

Republic Act No. 10165

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Republic of the Philippines
Congress of the Philippines

Metro Manila
Fifteenth Congress

Second Regular Session

Begun and held in Metro Manila, on Monday, the twenty-fifth day of July, two thousand eleven.

[REPUBLIC ACT NO. 10165]

AN ACT TO STRENGTHEN AND PROPAGATE FOSTER CARE AND TO PROVIDE FUNDS THEREFOR

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 2012”.

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 or other conditions prejudicial to their development.

It is hereby declared the policy of the State to provide every child who is neglected, abused, surrendered, dependent, abandoned, under sociocultural difficulties, or 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 lights 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.

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

The State shall also protect the rights of the biological child of the foster family and ensure that in no case shall the child be disadvantaged as a result of the placement of a foster child.

In all cases, the child's right to health shall be upheld and protected.

SEC. 3. *Definition of Terms.* – For purposes of this Act, the following terms are defined:

(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 eighteen (18) but is unable to fully take care of or protect oneself 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 about a child.

(d) *Child with Special Needs* refers to a child with developmental or physical disability.

(e) *Family* refers to the parents or brothers and sisters, whether of the full or half-blood, of the child.

(f) *Foster Care* refers to the provision of planned temporary substitute parental care to a child by a foster parent.

(g) *Foster Child* refers to a child placed under foster care.

(h) *Foster Family Care License* refers to the document issued by the DSWD authorizing the *foster parent to provide* foster care.

(i) *Foster Parent* refers to a person, duly licensed by the DSWD, to provide foster care.

(j) *Foster Placement Authority (FPA)* refers to the document issued by the DSWD authorizing the placement of a particular child with the foster parent.

(k) *Home Study Report* refers to a written report prepared by a social worker containing the necessary information on a prospective parent or family member.

(l) *Matching* refers to the judicious pairing of a child with foster parent and family members based on the capacity and commitment of the foster parent to meet the individual needs of the particular child and the capacity of the child to benefit from the placement.

(m) *Parent* refers to the biological or adoptive parent or legal guardian of a child.

(n) *Placement* refers to the physical transfer of the child with the foster parent.

(o) *Relatives* refer to the relatives of a child, other than family members, within the fourth degree of consanguinity or affinity.

(p) *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.* – 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 special needs;

(d) A child whose family members are temporarily or permanently unable or unwilling 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 who needs long-term care and close family ties but who cannot be placed for domestic adoption;

(g) A child whose adoption has been disrupted;

(h) A child who is under socially difficult circumstances such as, but not limited to, a street child, a child in armed conflict or a victim of child labor or trafficking;

(i) A child who committed a minor offense but is released on recognizance, or who is in custody supervision or whose case is dismissed; and

(j) A child who is in need of special protection as assessed by a social worker, an agency or the DSWD.

Provided, That in the case of (b), (c), (f), (h), (i), and (j), the child must have no family willing and capable of caring and providing for him.

SEC. 5. *Who May Be a Foster Parent.* – An applicant who meets all of the following qualifications may be a foster parent:

(a) Must be of legal age;

(b) Must be at least sixteen (16) years older than the child unless the foster parent is a relative;

(c) Must have a genuine interest, capacity and commitment in parenting and is able to provide a familial atmosphere for the child;

(d) Must have a healthy and harmonious relationship with each family member living with him or her;

(e) Must be of good moral character;

(f) Must be physically and mentally capable and emotionally mature;

(g) Must have sufficient resources to be able to provide for the family's needs;

(h) Must be willing to further hone or be trained on knowledge, attitudes and skills in caring for a child; and

(i) Must not already have the maximum number of children under his foster care at the time of application or award, as may be provided in the implementing rules and regulations (IRR) of this Act.

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 twelve (12) continuous months and maintains such residence until the termination of placement by the DSWD or expiration of the foster family license, may qualify as a foster parent.

ARTICLE III
PARENTAL AUTHORITY OF FOSTER PARENTS

SEC. 6. *Parental Authority of a Foster Parent.* – Foster parents shall have the rights, duties and liabilities of persons exercising substitute parental authority, as may be provided under the Family Code over the children under their foster care.

SEC. 7. *Limitations on Parental Authority of Foster Parents.* – Foster parents shall only have the rights of a person with special parental authority to discipline the foster children as defined under Section 233 of the Family Code, insofar as it prohibits the infliction of corporal punishment upon the child.

