

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

SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. **4855**



Introduced by REPRESENTATIVES MARIA LOURDES ACOSTA-ALBA, KARLO ALEXEI
B. NOGRALES and MEL SENEN S. SARMIENTO

EXPLANATORY NOTE

This bill seeks to institutionalize alternative family care for children as an option other than adoption and foster family care.

Adoption normally provides the orphaned child with the best substitute for the family he or she has lost. But only few of these children have the chance of being adopted. Many of them fail to meet the requirements of prospective parents who have decided ideas regarding the origin, appearance, intelligence or age of the child they wish to adopt. All too often there is some obstacle to their adoption. Sometimes relatives make difficulties or even refuse to give their consent.

Children who have no chance of being adopted would be best cared for in a foster home which, after adoption, best fulfills the ideal of a family upbringing. This, however, is only true of the good foster home. Children placed in less satisfactory foster families are exposed to new dangers.

The proposed measure seeks to fill a gap in the existing welfare facilities by creating foster homes of a new kind which could be adapted on a broader basis to each child's needs. The bill promotes child development within a caring family environment. In particular, this bill strives to promote and protect the "caring" element of a family environment, so that each child has a caring parent or alternative parental caregiver who can guide and support the child's development. It strives for siblings to be able to stay together, unless this is not in their best interests. Within a caring family environment, the family creates a "home" where children enjoy a real sense of security and belonging.

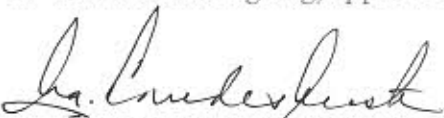
The 2009 United Nations Guidelines for Alternative Care of Children, to which the Philippines is a signatory thereof, enhances the implementation of the UN Convention of the Rights of the Child to ensure that children do not find themselves in alternative care unnecessarily, and where out-of-home care is provided, it is delivered under appropriate conditions responding to the child's rights and best interests.


The bill seeks to combine all the advantages of the private foster family through an Alternative Care Agency (ACA) with those of the best type of children's home, while eliminating the disadvantages stated above.

The ACA is basically very like an ordinary private foster family. It has, however, certain advantages. It can be supervised and controlled in its work, and adults in-charge of the children can be carefully selected and trained. It has the merit of existing solely in the interests of the children committed to its care. It is exclusively concerned with meeting their needs and with caring for their many and diverse problems.

Unlike adoption or foster care, alternative care of children does not totally cut off children's contact with their biological families. Except when the children's welfare will be endangered, or they are abused by their own family members, alternative care of children allows biological parents and families to participate in the rearing of the children given to the care of ACAs. This ensures that the unity and strength of family units is preserved.

In view of the foregoing, approval of this measure is most earnestly sought.


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HOUSE BILL NO. 4855

Introduced by REPRESENTATIVES MARIA LOURDES ACOSTA-ALBA, KARLO ALEXEI
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AN ACT
RECOGNIZING AND STRENGTHENING ALTERNATIVE CARE OF CHILDREN,
PROVIDING INCENTIVES TO AGENCIES PROVIDING THE SAME

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

Section 1. *Short Title.* - This Act shall be known as the “Alternative Care of Children Act.”

Section 2. *Declaration of Principles and State Policies.* –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 shall provide every child who is neglected, abused, surrendered, dependent, abandoned, under sociocultural difficulties, with an alternative family that will provide love and care as well as opportunities for growth and development.

Further, 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.

Finally, the State recognizes that aside from adoption and foster care, alternative child care shall be established in compliance to UN Guidelines on Alternative Care for Children that will promote the child’s growth and development, and at the same time provide the biological family with the opportunity to continue its involvement in child rearing.

Towards this end, the State shall provide every child who is neglected, abused, surrendered, dependent, abandoned, under socio-cultural difficulties, whose biological family cannot provide basic necessities, or with special needs with alternative family care that will provide love and care as well as opportunities for growth and development, without unduly severing the bonds of the child and the biological family.

The State shall also protect the child's right to health.

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

(a) *Alternative Care of Children (ACC)* refers to the provision of planned temporary substitute parental care to a child by an Agency pursuant to Section 4 of this Act and as may be defined by its implementing rules and regulations.

(b) *Alternative Care Agency (ACA)* - refers to a child-caring or child-placing institution licensed and accredited by the Department of Social Welfare and Development (DSWD) to provide alternative care in coordination with the host Local Government Unit pursuant to Chapter IV Section 34 of RA 7160.

(c) *Alternative Care License (license)* refers to the document issued by the DSWD authorizing an agency to provide alternative care.

(d) *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.

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

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

Section 4. Guiding Principles of ACC. – ACC shall be guided by the following:

(a) All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimized disruption of his/her educational, cultural, and social life.

(b) Decisions regarding children in alternative care, including those in informal care, should have due regard for the importance of ensuring children a family-based care, group foster care and of meeting their basic need for safe and long-term relationships to their caregivers, with permanency generally being a key goal.

(c) Children must be treated with dignity and respect at all times and must benefit from effective protection from abuse, neglect, and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves.

(d) Siblings with existing bonds should in principle not be separated from placements in alternative care unless there is a clear risk of abuse or other justification in the best interest of the

child. In any case, every effort should be made to enable siblings to grow together, maintain contact with each other unless this is against their wishes or interests.

