

HOUSE OF REPRESENTATIVES

House Bill No. 322

Introduced by Representative Susan A. Yap

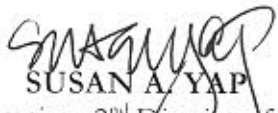
EXPLANATORY NOTE

To uphold children's rights and welfare, it is essential for the State to give special focus on children who are abused, neglected, surrendered, dependent, abandoned, under socio-cultural difficulties, and with special needs. Specifically, these children should be provided with care and support that only a family can provide. This is in recognition that the family, as a social institution, is responsible for the primary socialization of the child in his or her early years.

However, circumstances dictate the conditions for the rearing of a child. In some cases, crisis situations are inescapable, thereby creating a negative environment for a child to be raised in. Thus, alternative family care may be a solution to this particular dilemma.

This measure shall enable the State to fulfill part of its duty to provide care for children in a state of negligence and abandonment. It seeks to intervene by giving a comprehensive legal framework that shall consolidate the interests of children in need of foster care and those who can provide such.

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


SUSAN A. YAP
Representative, 2nd District of Tarlac

HOUSE OF REPRESENTATIVES
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AN ACT
TO STRENGTHEN AND PROPAGATE FOSTER CARE FOR ABANDONED AND
NEGLECTED CHILDREN 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 I
GENERAL PROVISIONS

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

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 (DSWD) 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 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.
- (m) "Placement" refers to the physical transfer of the child with 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-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 or 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 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;
- (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.

1 An alien possessing the abovestated qualifications and has resided in the Philippines for at
2 least six (6) continuous months and will continue to stay in the country for the duration of the foster
3 placement may qualify as a foster parent.

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5 ARTICLE III
6 PROCEDURE
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8 SEC. 6. *Recruitment and Development of Foster Parent.* – Social workers shall reach out to communities to
9 recruit and develop applicants for foster care.

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11 SEC. 7. *Issuance of License.* – The DSWD shall issue a license to applicant foster parents after
12 determining their motivation, capacities and potentials for development on the basis of a home
13 study report submitted by the agency or LGU concerned. The license is renewable unless earlier
14 revoked by the DSWD.

15
16 SEC. 8. *Matching.* – Matching shall be done by the agency/ies or LGU concerned only after the child
17 case study and the home study have been conducted. The child case study report shall establish the
18 needs of the child for consideration in the selection of the foster parent. Likewise, the home study
19 report shall establish said foster parent's capacity and resources to provide a safe, secure, and loving
20 home to the child.

21
22 SEC. 9. *Placement.* – The physical transfer of the child to the foster parent shall be allowed only after
23 the Foster Placement Authority has been issued, except in emergency cases when the life of the child
24 is in danger or at risk due to natural or man-made disasters. The DSWD shall issue the Foster
25 Placement Authority within five (5) working days from submission of application thereof.
26 Otherwise, the application for a Foster Placement Authority shall be deemed approved after the
27 lapse of said period without express or written denial thereof.

28
29 SEC. 10. *Supervision of Foster Placement.* – Supervised foster placement begins as soon as the foster
30 parent receives the child into his/her care.

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32 During the foster placement, the social worker shall conduct regular home visits to monitor
33 the child's adjustment in the foster home and shall submit progress reports to the DSWD.

34
35 In case of injury or death of a foster child, or if he/she runs away or gets lost, such incident
36 shall be reported immediately to the agency which, in turn, shall report the same to the DSWD.

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38 SEC. 11. *Termination of Placement.* – Termination of placement shall be done by the DSWD upon the
39 recommendation of the agency or LGU.

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41 ARTICLE IV
42 ADOPTION OF A FOSTER CHILD
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44 SEC. 12. *Conditions.* – A foster parent may adopt his/her foster child through the following
45 conditions:

- 46
47 (a) The foster parent must have all the qualifications as provided for by Republic Act No. 8552,
48 otherwise known as the "Domestic Adoption Act of 1998", or Republic Act No. 8043,
49 otherwise known as the "Inter-Country Adoption Act of 1995", as the case may be;
50 (b) The foster child has not yet been matched for adoption;
51 (c) The trial custody, as required in adoption, may be waived by the DSWD: *Provided*, that a
52 harmonious relationship exists between the child and his/her foster parents and family
53 members; and
54 (d) For purposes of this Act, the procedure for adoption shall be governed by Republic Act No.
55 8552 or Republic Act No. 8043, as the case may be.

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57 ARTICLE V
58 ASSISTANCE AND INCENTIVES

SEC. 13. *Foster Child Subsidy.* – A foster child shall be given a monthly subsidy by the LGU with augmentation from the DSWD.

SEC. 14. *Support Care Services to Foster Parents.* – 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.

SEC. 15. *Tax Exemptions.* –

- (a) *Additional Exemption for Dependents of Foster Parents.* – For purposes of claiming the additional exemption by foster parent/s for each dependent not exceeding four (4), the definition of the term “dependent” under Section 35(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, shall include “foster child”;
- (b) *Income Tax Exemption to a DSWD Accredited Nongovernment Agency.* – All income received by a DSWD accredited nongovernment agency shall be exempt from income tax pursuant to Section 30 of the NIRC of 1997, as amended; and
- (c) *Incentives for a DSWD Accredited Nongovernment Organization Donor.* – Gifts and donations of real and personal properties of all kinds shall be exempt from the donor’s tax and the same shall be considered as allowable deductions from the gross income in the computation of the income tax of a donor which shall qualify as a DSWD accredited nongovernment organization, in accordance with the provisions of the NIRC of 1997, as amended.

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 punished 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 punished 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 punished 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 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, the 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

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

2 (e)

3 SEC. 18. *Appropriations.* – The Secretary of the DSWD shall include in the Department's programs
4 the implementation of this Act, the initial funding of which shall be charged against its current year's
5 appropriations. Thereafter, the amount necessary for its continued implementation shall be included
6 in the annual General Appropriations Act.
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8 SEC. 19. *Implementing Rules and Regulations.* – The DSWD, as lead agency, the Department of the
9 Interior and Local Government, the Department of Justice, the Department of Health, the Council
10 for the Welfare of Children and other concerned government agencies, in consultation with
11 accredited child-caring institutions and organizations with foster care programs and both Houses of
12 Congress, are hereby mandated to prepare and draft the implementing rules and regulations to
13 operationalize the provisions of this Act within three (3) months from its effectivity.
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15 SEC. 20. *Repealing Clause.* – Any law, presidential decree, issuance, executive order, letter of
16 instruction, administrative order, rule and regulation contrary to or inconsistent with the provisions
17 of this Act is hereby repealed, modified or amended accordingly.
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19 SEC. 21. *Separability Clause.* – If any provision of this Act is held invalid or unconstitutional, the
20 other provisions not affected thereby shall remain valid and subsisting.
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22 SEC. 22. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following its publication in
23 two (2) newspapers of general circulation or in the *Official Gazette*.
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25 Approved,