ARTICLE IV
PROCEDURE

SEC. 8. *Recruitment and Development of Foster Parents.* – To recruit applications for foster care, the DSWD shall reach out to various communities and LGUs and work preferably with the Local Council for the Protection of Children (LCPC).

SEC. 9. *Submission of Home Study Report.* – The social worker shall make a detailed Home Study Report of an applicant's background and circumstances, carried out in a series of planned visits and interviews, in order to determine if the applicant meets the basic requirements for foster care and is suitable to become a foster parent.

SEC. 10. *Issuance of License.* – The DSWD shall issue a Foster Family Care License based on the Home Study Report submitted by the agency 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. 11. *Matching.* – Matching shall be done by the agency only after the child case study and the home study have been conducted, save for exceptions to be determined by the DSWD, taking into consideration the best interests of the child.

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. 12. *Placement.* – The physical transfer of the child to the foster parent shall be allowed only after the FPA has been issued, save for exceptions to be determined by the DSWD, taking into consideration the best interest of the child.

SEC. 13. *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.

SEC. 14. *Termination of Placement.* – Termination of placement shall be done by the DSWD, upon recommendation of the agency, on the following grounds:

- (a) Return of the child to biological parents;
- (b) Placement for adoption of the child;
- (c) Death of the child;
- (d) Death of both foster parents;
- (e) Expiration of the FPA; and
- (f) In all cases where placement becomes prejudicial to the welfare of the child, such as, but not limited to, abandonment, maltreatment, sexual assault, violence or other forms of abuse.

Provided, That in the case of (f), the foster child, with the assistance of a registered social worker, shall have the option to apply for termination of placement.

ARTICLE V

LONG-TERM FOSTER PLACEMENT

SEC. 15. *Long-Term Foster Placement Authority.* – If a child has been under the care of a foster parent for a period of at least seven (7) years, the said foster parent may apply for Long-Term Foster Placement Authority (LTFPA), subject to the following conditions:

- (a) The child’s return to his biological parents or placement in an adoptive family is not imminent;
- (b) The foster parent continues to possess the qualifications required under this Act and a valid foster family care license for the entire duration of the foster care;
- (c) The child, if ten (10) years of age or over, duly assisted by a social worker, gives written consent for long-term stay with the foster parent; and

(d) Aside from the regular monitoring visits, the DSWD shall reassess and reevaluate the foster home situation every three (3) years, to determine whether it is in the best interest of the child to continue living in the foster home on a long-term basis.

LTFPA grants the foster parent custody over the foster child without the requirement of the eventuality of adoption of the latter by the former. During this period, the foster child shall enjoy the rights of a child under Article 3 of the Child and Youth Welfare Code, and under other laws: *Provided*, That there shall be no mandatory rights of succession in favor of the foster child.

SEC. 16. *Long-Term Foster Care Commitment.* – Taking into consideration the stability and best interest of the foster child, a foster parent, who unilaterally terminates the LTFPA before the foster child reaches the age of majority or finishes tertiary education, shall make provisions for the education and basic needs of the foster child, in accordance with the standards in which the child has been raised or has become accustomed to, within the said period: *Provided*, That the foster parent has the means to support the foster child in keeping with the financial capacity of the family.

ARTICLE VI ADOPTION OF A FOSTER CHILD

SEC. 17. *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 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 foster parent and family members; and
- (c) The procedures for adoption, for purposes of this Act, shall be governed by Domestic Adoption Act of 1998 or Inter-Country Adoption Act of 1995, as the case may be.

ARTICLE VII LOCAL GOVERNMENT UNITS

SEC. 18. *Role of Local Government Units (LGUs).* – LGUs shall promote the foster care system in their respective territorial jurisdictions.

SEC. 19. *Funding.* – In accordance with the Local Government Code, LGUs shall primarily be responsible for social welfare services which include foster care programs. However, the national government shall provide financial support, priority given to third (3rd), fourth (4th) and fifth (5th) class municipalities.

SEC. 20. *Seminars and Trainings.* – The DSWD, in coordination with the Department of the Interior and Local Government (DILG), is hereby mandated to develop and provide programs to ensure the awareness and responsiveness of local government officials in the promotion and development of the foster care system in every city, municipality or barangay.

ARTICLE VIII
ASSISTANCE AND INCENTIVES

SEC 21. *Assistance to a Foster Child.* –

(a) *Foster Child Subsidy.* – A foster child, through the agency, shall be entitled to a monthly subsidy from the DSWD, subject to existing government auditing rules and regulations. The subsidy is primarily aimed at supporting the expenses of the child to lessen the financial burden on the foster parent: *Provided,* That support may be waived if the foster parent is capable of supporting the foster child.

