

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Thirteenth Congress

First Regular Session

House Bill No. 515

Introduced by HONORABLE DARLENE R. ANTONINO-CUSTODIO

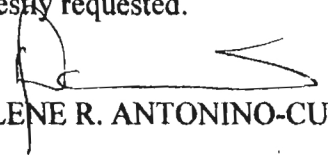
EXPLANATORY NOTE

The proposed Foster Care Act is a comprehensive legal framework under which every abused, neglected, surrendered, dependent and abandoned child can be provided with an alternative family. It seeks to systemize and enhance foster care in the country.

The bill guarantees rights to children in foster care under "The Child and Youth Welfare Code" as well as international conventions of which the Philippines is a signatory.

To encourage foster care, the bill provides for such incentives as, a monthly subsidy from DSWD for the foster child, PhilHealth membership as a dependent, Personal exemption for the foster parent under the National Internal Revenue Code, exemption from income tax for the foster care agency accredited by the Department of Social Welfare and Development, and full exemption on donations made by persons to foster agencies.

In view thereof, approval of this bill is earnestly requested.


DARLENE R. ANTONINO-CUSTODIO

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

13th Congress

First Regular Session

House Bill No. 515

Introduced by HONORABLE DARLENE R. ANTONINO-CUSTODIO

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

Article I
GENERAL PROVISIONS

SECTION 1. **Title.** – This Act shall be known as the “Foster Care Act of 2004.”

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, 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 systemize 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 (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 Child” refers to a child placed under the 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 the 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;

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- (m) "Placement" refers to the physical transfer of the child with the foster parent; and
- (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 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 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) A 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 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 abovestated qualifications and has resided in the Philippines for at least six (6) continuous months 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 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 or LGU 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/ies or LGU 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 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 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 injury or 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 or LGU.

Article IV ADOPTION OF A FOSTER CHILD

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

- (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 the "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) 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 AND INCENTIVES

SEC. 13. Foster Child Subsidy – Through the agency or LGU, a foster child shall be given a monthly subsidy from the DSWD, subject to existing government auditing rules and regulations.

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

- (a) **Health Insurance** – For purposes of enrolling a foster child as a dependent of the foster parents who are PHILHEALTH members, the definition of the term "dependent" under Article II, Section 4(f) of Republic Act No. 7875, otherwise known as the "National Health Insurance Act of 1995," shall be amended to include "foster child". As a dependent, a foster child shall be entitled to health insurance benefits under R.A. 7875.
- (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 Twenty Five Thousand Pesos (P25,000.00) personal exemption under the provisions of Section 35(A) of the National Internal Revenue Code (NIRC) of 1997.
- (c) **Additional Exemption for Dependents.** - For purpose of claiming the Eight Thousand Pesos (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 taxable year.

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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 For Agency and Donor.*

(a) Agency. – The agency shall be entitled to the following tax incentives:

- (1) Exemption from Income Tax – The agency, which must be a DSWD-accredited Non-Government Organization (NGO), shall be exempt from income tax on the income derived by it as such organization 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.

(b) Donor – The donor 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 Thirty percent (30%) of the amount of donation shall be spent for administrative expenses.

**ARTICLE VI
PENALTIES**

SEC. 16. 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, otherwise known as "An Act Providing For Stronger Deterrent 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 (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) 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 the license 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 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 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. 18. Appropriations. – 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 Million Pesos (P20,000,000.00) 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, Department of Health, Bureau of Internal Revenue, Council for the Welfare of Children 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 in full force and effect.

SEC. 22. **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,