential Decree No. 603 otherwise known as "The Child
7 and Youth Welfare Code", as amended, and the rights found under Article 20
8 of the United Nations Convention on the Rights of the Child, shall be
9 observed.

10
11 The State recognizes that in most cases, a Child will benefit more from
12 Foster Care than institutional care. Towards this end, the State shall
13 systematize and enhance the Foster Care program in the country. It shall
14 ensure that the foster family shall provide a wholesome atmosphere for the
15 foster Child. Further to this end, the State recognizes that Foster Care is an
16 important step towards the Child's return and reintegration to his biological
17 parents or placement with an adoptive family.

18
19 The State shall also protect the rights of the biological child of the
20 *foster family and ensure that in no case shall he be disadvantaged as a result*
21 *of the placement of the foster Child.*

22
23 In all cases, the Child's right to health should be upheld and protected.
24

1 **SECTION 3. *Definition of Terms.*** – For purposes of this Act, the
2 following terms are defined as:

3
4 “Agency” refers to any child-caring or child-placing institution licensed
5 and accredited by the Department of Social Welfare and Development
6 (DSWD) to implement the Foster Care program;

7
8 “Child” refers to a person below eighteen (18) years of age, or one who
9 is over eighteen (18) years, but is unable to fully take care of, or protect,
10 himself from abuse, neglect, cruelty, exploitation or discrimination because of
11 a physical or mental disability or condition;

12
13 “Child Case Study Report” refers to a written report prepared by a
14 Social Worker containing all the necessary information about a Child;

15
16 “Child With Special Needs” refers to a Child with physical or mental
17 disability or condition;

18
19 “Family” refers to the Parents and relatives of the Child within the fourth
20 (4th) degree of consanguinity or affinity, including, but not limited to, the
21 Child’s ascendants, uncles, aunts, brothers and sisters;

22
23 “Foster Care” refers to the provision of planned temporary substitute
24 parental care to a Child by a Foster Parent;

25

1 "Foster Family Care License" refers to the document issued by the
2 DSWD authorizing the Foster Parent to provide Foster Care;

3
4 "Foster Parent" refers to a person, duly licensed by the DSWD, to
5 provide Foster Care to a Child;

6
7 "Foster Placement Authority" refers to the document issued by the
8 DSWD authorizing the placement of a particular Child with the Foster Parent;

9
10 "Home Study Report" refers to a written report prepared by a Social
11 Worker containing the necessary information about a prospective parent or
12 family member;

13
14 "Matching" refers to the judicious pairing of a Child with a Foster Parent
15 and family members based on the capacity or commitment of the Foster
16 Parent to meet the individual needs of a particular Child and the capacity of
17 the Child to benefit from the Placement;

18
19 "Parents" refer to the biological or adoptive parents or legal guardian;

20
21 "Placement" refers to the physical transfer of the Child with the Foster
22 Parent; and

23
24 "Social Worker" refers to the registered or licensed Social Worker of
25 the DSWD, Local Government Unit (LGU) or Agency.

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ARTICLE III
ELIGIBILITY

SECTION 4. *Who May Be Placed in Foster Care.* – The following may be placed in Foster Care:

a) A Child who is abandoned, surrendered, neglected, dependent or orphaned;

b) A Child who is a victim of sexual, physical, or any other form of abuse or exploitation;

c) A Child with development and/or physical disability;

d) A Child whose Family members are temporarily or permanently unable to provide the child with adequate care;

e) A Child awaiting adoptive placement and who would have to be prepared for family life;

f) A Child whose adoption has been disrupted;

1 g) A Child who needs long-term care and close family ties but who
2 cannot be placed for adoption;

3
4 h) A Child under social difficulties such as, but not limited to, street
5 child, child in armed conflict and those who are victims of child labor or
6 trafficking;

7
8 i) A Child who committed a minor offense but is released on
9 recognizance, or who is in custody supervision or whose case is dismissed;
10 and

11
12 j) A Child who is in need of special protection, as assessed by a Social
13 Worker, an Agency or the DSWD.

14
15 *Provided*, that in the case of b, c, g, h, i and j, the Child must have no
16 Family willing and capable of caring and providing for him.

17
18 **SECTION 5. *Who May Be A Foster Parent.*** – An applicant who
19 meets all of the following qualifications may be a Foster Parent:

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21 a) Must be of legal age;

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23 b) Must have good moral character, emotional maturity, be physically
24 and mentally capable and whose resources are able to provide for the family's
25 needs;

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c) Must have a healthy and harmonious relationship with each family member;

d) Must have a genuine interest, capacity and commitment in parenting and is able to provide a family atmosphere for the Child; and

e) Must be willing to be trained to further hone his knowledge, attitudes and skills in caring for a Child.