(e) Provisions of alternative care should never be undertaken with a prime purpose of furthering the political, religious, or economic goals of the providers.

(f) Such other principles in accordance with the UN Convention on the Rights of the Child.

Section 5. Purposes. - The purposes of an ACA shall be as follow:

(a) To cooperate with public authorities in providing alternative care to abandoned, dependent, and neglected children as defined in Presidential Decree No. 603 and Republic Act No. 7610;

(b) To support efforts to keep children in, or return them to the care of their family or, failing this, to find another appropriate and permanent solution;

(c) To ensure that, while such permanent solutions are being sought or in cases where they are not possible or are not in the best interest of the child, the most suitable forms of alternative care are identified and provided under conditions that promote the child's full and harmonious development;

(d) To assist the Government to better implement their responsibilities and obligations in these respects, bearing in mind the economic, social, and cultural conditions;

(e) To guide policies, decisions, and activities of all concerned with the social protection and child welfare in both the public and the private sectors, including the civil society.

(f) Such other purposes to attain the guidelines and principles of the UN Convention on the Rights of the Child and local statutes.

Section 6. Parental Authority of an ACA. - ACAs shall be *in loco parentis*, exercising the rights, duties and liabilities of persons exercising substitute parental authority over the children under their foster care, as may be provided for by Executive Order No. 209, series of 1987 ("Family Code of the Philippines"), *Provided*, that ACAs shall only have the rights of a person with special parental authority to discipline the children under their care and protection as defined under Section 233 of the Family Code, insofar as it prohibits the infliction of corporal punishment upon the child.

Section 7. Privileges. - To allow it to fully realize its mandate, an accredited ACA shall:

(a) Enter into agreements with public authorities, and accept provisions for the cost of any service or activity which may be entrusted to it, within the scope of its object and functions, pursuant to such agreements;

(b) Own and hold real and personal properties and accept bequests, donations and contributions of property of all classes;

(c) Any donation, contribution, bequest, and grant which may be made to the agency shall be exempt from donor's tax and the same shall be considered as allowable deduction from the gross income of the donor, in accordance with the provisions of the National Internal Revenue Code, as amended, provided, that such agency are accredited NGO pursuant to Executive Order No. 720, series of 2008;

Finally, the agency shall be exempt from the payment of real property taxes on all real properties owned by it.

Section 8. *Who May Be Placed Under Alternative Care.* – The following may be placed in alternative 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 who needs long-term care and close family ties but who cannot be placed for domestic adoption;

(f) 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;

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

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

Section 9. *Role of the Department of Social Welfare and Development (DSWD).*-(a) *Issuance of License.* – The DSWD shall have the authority to accredit by issuing an Alternative Care license based on the application by the agency to include stipulation of its track record and to determine the motivations, capacities and potentials of said agency. The license is renewable every three (3) years unless earlier revoked by the DSWD.

(b) *Periodic Review.* –The DSWD shall review its existing alternative care guidelines, align it to the UN Guidelines and domestic laws and conduct periodic review on it.

Section 10. *Role of Local Government Units (LGUs).* – The host LGU, pursuant to Section 108 of Republic Act No. 7160 (“Local Government Code”), shall accredit alternative care agencies that are duly recognized by the DSWD in their locality. It shall put in place monitoring mechanisms over these alternative care agencies.

The LGU, through its Local Social Welfare and Development Office, shall include the provisions of this Act in the development of its plans and strategies, and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with social welfare programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under the Local Government Code.

Section 11. *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 alternative care system in every city, municipality or barangay.

Section 12. *Unlawful Solicitation.* – It shall be unlawful for any person to solicit, collect or receive money, materials or property of any kind by falsely representing himself to be a member, agent or representative of any alternative care agency.

Section 13. *Penal Clause.* – Any person, whether natural or juridical, violating any section of this Act shall, upon conviction therefore, be liable to a fine of not less than fifty thousand pesos (P50,000.00) or imprisonment for a term not exceeding one (1) year, or both, at the discretion of the court for each and every violation. In case the violation is committed by a corporation or an association, the penalty shall devolve upon the President, Director or any other officer responsible for such violation.

Section 14. *Alternative Care of Children (ACC) Committee.* – There is hereby created an Alternative Care of Children Committee, chaired by the DSWD Secretary. The secretaries, or duly appointed representatives of the Department of Health, Department of Education, Department of the Interior and Local Government, Council for the Welfare of Children, and the various local government leagues shall be members thereof.

Section 15. *Duties of the ACC Committee.* – The ACC Committee shall primarily monitor the implementation, review, and recommend changes in policies concerning alternative family care and other matters related to the child’s welfare. It shall submit to the DSWD Secretary and to Congress an annual report of the policies, programs and activities relative to the implementation of this Act, and recommendations for remedial legislation to strengthen alternative family care.

Section 16. *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, with institutions presently providing alternative family care, the Leagues Provinces, Cities, and Municipalities, and Liga ng

mga Baranggay, 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 ninety (90) days from its effectivity.

Section 17. *Suppletory Clause.* – The provisions of Executive Order No. 209, series of 1987, otherwise known as the Family Code of the Philippines and other applicable laws, shall have suppletory application to this Act.

Section 18. *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.

Section 19. *Separability Clause.* – If any provision of this Act is held invalid or unconstitutional, the other provisions not affected hereby shall remain valid and subsisting.

Section 20. *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,