(b) *Health Insurance.* – A foster child shall automatically be a PhilHealth beneficiary of the foster parent and as such, entitled to health insurance benefits. If the foster parent is not a PhilHealth member, he must seek enrollment with PhilHealth. LGUs and agencies shall provide assistance to the foster parents to ensure enrollment.

SEC. 22. *Assistance and Incentives to Foster Parent.* –

(a) *Support Care Services.* – The DSWD, the social service units of LGUs and agencies 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) *Additional Exemption for Dependents.* – For purposes of claiming the Twenty-five thousand pesos (PhP 25,000.00) additional exemption for foster parents for each dependent not exceeding four (4) as provided for by Republic Act No. 9504, the definition of the term “dependent” under Section 35(B) of the National Internal Revenue Code (NIRC) of 1997 shall be amended to include “foster child”: *Provided,* That all other conditions provided for under the aforesaid section of the NIRC of 1997 must be 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 (1) taxable year.

For purposes of this section, only one (1) foster parent can treat the foster child as a dependent for a particular taxable year. As such, no other parent or foster parent can claim the said child as a dependent for that period.

SEC. 23. *Incentives to Agencies.* – Agencies shall be entitled to the following tax incentives:

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

(b) Qualification as a Donee Institution. – Agencies can also apply for qualification as a donee institution.

SEC. 24. *Incentives to Donors.* – Donors of an agency shall be entitled to the following:

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

(b) Exemption from Donor's Tax. – Donors shall be exempted from donor's tax under Section 101 of the NIRC of 1997: *Provided*, That not more than thirty percent (30%) of the amount of donations shall be spent for administrative expenses.

ARTICLE IX

PENALTIES

SEC. 25. *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 11, 12, 13 or any other provision of this Act and its IRR shall suffer the following penalties:

(1) For the first violation, a fine of not less than Twenty-five thousand pesos (PhP 25,000.00) but not exceeding Fifty thousand pesos (PhP 50,000.00); and

(2) For any subsequent violation, a fine of not less than Fifty thousand pesos (PhP 50,000.00) but not exceeding One hundred thousand pesos (PhP 100,000.00), and revocation of license to operate.

(c) Any person, natural or juridical, other than the foster parent or any agency, violating any provision of this Act and its IRR shall be penalized with imprisonment of one (1) month to six (6) years, depending on the gravity of the offense or a fine of not less than Ten thousand pesos (PhP 10,000.00) but not

more than One hundred thousand pesos (PhP 100,000.00), or both, at the discretion of the court.

(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 X FINAL PROVISIONS

SEC. 26. *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 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; and
- (e) Perform such other functions and duties as may be prescribed by the DSWD.

SEC. 27. *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 (PhP 25,000,000.00) 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 agencies.

SEC. 28. *Implementing Rules and Regulations.* – The DSWD, as lead agency, the Department of Justice (DOJ), the Department of Health (DOH), the Bureau of Internal Revenue (BIR), the Council on Welfare of Children (CWC), the DILG and other concerned government agencies, in consultation with agencies are hereby mandated to prepare and draft the IRR to operationalize the provisions of this Act within (3) months from its effectivity.

SEC. 29. *Suppletory Clause.* – The provisions of Executive Order No. 209, otherwise known as the Family Code of the Philippines and other applicable laws, shall have suppletory application to this Act.

SEC. 30. *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. 31. *Separability Clause.* – If any provision of this Act is held invalid or unconstitutional, the other provisions not affected hereby shall remain valid and subsisting.

SEC. 32. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation or in the *Official Gazette*.

Approved,

(Sgd.) **FELICIANO BELMONTE JR.**

*Speaker of the House
of Representatives*

(Sgd.) **JUAN PONCE ENRILE**

President of the Senate

This Act which is a consolidation of Senate Bill No. 2486 and House Bill No. 4481 was finally passed by the Senate and the House of Representatives on March 21, 2012.

(Sgd.) **MARILYN B. BARUA-YAP**

*Secretary General
House of Representatives*

(Sgd.) **EMMA LIRIO-REYES**

Secretary of the Senate

Approved: JUN 11, 2012

(Sgd.) **BENIGNO S. AQUINO III**

President of the Philippines

RESOURCES

- [PDF] [Republic Act No. 10165, June 11, 2012](http://www.officialgazette.gov.ph/downloads/2012/06jun/20120611-RA-10165-BSA.pdf)
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