Provided, that in determining who is the best suited Foster Parent, the relatives of the Child shall be given priority, so long as they meet the above qualifications.

Provided further, that an alien possessing the above qualifications and who has resided in the Philippines for at least six (6) months may qualify as a Foster Parent.

ARTICLE III
PROCEDURE

SECTION 6. Recruitment and Development of Foster Parents. – To recruit applications for Foster Care, the DSWD shall reach out to various

1 communities and LGUs and work specifically with the Local Council for the
2 Protection of Children (LCPC).

3

4 **SECTION 7. *Submission of Home Study Report.*** – The Social
5 Worker shall make a detailed Home Study Report of an applicant's
6 background and circumstances, carried out in a series of planned visits and
7 interviews, in order to determine if the applicant meets the basic requirements
8 for Foster Care and is suitable to become a Foster Parent.

9

10 **SECTION 8. *Issuance of License.*** – The DSWD shall issue a Foster
11 Family Care License based on the Home Study Report submitted by the
12 Agency to determine the motivations, capacities and potentials for
13 development of applicants. The license is renewable every three (3) years
14 unless earlier revoked by the DSWD.

15

16 **SECTION 9. *Matching.*** – Matching shall be done by the Agency only
17 after the child case study and the home study have been conducted. The
18 Child Case Study Report shall establish the needs of the Child for
19 consideration in the selection of the Foster Parent. Likewise, the Home Study
20 Report shall establish the Foster Parent's capacity and resources to provide a
21 safe, secure and loving home to the Child.

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23 **SECTION 10. *Placement.*** – The physical transfer of the Child to the
24 Foster Parent shall be allowed only after the Foster Placement Authority
25 (FPA) has been issued.

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SECTION 11. *Supervision of Foster Placement.* – Supervised foster Placement begins as soon as the Foster Parent receives the Child into his 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 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.

SECTION 12. *Termination of Placement.* – Termination of Placement shall be done by the DSWD upon recommendation of the Agency.

ARTICLE IV
ADOPTION OF FOSTER CHILD

SECTION 13. *Conditions.* – A Foster Parent may adopt his Foster Child subject to 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

1 1998” or Republic Act No 8043, otherwise known as the “Inter-Country
2 Adoption Act of 1995,” as the case may be;

3

4 b) The trial custody, as required in adoption, may be waived; *Provided*,
5 that the harmonious relationship exists between the Child and his Foster
6 Parent and family members; and

7

8 c) The *procedures for adoption*, for purposes of this Act, shall be
9 governed by Republic Act No. 8552 or Republic Act No. 8043, as the case
10 may be.

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ARTICLE V

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LOCAL GOVERNMENT UNITS

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16 **SECTION 14. *Role of Local Government Units.*** – LGUs shall
17 promote the Foster Care system in their respective territorial jurisdictions.

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19 **SECTION 15. *Funding.*** – In accordance with the Local Government
20 Code, LGUs shall primarily be responsible for social welfare services which
21 includes Foster Care programs. However, the National Government shall
22 provide financial support, priority being given to third (3rd), fourth (4th) and fifth
23 (5th) class municipalities.

24

1 **SECTION 16. *Seminars and Training.*** – The DSWD, in coordination
2 with the DILG, is hereby mandated to develop and provide programs to
3 ensure the awareness and responsiveness of local government officials in the
4 promotion and development of the Foster Care system in every city,
5 municipality or barangay.

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ARTICLE VI

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ASSISTANCE AND INCENTIVES

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11 **SECTION 17. *Assistance to a Foster Child.*** –

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13 a) Foster Child Subsidy. – A Foster Child, through the Agency, shall be
14 entitled to a monthly subsidy from the DSWD, subject to existing government
15 auditing rules and regulations. The subsidy is primarily aimed at supporting
16 the expenses of the Child to lessen the financial burden on the Foster Parent.
17 *Provided,* that support may be waived if the Foster Parent is capable of
18 supporting the foster Child.

19

20 b) Health Insurance. – A Foster Child shall automatically be a
21 PhilHealth beneficiary of his Foster Parent and as such, entitled to health
22 insurance benefits. If the Foster Parent is not a PhilHealth member, he must
23 seek enrollment with PhilHealth. LGUs and Agencies shall provide assistance
24 to the Foster Parents to ensure enrollment.

