

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

15TH CONGRESS
First Regular Session

HOUSE BILL NO. 3012

Introduced by **REP. SALVADOR H. ESCUDERO III**

EXPLANATORY NOTE

This bill proposes a comprehensive legal framework for a foster care system in our country. It is principally aimed to address the social, physical, economic and moral needs of children who have been abandoned, neglected, surrendered and/or abused.

It is anchored on the constitutionally mandated State policy 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"¹

Concomitantly, this proposed foster care system also finds basis in The Child and Youth Welfare Code and International Conventions duly recognized and entered into by our country.

This proposed legislation also deems appropriate the inclusion of provisions for incentives in order to advance and promote foster care. These benefits range from subsidies to healthcare memberships to tax exemptions.

On the basis of the foregoing, passage of this bill with dispatch is sought.


SALVADOR H. ESCUDERO III
Representative
1st District, Sorsogon

¹Section 3, par. 2, Article XV of the Constitution

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AN ACT
INSTITUTIONALIZING AND STRENGTHENING FOSTER CARE FOR
QUALIFIED CHILDREN, APPROPRIATING FUNDS THEREFOR AND FOR
OTHER PURPOSES

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

Article I
GENERAL PROVISIONS

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

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; 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 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 temporary 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 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 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 a 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 the agency or LGU concerned. The license is renewable 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 foster 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, except in emergency cases when the life of the child in danger or at risk due to natural or man-made 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 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.

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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 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 1998", 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 AND INCENTIVES

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

SEC. 14. *Assistance and Incentives to Foster Parents* - 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 provisions of Section 35(A) of the National Internal Revenue Code (NIRC) of 1997.
- (c) *Additional Exemption for Dependents* - For purpose of claiming the 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.

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. 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 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
- (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:

(1) Full deductibility from the gross income of the donor of the amount donated subject to the conditions provided for under Sec. 34 (H2c) of the Tax Code of 1997 otherwise, the donor shall only be entitled to a limited deduction in an amount not in excess of ten 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; and

(2) Exemption from donor's tax subject to the provisions of Sec. 101 (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 PENALTIES

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 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. 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 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 provisions of this Act shall be included in the annual 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. 20. *Implementing Rules and Regulations* - The DSWD, as lead agency, Department of the Interior and Local Government, Department of Justice, Department of Health, 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 prepare and draft the implementing rules and regulations to operationalize the provisions of this Act within three (3) 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 Clause* - If any provisions 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,