25

1 **SECTION 18. Assistance and Incentives to Foster Parent. –**

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3 a) Support Care Services. – The DSWD, the social service units of
4 LGUs and Agencies shall provide support care services to include, but not
5 limited to, counseling, visits, training on child care and development, respite
6 care, skills training and livelihood assistance.

7

8 b) Additional Exemption for Dependents. – For purposes of claiming
9 the P25,000.00 additional exemption for Foster Parents for each dependent
10 not exceeding (4) as provided for by Republic Act No. 9504, the definition of
11 the term "dependent" under Section 35 (B) of the National Internal Revenue
12 Code (NIRC) of 1997 shall be amended to include "Foster Child."

13

14 *Provided*, that all other conditions provided for under the aforesaid
15 section of the NIRC must be complied with.

16

17 *Provided further*, that this additional exemption shall be allowed only if
18 the period of Foster Care is at least a continuous period of one (1) taxable
19 year.

20

21 The foregoing provisions to the contrary notwithstanding, for purposes
22 of this section, only one Foster Parent can treat the Foster Child as a
23 dependent for a particular taxable year to the exclusion of the Parents and
24 other Foster Parents of the Child, if any.

25

1 **SECTION 19. *Incentives to Agencies.*** – Agencies shall be entitled
2 to the following tax incentives:

3

4 a) Exemption from Income Tax. – Agencies shall be exempt from
5 income tax on the income derived by it as such organization pursuant to
6 Section 30 of the NIRC of 1997, as implemented by Revenue Regulations
7 (RR) No. 13-98; and

8

9 b) Qualification as a Donee Institution. – Agencies can also apply for
10 qualification as a donee institution entitled to receive donations from donors.

11

12 **SECTION 20. *Incentives to Donors.*** – Donors of an Agency shall be
13 entitled to the following:

14

15 a) Allowable Deductions – Donors shall be granted allowable
16 deductions from its gross income to the extent of the amount donated to
17 Agencies in accordance with Section 34 (H) of the NIRC of 1997; and

18

19 b) Exemption from Donor's Tax – Donors shall be exempted from
20 donor's tax under Section 101 of the NIRC of 1997, provided that not more
21 than 30% of the amount of donations shall be spent for administrative
22 expenses.

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ARTICLE VII

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PENALTIES

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SECTION 21. 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) An Agency which violates Sections 9, 10, 11 or any other 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 Twenty Five Thousand Pesos (P25,000.00) but not exceeding Fifty Thousand Pesos (P50,000.00); and

2) For any subsequent violation, a fine of not less than Fifty Thousand Pesos (P50,000.00) but not exceeding One Hundred Thousand (P100,000.00), and revocation of its license to operate.

c) Any person, natural or juridical, other than the Foster Parent or an Agency, violating any provision of this Act and its Implementing Rules and Regulations shall be penalized with imprisonment of one (1) month to six (6)

1 years, depending on the gravity of the offense or a fine of not less than Ten
2 Thousand Pesos (P10,000.00) but not more than One Hundred Thousand
3 Pesos (P100,000.00), or both at the discretion of the court.

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ARTICLE VIII

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FINAL PROVISIONS

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SECTION 22. *Foster Care Committee.* – The Regional Child Welfare
10 Specialist Group of DSWD shall serve as the Foster Care Committee, which
11 shall have the following functions:

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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 Secretary of the DSWD and to Congress an annual
report of the policies, programs and activities relative to the implementation of
this Act;

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

SECTION 23. *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 operation. Such sum shall be intended to support the Foster Care programs of the DSWD and the Agencies.

SECTION 24. *Implementing Rules and Regulations.* – The DSWD, as lead agency, Department of Justice (DOJ), Department of Health (DOH), Bureau of Internal Revenue (BIR), Council of the Welfare of Children, the Department of Interior and Local Government (DILG) and other concerned government agencies, in consultation with Agencies 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.

SECTION 25. *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.

1 **SECTION 26. *Separability Clause.*** – If any provision of this Act is
2 held invalid or unconstitutional, the other provisions not affected hereby shall
3 remain valid and subsisting.

4

5 **SECTION 27. *Effectivity Clause.*** – This Act shall take effect fifteen
6 (15) days following its complete publication in two (2) newspapers of general
7 circulation or in the Official Gazette.

8

9 *Approved,*